

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
HARBOUR VILLAS SECTION 1  
CAPE ROYALE SUBDIVISION

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

        THAT MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST (formerly GMA Development Corporation), a Texas corporation (referred to herein as "Developer"), with offices and principal place of business in Houston, Harris 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 HARBOUR VILLAS, SECTION 1, of CAPE ROYALE SUBDIVISION (being sometimes referred to herein as ("The Property")), according to the Replat thereof, recorded in Volume 4, Page 34, of the Deed Records of San Jacinto County, Texas, to which plat and the record thereof reference is here made for a full and particular description of the Property.

        Developer desires to create and carry out a uniform plan for the improvement, development and sale of all of the Townhouse lots to be located on the property for the benefit of the present and future owners of Townhouse lots, and for the protection of property values throughout the Cape Royale 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 Townhouse lots in Harbour Villas, Section 1, of Cape Royale Subdivision as said Harbour Villas now exists or said Harbour Villas may hereafter be constituted; 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):

ARTICLE I. 182

DEFINITIONS

"Association" shall mean and refer to the Cape Royale Property Owners' Association.

"Townhouse Corporation" shall mean the Harbour Villas Townhouse Corporation acting through its Board of Directors, its successors and assigns.

"The Property" shall mean and refer to the above described Harbour Villas, Section 1, containing 3.5539 acres of land, title to which is now vested in Developer, and such other Sections of Harbour Villas as Developer may from time to time make subject to this Declaration of Covenants, Conditions and Restrictions.

"Common Area" shall mean that portion of The Property which is owned by the Developer and reserved for the common use and enjoyment of the Townhouse Owners, being all of The Property except Townhouse Lots, utility easements, unrestricted reserves, streets and the area South of the 20-foot utility easement extending from Cape Royale Drive to the West boundary line of The Property as shown on the aforementioned plat.

The provisions of this Declaration of Covenants, Conditions and Restrictions relating to Common Area shall apply to any portion of The Property hereafter brought within the jurisdiction of the Townhouse Corporation. Such Common Area may include, without being limited to, pumps, trees, landscaping, sprinkler systems, pavements, parking areas, pipes, wires, conduits and other public utility lines, recreational facilities, and/or swimming pools located on or within the Common Area.

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"Townhouse Lot" shall mean and refer to that portion of The Property on which there has been constructed a single family Townhouse. For all purposes hereunder, it shall be understood and agreed that The Property initially includes twenty (20) separate Townhouse Lots, and Developer is the owner of all of said twenty (20) Townhouse Lots.

"Townhouse" shall mean a single family residence unit constructed on a Townhouse Lot as part of a group of two or more single family residences.

"Townhouse Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Townhouse Lot which is a part of The Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

"Property Owner" shall mean the record owner of a lot in Cape Royale Subdivision.

"Subdivision" shall mean all existing and future sections of Cape Royale Subdivision.

"Party Wall" shall mean each wall which is built as a part of the original construction of a Townhouse and placed on the dividing line between two Townhouse Lots.

"Members" shall mean and refer to every person or entity who holds membership in the Townhouse Corporation.

"Committee" shall mean the Architectural Control Committee.

ARTICLE II.  
RESTRICTIONS

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1. Use. None of the Townhouse Lots or the Townhouse Units thereon shall be used for anything other than single family, private residential purposes, and all lots in The Property shall be exclusively Townhouse residential lots. No commercial activity shall be permitted on any Townhouse Lot, nor shall any commercial activity be engaged in from any such Townhouse Lot.

2. Resubdivision of Lots. No Townhouse Lot may be resubdivided.

3. Architectural Control Committee. The 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 sold 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 Association.

4. Structures.

(a) No residence shall be constructed or permitted to remain on any Townhouse Lot in the Subdivision unless such residence shall have a minimum of 1,000 square feet of airconditioned living area, exclusive of the area of the covered carport.

(b) No improvements shall be placed on any Townhouse Lot until the building plans, specifications and plot have been approved in writing by the Committee. Likewise, the alteration of any existing improvements which materially affects or changes the exterior design thereof or which changes the color of the original exterior paint or stain 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

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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 submitted to it, 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 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) Building set-back lines shall be as determined by the Committee.

(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 lot 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.

(f) 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.

(g) No fence or wall shall be permitted on the street side of any Townhouse Lot, and no hedge having a height of more than three (3) feet shall be located nearer any street line than five (5') feet. No fence or wall having a height greater than seven (7') feet shall be constructed or permitted to remain in the Subdivision. No "cyclone" fence shall be constructed or permitted on any Townhouse Lot.

No fence, wall or hedge may be placed on any Townhouse Lot until the plans and specifications showing the location, dimensions and type of material have been approved in writing by the committee as provided in Article II, Section 4 hereof.

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

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 sightly, sanitary containers.

9. Unsightly Storage. No unsightly storage and/or unsightly vehicles shall be permitted in open carports. No boats, trailers or other boating equipment shall be stored in any lot, driveway, parking lot, road or roadside except in those areas designated by the association.

10. Camping. No camping shall be permitted on The Property or 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. Weeds. The owner of each Townhouse Lot shall keep any and all gardens, flowerbeds and other such improvements 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, Developer or the Townhouse Corporation may have the area cleaned and the cost or expense thereof shall be payable on demand by the owner to Developer or the Townhouse Corporation, as the case may be.

13. Sewerage. No building or structure shall be occupied as a residence unless all plumbing fixtures, dish-washers and toilets are connected to the established sewerage system in the Subdivision. A fee of Five Hundred (\$500.00) Dollars will be charged to each lot owner when his residence is connected to the sewerage disposal system serving the Subdivision. Each lot owner shall, at his expense, extend his residence connection line to the sewerage gathering line serving his lot.

14. Underground Electric Connection Charge. Each lot owner shall be required to pay the sum of \$75.00 when and if his residence is connected to an underground electric system, said sum of \$75.00 to be payable to the electric utility company for extension of underground electric service from the transformers or secondary pedestals to the residence.

15. Utility Easements. An easement is expressly reserved in, on, over, under and through those portions of The Property as shown on the plat referred to above 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 on plat referred to above except for the 20 foot wide easement along the front of each Townhouse Lot. 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 The Property for the purposes aforesaid, without the necessity of any further grant of such easement rights to such utility companies. Subject to Paragraph 4(g) above, 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.

16. Association Membership. All owners of a lot or lots in the Subdivision shall automatically be members of the Association upon the purchasing of a lot or lots in the Subdivision.

17. 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 Cape Royale plats. Such right shall extend to and include the owners of lots within the existing sections of Cape Royale Subdivision as well as subsequent sections developed by the Developer from lands contiguous to or in the vicinity of the Cape Royale 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, 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.

18. Trinity River Authority. The Property 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 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. All references to the improvements which may 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.

19. 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 or in any part of The Property, nor shall oil or gas wells, or tunnels, mineral excavations or shafts be permitted in or upon any part of The Property 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 upon any part of The Property at any time while these restrictions remain in force and effect.

20. 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.

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

22. Cape Royale Maintenance Fund. Each Townhouse Lot, from and after the sale thereof by Developer, is hereby subjected to an annual maintenance charge of \$60.00 per year (\$5.00 per month) 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 the vendor's lien upon said lots, said maintenance charge to be payable monthly in advance as directed by the 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 Sections of Cape Royale Subdivision, or sooner if notice to such effect is given by Developer to the Association, the responsibility for the collection and disbursement of such



maintenance fund may be 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 \$100.00 per year without the approval of a majority of the lot owners. 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, landscaping of public and private areas, swimming pools, clubhouse facilities, ramps, boat landings, boat basins, waterfront bulkheads, and other similar recreational facilities, employing policemen and watchmen, providing fire protection, providing mosquito control, the planning of signs in the subdivision, caring for vacant lots, collecting of maintenance charges, enforcement of restrictions, and doing any other things necessary or desirable in the opinion of the Developer 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 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 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.

23. Party Wall. An easement is hereby created upon, over and across each Townhouse Lot on which a portion of a Party Wall is constructed in favor of the Owner of the adjacent Townhouse Lot for support and maintenance of the Party Wall. Cost of reasonable repair and maintenance of a Party Wall shall be shared by the owners who make use of the wall in equal proportions. Unless inconsistent with the terms hereof, the general rules of law regarding party walls shall apply thereto.

### ARTICLE III

#### ADDITIONAL COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO TOWNHOUSES

1. Membership in Townhouse Corporation. Every person or entity who is a record owner of a Townhouse Lot which is subject by covenants of record to assessment by the Townhouse Corporation, including Contract sellers, shall be a member of the Townhouse Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separate from ownership of any Townhouse Lot which is subject to assessment by the Townhouse Corporation. Each Townhouse Lot shall entitle its owner or owners to a single vote.

All the affairs, policies, regulations and properties of the Townhouse Corporation shall be controlled and governed by the Board of Directors of the Corporation consisting of not less than five (5) members and not more than seven (7) members who are all to be elected annually by the voting members. The Townhouse Corporation shall have the right to be managed by Trustees rather than a Board of Directors, and wherever the term "Board of Directors" is used herein, same shall be construed to include Trustees, if applicable.

2. Easements. Every Townhouse Owner in Section 1 and all subsequent sections of Harbour Villas shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Townhouse Lot, subject to the following provisions:

- (a) The right of the Townhouse Corporation to limit the number of guests of members;
- (b) The right of the Townhouse Corporation to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (c) The right of the Townhouse Corporation, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and facility, and in aid thereof to mortgage said property, and the rights of such mortgagee in said property shall be subordinate to the rights of the Townhouse Owners hereunder;
- (d) The right of the Townhouse Corporation to suspend the voting rights and right to use of the recreational facilities by a Townhouse Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- (e) The right of the Developer or Townhouse Corporation to dedicate or transfer, with the written consent of all first lienholders, if any, all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Townhouse Owners. No such dedication or transfer shall be effective unless an instrument signed by the Townhouse Owners entitled to cast 2/3rds of the votes has been recorded, agreeing to such dedication or transfer.

3. Delegation of Use. Any Townhouse Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on The Property, subject to such rules and regulations as may from time to time be promulgated by the Townhouse Corporation.

4. Title to the Common Area. Developer hereby covenants for itself, its successors and assigns, that it will convey its title to the Common Area to the Townhouse Corporation within three (3) years of the date the plat designating such Common Area is filed for record. The Common Area shall remain undivided, and shall at all times be controlled by Developer or the Townhouse Corporation or its successors, it being agreed that this restriction is necessary in order to preserve the right of each Townhouse Owner with respect to the operation and management of the Common Area.

5. Creation of the Lien and Personal Obligation. The Developer, for each Townhouse Lot within The Property, hereby covenants, and each Townhouse Owner, by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree, to pay to the Townhouse Corporation annual assessments or charges, and special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The monthly and special assessments, together with such interest thereon and costs of collection thereof, including costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Townhouse and Townhouse Lot against which each such assessment is made.

6. Purpose of Assessments. The assessments levied by the Townhouse Corporation shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in The Property and, in particular, for the improvement and maintenance of The Property, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the Townhouses situated upon The Property. They shall include, but are not limited to, funds for the actual cost to the Townhouse Corporation of a pro rata portion of the insurance, repair, replacement and maintenance of the Common Area and of the maintenance of the exteriors of the Townhouses as may from time to time be authorized by the Board of Directors, and other facilities and activities including, but not limited to, mowing grass, caring for the grounds, sprinkler system, landscaping, swimming pool, recreational buildings and equipment, roofs and exterior walls of the Townhouses, and other charges required by these restrictions, or that the Board of Directors or Trustees of the Townhouse Corporation shall determine to be necessary to meet the primary purposes of the Townhouse Corporation. Specifically, but not by way of limitation, the Townhouse Corporation shall be responsible for the maintenance of The Property as follows:

- a. Lawn Maintenance. The Corporation shall maintain and care for all lawns within The Property, which shall include mowing, edging, fertilizing and spraying of lawns, and the replacement of sod. In the exercise of its discretion in this regard, the Townhouse Corporation shall be governed by the principle that all lawns shall be fully maintained free from unsightly bald spots or dead grass, and uniform in texture and appearance with surrounding lawns in The Property. There is hereby reserved in favor of the Townhouse Corporation the right to enter over, through and upon all the Townhouse lots for the purpose of maintaining and caring for the lawns located thereon.
- b. Garbage and Trash Disposal. The Corporation shall be responsible for collecting and disposing of all trash, garbage and rubbish within The Property.

- c. Exterior Maintenance and Repair of Buildings. The exterior of all Townhouse buildings on The Property shall be maintained and repaired on a periodic basis by the Townhouse Corporation, which maintenance and repair shall include, but shall not be limited to, repainting and repair of exterior walls, shutters, trim, eaves, roofs or any portion of the foregoing. The times and extent of such maintenance and repair shall be determined by the Townhouse Corporation in its sole discretion. The Townhouse Corporation shall not be responsible for repairing or replacing a building or structure which in the Townhouse Corporation's opinion shall have been destroyed, nor shall the Townhouse Corporation be responsible for repairs beyond the exterior surfaces of the building, all such repairs being the responsibility of the Townhouse Owner. There is hereby reserved in favor of the Townhouse Corporation the right to enter upon all of the Townhouse Lots and buildings located thereon for the purpose of conducting a periodic program of exterior maintenance and repair.
- d. Private Driveways. The Townhouse Corporation shall be responsible for the maintenance and repair of all private driveways located upon The Property. There is hereby reserved in favor of the Townhouse Corporation the right to enter upon any and all parts of The Property for such purposes.
- e. Common Area. The maintenance and operation of the common area shall be the responsibility of the Townhouse Corporation.
- f. Owner's Maintenance Responsibilities. The responsibility of the Townhouse Owner shall be to maintain, repair and replace at his expense all portions of his Townhouse, including exterior walls, except the portions to be maintained, repaired and replaced by the Townhouse Corporation; and to promptly report to the Townhouse Corporation any defect or need for repairs, the responsibility for the remedying of which is that of the Townhouse Corporation.

7. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be \$300.00 per lot.

- a. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased effective January 1 of each year, without a vote of the membership, in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D. C.) for the preceding month of July.

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- b. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula with the assent of 2/3rds of the votes of the Townhouse Corporation members, at a meeting duly called for such purpose, written notice of which shall be sent to all Townhouse Corporation members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purposes of the meeting.
- c. After consideration of current maintenance costs and future needs of the Corporation, the Board of Directors may fix the annual assessment in an amount not in excess of the maximum.

8. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Townhouse Corporation may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto; provided, however, that any such special assessment must have the assent of 2/3rds of the votes of the Townhouse Corporation members, at a meeting duly called for such purpose, written notice of which shall be sent to all Townhouse Corporation members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purposes of the meeting.

9. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Townhouse Lots and may be collected on a monthly basis with each Townhouse Owner paying an amount equal to that paid by each of the other Townhouse Owners.

10. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Townhouse Lots on the first day of the month following the conveyance of the first Lot by the Developer to a Townhouse Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Townhouse Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Townhouse Owner. The due dates shall be established by the Board of Directors and, unless otherwise provided, the Townhouse Corporation shall collect each month from the owner of such Lot 1/12th of the annual assessment of such Lot. The Townhouse Corporation shall upon demand at any time furnish a certificate in writing, signed by an

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officer of the Townhouse Corporation, setting forth whether the assessments on a specified lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

12. Effect of Nonpayment of Assessments; Remedies of the Townhouse Corporation. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 7-1/2 percent per annum, and the Townhouse Corporation may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against such Townhouse Lot, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such owner, by his acceptance of a deed to a Townhouse Lot, hereby expressly vests in the Townhouse Corporation, or its agents, the right and power to bring all actions against such owner personally for the collection for such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Townhouse Corporation in a like manner as a mortgage or deed of trust lien on real property, and such owner hereby expressly grants to the Townhouse Corporation a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Townhouse Corporation and shall be for the benefit of all other Townhouse owners. The Townhouse Corporation, acting on behalf of the Townhouse owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease and mortgage the same. No Townhouse owner may waive or otherwise escape liability for any and all assessments provided for herein by non-use of the Common Area or abandonment or sale of his lot.

13. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sublease or transfer of any Lot shall not affect the assessment lien. However, the sublease or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sublease or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

14. Management Agreements. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Townhouse Corporation. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Townhouse Corporation provide that said management agreement may be cancelled by an affirmative vote of sixty (60%) per cent of the votes of the Members of the Townhouse Corporation. In no event shall such management agreement be cancelled prior to the effecting by the Townhouse Corporation or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Townhouse Corporation or its Board of Directors to effect a new management agreement prior to the expiration of the term of any prior management contract. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

15. Insurance. The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the buildings, including all townhouses, unless the owners thereof have supplied proof of adequate coverage to the Board of Directors' complete satisfaction, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering all Common Area, and all damage or injury caused by the negligence of the Townhouse Corporation or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance, except on the individual townhouses, shall be common expenses. All such insurance coverage, including insurance on individual townhouses obtained by the Board of Directors shall be written in the name of the Townhouse Corporation as Trustee for each of the Townhouse Owners in the same proportions as their undivided interest in the Common Area. Insurance on individual Townhouses obtained by such Townhouse Owners may be written in the name of the individual owners. Premiums for insurance obtained by the Board of Directors on individual Townhouses shall not be part of the common expense but shall be an expense of the specific Townhouse or Townhouses so covered and a debt owed by the Owners, and shall be collectible by any lawful procedure permitted by the laws of the State of Texas. In addition, if said debt is not paid within twenty (20) days after notice of such debt, such amount shall automatically become a lien until fully paid. This lien shall be subordinate to the lien of any first mortgagee and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments. In addition to the aforesaid insurance required to be carried by the owners and/or the Townhouse Corporation, any owner may, if he wishes, at his own expense, insure his own Townhouse Unit for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Townhouse Corporation, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank of institution are insured by a Federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all owners of the damaged Townhouses in such proportions as the Board of Directors deem fair and equitable in the light of the damage sustained by such Townhouses to make up any deficiency, except that the special assessment shall be levied against all Townhouse Owners to make up any deficiency for repair or rebuilding of the Common Area not a physical part of a Townhouse Unit. In the event such insurance proceeds exceed the cost of repair and

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reconstruction, such excess shall be paid over to the respective mortgagees and Owners in such proportions as the Board of Directors deem fair and equitable in the light of the damage sustained by such Townhouses. Such payments shall be made to all such Owners and their mortgagees in proportion to their percentage interests. In the event of damage or destruction by fire or other casualty to any Townhouse or other property covered by insurance written in the name of an individual owner, said owner shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of the exterior of the townhouse in a good workmanlike manner in conformance with the original plans and specifications of said Townhouse. In the event such Owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the Townhouse area within thirty (30) days, the Townhouse Corporation, by and through its Board of Directors, is hereby irrevocably authorized by such Owner to repair and rebuild any such Townhouse in a good and workmanlike manner in conformance with the original plans and specifications of the Townhouses. The Owner shall then repay the Townhouse Corporation in the amount actually expended for such repairs, and the Townhouse Corporation shall have a lien securing the payment of same identical to that provided above in this Section securing the payment of insurance premiums; and subject to foreclosure as above provided. Notwithstanding the foregoing, in the event of damage or destruction by fire or other casualty to any property on which there is an outstanding lien, the proceeds from the insurance policy or policies covering such property may, at the option of the lienholder, be applied to the loan balance.

16. Prohibited Fuel. Propane, butane and other similar liquifiable hydrocarbon gases shall never be used as a fuel for any Townhouse on The Property.

17. Additional Lands. For a period of ten (10) years from the date hereof, Developer, in its sole discretion, may annex and add to The Property covered by this Declaration additional sections of Harbour Villas, as such sections are platted and filed for record in the Office of the County Clerk of San Jacinto County, Texas. Such action shall not require the consent or joinder of the existing members of the Townhouse Corporation.



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ARTICLE IV

OTHER PROVISIONS

1. 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, its 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.

2. 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.

3. 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 Paragraph (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 the Townhouse Lots on The Property, each Townhouse Lot entitling its owner to one 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 by a majority vote of the Townhouse Lot Owners, each Townhouse Lot entitling its Owner to one vote. Such repeal, amendment or modification shall be effected by an instrument in writing executed by such majority and filed for record in the Office of the County Clerk of San Jacinto County, Texas. Provided, however, that no

amendment shall be made which shall in any manner impair the security of any institutional lender having a mortgage or other lien against any part of the property, or any other record owners of liens thereon; nor shall any amendment in any manner impair any management agreement with Mitchell Development Corporation of the Southwest; nor shall any amendment alter or affect the right of Developer to annex additional property hereto in accordance with the provisions of Article III, Paragraph 17, above.

4. Reserve Tracts. With reference to the tracts designated as "Reserve" on the aforementioned plat of The Property, Developer covenants that none of said tracts shall be for uses other than parks, parking or recreational purposes.

5. 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.

6. Joinder of Lienholder. The undersigned lienholder joins in the execution hereof solely as lienholder for the purpose of subordinating its liens to these restrictions, reservations, covenants and conditions 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.

This Declaration of Covenants, Conditions and Restrictions is executed in lieu of, and in all manner replaces and supersedes, those certain restrictions dated April 8, 1971, recorded in Volume 122, Page 468, of the Deed Records of San Jacinto County, Texas.

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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 6<sup>th</sup> day of May, 1974.



ATTEST:

*[Handwritten signature]*  
Assistant Secretary

OWNER:

MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST

By: *[Handwritten signature]*  
Vice President



ATTEST:

*[Handwritten signature]*  
Assistant Cashier

LIENHOLDER:

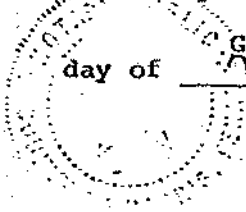
AMERICAN BANK AND TRUST COMPANY

By: *[Handwritten signature]*  
Vice President  
Chairman of the Board

THE STATE OF TEXAS X

COUNTY OF HARRIS X

BEFORE ME, the undersigned authority, on this day personally appeared ~~Robert D. Grace~~ Robert D. Grace, known to me to be the person whose name is subscribed to the foregoing instrument as Vice President of MITCHELL DEVELOPMENT CORPORATION OF THE SOUTHWEST, a corporation, and acknowledged to me that he executed the same for the purposes 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 6<sup>th</sup> day of May, A. D. 1974.

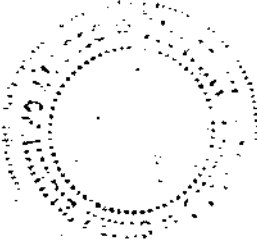
*[Handwritten signature]*  
Notary Public in and for Harris County, Texas

THE STATE OF TEXAS X  
COUNTY OF HARRIS X

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BEFORE ME, the undersigned authority, on this day personally appeared Charles T. Meeks, known to me to be the person whose name is subscribed to the foregoing instrument as Chairman of the Board of AMERICAN BANK AND TRUST COMPANY, a corporation, and acknowledged to me that he executed the same for the purposes 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 23rd day of May, A. D. 1974.



Royce E. Stevens  
Notary Public in and for  
Harris County, Texas

ROYCE E. STEVENS  
Notary Public in and for Harris County, Texas  
My Commission Expires June 1, 1975