

RESTRICTIONS, CONDITIONS AND COVENANTS

of

CAPE CARANCAHUA SUBDIVISION

Sections One through Five

SECTION ONE

I

1.01 Except as may be indicated on the recorded plat of the Subdivision, each and every lot therein shall be used for single-family residential purposes only and for no other purpose.

1.02 No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or the Subdivision. No person shall discharge any gun, pistol or firearm, air-rifle, air-pistol, or bow and arrow, activated by whatever means including gun powder, compressed air or gas, or spring, or cannon cracker or torpedo as the same are defined by the laws of the State of Texas and no person shall discharge firecrackers on, over, or across any lot, street, or easement within the Subdivision.

1.03 No manufacturing or commercial or professional enterprise, or enterprise of any kind for profit shall be maintained upon or in connection with any lot, nor shall said lot in any way be used for other than strictly residential purposes.

1.04 No cows, horses, sheep, goats, hogs, chickens, ducks, rabbits, or any other animals, or fowls or poultry, except household pets, shall be kept, staked, pastured or permitted on any residential lot in the Subdivision, but in no event shall any person keep household pets for commercial purposes.

1.05 No part of the Subdivision or any lot therein shall be used for the dumping of rubbish, trash or other waste. All trash, garbage, and other wastes shall be kept in sanitary containers and shall be disposed of at regular intervals consistent with good housekeeping. All household and yard tools and equipment shall be kept out of sight in enclosed storage areas except when in use. All containers, incinerators or other equipment for the storage or disposal of trash and/or wastes shall be kept clean and in good repair.

1.06 No use of any lot shall be made for any purpose that would result in the pollution of the waters above, below or adjacent to the surface of the Subdivision.

1.07 No excavation for stone, gravel, or earth shall be made thereon except in connection with the erection of improvements.

1.08 No sign of any kind shall be displayed to the public view on any lot, except one sign containing a surface area of not more than six square feet advertising the property for sale, or signs used by a builder to advertise the property during the construction and sale of a residence; or one small sign displaying the owner's name and address. No signs of any nature shall be permitted on any lot except with the written consent of the Association.

1.09 The owners or occupants of all lots of the Subdivision shall at all times keep all weeds and grass thereupon cut in a sanitary, healthful and attractive manner, and shall in no event use any lot for storage of material and equipment except for normal residential requirements. Such owners or occupants shall not permit the accumulation of garbage, trash, or rubbish of any kind thereon. In the event of default on the part of the owner or occupant of any lot in the Subdivision in observing the above stated requirements, or any of them, employees or agents of the developer or the Association, its and their successors and assigns may, without becoming liable to the owner or occupant, in trespass or otherwise, enter upon such lot, cut, or cause to be cut, such weeds and grass, and remove or cause to be removed such garbage, trash, rubbish, etc. so as to place said lot in a neat, attractive, healthful and sanitary condition, and may bill either the owner or occupant of such lot for the cost of such work. The owner or occupant as the same may be, agrees by the purchase or occupation of any lot in the Subdivision to pay such bill or statement immediately upon receipt thereof. The Association shall have a lien against any lot for any such monies so advanced, and the failure to observe these covenants shall constitute a breach of any contract for the purchase of a lot within the Subdivision.

1.10 No lot in the Subdivision shall be subdivided or a portion thereof conveyed except as between respective owners of full lots contiguous thereto; and any such attempt to otherwise subdivide ownership of a lot shall be absolutely void. No dwelling or residence shall be erected upon any parcel less than one full lot as shown on the plat of the Subdivision.

1.11 All recreational facilities in the Subdivision shall be for the use and benefit of the property owners and their families and guests only and are to be used by them at their own risk. The developer and/or the Association, their successors, designees and assigns assume no liability for theft, loss, damage or injury to anyone.

II

BUILDING RESTRICTIONS

2.01 Except as may be indicated on the recorded plat of the Subdivision, each and every lot therein shall be used for single-family residential purposes only and for no other purposes.

2.02 No more than one (1) single-family residence may be built on any one lot. No duplexes, rooming houses or similar buildings shall be permitted.

2.03 No building, mobile home, toolhouse, outbuilding, culvert, fence or other structure or improvement shall be erected, placed or altered on any lot until two copies of the construction plans and specifications, including specifications of all exterior materials and a plan showing the proposed location of the structure, have been submitted to and approved in writing by the Architectural Control Committee and/or developer. If construction is not commenced within three (3) months of such approval the approval shall be null and void unless an extension is granted in writing.

2.04 No building exceeding two stories in height shall be erected on any lot.

2.05 No house may be constructed or covered with tar paper, metal or any other material other than that customarily used for the erection of houses, except that pier houses and boat houses, that are built on the water, may be of new corrugated sheet metal. All houses shall have a minimum of six hundred (600) square feet of living area, not counting stoops and porches. All construction must be of new material, except stone, brick, or other materials used for an antique decorative effect if such use is approved in writing by the developer or the Architectural Control Committee. No sheet metal or metal panels shall be used in any outbuilding unless such sheet metal panels shall have factory applied paint or be factory anodized. Any metal outbuildings, storage building or toolhouse not built by a commercial manufacturer shall be of design, appearance, quality and materials comparable to those built by commercial manufacturers.

2.06 No house shall be occupied while in the process of construction. All buildings shall be completed on the outside within six (6) months after construction is commenced, and if wood, they must have at least two coats of high grade paint or stain applied to the exterior, except where rough cedar siding is used.

2.07 All dwellings and other structures shall be kept and maintained in good repair and must be painted when necessary to preserve their attractiveness.

2.08 No outbuildings, boathouses, basement or garage erected on any lot shall at any time be used for a dwelling or camping, temporarily or permanently.

2.09 One factory made mobile home may be placed and used upon any lot only if the same has been inspected by, and prior written approval of the same has been granted by the developer or the Architectural Control Committee, including the following requirements: (a) that the mobile home be no more than five (5) years old at date of delivery to the Subdivision, (b) be in good repair and of attractive design and appearance, and (c) be underpinned within ninety (90) days with material approved by the developer or the Architectural Control Committee.

2.10 Camping on lots shall be limited to: the use of campers, camping trailers, tents or other camping shelters which shall be of good appearance and in good repair and no such camping shelter shall be left on any lot for more than fourteen (14) days out of any continuous thirty (30) day period. Except that travel trailers of the Airstream category and quality and motor homes are permitted on a temporary basis if they are in good condition. The owners of such vehicles shall make application to the Association for a temporary permit.

2.11 Pickup campers are not to be taken off the truck and left on any lot.

2.12 Metal storage buildings shall not be attached to a house or mobile home. Old school buses or similar vehicles shall not be permitted.

2.13 Each and every private driveway to any lot in the Subdivision shall have a drainage structure thereunder and parallel to the roadway which provides an opening of sufficient size and depth to permit the free flow of water to the end that the same will not cause the impounding of water on other lots in the Subdivision, and will not interfere with the drainage in the Subdivision.

2.14 All structures shall comply with all applicable laws and building codes, as well as all the restrictions herein.

2.15 No building or mobile home shall be placed in any utility easement as shown on the Plat Map of the Subdivision. No building or mobile home shall be located nearer than five (5) feet to any side lot line, nor nearer to the rear lot line than ten (10) feet nor nearer to the front lot line than twenty (20) feet; for the purpose of installation or maintenance of utilities, including but not limited to gas, water, electricity, telephone, drainage and sewage, and any appurtenances to the supply lines thereof including the right to remove and/or trim trees, shrubs or plants. This reservation is for the purpose of providing for the practical installation of such utilities as and when any public or private authority or utility company may desire to serve said lots. Should utilities be installed in the rear property easement as herein reserved, each lot owner or purchaser agrees to install a gate in any fence that shall be constructed on such easement for utility company access to such lines, etc. All lots are subject to easements and restrictions now of record and are subject to any applicable zoning rules and regulations.

2.16 Any reasonable damage by utility companies to any fence located in any utility easement shall be borne by the lot owner or purchaser and not by the utility company.

2.17 No removal of trees or excavation of any materials, other than for landscaping, construction of buildings, driveways, etc., will be permitted without the written permission of the developer and/or the Architectural Control Committee.

2.18 No water wells may be drilled on any lot.

2.19 No lot purchaser or owner of a waterfront lot in the Subdivision shall erect a dock, pier or pilings adjacent to such lot and on or in Carancahua Bay without first obtaining written approval from the Architectural Control Committee and without first obtaining permits from the State Land Commissioner, the Texas Game and Fish Commission and any and all other governmental authorities having jurisdiction over such matters.

III

WATER AND SEWAGE DISPOSAL SERVICE

3.01 No outside toilet or privy shall be erected or maintained in the Subdivision. The materials installed in, and the means and methods of assembly of all sanitary plumbing shall conform with the requirements of the Health Department of Jackson County and of agencies of the State of Texas. No septic tank or lateral line will be placed within ten (10) feet of any water line. No sewage, nor effluent shall be disposed of upon nor under any lot in the Subdivision except into a septic system or other approved system meeting the aforesaid requirements. Before any work is done, approval of said location must be first obtained from the developer and/or the Association or the local Department of Health.

3.02 In the event a governmental authority should require the installation of sanitary sewers and appurtenances in part or all of the Subdivision, the purchasers or owners of the lots in the Subdivision agree to join with the developer and/or the Association in the formation of a utility district to furnish and provide such required services and each lot purchaser and owner does upon his or her or the execution of the Association membership agreement, appoint the Association as their lawful attorney-in-fact to execute any and all instruments and take any and all necessary actions in their behalf to accomplish the creation of a utility district and the construction of the required improvements. Each lot purchaser and owner further agrees to pay monthly charges for the use of such system as established by the Texas Utilities Commission or its successor.

When and if a sewage treatment plant and collection system for the service of the Subdivision is provided, it shall be used as the sole means of sewage disposal for such premises.

IV

STREETS, CANALS, EASEMENTS AND UTILITIES

4.01 The developer reserves unto itself, its successors and assigns, or any governmental authority having jurisdiction thereover, the right and privilege and an easement to use all streets and roadways, waterways, public areas and easements shown on the recorded plat of the Subdivision, for utility purposes and surface drainage. In addition, the developer reserves unto itself, its successors and assigns, an easement for utility purposes, in, on, over and under a strip twenty (20) feet in width along the front of each lot in the Subdivision and ten (10) feet in width along the rear and five (5) feet in width along each side of each and every lot in the Subdivision.

4.02 Each lot owner is granted the right and privilege and an easement to use all of said streets, roads, and public areas, but subject to and conditioned upon the observance of the rules and regulations as may from time to time be promulgated by the Association for the use of such facilities and upon the payment of any and all dues, fees, charges, and assessments, which may be imposed by the Association for the establishment and maintenance thereof.

4.03 Each lot owner must use any right, privilege and easement granted herein in such a manner as not to interfere with any other lot owner's use. No boat, boat trailer, truck, car or trailer of any kind shall be parked or stored, except temporarily (12 hours) on any street or road.

4.04 It is contemplated that the Association will maintain the streets and roads, and the public areas in good, sanitary condition so as to permit the use thereof by all lot owners at all times.

THE ASSOCIATION AND THE MAINTENANCE FUND

5.01 The developer binds itself to establish a non-profit corporation under the Texas Nonprofit Corporation Act to be known as the Cape Carancahua Property Owners' Association. Among the purpose for which the corporation shall be established are to promote the civic interests of persons owning or occupying lots in the Subdivision, to promote the safety and health of such persons, security protection for such persons, and to promote the cleanliness, beautification and protection of the property in the Subdivision.

5.02 To accomplish its purposes, the Association shall have the right to make rules and regulations to govern the use of all streets and roads, and other public areas in the Subdivision. It shall also have the right to make assessments against the lots in the Subdivision for the use in the maintenance of such streets and roads and other public areas. The Association shall expressly have the right to:

- a. Collect and expend, in the interest of the Subdivision as a whole, the maintenance fund herein created.
- b. Enforce these covenants and restrictions by appropriate proceedings (but this power shall not be exclusive and may also be exercised by any lot owner in the Subdivision).
- c. Enforce any lien imposed on any part of the Subdivision by reason of the violation of any of these covenants or restrictions, or reason of failure to pay the maintenance charge herein provided, and to execute a release of such land upon performance.
- d. Approve or reject plans and specifications for improvements to be erected in the Subdivision. All plans and specifications for improvements must be submitted to the Architectural Control Committee for approval prior to the commencement of the construction of any such improvement. If the Committee fails to act within thirty (30) days after submission to it of plans and specifications, construction in accordance with these restrictions may begin.

5.03 Each lot owner shall be a member of the Association by virtue of his ownership. Each lot owner in a Subdivision subsequently platted by the developer shall likewise be a member of the Association. Each member shall have such rights and privileges, in connection with the Association, as may from time to time be specified in its Articles of Incorporation and its By-laws.

5.04 No sale, transfer, lease or other disposition of any lot shall be consummated unless and until the purchaser or transferee has applied for and is approved as a member of the Association, and such approval has been certified on the proposed deed or other instrument of transfer. This restriction shall not apply, however to a lending institution which may bid on any lot at a foreclosure sale, nor shall it apply upon the death of an owner to a transfer by Will of intestacy pursuant to the laws of the State of Texas. Membership in the Association shall be conditioned upon observance of the rules and regulations established by it for the benefit and general welfare of its members, and conditioned upon payment when due of any dues, fees, charges or assessments.

5.05 The Association shall have the right to enforce any and all of the protective covenants contained herein, and pursuant thereto has the right to contract for the performing of services which will remedy the breach of any covenant herein and assess the cost of said services against the particular lot owner involved. Each instrument of conveyance of any lot in the Subdivision shall make reference to these restrictions and shall contain a Vendor's Lien in favor of the Association securing the performance of these restrictions.

5.06 Each lot in the Subdivision sold either by deed or contract for deed by the developer, its successors and assigns is hereby subject to an annual maintenance charge of \$100.00 per lot, per year, for the purpose of creating a fund to be known as the "maintenance fund" to be paid annually on the 15th day of March of each year, to the Cape Carancahua Property Owners' Association at its office in Palacios, Texas, or such other place as it shall designate in writing, and said charge and lien are hereby assigned to the said Cape Carancahua Property Owners' Association. The annual maintenance charge may be adjusted from year to year by the Cape Carancahua Property Owners' Association at a meeting called for that purpose, whereby a majority of lot owners and purchasers present at that meeting, or those voting by ballot mailed in the U. S. Mails, such majority constituting a quorum.

Funds arising from the charge shall be applied, so far as sufficient, toward the payment of maintenance expenses incurred for any or all of the following purposes: enforcing compliance with these restrictions, improving and maintaining the streets and doing other things necessary or desirable in the opinion of the Association to keep the property and the common facilities operating, maintained and in neat and good order, or any thing which it considers of general benefit to the owners or occupants of the addition, it being understood that the good faith judgment of said Association in the expenditure of such funds shall be final.

The developer of the Subdivision, Cape Carancahua, Inc., or its successors or assigns, are specifically excluded from the requirements to pay maintenance fees on any lot said developer owns in this development for sale or for re-sale.

By acceptance of deed or contract for deed, each purchaser agrees and consents to and joins in such maintenance charge, acknowledges the lien for enforcement or collection thereof. Said lien shall be deemed subordinate to the liens of any bank, insurance company or savings and loan association whichever lends money for the purpose of any property in the Subdivision and/or for the construction and/or permanent financing of improvements on such property, and shall also be subject to the lien for taxes.

5.07 The developer of the Subdivision, Cape Carancahua, Inc., shall have complete control of the Cape Carancahua Property Owners' Association and the Maintenance Fund until the developer has sold 90% of all platted and recorded lots in all Sections of the Subdivision to third parties or another person or entity which is not a developer. At that time, the developer will convey all common facilities to the Association and will transfer all monies in the maintenance fund to the Association.

VI

THE ARCHITECTURAL CONTROL COMMITTEE

6.01 The Association shall establish an Architectural Control Committee and shall provide for the filling of any vacancy thereon. The Committee shall adopt rules governing the conduct of its business.

6.02 The Committee shall approve in advance any construction proposed for any lot in the Subdivision. The Committee shall determine whether the same meets the specific requirements of these protective covenants. In addition, and with limitation, the Committee shall have the right to approve the type and size of the proposed structure, the quality of materials and workmanship, the harmony of the external design in relation to existing structures, and the location with respect to the topography of the property. The Committee shall formulate an established plan with regard to all such matters and shall make the same available to all lot owners.

6.03 The Committee shall have the power in specific cases where owing to special conditions, enforcement of one or more of these protective covenants will result in hardship to the lot owner, to make a special exception thereto, and may substitute other conditions therefore, so that the spirit of these protective covenants will be preserved.

VII

GENERAL PROVISIONS

7.01 These protective covenants shall constitute covenants running with the land and shall be binding on and inure to the benefit of the owners and developer, their successors and assigns, and all persons including the Association, and all other persons claiming by, through or under them until January 1, 1990, after which time they shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the Association and by a majority of the lot owners in the Subdivision has been recorded, agreeing to a change therein in whole or in part.

7.02 The protective covenants may be amended at any time after March 15, 1980, by an instrument signed by the Association, together with a majority of the lot owners in the Subdivision.

7.03 These protective covenants may be enforced by the developer, the Association, or by the owner of any lot in the Subdivision either by proceedings for injunction or to recover damages for breach thereof or both. When additional units are platted by the developer, the owners of lots in the Subdivision shall have standing to enforce the protective covenants applicable to the subsequent units, which shall be similar to, but need not be identical to these protective covenants. Likewise, the property owners in such additional units shall have standing to enforce the restrictions, covenants and conditions herein contained. However, only the Association or the developer, or their successors or assigns, may file suit to collect any of the assessments or sums mentioned in Section V above or to enforce the foreclosure of any lien herein granted. Any suit hereunder shall be filed in any court of competent jurisdiction with venue to be in Jackson County, Texas.

7.04 Any one who has executed a contract to purchase any lot in the Subdivision shall be deemed for all purposes hereunder to be the owner of such lot if they have under such contract the right to possession of such lot, whether or not such right is conditional or limited.

7.05 The developer reserves for itself and its designated agent or agents the right to use any unsold lot or lots for a temporary office location, and the right to place a sign or signs on any unsold lots. Again, no lot in the Subdivision owned by the developer shall be subject to assessment by the Association, without the consent of the developer.

7.06 If any provision or portion of these protective covenants shall be declared invalid by judgment, court order, or otherwise, it shall not affect or invalidate any other provisions or portion thereof. Failure to enforce any one or more provisions hereof shall not constitute a waiver thereof or invalidate such provision or provisions.