

MODIFICATION OF COVENANTS, CONDITIONS,  
RESERVATIONS, AND RESTRICTIONS  
OF SECTION V  
TIKI ISLAND SUBDIVISION

WHEREAS certain covenants, conditions, reservations, and restrictions of Tiki Island, Section V, a subdivision in the Village of Tiki Island, Galveston County, Texas, according to the map thereof of record in Plat Book 9, Page 32 of the Map Records in the Office of the County Clerk of Galveston County, Texas, recorded in Volume 1882, page 466 of the Deed of Trust Records in the Office of the County Clerk of Galveston County, Texas, on August 2, 1967, hereinafter collectively referred to as the "original restrictions", include a provision that they shall remain in effect until June 1, 1991, at which time the original restrictions shall be automatically extended for successive periods of ten years each, unless and until by a duly recorded instrument a majority of the property owners in said Tiki Island, Section V, agree to change the original restrictions, in whole or in part; and

WHEREAS, in order to maintain and establish a uniform plan for the development, improvement, and sale of the Subdivision and to insure the preservation of such uniform plan for the benefit of both the present and future owners of lots in the Subdivision, we, the majority of the property owners in said Tiki Island, Section V, desire to modify the original restrictions (1) by renewing and extending any and all of the original restrictions, or portions thereof, specified in this instrument; (2) by removing any others of the original restrictions, or portions thereof, not specified in this instrument; and (3) by amending, adding, and placing certain covenants, conditions, reservations, and restrictions upon and against the Subdivision, as follows:

NOW, THEREFORE, we, the undersigned, constituting the majority of the property owners in Tiki Island, Section V, and acting in accordance with the original restrictions, do hereby modify the original restrictions (1) by renewing and extending any and all of the original restrictions, or portions thereof, specified in this instrument; (2) by removing any others of the original restrictions, or portions thereof, not specified in this instrument; and (3) by amending, adding, and placing the following covenants, conditions, reservations, and restrictions upon and against the Subdivision, with such modifications to become effective on June 1, 1991, and agree that all of the above-described property in the Subdivision shall be held, sold, and conveyed subject to the following easements, reservations, charges, restrictions, covenants, conditions, and other provisions, which are for the purpose of protecting the property values and shall be binding upon all persons having any right, title or interest in the Subdivision or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

Every contract, deed, or other instrument of conveyance which has been executed or may be hereafter executed with regard to the above-described property shall be conclusively deemed to have been executed, delivered, and accepted with the following reservations, charges, easements, covenants, conditions, restrictions, and other provisions, regardless of whether or not said provisions are set out in full or incorporated therein.

## ARTICLE 1.

### Definitions

Section 1. "Association" shall mean and refer to the Tiki Island Civic Association, its successors and assigns.

Section 2. "Committee" shall mean and refer to the Tiki Island Architectural Control Committee.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "In good standing" shall mean and refer to an owner who has paid all maintenance charges, mowing fees, bulkhead repair fees, and other assessments due to the Association.

Section 5. "Subdivision" shall mean and refer to that certain real property described above and known as Section V, Tiki Island Subdivision.

Section 6. "Lot" shall mean and refer to any plot of land shown on the recorded map of the Subdivision.

Section 7. "Waterways" shall mean and refer to all channels, canals, lakes, and waterways of every type shown on the recorded map of the Subdivision.

## ARTICLE II.

### Reservations, Exceptions and Dedications

Section 1. Recorded map of the subdivision. The recorded map of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the streets and easements shown thereon, and such recorded map of the Subdivision further establishes certain other restrictions applicable to the Subdivision. All dedications, limitations, restrictions and reservations shown on the recorded map of the Subdivision are incorporated herein and made a part hereof for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed, or other instrument of conveyance which has been executed or may be hereafter executed with regard to the above-described property or any part thereof, whether specifically referred to therein or not.

Section 2. Utilities. The Association hereby expressly reserves a utility easement along, under, over, across and through the front 10 feet of each lot in order to lay, construct, operate,

maintain, inspect, reconstruct, change the size of and remove utility lines and facilities (including, but not limited to, water, sanitary sewer, storm sewer, drainage, and gas pipes, mains and conductors and all appurtenances thereto and electric distribution and communication lines, wires, conduits, poles, down guide wires, connections and all appurtenances thereto, telephone poles and lines and all appurtenances thereto, and any other utilities necessary to serve each of said lots), together with the right of ingress and egress thereto. The "front 10 feet of each lot" is defined as a strip 10 feet in width along each side of each lot adjoining a right of way. Utility easements hereby reserved are easements 10 feet wide at and below normal ground level and existing upward to a plane 16 feet above the ground, and from said plane and upward, the utility easements are unobstructed aerial easements 21 feet, 6 inches wide, extending 5 feet in width adjacent to and on both sides of the utility easements on each lot. The Association further reserves the exclusive right and easement to grant franchises and easements to utility owners to lay, construct, maintain, and remove utility lines in said utility easement. Said utility easement is in no way dedicated to the public and is not included in the conveyances already made or to be made in the future from Jamaica Corporation, or any subsequent owner, to any lot owner, unless expressly stated to the contrary in the conveyance instrument. The Association hereby expressly reserves all utility lines and facilities now installed or to be installed in the future, in all easements, streets, alleys and ways, including without limitation, water wells and equipment, sewer lines, water lines, gas lines, electric poles and lines and telephone poles and lines. Said utility lines and facilities now installed or to be installed in the future are in no way dedicated to the public and are not included in the conveyances already made or to be made in the future from Jamaica Corporation, or any subsequent owner, to any lot owner, unless expressly stated to the contrary in the conveyance instrument.

Section 3. Waterways. The Association hereby reserves a perpetual right or way easement in, along, under, over, across and through all waterways to construct, operate, maintain, inspect, reconstruct and deepen such waterways and all other facilities for navigation by small boats and crafts, together with the right to connect such waterways with other waterways, and such waterways are not dedicated to the public in any manner.

Section 4. Bulkheads. The Association hereby reserves a perpetual, non-exclusive easement in, along, under, over, across and through each lot in the Subdivision which abuts a waterway (in common with the owner of any such lot or parcel of land which abuts a waterway) to the extent necessary to operate, maintain, inspect, repair, change the size of and reconstruct bulkheads located on such lots for the purpose of maintaining and protecting the said waterways from erosion from such abutting lots or parcels of land.

Section 5. No other reservations. Other than those described in Sections 1, 2, 3, and 4 of Article II above, there are no reservations, exceptions, and dedications.

### ARTICLE III

#### Use Restrictions

Section 1. Lot maintenance. The owner and the occupant of each lot shall have the responsibility at all times to keep all weeds and grass thereon cut in a sanitary, healthful, and attractive manner. In no event shall the owner or occupant use any lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The owner or occupant of each lot shall not permit the accumulation of garbage, trash, rubbish, or other unsightly obstacles of any kind on any lot, easement, alley, or street abutting the lot.

Section 2. No vacant lot or part of the Subdivision shall be used or maintained as dumping grounds for rubbish, refuse, stumps, trees, underbrush, or scrap materials from construction. Trash, garbage or other materials shall be kept only in sanitary containers.

Section 3. Dirt and fill material. The digging or removal of dirt from any lot is expressly prohibited, except when necessary in conjunction with the landscaping of such lot or in conjunction with the construction of improvements on such lot. No fill material which will change the grade of a lot will be placed thereon without the written approval of the Committee.

Section 4. Authorized use. No lot or other property in the Subdivision shall be used except for residential purposes, which exclude hospitals, clinics, duplex houses, apartment houses, and hotels. Use of any lot for business, commercial, trade, or professional purposes is prohibited. No building shall be erected, placed, altered, or permitted to remain on any lot other than one single family dwelling. Although only one single family dwelling shall be constructed on each lot, a residence may be constructed on a portion of two or more adjoining lots, subject to the approval of the Committee. The living area of the main structure located on any of these lots, exclusive of porches, decks, patios, entryways, garages, and the like, shall not be less than fourteen hundred (1,400) square feet.

No building shall be located on any lot nearer than twenty (20) feet to the front lot line. In the event a lot is over fifty (50) feet wide at the right of way or at the canal adjoining such lot, then no building shall be located on such lot nearer than ten (10) feet to any side lot line; in the event the width of a lot is fifty (50) feet or less both at the right of way and at the canal adjoining such lot, then no building shall be located on said lot nearer than seven (7) feet to any side lot line. Subject to the approval of the Committee, building lines on irregularly-shaped lots may be adjusted as the Committee deems necessary. The word "building" as used herein with reference to the building lines, shall exclude the following building elements, if they do not extend more than five (5) feet beyond the building line: galleries; walkways; steps; open porches; porticos; parapet walls; and the extension of the eaves of a roof. Corner lots shall be deemed to front on the street having the least frontage. No physical improvement above the ground shall be located on any lot nearer than ten (10) feet to the front lot line. No physical improvement above the ground shall be located on any lot nearer than five (5) feet to any side lot line.

Section 5. Foundations. The entire area under the house at ground level shall be concrete.

Section 6. Building materials. No building material of any kind or character shall be placed or stored upon any lot until the owner or builder is ready to commence making improvements, after which time any building materials shall be placed or stored within the property lines of the lot or parcel of land upon which the improvements are to be made. At no time shall any building materials be placed in the street or between the pavement and the property line.

Section 7. Driveways. Driveways shall be constructed of reinforced concrete and shall extend to the street. Drainage structures under driveways shall have a net drainage opening area of sufficient size to permit the free flow of water without back water and shall have a minimum opening of one and three-quarters (1-3/4) square feet (18-inch diameter pipe culvert). Driveways must slope toward the canal for drainage.

Section 8. No sign, advertisement, billboard or advertising structure of any kind may be erected or maintained on any lot; provided, however, that (1) one sign which is not more than five square feet and advertises the property for sale or rent or (2) one sign used by builders to advertise the property during the periods of construction and sale may be erected or maintained without consent. The Association shall have the right to remove any such prohibited sign, advertisement, billboard or advertising structure which is placed on any lot, except as allowed above, and in doing so, shall not be liable and is expressly relieved from any liability for trespass or for any damages in connection therewith, or arising from such removal.

Section 9. No clothes line shall ever be installed, maintained, or used on any lot.

Section 10. Construction subject to the approval of the Village of Tiki Island. Construction or alteration of any structure on any lot governed by these restrictions is subject to the ordinances and building regulations of the Village of Tiki Island, its successors and assigns and the issuance of the required building permit.

Section 11. No structure of any type shall be moved onto any residential lot in this Subdivision.

Section 12. Use of temporary structures. No structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuilding shall be used on any lot at any time as a residence. Temporary structures used as building offices and for other related purposes during the construction period must be inconspicuous and not unsightly and must be removed within ten days of the final inspection by the appropriate entity.

Section 13. Repair. All buildings in the Subdivision must be kept in good condition and repair; they must be painted when necessary to preserve their attractiveness.

Section 14. Antennae and satellite dishes. No CB antennae, or other communications receivers, other than those used for receiving television signals, or communications transmitters shall be maintained on any portion of any lot or on the roof of any dwelling in the Subdivision. No satellite dish or radio or television aerial wire shall be maintained on any portion of any lot in front of any building or encroach upon another lot in the Subdivision.

Section 15. Occupancy. Upon complaint to the Association by an owner in good standing, whether in Section V or in another subdivision in the vicinity of the Subdivision which is designated as a numbered section of "Tiki Island", the Association has the right to inspect a dwelling, which may not be occupied until the Association has approved it for occupancy. No residential dwelling will be occupied unless water, sewerage, and permanent electrical facilities are complete. No septic tanks are to be utilized within this Subdivision. No sewerage disposal of any kind may be discharged directly unto a canal or easement or upon any property in the Subdivision.

Section 16. Prohibition of certain activities. No business or trade activity for profit shall be conducted on any lot which is not related to single family residential purposes. No activity of any sort shall be permitted nor shall anything be done on any lot which may be or become an annoyance or nuisance to the neighborhood of the Subdivision.

Section 17. Liquid petroleum products. The use of liquid petroleum products (propane, butane, etc. is prohibited, except for those which (1) are not in a permanently-installed container, (2) are used outside the building for cooking, fogging, or similar uses, and (3) are used inside the building to protect against freezing weather.

Section 18. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that three or fewer dogs, cats or other household pets may be kept within the boundaries of the lot, provided they are not kept, bred or maintained for any commercial purpose.

Section 19. No spirituous, venous or malt liquor, medicated bitters capable of producing intoxication, alcohol, illegal drugs, or controlled substances shall ever be sold or offered for sale on any lot. No lot shall be used for illegal or immoral purposes.

Section 20. No hunting will be allowed in the Subdivision.

Section 21. Except for temporary (less than 72 hours) parking, no boat, boat trailer, boat rigging, travel trailer, camper, or inoperative automobile shall ever be parked or placed nearer to the street than the building setback lines. Except for temporary (less than 72 hours) parking or for temporary (less than 72 hours) storage, no house trailer, recreational vehicle, or truck, trailer or commercial vehicle having a rated load capacity in excess of one ton shall ever be parked or stored on any lot in the Subdivision. Except for such times as may be reasonably required on a delivery or pickup of goods, wares, property or material to or from property in the Subdivision, no such house trailer, recreational vehicle, truck, trailer, or commercial vehicle shall ever be parked on any right of way in the Subdivision at any time. No automotive vehicle or recreational

vehicle shall ever be parked on the shoulder of a road in the Subdivision for a period of longer than twelve (12) hours.

Section 22. Bulkhead. Owner shall be responsible to construct and maintain a bulkhead throughout the entire length of owner's property that adjoins any waterway. Such bulkhead shall be kept in good repair. At a minimum, such bulkhead must be maintained in such a condition that no soil passes through the bulkhead into the waterway. The Association shall have the right to monitor and inspect, from time to time, the condition of such bulkhead. In the event the Association determines, in its sole discretion, that repairs of a bulkhead are necessary in order to comply with these restrictions and notifies the owner that repairs are needed by sending a letter to the owner at the last known address of owner, then owner shall submit to the Association or its designated Committee the plans, specifications, or designs with respect to the said repairs, within 60 days from the mailing of such notice. In the event the owner does not receive notice of approval or disapproval of the plans for bulkhead repairs within thirty (30) days after they have been submitted, approval will not be required. In the event the owner does not submit the plans for bulkhead repairs within sixty (60) days, the owner hereby grants the right to the Association to make the repairs of the bulkhead that are reasonable and necessary in order to comply with these restrictions; provided, however, that the Association has no obligation to make such repairs and may elect not to do so. If the Association does elect to make such repairs, the Association shall send an invoice for the repairs to the owner at the last known address of the owner. The lot owner agrees to pay to the Association said invoice for the repairs. Said invoice is due and payable to the Association within thirty (30) days from the mailing of such invoice. In the event said invoice is not paid in a timely manner, the remedies provided in Article V hereof and at law may be enforced by the Association.

Section 23. Bulkheads, boathouses and piers. The bulkhead of any lot shall not be breached for any purpose, nor shall boathouses, boat slips, or docks be constructed, without first having obtained the written approval of the Committee. Any breach of the bulkhead for an inland boat slip shall have a bulkhead liner equal to or better than the breached bulkhead. Boathouses must conform with the distances allowed by the Committee. The use of automotive tires or other unsightly materials for hold-off fenders or pier construction is prohibited.

Section 24. In no event shall a boathouse be allowed to be constructed on any lot or in any canal as may be hereinafter provided, unless and until a residential dwelling has been commenced. In any event, once a residence dwelling has been started, it must be completed within twelve (12) months from commencement.

Section 25. No pier, wharf, dock, boathouse, boat lift or other structure shall be erected in any canal without first having obtained the written approval of the Committee.

Section 26. No boat which is used for commercial purposes will be allowed to operate or be anchored or docked in any manner in any waterway; provided, however, that any boat rigged for the dragging of nets must be moored in a boathouse and lifted from the water when it is not in use. Upon complaint to the Association by an owner in good standing, whether in Section V or in another subdivision in the vicinity of the Subdivision which is designated as a numbered section

of "Tiki Island", any boat operated in the waterways must be approved in writing by the Association as to appearance, size and loudness of motors. No boat of any size or type which is unsightly, oversized, or has an unusually loud motor will be allowed to be placed in any waterway. No boat shall be anchored in any canal in the Subdivision. Each boat must be securely tied fore and aft to the canal lot frontage of the owner. No person shall be permitted to flush a toilet from a boat into the waterways. In the waterways, no person shall be permitted to live aboard a boat overnight or for a longer period of time.

Section 27. The canals shown on the plat of this Subdivision will at all times be open for the use of the owners in this Subdivision, their guests and invitees. The Association shall make all necessary rules deemed necessary from time to time regarding navigation of the canals, especially as to speed limits and water skiing.

#### ARTICLE IV

##### Architectural Control Committee

No building shall be erected, placed, or altered on any lot until construction plans and specifications and a plot plan showing the location and size of the structure have been approved in writing as to harmony of exterior design materials and color with the existing structures in the Subdivision, as to location with respect to topography and finished ground elevation, and as to compliance with minimum construction standards by the Committee. By a majority vote of the Association's board of directors, the Association shall appoint or remove the members of the Committee. A copy of the construction plans and specifications and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Committee or its designated representative, prior to commencement of construction. The Committee may require the submission of such plans, specifications, and plot plans, together with such other documents as it deems appropriate. A fee will be charged for the review of the building plans. The owner will pay such fee to the Association at the time that the building plans are submitted to the Committee. In the event the Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the receipt of the required documents, approval will not be required and the requirements of this Article IV. will be deemed to have been fulfilled. No building plans may be approved unless (1) all amounts relating to maintenance charges and mowing fees due and payable for the lot pursuant to Article V. hereof have been paid in full, (2) the condition of the bulkhead for the lot is in compliance with Article III, Section 22 hereof, and (3) all amounts relating to bulkhead repairs made by the Association pursuant to Article III, Section 22 hereof have been paid in full.



## ARTICLE V

### Maintenance Charge

Each lot in the Subdivision, after its completion as a saleable lot, is hereby subjected to an annual maintenance charge of Seventy-Five and no/100ths Dollars (\$75.00) per year, which is due and payable annually in advance to the Association by the owner or purchaser of each lot on the first day of January of each year, beginning on January 1, 1992, and continuing on January 1 of each and every succeeding calendar year thereafter, until terminated as provided below, for the purpose of creating a fund known as the "Maintenance Fund" and described below. A lot shall be deemed to be completed when it has paved roads and utilities. The maintenance charge shall be prorated between the purchaser and seller of a lot in the proportion that the remaining months of the calendar year bear to the whole year. At the time any lot is sold, the purchaser thereof shall pay a transfer fee to the Association in the amount of Five and no/100ths Dollars (\$5.00), in consideration of expenses incurred in identifying and processing the transfer and other good and valuable consideration; provided, however, that in the event the purchaser thereof shall notify the Association, within thirty (30) days of the execution of the document transferring ownership of the lot, of the purchaser's full name, mailing address, and lot and section number, then no such transfer fee shall be charged.

The Association may increase or reduce the maintenance charge from time to time by action applying uniformly to all lots in the Subdivision, but the amount of any such increase for each calendar year shall not exceed Five and no/100ths Dollars (\$5.00) per lot; provided, however, that no increase shall occur until January 1, 1996, at which time the annual maintenance charge for calendar year 1996 becomes due and payable, and, provided further, that the annual maintenance charge may not at any time exceed the maximum sum of One Hundred and no/100ths Dollars (\$100.00) for each lot in the Subdivision. The Association may also from time to time reduce the maintenance charges payable by owners of two or more lots by action applying uniformly to all owners of two or more lots. Such increase or decrease shall become effective on January 1 of the year to which said change applies.

Each vacant lot in the Subdivision that is not landscaped is hereby subjected to an annual mowing fee, in an amount to be determined by the Association, which is due and payable annually in advance to the Association by the owner or purchaser of each lot on the first day of January of each year, beginning on January 1, 1992, and continuing on January 1 of each and every succeeding calendar year thereafter, until terminated as provided below. The owner of each vacant lot in the Subdivision that is not landscaped grants the right to the Association to cut weeds and grass and to perform and cause to be performed the services necessary for compliance with Article III, Section I. herein and agrees to timely pay to the Association the amount of the mowing fee therefor. The Association or its agent shall, without liability to the owner or occupant, in trespass or otherwise, enter upon such vacant lot and cut such weeds and grass and perform such services as the Association may deem to be appropriate.

Bach maintenance charge, mowing fee, and bulkhead repair fee (pursuant to Article III,

Section 22. hereof) that is not paid at the time the same becomes due and payable to the Association shall bear interest at the rate of twelve percent (12%) per annum, which amounts to one percent (1%) per month. The owner of each lot agrees to pay such interest to the Association. In the event the Association incurs attorney's fees, court costs, or other expenses in connection with the enforcement of any of these covenants, conditions, reservations, and restrictions, including, but not limited to, the collection of the maintenance charge, mowing fee, and bulkhead repair fee hereunder, the owner agrees to pay to the Association the reasonable amount of all such attorney's fees, costs, and other expenses which relate to his lot. The owner of each lot, his heirs, personal representatives, successors and assigns shall be personally obligated jointly and severally, for such maintenance charges, mowing fees, bulkhead repair fees, interest, and attorney's fees. The owner hereby grants to the Association a lien on the owner's lot to secure the payment of all maintenance charges, mowing fees, bulkhead repair fees, interest, and attorney's fees, all of which shall be a charge on the land, and said lien shall be a continuing lien upon the lot to which the maintenance charges, mowing fees, and bulkhead repair fees relate.

To secure the payment of the maintenance charge, mowing fee, bulkhead repair fee (pursuant to Article III, Section 22 hereof), interest, and attorney's fees on each lot, a vendor's lien is hereby retained on each lot in favor of the Association, and it shall be the same as if a vendor's lien were retained in favor of Jamaica Corporation, or any subsequent owner, and assigned to the Association without recourse in any manner on Jamaica Corporation, or any subsequent owner, for payment of such indebtedness. The liens herein shall be enforceable through appropriate proceedings at law and in equity; provided, however, that each such lien shall be secondary, inferior and subordinate to all liens, present and future, given, granted and created by or at the instance and request of the owner of any lot to secure the payment of moneys advanced or to be advanced on account of the purchase price or the improvements of any such lot, and further provided that in the event the Association has received written notice of the name and address of the first mortgage holder, as a condition precedent to any proceeding to enforce such lien upon which there is an outstanding valid and subsisting first mortgage lien, the Association shall give the holder of such first mortgage lien sixty (60) days' written notice of such proposed action by mailing to the last known address or to the nearest convenient office of such first mortgage holder by prepaid United States mail a statement of the delinquent maintenance charges, mowing fees, bulkhead repair fees, interest, and attorney's fees, upon which proposed action is based. The Association may bring an action at law and in equity against the owner personally obligated to pay the maintenance charges, mowing fees, bulkhead repair fees, interest, and attorney's fees, and to foreclose the liens granted herein against the lot and may obtain an order of sale of the lot to which such liens are attached.

By acceptance of a contract of sale, deed, or other instrument of conveyance, each owner agrees and consents to the maintenance charges, mowing fees, bulkhead repair fees, interest, attorney's fees, and the liens as provided herein and expressly vests in the Association or its agents the right and power to bring all actions against each owner personally for the collection of such maintenance charges, mowing fees, bulkhead repair fees, interest, and attorney's fees as a debt. Upon the conveyance of any lot in the Subdivision, successive owners shall, from the time of the acquiring title, be held to have covenanted and agreed to pay the Association all past and future maintenance charges, mowing fees, and bulkhead repair fees, interest, and attorney's fees,

relating to such lot.

Payments of the maintenance charge shall be used by the Association (co-mingled with payments of maintenance charges to the Association from other subdivisions in the vicinity of the Subdivision which are designated as numbered sections of "Tiki Island" and which have been heretofore or are hereafter subdivided according to a map or plat filed in the Plat or Map Records of Galveston County, Texas, and in which each lot is subject to an annual maintenance charge which has been assigned to the Association or which is required to be paid to the Association by applicable restrictions and reservations) to create a "Maintenance Fund". "Maintenance expenses" shall include expenses incurred for any of the following purposes: lighting, constructing, improving and maintaining any rights of way, easements, streets, sidewalks, paths, fences, waterways, marinas, boat docking facilities, navigational facilities and aids, parkways, esplanades, areas between curbs and sidewalks, and any structures, facilities or area which can be used by all owners or which in the opinion of the Association would benefit the Subdivision or Tiki Island; collecting and disposing of garbage, ashes, rubbish and the like in said areas (other than garbage, ashes, rubbish and the like from constructed residential dwellings), subsidizing bus or transportation service, employing security personnel or any other action deemed desirable to protect persons and property, payment of legal and all other expenses in connection with the operation of the Association, and the enforcement of recorded charges, restrictions, covenants, reservations, agreements and conditions affecting property to which maintenance charges apply, payment of all expenses in connection with the collection and administration of the maintenance charges, and doing any other things necessary and desirable in the opinion of the Association to keep property neat and in good order or which it considers of general benefit to the Subdivision or other portions of Tiki Island. The act of the Association and its expenditures of the Maintenance Fund shall be final so long as it acts in good faith.

## ARTICLE VI.

### General Provisions

Section 1. Enforcement. The Association, or the owner of any lot, shall have the right to enforce, by a proceeding at law or in equity all covenants, conditions, reservations, restrictions, liens and charges renewed and extended herein, now imposed, or hereafter imposed by the provisions of this instrument or any modification hereto. The Association, or the owner of any lot, may so prosecute any proceeding at law or in equity against any person violating, attempting to violate, or threatening to violate the provisions of this instrument or any modification hereto, either to prevent him from doing so or to recover damages for such violation. Failure by the Association or by any owner to enforce any covenant, condition, reservation, restriction, lien, or charge herein shall in no event be deemed a waiver of the right to do so thereafter. This section shall not restrict any governmental agency or entity from acting to enforce any of the foregoing provisions.

Section 2. Severability. Invalidation of any one of these reservations, covenants, conditions, restrictions, liens, charges, or other provisions by judgment or court order shall in no wise affect any of the other provisions hereof, which shall remain in full force and effect.

Section 3. Relationship to original restrictions. Any and all of the original restrictions which are contained or referred to herein, in whole or in part, are deemed to be renewed and extended by this instrument. Any and all of the original restrictions which are not contained or referred to herein, in whole or in part, are deemed to be removed by this instrument.

Section 4. Modification of the above deed restrictions. The covenants, conditions, reservations, and restrictions herein shall run with and bind the land comprising the property in the Subdivision for an initial term from June 1, 1991 until May 1, 2005, after which time they shall be automatically extended for successive terms of ten (10) years each. The covenants, conditions, reservations, and restrictions herein may be modified upon the expiration of the initial term or any successive term hereof by an instrument signed by a majority of the property owners in this Subdivision. Any modification hereof must be duly recorded in the Office of the County Clerk of Galveston County, Texas (1) on or before the expiration of the initial term of the covenants, conditions, reservations, and restrictions herein or (2) on or before the expiration of any successive term thereof.

Section 5. Relationship to Village of Tiki Island. In the event any ordinance, regulation, or charter provision of the Village of Tiki Island or of any governmental entity succeeding thereto shall conflict with any of the provisions contained herein, such ordinance, regulation, or charter provision shall take precedence and be controlling over the provisions contained herein.

Section 6. Limitation on interest. It is the intention of each owner in the Subdivision and of the Association that the provisions hereof conform in all respects to the laws of the State of Texas, or the laws of the United States, whichever may be applicable, so that no payment of interest or other sum construed to be interest shall exceed the highest lawful rate permissible

under the laws applicable hereto. In determining the annual or monthly rate of interest paid or payable hereunder, all sums paid or to be paid as interest or construed to be interest shall be prorated, allocated, or spread as permitted under applicable laws. If through any circumstances any owner contracts for the payment of or pays any sums as interest or construed to be interest which would exceed the highest lawful rate applicable hereto, (1) the amount contracted for shall be automatically reduced to the highest lawful rate authorized for such provision, and (2) the amount of excess interest paid shall be applied to the reduction of the principal balance owed by the owner to the Association, if any, and if the principal balance has been fully paid, the excess interest shall be refunded to the owner and thereupon, the Association shall not be subject to any penalty provided for the contracting for, charging or receiving interest in excess of such highest lawful rate regardless of when or the circumstances under which such refund or application was made.

Section 7. Number and gender. The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret the above restrictions in accordance with the intent of the majority of the property owners of the Subdivision. Likewise, if either the feminine or masculine gender should be one of or inclusive of the other gender, it shall be so treated.

Section 8. Multiple signature pages. The signatures of the owners modifying these covenants, conditions, reservations, and restrictions may be on multiple signature pages, shall be incorporated herein by reference for all purposes, and shall have the same effect as a signature on page 16 of this instrument, so long as each signature page is entitled "Modification of Covenants, Conditions, Reservations, and Restrictions of Section V, Tiki Island Subdivision" and is signed by one or more property owners in the Subdivision.

EXECUTED effective on the 1st day of June 1991.