

VERSION 2

147764

RESTRICTIONS AND COVENANTS

OMEGA BAY, SECTION A
GALVESTON COUNTY, TEXAS

DEED OF TRUST

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THE STATE OF TEXAS) KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF GALVESTON)

THAT, WHEREAS, Omega Bay, Inc., a Texas Corporation, domiciled in Galveston County, Texas, is the sole owner of that certain tract or parcel of land known as "Omega Bay, Section A", part of a Subdivision of Omega Bay, Sections A, B, and C, a Subdivision out of Lots 20, 21, and 22 of that portion of the Samuel C. Bundick League lying and situated southwest of the Galveston, Houston and Henderson Railroad right-of-way, as shown by the plat of said "Omega Bay, Sections A, B, and C, filed and of record in the Office of the County Clerk of Galveston County, Texas, in Volume 15, Page 100, of the Deed Records; and

WHEREAS, it is the desire of the said Omega Bay, Inc. to create exclusive residential waterfront homesites in said Subdivision for the purpose of preserving and enhancing the privacy and quiet enjoyment of homes built thereon by restricting by a general plan or scheme the use to which the lots in said Subdivision may be put, and in order to ensure uniformity and to maintain suitable standards for the use and occupancy of the lots in said "Omega Bay, Section A", as exclusive residential waterfront sites for the benefit, use and convenience of each and every purchaser, their heirs and assigns, of lots in said "Omega Bay, Section A", and

WHEREAS, these restrictions shall apply solely to Section A of Omega Bay, the restrictions on Sections A, B, and C, respectively, each being independent of one another. The power to modify the restrictions on Section A will not require the concurrence of any property owners outside of Section A other than the approval of the Omega Bay Improvement Committee.

NOW, THEREFORE, Omega Bay, Inc., a Texas Corporation, acting by and through Edward S. Saconas, for itself, its successors and assigns, has, and does hereby covenant, promise and agree that the said "Omega Bay, Section A", shall be, and from this time forward is subject to the following Restrictions and Covenants:

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1. No lot or lots shall be used for anything other than residential purposes, and shall not be used directly or indirectly for the conduct of any business whatsoever, commercial or otherwise.

2. Only one (1) building shall be placed or erected on a lot for use and occupancy as a dwelling; such outbuildings or other roofed or walled structures as are necessary to the comfort, pleasure and convenience of the building used and occupied as a dwelling house may be constructed on the premises, provided that all such outbuildings shall correspond in style and outside finish material to the dwelling house. No duplex shall be placed or erected on any lot.

3. The building placed or erected on the lot for use and occupancy as a dwelling shall contain not less than One Thousand (1,000) square feet of interior living area floor space on lots with less than Sixty (60') lineal feet of roadway frontage nor less than One Thousand Two Hundred (1,200) square feet of interior living area floor space on lots with Sixty (60') lineal feet or more of roadway frontage, unless an exception is approved in writing by the Omega Bay Improvement Committee. In any dwelling house of high-raised construction, none of the area on the ground level, even if enclosed, shall be considered as constituting "interior living area floor space" for the purpose of this restriction.

4. No timbers of any kind or description whatsoever shall be used for pilings and/or bracing for pilings, i.e., vertical supporting members and its bracing, on any high-raised building placed or erected on the premises unless the area below such high-raised building is permanently enclosed with acceptable exterior building material, as required by Paragraph 5 immediately following, so as to obscure such piling and its bracing; provided, however, that this provision is not intended to and shall not apply to the substructures of porches, desks or other unenclosed areas of the building.

5. All buildings placed or erected on a lot shall be finished on the outside with an accepted wood, composition and/or masonry residential exterior building material, and no corrugated metal, felt or paper shall be used as exterior siding or roofing on any building placed or erected on the lot. All residences and other buildings must be kept in good repair and in a neat and clean condition and must be painted when necessary to preserve their attractiveness.

6. No improvements of any character shall be placed or erected, nor shall the erec-

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tion or emplacement thereof be begun, nor shall any changes be made in the exterior design thereof after construction is begun, on any lot until plans and specifications for the proposed improvements have been submitted to and approved in writing by the Omega Bay Improvement Committee, and a building permit issued. Such approval is to include exterior design, floor elevation, plot plan, exterior materials and finish, foundation and framing specifications, and any and all other matters necessary to assure full compliance with these Restrictions and Covenants and with governmental regulations. The Omega Bay Improvement Committee shall have the power to require a bond from the contractor and/or property owner in order to assure full compliance with building permit requirements.

7. When construction of a dwelling or other above-ground improvement has begun, the exterior of such construction must be completed within one hundred twenty (120) days of the time of starting. No one shall occupy the structure until the exterior has been finished. Within thirty (30) days of occupancy of the dwelling, the owner shall cause to have planted at least one palm tree between the road and the dwelling and at least one palm tree between the canal and the dwelling. The palm trees may be substituted for by another tree or planting approved by the Omega Bay Improvement Committee. No temporary building, tent, or house trailer of any type, shall be placed upon the lot during construction or at any other time.

8. No building or other above-ground structure shall be placed or erected on a lot (a) closer than twenty (20) feet to the bulkhead on the bank of the canal, (b) nor closer than twenty (20) feet to the road shoulder, nor (c) closer than five (5) feet from the property lines on any and all sides of the lot unless an exception is approved in writing by the Omega Bay Improvement Committee. Steps leading to a residence shall not be included in (a) and (b) above, but shall be included in (c) above. Air conditioning units shall not be included in (c) above. Fences are permitted anywhere on the lot provided that any portion of a fence within twenty (20) feet of the bulkhead must be of the chain link type, so as not to obstruct the view of the canal unless an exception is approved in writing by the Omega Bay Improvement Committee.

9. No sign, advertisement, billboard or advertising structure of any kind shall be erected or maintained on any lot, house or other structure or vehicle without the consent in writing of Omega Bay, Inc., its successor or nominee. Omega Bay, Inc. shall have the right to remove without the consent of the lotowner or of any other person, any such sign,

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advertisement, billboard or advertising structure which is displayed without its consent, and in so doing shall not be liable and is expressly relieved from any liability upon any claim, demand and/or cause of action for damages or alleged damages resulting, directly or indirectly, from or in any way connected with such removal.

10. If at any time a purchaser of a lot, his heirs, successors or assigns, should desire to sell such lot or any part thereof, the same shall first be offered to Omega Bay, Inc., its successor or nominee, which shall have the right to purchase the same at the price the purchaser, his heirs, successors or assigns, can sell such property for, and if Omega Bay, Inc., its successor or nominee, fails to exercise said option within ninety (90) days thereafter, said option shall become null and void; provided, however, that it is understood and agreed that said ninety (90) days' option shall extend from and after the date Omega Bay, Inc., its successor or nominee, is notified by the purchaser, his heirs, successors or assigns, of the price for which said property can be sold.

11. No pier, dock or other similar structure shall be placed or erected on the bank of the canal which extends more than six (6) feet over or into the water of said canal, unless an exception is approved in writing by the Omega Bay Improvement Committee.

12. No boathouse or other walled and/or roofed structure shall be placed or erected in or over the canal. The canal shall at all times be kept free of debris, trash, rubbish, garbage, other unsightly and/or unsanitary articles, and/or anything that would constitute a hazard to navigation.

13. No dwelling house placed or erected on said premises shall be occupied until the same is connected and tied into the sanitary sewer system made available to property owners, and no connections to the water system and the sanitary sewer system shall be covered until inspected and approved by the Bayou Vista Utilities Co., Inc., its successor or assign. No sewage septic tanks shall be used or permitted and no sewage shall be disposed of in any other manner whatsoever other than into the sewer system. In no event shall any sewage be drained or in any manner discharged into the canal, Highland Bayou or any other body of water, and no "privy", vault or other outhouse of similar character shall be placed, erected or allowed on the premises. No water wells may be drilled on any lot in the Subdivision.

14. Said premises shall not be used for any purpose whatsoever which is an annoyance

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or nuisance to the other lot owners in said Subdivision, and the placing, allowing or keeping of anything, or the commission of any act, which is an annoyance or nuisance to the owners of the other lots is expressly prohibited; the owners and occupants of each lot shall keep the same free of weeds, high grass and all unsightly and unkept vegetation, all rubbish and/or other discarded material, and shall at all times so maintain their premises so as not to constitute or create an annoyance or nuisance to the other lots. No building materials or other materials shall be stored or located on any lot except when the storage of building materials is necessary in connection with the construction of improvements then in progress. All rubbish and stored building material must be removed before the house is occupied. The Omega Bay Improvement Committee shall have the right to abate such an annoyance or a nuisance in any manner deemed reasonable by said committee, the costs expended by said committee for abating said annoyance or nuisance to be secured by a lien upon and against the lot upon which said premises are used for any purpose whatsoever which is an annoyance or nuisance to the other lot owners in said subdivision. Said committee shall not be liable and is expressly relieved from any liability upon any claim, demand and/or cause of action for damages or alleged damages resulting, directly or indirectly, from or in any way connected with such action brought to abate such annoyance or nuisance. The violation of any of the terms and conditions of these restrictions and covenants shall be deemed a nuisance.

15. No livestock or poultry or other domestic animals of any kind whatsoever, other than dogs and cats, shall be placed, allowed, or kept on any lot, and pets permitted by this restriction must be kept and maintained so as not to constitute an annoyance or nuisance to the other lots in said subdivision.

16. All garbage cans and other trash receptacles shall be kept covered at all times; and kept within three (3) feet of the dwelling house in an enclosure approved by the Omega Bay Improvement Committee, provided that the Omega Bay Improvement Committee may from time to time amend the requirements for the type of enclosure and its location on the lot.

17. Each lot shall be maintained so as to preserve the drainage of the lot and adjacent roadway areas. The erection or placing of any structure or object, or the filling in or excavation of any area of the lot which will prevent free and adequate drainage or allow water to stand on the lot, or adjacent lots, or adjacent roadway, is prohibited.

18. The Omega Bay Improvement Committee, to perform and fulfill the purposes and

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functions of such committee as in these Restrictions and Covenants set out, is hereby established and created; said Omega Bay Improvement Committee shall consist of three (3) members and shall initially be composed of George Saconas, Edward S. Saconas and Janet Hendrickson, who shall serve as such Omega Bay Improvement Committee until their successors are elected or appointed as hereinafter provided. Said initial committee shall function as such committee, at the sole discretion of said committee until seventy-five per cent (75%) of the lots in all additions of Omega Bay subject to the jurisdiction of said committee have been conveyed by deed by the developer. In the event of a vacancy in said initial committee, for any reason, said vacant position shall be filled by the remaining member or members of the initial committee. After seventy-five per cent (75%) of the lots of all additions in Omega Bay have been conveyed by deed by the developer, the then owners of lots in Omega Bay, may, and shall have the right to cause an election to be called to elect three (3) of their number as members of such Omega Bay Improvement Committee and said three (3) lot owners so elected shall thereupon constitute and be said Omega Bay Improvement Committee until their successors are elected or appointed as hereinafter provided; provided, that the initial Omega Bay Improvement Committee composed of George Saconas, Edward S. Saconas and Janet Hendrickson, may, in its sole discretion, either before seventy-five per cent (75%) of said lots in all additions of Omega Bay have been conveyed, or after such seventy-five per cent (75%) of such lots have been conveyed should the owners of lots in Omega Bay fail to cause an election to be called, appoint three (3) owners of lots subject to the jurisdiction of said Omega Bay Improvement Committee, and said three (3) lot owners so appointed shall thereupon be and constitute the Omega Bay Improvement Committee and shall serve as such until their successors are elected or appointed as hereinafter provided; at any time after one (1) year from the election or appointment of the first committee consisting and composed of lot owners (save and except the initial committee), and at any time after one (1) year from any successive next preceding election, the Omega Bay Improvement Committee may, in its sole discretion, arrange for an election of members to serve on and constitute said Omega Bay Improvement Committee, and when requested in writing by ten (10) or more owners of lots subject to the jurisdiction of said Omega Bay Improvement Committee, the committee shall arrange for and call such election; and any and all such elections shall be governed by the following rules, to-wit:

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Each owner shall be entitled to one (1) vote for each lot to which he holds record title at the time of such election; written notice of such election shall be served upon each owner of a lot subject to the jurisdiction of the committee, either by delivery in person or by addressing such notice, United States mail, postage prepaid, to the last known address of the lot owner, such notice to be either personally delivered or mailed not less than two (2) weeks prior to the date upon which the ballots are to be counted; certification by the committee that such notices have been either delivered or mailed as required hereunder shall be sufficient evidence of compliance with this requirement of these rules; votes shall be by written ballot and all ballots shall be retained for at least one (1) year after each such election; election shall be by a majority vote of those owners of lots subject to the jurisdiction of the Committee casting votes in the election; vacancies occurring between elections may be filled by the remaining members of the committee.

19. Said Omega Bay Improvement Committee shall and is hereby vested with the following powers, duties and functions, to-wit:

- (1) To collect and expend, in the interest of all lots subject to the jurisdiction of said committee as a whole, the maintenance charges hereinafter established, created and levied.
- (2) To interpret and enforce the Restrictions and Covenants of Omega Bay, Section A, and of any and all other Omega Bay Additions made subject to the jurisdiction of said committee by appropriate proceedings, provided, however, that the power to enforce these Restrictions and Covenants is not intended to be and shall not be exclusive and may be exercised by any other person or persons vested with the right to enforce such Restrictions and Covenants.
- (3) To enforce any lien imposed on any lot subject to the jurisdiction of such committee given and created to secure the payment of the maintenance charges hereinafter levied upon the default in payment of the same.
- (4) To approve or reject plans and specifications and to issue building permits for improvements to be erected upon any lot subject to the jurisdiction of the committee. Notwithstanding any other provisions of these Restrictions and Covenants, it shall remain the prerogative in the jurisdiction

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of the Committee to review applications and grant approval for exceptions to those portions of these Restrictions and Covenants which relate to buildings and structures upon the lots. Variations from the building requirements imposed by these restrictions may be made when and only when such exceptions, variances, and deviations do not in any way detract from the appearance of the premises and are not in any way detrimental to the welfare of the subdivision as a whole or to the property of other persons located in the vicinity thereof, all in the sole opinion of the Committee.

(5) To establish eligibility requirements for prospective purchasers and to insure that such requirements are met by prospective purchasers. Such eligibility requirements are limited to (a) The purchaser shall have established credit or financial status which indicate a probability that the purchaser will be able to finance a dwelling on the property purchased, and (b) An intended use of the property by the purchaser which is consistent with a well-kept, peaceful, single family residential community.

20. Each and every lot in Omega Bay, Section A, shall be and is hereby made subject to and liable for an annual minimum maintenance charge of \$75.00. Said annual minimum maintenance charge shall not be increased unless necessitated by an actual increase in operating costs and said increase must be presented to all lot owners at least sixty (60) days in advance of said increase with a full written explanation of the reasons and necessity for the increase. Such charges on such lots shall be for the purpose of creating a fund to be known and used as the "Maintenance Fund"; and the owner of each lot shall pay such annual maintenance charge on the first day of January of each year, commencing January 1, 1979, the payment of such maintenance charge to be secured by a lien upon and against each lot of said Omega Bay, Section A; said maintenance charges and the lien securing the payment thereof are hereby transferred and assigned to the Omega Bay Improvement Committee, and the payment of such maintenance charges shall be made by each lot owner to said Omega Bay Improvement Committee at its office in La Marque, Texas. The costs for collecting all delinquent maintenance charges shall also be charged against the lot upon which the mainte-

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nance charge is delinquent and shall be secured by a lien upon and against said lot. The Maintenance Fund so created and arising from said maintenance charges upon each lot shall be applied, by said Omega Bay Improvement Committee, so far as sufficient, toward the payment of maintenance expenses, including but not limited to, improving and maintaining of the streets and common areas in said subdivision, complying with governmental requirements affecting the overall subdivision, and doing any and all other things necessary or desirable in the opinion of said committee to keep the property of said subdivision neat and in good order, or which said committee considers for the general benefit of said subdivision as a whole, and it is understood and hereby expressly provided that the judgement of said committee in the use and expenditure of said Maintenance Fund shall be final so long as such judgement is exercised in good faith. Such maintenance charge upon each of said lots shall be due and payable, as hereinabove provided, on the first day of January of each year, commencing on January 1, 1979, and for twenty-four (24) years thereafter, and such maintenance charge shall be automatically extended for successive ten-year periods thereafter unless the then owners of a majority of the lots in said subdivision desire to discontinue such charge, such desire by a majority of the owners of lots in said subdivision to so discontinue such charge to be evidenced in an instrument in writing, signed and acknowledged, by such owners of a majority of the lots in said subdivision duly filed of record in the Deed Records of Galveston County, Texas.

21. Each purchaser of a lot in said Omega Bay, Section A, by his acceptance of a deed thereto agrees and consents to such maintenance charges, and covenants and agrees to pay the same.

22. These restrictions and covenants shall run with the land, and shall be binding on all persons owning lots in said Omega Bay, Section A, and all persons claiming under them, for a period of twenty-five (25) years from the date these covenants are recorded with the County Clerk of Galveston County, Texas, after which time such covenants shall be automatically extended for successive period of ten (10) years, unless an instrument signed by a majority of the then owners of the lots has been recorded with the County Clerk of Galveston County, Texas, agreeing to change such Restrictions and Covenants in whole or in part or to revoke them.

23. Enforcement of these Restrictions and Covenants may be by proceedings at law or

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in equity against any person or persons violating or attempting to violate any Restriction or Covenant either to restrain such violation or proposed violation or to recover damages; such enforcement may be by Omega Bay, Inc., the Omega Bay Improvement Committee, and/or the owner of any lot in said subdivision.

24. The violation of any of these Restrictions and Covenants shall not operate to invalidate any mortgage, deed or trust or other lien held against said property, or any part thereof, and such liens may be enforceable against any and all property covered thereby, subject nevertheless to these Restrictions and Covenants.

25. Each residence built in the subdivision must install a natural gas heating system and a natural gas water heater, unless an alternative heating and water heating system is approved by the Omega Bay Improvement Committee.

26. It is expressly understood and agreed that the above Restrictions and Covenants shall apply only to those areas in Section A, Omega Bay, which are designated by lot numbers within the Subdivision boundaries.

27. If any portion of these Restrictions and Covenants are declared to be illegal or invalid for any purpose, the remainder of these Restrictions and Covenants shall not thereby be invalidated.

EXECUTED this, the 24th day of February, 1978.

OMEGA BAY, INC.

Janet Hendrickson
ATTEST

THE STATE OF TEXAS

COUNTY OF GALVESTON

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Edward J. Saconas, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said OMEGA BAY, INC., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 24th day of February A. D., 1978.

Linda C. Bennett

Notary Public in and for
Galveston County, Texas