

AMENDMENT OF RESTRICTIONS  
CAPE ROYALE SUBDIVISION  
- VILLAS DE MARINA SECTION

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THE STATE OF TEXAS           §  
                                  §     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF SAN JACINTO,     §

WHEREAS, by instrument recorded on September 16, 1977, in Volume 168, Pages 554, et seq. and as amended by instrument recorded on November 19, 1976, in Volume 161, Page 256, and by instrument recorded March 28, 1977, in Volume 163, Page 720, all in the Deed Records of San Jacinto County, Texas, Mitchell Development Corporation of the Southwest, as the "Developer", adopted, established and imposed certain restrictions, declarations, reservations, protective covenants, limitations, conditions and easements (the "Restrictions") for the benefit of all present and future owners of lots in Cape Royale, Villas de Marina Section, a subdivision in San Jacinto County, Texas, according to the maps thereof recorded in Volume 5, Page 11, Volume 5, Page 15, Volume 5, Page 19, Volume 5, Page 18, and as replatted in part by map recorded in Volume 5, Page 38, all in the Map Records of San Jacinto County, Texas ("the Subdivision"); and

WHEREAS, the Restrictions provide that such Restrictions may be repealed, amended or modified at any time by majority vote of the lot owners in the Subdivision, each lot entitling its owner to one vote, such repeal, amendment or modification to be effected by any 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; and

WHEREAS, it is the desire of the lot owners of the Subdivision to amend said Restrictions in the manner hereinbelow set forth;

NOW, THEREFORE, the undersigned, being a majority of the lot owners in the Subdivision, have amended, and do hereby amend the Restrictions by adding thereto the following provisions, to-wit:

1. 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 Cape Royale Property Owners' 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 Cape Royale Property Owners' 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.

Except as amended hereby, said Restrictions shall remain as originally written.

The undersigned lienholders join in the execution hereof solely as lienholders for the purpose of subordinating their

liens to this Amendment of Restrictions with the understanding, however, that:

- (a) Except to the extent of subordinating its lien to the restrictions, reservations, covenants and conditions hereinabove provided for, such liens are continued in full force and effect as first and prior liens upon the property described in the security instruments given to secure the indebtedness now or hereafter held by the lienholder; and
- (b) Said subordination excepts from the operation thereof any charge, fee or lien created in this instrument which under any theory or circumstance can be prior or equal to the liens held by the lienholders.

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 \_\_\_ day of \_\_\_\_\_, 1978.

<u>Description</u>	<u>Owner (s)</u>
Lot 12 BK 2 Sec 3	D. E. Banta
LOT 1 SE 1 BK 1	E. J. M. Molyneux
Lot 7 Block 2 Sec 1	B. P. Jagelski
Lot 7 Block 1 Sec 1	W. R. Rowden
Lot 13 Block 1 Sec 4	W. R. Rowden
LOT 2-4-6 BLOCK 1 SECTION 2; LOTS-1-7-8-9-12-13-14-15-16 BLOCK 1-SECTION 3; LOTS-1-2-3-4-6-10-13 BLOCK 2 SECTION-3; LOTS-2+3-Block 3, Section 3; LOTS 1 thru 12 + 15 thru 20 Block 1 Section	Royal Development Corp. A. H. White (President)
(Total 54 lots)	Royal Development Corp. A. H. White (President)

Description

Owner(s)

Lot 3, Block 3 Section 3  
Lot 11, Block 2, Section 3

Marie Miller Schubert

Lot 1, Blk 1 Sec. 2

J. B. Hall

LOT 6 BLK. 1 SEC. 1

D. S. Lamborough

LOT 8 BLK 1 SECT. 1

A. White

LOT 3 BLK 1 SECT-2

LOT 21 BLK 1 SECT 4

Frank Stewart

LOT 6 BLK 2 SECT 3

Richard Pella  
Karin M. Allen

COUNTY OF

BEFORE ME, the undersigned authority, on this day personally appeared Robert E. Beauth known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed,



GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

EXP 2-22-79

R. L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF )

BEFORE ME, the undersigned authority, on this day personally appeared Donald D. Nelson known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed,



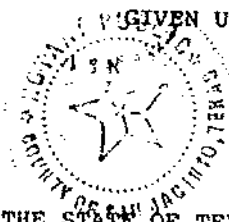
GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

EXP 2-22-79

R. L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF )

BEFORE ME, the undersigned authority, on this day personally appeared Al Jagubski known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed,



GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

2-22-79

R. L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF )

BEFORE ME, the undersigned authority, on this day personally appeared WILLARD S. KEMP known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed,



GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

EXP 2-22-79

R. L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF )

BEFORE ME, the undersigned authority, on this day personally appeared W. R. Rowden and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.



GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

*EYP 2-22-79*

R. L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF )

BEFORE ME, the undersigned authority, on this day personally appeared R. Whitford and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.



GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

*EYP 2-22-79*

R. L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF )

BEFORE ME, the undersigned authority, on this day personally appeared DORIS SHIRLEEN SHABBARON and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.



GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

*2-22-79*

R. L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF )

BEFORE ME, the undersigned authority, on this day personally appeared Don B. Hall and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.



GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

*2-22-79*

R. L. Blankenship  
Notary Public

BEFORE ME, the undersigned authority, on this day personally appeared O.L. SCARBOROUGH and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.



GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

22-79

R.L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF )

BEFORE ME, the undersigned authority, on this day personally appeared A. WAITE and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.



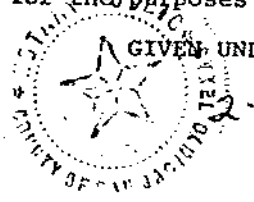
GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

EXP 2-22-79

R.L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF )

BEFORE ME, the undersigned authority, on this day personally appeared FRANK STEWART and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.



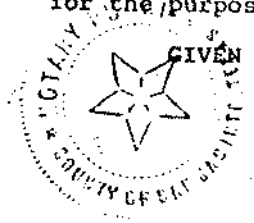
GIVEN UNDER MY HAND AND SEAL OF OFFICE on 11-4, 1978.

2-22-79

R.L. Blankenship  
Notary Public

THE STATE OF TEXAS )  
COUNTY OF SAN JACINTO )

BEFORE ME, the undersigned authority, on this day personally appeared RICHARD ALLEN and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.



GIVEN UNDER MY HAND AND SEAL OF OFFICE on 12-2, 1978.

R.L. Blankenship  
Notary Public  
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THE STATE OF TEXAS )  
MONTGOMERY )  
COUNTY OF HARRIS )

BEFORE ME, the undersigned authority, on this day personally appeared Edna Dreiss, known to me to be the person whose name is subscribed to the foregoing instrument as <sup>Senior</sup> Vice President of MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST, a corporation and acknowledged to me that he executed the same for the purpose and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of SEPTEMBER, 1976 1977.



Barbara Halman  
Notary Public in and for  
Harris County, Texas  
Montgomery

THE STATE OF TEXAS )  
SAN JACINTO )  
COUNTY OF HARRIS )

BEFORE ME, the undersigned authority, on this day personally appeared Raymond L. Moody, known to me to be the person whose name is subscribed to the foregoing instrument as President of ROYALE DEVELOPMENT CORPORATION, a corporation and acknowledged to me that he executed the same for the purpose and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 14th day of September, 1976 1977.



Jamie P. Manuel  
Notary Public in and for  
Harris County, Texas  
San Jacinto

FILED FOR RECORD ON the 16th day of September A.D. 1977, at 2:30 o'clock P.M.  
DULY RECORDED THIS the 22nd day of September A.D. 1977, at 8:55 o'clock A.M.  
FILE NO. 1485 RECORDED: VOL. 168 PAGE 554 et seq.

Maureen H. Craft  
COUNTY CLERK SAN JACINTO COUNTY, TEXAS.



CP 168-VA-554  
Sept 16, 1977-2:30 PM

RNH:rcg 9/1/77 80-41-A

RESTRICTIONS - CAPE ROYALE  
VILLAS DE MARINA SECTION, SECTIONS THREE AND FOUR

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THE STATE OF TEXAS § 4485  
COUNTY OF SAN JACINTO §

WHEREAS, MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST, a Texas corporation with principal offices located in San Jacinto County, Texas (referred to herein as "Developer"), is developing those certain lands known as CAPE ROYALE, a development including among other lands, a collection of platted subdivisions described as follows: Cape Royale - Forest Cove Section, according to the map or plat thereof recorded in Volume 114, Page 384 of the Deed Records of San Jacinto County, Texas; Cape Royale - Pine Harbor Section, according to the map or plat thereof recorded in Volume 114, Page 385 of the Deed Records of San Jacinto County, Texas; Cape Royale - Royale Green Section, according to the map or plat thereof recorded in Volume 115, Page 265 of the Deed Records of San Jacinto County, Texas; Cape Royale - Imperial Point Section, according to the map or plat thereof recorded in Volume 130, Page 172 of the Deed Records of San Jacinto County, Texas; Cape Royale - Kings Ridge Section, according to the map or plat thereof recorded in Volume 121, Page 375 of the Deed Records of San Jacinto County, Texas and Cape Royale - Harbor Villas, Section 1, according to the map or plat thereof recorded in Volume 4, Page 34 of the Map Records of San Jacinto County, Texas; all of which platted subdivisions, together with such other platted subdivisions as Developer may after April 20, 1976 plat and record of record, as a section of Cape Royale, together with such other lands in the vicinity of such platted subdivisions as Developer may, from time to time, permit the use of by recorded instrument by the owners of lots within such recorded subdivisions, are hereinafter collectively referred to as "Cape Royale"; and

WHEREAS, ROYALE DEVELOPMENT CORPORATION, a Texas corporation with principal offices located in San Jacinto County, Texas (referred to herein as "Owner"), is the Owner of all that certain real property situated in San Jacinto County, Texas, known as Cape Royale Subdivision, Villas De Marina, Sections Three and Four (being collectively sometimes referred to as "VDM Section" according to the maps or plats thereof recorded in Volume 5, Page 18, and in Volume 5, Page 19, respectively, of the Map Records of San Jacinto County, Texas, to which maps and the record thereof reference is here made for a full and particular description of the said VDM Section; and

WHEREAS, Owner and Developer desire to create and carry out a uniform plan for improvement, development and sale of all of the lots in VDM Section, for the benefit of the present and future owners of said lots, for the benefit of all property owners in Cape Royale, and for the protection of property values in Cape Royale;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS; THAT Owner, 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 VDM Section and each contract or deed which may be hereafter executed with regard to any of the

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lots in VDM Section 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 VDM Section 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, other than the temporary sales and administrative activities of the Owner, until all other lots in VDM Section have been sold to third parties.

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. As to lots divided between abutting owners, the said maintenance fund assessment as to the divided lot shall be apportioned on the basis of surface area of the portions of the divided lot added to the adjacent lots for the purpose of creating two oversized lots.

3. Architectural Control Committee. An Architectural Control Committee ("Committee") for VDM Section shall be appointed, from time to time, by Owner and 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 sold 75% of the lots in all subdivisions recorded by Developer as a section of Cape Royale, or sooner at the sole election of Developer, the members of the Committee shall be selected by the Cape Royale Property Owners' Association, an association to be created in the future by Owner to be comprised of the owners of lots within all all present and future subdivisions recorded by Developer as a section of Cape Royale (hereinafter sometimes called the "Association").

#### 4. Structures.

(a) No residence shall be constructed or permitted to remain on any residential lot in VDM Section unless such residence shall meet the following requirements as to living area: each residence in VDM Section shall have a minimum of 800 square feet of enclosed 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 and any clearing, landscaping and other construction on the lot, have been approved in writing by the Committee.

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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 effect 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, it will be presumed that the same have been approved. These requirements for approval by the Committee as herein set out cover not only the residences to be constructed in VDM Section, 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) No part of any building shall be located on any residential lot nearer than twenty (20) feet to any street, on which it fronts, unless otherwise provided upon the recorded plat of VDM Section. 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.

(d) 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.

(e) 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.

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(f) No trailer, mobile home, (even if affixed to realty or otherwise rendered immobile) 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.

(g) No fence, wall or hedge having a height of more than three feet (3') shall be constructed or employed in VDM Section, with the exception of patio enclosures, nearer any front street line than twenty feet (20'), or nearer any side street line than five feet (5'). Patio enclosures shall be no more than seven feet (7') in height and shall not be located nearer any front street lot line than twenty feet (20'), or nearer any side street line than five feet (5').

5. Signs. No "For Sale" sign or "For Rent" sign or any other advertising structures may be displayed in VDM Section without the prior written approval of Owner and Developer.

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

7. Firearms. The use or discharge of firearms in VDM Section 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 sightly, sanitary containers. Each lot owner shall be responsible for disposing of all of his trash, garbage and rubbish.

9. Unsightly 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 VDM Section 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 VDM Section.

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 two automobiles.

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 and the community at any particular time. Upon failure to do this, Owner, Developer or the Association may have the lot cleaned and the

cost or expense thereof shall be payable on demand by the Owner to Owner, Developer or the Association, as the case may be. 558

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 VDM Section. Each lot owner shall, at his expense, connect his residence to the water line and to the sewerage gathering line serving his lot. A monthly charge shall be made for water and sewer service. Nothing herein contained to the contrary shall prevent the installation and operation of water and sanitary sewer facilities by a water district or other governmental authority in VDM Section.

15. Underground electric connection charge. Each lot owner shall be required to pay the sum of \$75.00 (or such other charge as may be charged by any public utility company) when and if his residence is connected to an underground electric system, said sums to be payable to the provider of such service 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 VDM Section map 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 Owner, Developer and any public or private utility company an unobstructed aerial easement five (5) feet wide from a place twenty (20) feet above the ground upward, located adjacent to and above all dedicated utility easements as shown on the map or plat of VDM Section. The easements reserved and dedicated under the terms and provisions hereof and under the terms and provisions of VDM Section plat shall be for the general benefit of Cape Royale and any other land owned or acquired by Owner or 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. Association membership. All purchasers of a lot or lots in VDM Section must be members of the Association.

18. Park and Recreational Areas. All Cape Royale property owners, members of their families and their guests, shall have the right of ingress and egress to the lake through any park areas shown on present or future VDM Section plats. Such right shall extend to and include, among others, as determined by Developer, the owners of lots within the VDM Section of Cape Royale as well as all other recorded sections of Cape Royale developed by the

Developer from lands contiguous to or in the vicinity of the said VDM Section of Cape Royale. 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 recorded sections of Cape Royale have been sold, or sooner at the election of the Developer, Owner and 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.

19. Easements in favor of the Trinity River Authority of Texas. The property included in VDM Section is subject to certain easements in favor of The Trinity River Authority of Texas, and the use of the land area contained in said easements is further subject to the approval by The Trinity River Authority of Texas as set out in that certain conveyance from Mitchell & Mitchell Land Development Company 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 records thereof reference is hereby made for all purposes. All references to the improvements to be located within such easement areas as contained in these Restrictions, are hereby expressly made subject to the approval of The Trinity River Authority of Texas.

20. 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 VDM Section, nor shall oil or gas wells, or tunnels, mineral excavations or shafts be permitted on any residential 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 VDM Section at any time while these restrictions remain in force and effect.

21. 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.

22. 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.

23. Maintenance Fund. Each lot in VDM Section, from and after the sale thereof by Owner, is hereby subjected to an annual maintenance charge of \$4.00 per month (\$48.00 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 VDM Section, the same to be secured by vendor's lien upon said lots, said maintenance charge to be payable monthly in advance as directed by Developer or the Association, as the case may be. At such time as Developer has transferred the title to 75% of the residential lots in all subdivisions recorded by Developer as a section of Cape Royale, or sooner if notice to such effect is given by Developer to the Association, the right and responsibility for the collection and disbursement of such maintenance fund may be assigned and delegated to the Association. The annual maintenance charge may be increased from year to year up to an annual increase not to exceed 10% of the maintenance charge for the previous year, provided that such maintenance charge may not exceed \$75.00 per year without the approval of the owners of a majority of the lots contained within all present and future subdivisions recorded

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by Developer as a section of Cape Royale. Funds arising from such charge may be applied, so far as sufficient, toward the payment of operating, 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 Developer to keep the property within Cape Royale neat and in good order, or which they consider of general benefit to the owners or occupants of VDM Section, Cape Royale, and to Developer, it being understood that the judgment of Developer (or the Association, as the case may be) 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 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 VDM Section 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.

24. 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 VDM Section, and shall be covenants running with the land. Owner or Developer, their respective 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 VDM Section affected shall likewise have the right either to prevent a breach of any such restrictions or covenants or to enforce the performance thereof.

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

26. Duration of restrictions.

(a) The restrictions and covenants herein provided for and adopted shall remain in full force and effect until December 31, 1998, subject to modification or amendment as hereinafter provided.

(b) At the end of the term provided in 26 (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 of a majority of lots in all subdivisions recorded by Developer as a section of Cape Royale, 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 and covenants 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, with the written consent of Developer, by a vote of the then owners of a majority of all lots in subdivisions which have been recorded by Developer as a section of Cape Royale, each lot entitling its owner to one (1) vote. Such repeal, amendment or modification shall be effected by an instrument in writing executed by Developer and such majority of said lot owners, and filed for record in the Office of the County Clerk of San Jacinto County, Texas. Owner of the lots in VMD Section, Owner will not repeal, amend or modify these restrictions, covenants and conditions without the written consent of Developer as evidenced by Developer's joinder in the execution of the instrument effecting such repeal, modification or amendment.

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

28. Assignment to Developer. Owner, for and in consideration of Ten and No/100 Dollars (\$10.00) and other valuable consideration, in the further an additional consideration of Developer's covenant and agreement to keep and perform all of the obligations, duties and responsibilities of Owner under these restrictions, does hereby transfer and assign unto Developer, its successors and assigns, all of the rights, privileges, easements, benefits, powers and authority herein reserved and retained by, or for the use and benefit of, Owner.

29. Reservations by Developer. Developer reserves the right to mix and commingle the maintenance assessments and the Cape Royale Maintenance Fund created under these restrictions and under restrictions affecting other present and future subdivisions recorded by Developer as a section of Cape Royale. In this connection Developer reserves the right to collect and receive, expend and apply all such funds for the benefit of all property owners within any such subdivisions recorded by Developer as a section of Cape Royale, past and future, and for the benefit of Developer and all lands within Cape Royale. Developer further reserves the right to assign all or any portion of its rights hereunder to the Association, subject to the assumption by the Association of Developer's duties hereunder. Developer shall not have any obligation to create the Association until at least 75% of all lots within subdivisions recorded by Developer as a section of Cape Royale shall have been sold to third parties, but if not sooner created, the same shall be created on or before the expiration of the initial term of these restrictions.

30. Definition of Recorded Subdivision. As used in these restrictions, the phrase "subdivision(s) recorded by Developer as a section of Cape Royale" shall mean any present or future platted subdivision recorded in the Map Records or Deed Records of the County Clerk of San Jacinto County, Texas which bears the signature of Developer, together with a title or legend bearing the name "Cape Royale" followed by the name or number of the section within Cape Royale by which such recorded subdivision is intended to be described. The joining by the Developer in the execution and filing of a plat for the sole purposes of subordinating a lien of the Developer upon the property described in a plat, to the terms of such plat shall not, in-and of itself, be such an execution of



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the plat as to cause any recorded subdivision resulting therefrom to be included within the meaning of the phrase "subdivision recorded by the Developer as a section of Cape Royale" as used in these restrictions. However, by the addition of a separate statement upon the plat, subscribed by the Developer, to the effect that such subdivision represented by the plat is intended to be a section within Cape Royale, such subdivision, when recorded, shall automatically come within the definition of a "subdivision recorded by the Developer as a section of Cape Royale" as used in these restrictions.

31. Joinder of Developer. Developer hereby joins in the execution hereof for the purpose of evidencing its acceptance of the assignment as set out in Paragraph 28 above. Further, Developer, as the owner and holder of certain liens against the property covered by and included in these restrictions as evidenced by the vendor's lien retained in that certain Deed dated May 20, 1976, from Developer to Owner, recorded in Volume 157, Page 189 of the Deed Records of San Jacinto County, Texas, and by Deed of Trust recorded in Volume 41, Page 142 of the Deed of Trust Records of San Jacinto County Texas, does hereby join in the execution hereof as lienholder for the purpose of subordinating its liens to these restrictions, reservations, covenants and conditions herein set forth, with the understanding, however, that:

(a) Except to the extent of subordinating its liens to the restrictions, reservations, covenants and conditions herein provided for, such liens are continued in full force and effect as first and prior liens upon the property described in the security instruments given to secure the indebtedness now or hereafter held by the lienholder; and

(b) Said subordination excepts from the operation thereof any charge, fee or lien created in this instrument which under any theory or circumstance can be prior or equal to the liens held by the lienholder.

IN WITNESS WHEREOF, Royale Development Corporation and Mitchell Development Corporation of the Southwest, each acting herein by and through their respective duly authorized officers, have executed this instrument on this the 12<sup>th</sup> day of September, 1977.

ATTEST:

MITCHELL DEVELOPMENT CORPORATION  
OF THE SOUTHWEST

Michael White  
Assistant Secretary

Edward O. [Signature]  
Senior Vice President

ATTEST:

ROYALE DEVELOPMENT CORPORATION

A. H. White  
Assistant Secretary

Raymond L. Shaully  
President