

4762

RESTRICTIONS
CAPE ROYALE SUBDIVISION
HARBOUR POINT ESTATES TWO

THE STATE OF TEXAS §
 §
 COUNTY OF SAN JACINTO §

WHEREAS, MITCHELL/SOUTHWEST, a Delaware corporation (referred to herein as "Developer"), with offices and principal place of business in The Woodlands, Montgomery County, Texas acting herein by and through its duly authorized officers, is the owner of all that certain real property situated in San Jacinto County, Texas, known as CAPE ROYALE SUBDIVISION, HARBOUR POINT ESTATES TWO (being sometimes referred to herein as "the Subdivision"), according to the map of said Cape Royale Subdivision, Harbour Point Estates Two, recorded in Volume 152, Page 616 of the Map Records of San Jacinto County, Texas, to which map and the record thereof reference is here made for a full and particular description of said real property.

Developer desires to create and carry out a uniform plan for improvement, development and sale of all of the lots in the Subdivision for the benefit of the present and future owners of said lots, and for the protection of property values in the Subdivision; and, to that purpose Developer hereby adopts, establishes and imposes the following declarations, reservations, protective covenants, limitations, conditions and easements to apply uniformly to the use, improvement, occupancy and conveyance of all lots in the Subdivision; and each contract or deed which may be hereafter executed with regard to any of the lots in the Subdivision shall conclusively be held to have been executed, delivered and accepted subject to the following (regardless of whether or not the same are set out in full or by reference in said contract or deed):

SUBDIVISION RESTRICTIONS

1. Use. None of the lots or the improvements thereon shall be used for anything other than single-family, private residential purposes, and all lots in the Subdivision shall be known as residential lots. No commercial activity shall be permitted on any residential lot, nor shall any commercial activity be engaged in from any such residential lot, except that a lot owner may from time to time rent his home to another for residential purposes.
2. Lot area. No lot may be resubdivided; provided however, that individual lots may be divided between abutting owners and thereafter each owner's resulting oversized tract shall be considered as one lot. Nothing herein contained shall prohibit the construction of a single residence on two (2) lots, in which case both such lots shall be considered as one lot for building purposes. Irrespective of the foregoing provisions of this Paragraph 2, the maintenance fund assessment hereinafter set forth shall be and remain applicable to all lots as originally platted.
3. Architectural Control Committee. An Architectural Control Committee ("Committee") shall be appointed, from time to time, by Developer, whose purpose it shall be to review plans, to insure for all owners harmony of location, and harmony of external and structural design and quality with existing structures. The Committee shall have the right to designate a representative to act for it in all matters arising hereunder. Until such time as the Committee has been constituted and appointed, Developer, or its nominee or representative, shall carry out all functions of the Committee relating to these restrictions. After Developer has conveyed title by general warranty deed to 75% of the lots in all sections of Cape Royale Subdivision, or sooner at the sole election of Developer, the members of the Committee shall be selected by the Cape Royale Property Owners' Association ("Association").
4. Structures.
 - (a) No residence shall be constructed or permitted to remain on any residential lot in the Subdivision unless each such residence shall have a minimum of 1800 square feet of living area.
 - (b) No improvements shall be placed on any lot until the building plans, specifications and plot plans showing the location of such improvements on the lot, have been approved in writing by the Committee. Likewise, the alteration of any existing improvements which materially affects or changes the exterior design thereof, may not be made until the plans for such alterations have been approved in writing by the Committee. In the event the Committee disapproves of any such plans, specifications and/or plot plans, notice of such disapproval shall be delivered in person or by registered or certified letter addressed to the party submitting the same at an address which must be supplied with the submission. In passing upon all of such plans, specifications and/or plot plans, the Committee may take into consideration, among other things, the suitability of any such proposed building or structure or the alteration thereof and the materials of which it is to be constructed to the lot or plot upon which it is to be constructed, and the affect thereof upon adjacent neighboring or other lots or plots. Any such notice shall set forth the elements disapproved and the reason or reasons therefor, but need not contain suggestions as to methods of curing any matters or things disapproved. The judgment of the Committee in this respect in the exercise of its sole and absolute discretion shall be final and conclusive. If said Committee fails to approve or disapprove said plans, specifications and/or plot plans within thirty (30) days after the same have been received by the Committee, the same will be deemed to have been approved. These requirements for approval

by the Committee as herein set out cover not only the residences to be constructed in the Subdivision, but all piers and other structures built in the water as well as on the land, and also apply to any retaining walls and any significant moving of soil in or out of the water.

(c) All structures which extend into the water shall meet the following requirements:

(1) Such structures shall not extend into the water more than twenty-five (25) feet.

(2) No part of such structures shall be closer to any projected side property line than ten (10) feet.

(3) No such structures shall extend more than twenty-five (25) feet parallel to the water's edge.

(4) Notwithstanding the foregoing an exception may be made by the Committee in cases where such an exception is necessary because of shallow water or other unusual circumstances, approval of such exception to be given in writing to the owner of the lot affected.

(d) No residence may be occupied in the Subdivision until such time as electricity and central water and sanitary sewers are available to serve the lot on which such residence is to be constructed.

(e) No part of any building shall be located on any residential lot nearer than twenty-five (25) feet to any street. No part of any building shall be located nearer than five (5) feet to any interior lot line, except that in the event of common ownership of more than one (1) lot and the construction of one (1) building on more than one (1) lot, the combined area owned shall be considered as one (1) lot for this purpose. The building set-back lines may be relaxed by decision of the Committee, if the above described distances are not feasible, considering the terrain and/or dimensions of the lot.

(f) No structure shall be occupied or used for residential or storage purposes (other than for the storage of building materials to be used in the construction and completion thereof) until the exterior thereof shall have been fully completed in accordance with the approved plans and specifications.

(g) Each residence, once commenced, must be "dried in" within six (6) months from the date of commencement thereof. By the term "dried in" is meant that the exterior must have the appearance of being a complete house, including all necessary windows, doors, roof, paint and trim. If any such residence is not "dried in" within six (6) months after the date on which such residence is commenced, the owner of same hereby gives the Committee or its representative or agent the right and authority to enter upon the property upon which such structure is situated, and to disassemble such structure and store the building materials on the premises or elsewhere at the discretion of the Committee. The owner or occupant of any such lot agrees, by the purchase or occupancy thereof, that the Committee shall not be liable in trespass or otherwise in entering upon said lot and disassembling any such structure.

(h) No trailer, mobile home, tent, shack, camper, garage, barn or other outbuilding or structure of a temporary character shall, at any time, ever be used as a residence, temporary or permanent, nor shall any structure of a temporary character ever be used in any way or moved onto or permitted

to remain on any lot except during construction of permanent structures.

(i) No fence, wall or hedge having a height of more than three (3) feet shall be located nearer any front lot line than thirty (30) feet. Any fence in front of a residence must be 90% open and be decorative. No fence or wall having a height greater than six (6) feet shall be constructed or permitted to remain in the Subdivision.

(j) Notwithstanding anything contained herein to the contrary, the Committee shall have the power and the authority, to be exercised in its sole discretion, to authorize variances and exceptions from the terms and provisions of any of the restrictive covenants and requirements set forth in this Paragraph 4 as to any one or more lots. The rights, powers and duties reserved to Developer in this instrument and by Paragraph 3 and 4 shall remain in force and effect so long as the covenants and restrictions set forth herein shall be and remain in force and effect. The terms and provisions of this Paragraph 3 may be enforced in the same manner as the terms and provisions hereof are enforced pursuant to Paragraph 25 hereof.

5. Signs. No "For Sale" sign or "For Rent" sign or any other advertising structures may be displayed in the Subdivision without the approval of the Committee.

6. Nuisances. No noxious or offensive activity shall be carried on or maintained on any lot in the Subdivision, nor shall anything be done or permitted to be done thereon which may be or become a nuisance in the neighborhood.

7. Firearms. The use or discharge of firearms in the Subdivision is expressly prohibited.

8. Garbage and Trash Disposal. No lot shall be used or maintained as a dumping ground for garbage. Trash, garbage or other rubbish shall be kept only in tightly, sanitary containers. Each lot owner shall be responsible for disposing of all of its trash, garbage and rubbish.

9. Unightly Storage. If open carports are used, no unsightly storage and/or unsightly vehicles shall be permitted therein.

10. Camping. No camping shall be permitted in the Subdivision at any time.

11. Animals. No horses, cows, poultry, or livestock of any kind (other than house pets) may be kept on any lot in the Subdivision.

12. Off-street Parking. Both prior to and after the occupancy of a dwelling on any lot, the owner shall provide appropriate space for off-street parking for all vehicles and/or boat.

13. Weeds. The owner of each lot shall keep the same clean and free of weeds such as will be in keeping with the other property within Cape Royale Subdivision at any particular time. Upon failure to do this, Developer or the Association may have the lot cleaned and the cost or expense thereof shall be payable on demand by the owner to Developer or the Association, as the case may be.

14. Sewerage and Water. No building or structure shall be occupied as a residence unless all plumbing fixtures, dishwashers and toilets are connected to the established sewerage system in the Subdivision. Each lot owner in the Subdivision covenants and agrees to pay the initial connection charge to connect his residence to the water system and to the sewage disposal system, and

monthly service charge imposed by the municipal utility district or other governmental authority providing water and sewer service in the Subdivision. A lien is hereby retained to secure payment of said charges.

15. Underground Electric Connection Charge. Each lot owner in the Subdivision covenants and agrees to pay the connection charge imposed by the electric utility company for extension of underground electric service from the transformers or secondary pedestals to the residence.

16. Utility Easements. An easement is expressly reserved in, on, over, under and through those portions of the lots as shown on the plat of the Subdivision for the purpose of installing, repairing and maintaining electric power, water, sewerage, gas, telephone and similar utility facilities and services. There is also reserved and dedicated hereby for the use of the Developer and any public or private utility company an unobstructed aerial easement five (5) feet wide from a plane twenty (20) feet above the ground upward, located adjacent to and above all dedicated utility easements as shown and/or reserved on the map or plat of the Subdivision. The easements reserved and dedicated under the terms and provisions hereof and under the terms and provisions of the Subdivision plat shall be for the general benefit of the Subdivision as herein defined and any other land owned or acquired by Developer in the vicinity thereof, and shall also inure to the benefit and may be used by any public or private utility company entering into and upon said property for the purposes aforesaid, without the necessity of any further grant of such easement rights to such utility companies. Fences, walls and shrubbery hedges shall be permitted on any such easements except those easements being used for underground electric and/or telephone systems, provided: (i) that such fences, walls and hedges do not interfere in any way with the use of such easements by any public or private utilities then utilizing or thereafter designed to utilize the same, (ii) that the right of the owners of such fences, walls and hedges shall at all times be and remain subordinate and inferior in every way to the right of public and private utilities; and (iii) that such public or private utilities at any time may, without liability of any kind to the owner or owners thereof, remove any such fence, wall or hedge where the removal of the same is incidental to or necessary for the performance of public or private utility operations. No buildings or structures of any character may be erected or allowed to remain on any utility easement.

17. Utility Lines and Facilities. Each owner of a lot within the Subdivision shall be responsible for maintaining his lot in such a manner as to prevent damage to public or private utility lines or facilities located in, on, or under his lot. Such maintenance shall include, but not by way of limitation, bulkheading. In the event of a violation or breach of this covenant herein contained which violation or breach continues after fifteen (15) days written notice to the owner of any lot involved setting forth the nature of such violation or breach and the specific action to be taken to remedy such violation or breach, the Developer, its successors or assigns, the Association and/or any municipal utility district owning, operating or maintaining such utility lines or facilities, and their agents, shall have the right at reasonable times to enter upon the land on which such violation or breach exists and to take the actions specified in the notice to the owner to remedy, abate and remove, at the expense of the owner thereof, such conditions as may be reasonably necessary to protect the public or private utility lines; and the said party shall not thereby be deemed guilty in any manner of trespass for such entry, abatement or removal. The cost of such remedy or abatement shall be paid to the Developer, the Association or the municipal utility district incurring the expense upon demand and if not paid within thirty (30) days thereof, shall become a lien upon the lot affected in the same manner as a lien securing the maintenance charge; provided, however, that any such lien shall be subordinate and

inferior to any voluntary lien, including any renewal and/or extension thereof, created on any lot or lots in the Subdivision by an owner thereof for the purpose of obtaining a construction or permanent loan or both such loans for the purpose of improving such lot or lots. The rights and remedies provided for in this Paragraph are in addition to, and not in lieu of, all other rights and remedies to enforce the Restrictions available at law or in equity.

18. Association Membership. All purchasers of a lot or lots in the Subdivision must be members of the Association.

19. Park and Recreational Areas. All property owners, members of their families and their guests, shall have the right of ingress and egress to the lake through the park areas as shown on the plat of the Subdivision. Such right shall extend to and include the owners of lots within the Subdivision as well as all other sections of Cape Royale Subdivision developed by the Developer from lands contiguous to or in the vicinity of the said Subdivision. All parks, lakes and beach improvements shall be available for use by such property owners, their families and guests at their own risk. When 75% of the lots in all sections of Cape Royale Subdivision have been sold and title to these lots conveyed by general warranty deed, or sooner, at the election of the Developer, Developer may transfer title to all park and other community areas to the Association or other civic organization active in the area, after which the operation of and maintenance and payment of taxes on such park and other community area shall be the responsibility of such transferee. Nothing herein contained shall be construed as dedicating the Reserves shown on the plat of the Subdivision to the public or to anyone else for park purposes, and Developer hereby declares that such reserves have not been dedicated for use as park areas.

20. Easements in Favor of the Trinity River Authority of Texas. The property included in the Subdivision is subject to certain easements in favor of The Trinity River Authority of Texas (referred to herein as "Authority"), and the use of the land area contained in said easements is further subject to the approval by Authority as set out in that certain conveyance from Mitchell & Mitchell Land Development Co. to The Trinity River Authority of Texas dated January 10, 1968, recorded in Volume 107, Page 506, of the Deed Records of San Jacinto County, Texas, to which instrument and the record thereof reference is hereby made for all purposes. No improvements, including but not limited to docks and decks may be placed in said easement without the approval of the Authority and the Committee.

21. Oil, Gas and Mineral Development. No oil or gas drilling, oil or gas development operations, oil or gas refining or treatment, quarrying or mining operations of any kind shall be permitted upon any residential lot in the Subdivision, nor shall oil or gas wells, or tunnels, mineral excavations or shafts be permitted on any lot at any time while these restrictions remain in full force and effect. No derricks or other structure designed for use in boring or drilling for oil or gas shall be erected, maintained or permitted on any residential lot in the Subdivision at any time while these restrictions remain in force and effect.

22. Drainage Structures. Drainage structures under private driveways shall always have a net drainage opening area of sufficient size to permit the free flow of water without backwater.

23. Cutting of Trees. No growing trees 6" or more in diameter measured at a point 12" from the ground may be cut from any lot without the prior written approval of the Committee, except only for such trees as may be removed where necessary to the construction of improvements on the lot.

24. Maintenance Fund. Each lot in the Subdivision, from and after the sale thereof by Owner, is hereby subjected to an annual maintenance charge of \$226.28 per year per lot, for the purpose of creating a fund to be known as the "Cape Royale Maintenance Fund", to be paid by the purchaser of each such lot in conjunction with a per lot charge to be paid by the purchasers of other lots in the Subdivision, the same to be secured by an assessment lien upon said lots. This annual maintenance charge includes the \$180.00 annual maintenance charge provided for in the restriction instruments recorded in Volume 227, Page 411 and Volume 240, Page 360 of the Deed Records of San Jacinto County, Texas. Said maintenance charge is to be paid annually in advance as directed by the Association. The Board of Directors of the Association shall have the right, in its sole discretion, to increase from time to time the annual maintenance charge by a percentage increase equal to the percentage increase in the Consumer Price Index - All Items, 1967 equals 100 (as defined by the U. S. Department of Labor, Bureau of Labor Statistics) for the year preceding the year for which the assessment is being made; should the U. S. Department of Labor, Bureau of Labor Statistics cease to publish the Consumer Price Index - All Items, the Board of Directors of the Association shall select such other indices which in its judgment reflect the then broad range of economic factors represented in the said Consumer Price Index - All Items. Funds arising from such charge may be applied, so far as sufficient, toward the payment of maintenance or improvement expenses incurred for any or all of the following purposes: lighting, streets, sidewalks, paths, parks, parkways, esplanades, areas between curbs and sidewalks, swimming pools, clubhouse facilities, ramps, boat landings, boat basins, and other similar recreational facilities, collecting and disposing of garbage, ashes, rubbish, and the like, employing policemen and watchmen, providing fire protection, caring for vacant lots, collecting of maintenance charges, enforcement of restrictions, and doing any other things necessary or desirable in the opinion of the Board of Directors of the Association to keep the property neat and in good order, or which it considers of general benefit to the owners or occupants of the Subdivision, it being understood that the judgment of the Association in the expenditure of said fund shall be final so long as such judgment is exercised in good faith. Any and all liens securing said annual maintenance charge are hereby declared to be expressly subordinate and inferior to any voluntary lien, including any renewal and/or extension thereof, created on any lot or lots in the Subdivision by an owner thereof for the purpose of obtaining a construction or permanent loan or both such loans for the purpose of improving such lot or lots. Said subordination of liens shall continue and be in full force and effect for so long as such construction or permanent loan is outstanding.

25. Covenants Running with the Land. All of the restrictions, covenants and conditions herein provided for and adopted shall apply to each and every lot in the Subdivision, and shall be covenants running with the land. Developer, their successors and assigns, shall have the right to enforce observance and performance of the restrictions and covenants contained and provided for herein, and in order to prevent a breach or to enforce the observance or performance of same, shall have the right, in addition to all legal remedies or remedies elsewhere provided herein, to an injunction either prohibitive or mandatory. The owner of any lot or lots in the Subdivision affected shall likewise have the right either to prevent a breach of any such restrictions or covenants or to enforce the performance thereof.

26. Partial Invalidity. Invalidation of any of these covenants, restrictions or conditions by court judgment or otherwise, shall not affect, in any way, the validity of any of the other covenants, restrictions or conditions, all of which shall remain in full force and effect. Acquiescence in any violation, shall not be deemed a waiver of the right to enforce against the violator or others the conditions so violated or any other conditions; and

Developer shall have the right to enter the property of the violator and correct the violation, or to require that the same be corrected.

27. Duration of Restrictions.

(a) The restrictions, covenants and conditions herein provided for and adopted shall remain in full force and effect until December 31, 2012, subject to modification or amendment as hereinafter provided.

(b) At the end of the term provided in Paragraph 27 (a) above, and at the end of each ten (10) year extension herein provided for, these restrictions shall be automatically extended and renewed for succeeding periods of ten (10) years each, unless, within six (6) months prior to the date such restrictions and covenants would otherwise be automatically extended, an instrument shall have been signed by the then owners by general warranty deed of a majority of lots in the Subdivision, each lot entitling its owner to one (1) vote, and shall have been recorded in the Office of the County Clerk of San Jacinto County, Texas, agreeing to change said restrictions, covenants and conditions in whole or in part.

(c) Any or all of the restrictions, covenants and conditions herein contained may be repealed, amended or modified at any time, by a majority vote of the lot owners in the Subdivision, each lot entitling its owner to one (1) vote, such repeal, amendment or modification shall be effected by an instrument in writing executed by such majority of said lot owners, and filed for record in the office of the County Clerk of San Jacinto County, Texas. Notwithstanding anything contained herein to the contrary, no amendment shall effect the rights given to Developer without the consent of Developer.

(d) Developer shall have and hereby reserves the right at any time and from time to time, without the consent or joinder of any other party, to amend this instrument by an instrument in writing duly signed, acknowledged and filed for record in the office of the County Clerk of San Jacinto County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity, or inconsistency, appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of the development as evidenced by the restrictions, covenants and conditions herein contained, and shall not impair or affect the vested property or the rights of any lot owner or his mortgagee.

28. Headings. All Paragraph headings used herein are for convenience only and shall have no efficacy in construing any of the restrictions, covenants or conditions herein contained.

29. Prior Restrictions. These restrictions, covenants and conditions are made in conjunction with the restrictions, covenants, and conditions recorded in Volume 227, Page 411 and Volume 240, Page 360 of the Deed Records of San Jacinto County, Texas (referred to herein as "Prior Restrictions"). In the event of any conflict between the provisions hereof and the Prior Restrictions, the restrictions, covenants and conditions herein contained shall control.

30. Further Development. Notice is hereby given to each purchaser of a lot in the Subdivision that Developer may in the future add an additional section or sections to the Cape Royale Subdivision. Purchasers of lots in such future sections may be entitled to use recreational facilities, if any, in the subdivision.

IN WITNESS WHEREOF, these presents have been executed in counterparts, each executed counterpart to have the full force and effect of an original, this the 28th day of October, 1992.

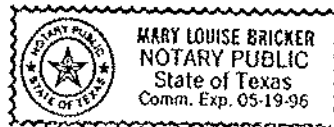
OWNER

MITCHELL/SOUTHWEST

By: [Signature]
Name: J. L. Rogers
Title: Senior Vice President

STATE OF TEXAS §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on October 28, 1992, by J. L. Rogers, senior Vice President of MITCHELL/SOUTHWEST, a Delaware corporation, on behalf of said corporation.



MARY LOUISE BRICKER
Printed Name: Mary Louise Bricker
Notary Public, State of Texas
My Commission Expires: 05-19-96

Mailing Address:

Mitchell/Southwest
Attn: Mary Rose
P. O. Box 4000
The Woodlands, TX 77381

FILED FOR
RECORD

92 OCT 28 PM 4:23

[Signature]
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF SAN JACINTO
I, Joyce Hogue, hereby certify that this instrument was FILED in file number sequence on the date and at the time stamped hereon by me and was duly RECORDED in the official public records of San Jacinto County, Texas as directed herein by me on

OCT 28 1992



JOYCE HOGUE
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS