

THE STATE OF TEXAS)

COUNTY OF HENDERSON)

**RESTRICTIONS, COVENANTS AND CONDITIONS
(Amended and Restated)**

CAPE TRANQUILITY SUBDIVISION

That **CAPE TRANQUILITY HOMEOWNERS' ASSOCIATION**, a Texas Corporation, acting by and through its duly authorized officers, is property owned by Members in Units No. 1 and 2, a part of the M. Cortinas League, Henderson County, Texas, according to a plat recorded in the Plat records of Henderson County, Texas, does hereby declare that the property described above and such additions thereto as may hereinafter be made in accordance herewith, is and shall be held transferred, sold, conveyed and occupied subject to the covenants, restrictions, conditions, easements, charges and liens (hereinafter some time referred to as restrictions, covenants and conditions), as hereinafter set forth.

Under the laws of Texas, **CAPE TRANQUILITY HOMEOWNERS' ASSOCIATION, INC.**, a not-for-profit corporation, is for the purpose of maintaining and administering the common properties and facilities, enforcing the covenants, restrictions and conditions, and collecting and disbursing the assessments and charges as hereinafter created.

**ARTICLE I
DEFINITIONS**

- A. Association shall mean and refer to **CAPE TRANQUILITY HOMEOWNERS' ASSOCIATION, INC.**, its successors and assigns.
- B. Common Properties shall mean and refer to those areas of land shown on any recorded subdivision plat intended to be devoted to the common use and enjoyment of the Members of the Association and also includes the areas under lease, or to be leased, from the Upper Neches River Authority by the Association as more fully set forth hereafter.
- C. Member shall mean and refer to every person or entity that holds membership in the Association.

**ARTICLE II
PROPERTIES SUBJECT TO THIS DECLARATION: ADDITIONS THERETO**

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this declaration is located in Henderson County, Texas, and more particularly described as follows:

Cape Tranquility Subdivision Unit Nos. 1 and 2, a part of M. Cortinas League, Henderson County Texas, being Cape Tranquility Subdivision Unit No 1, recorded in Vol. 6, Page 95 of the Plat Records of Henderson County, Texas; and being Cape Tranquility Subdivision Unit No. 2, recorded in Vol. 8, Page 15, and as amended in Vol. 8, page 21, of the Plat Records of Henderson County, Texas.

Section 2. Additions to Existing Property. Members of **CAPE TRANQUILITY HOMEOWNERS' ASSOCIATION**, its successors and assigns shall have the option of additions to all or any part of the property as described above by filing a designation of record so stating, by an instrument called a supplementary declaration of restrictions, covenants and conditions.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Every person or entity who is a record owner of a lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association (provided that any such person or entity who possesses such interest as security for the performance of an obligation shall not be a Member) and any person or entity who acquires such interest in a lot as aforesaid, shall have been deemed to have accepted membership and assumed all obligations therefor.

Section 2. Voting Rights. The Association shall have one (1) class of voting membership, such Member being entitled to one (1) vote for each lot owned by such Member.

ARTICLE IV
PROPERTY RIGHTS IN COMMON PROPERTIES

Section 1. Title to Common Properties. Developer agreed that the common properties were conveyed to the Association free and clear of all liens and encumbrances not later than May 1, 1982. Common properties include such things as boat ramps, boat dock, picnic tables, barbecue pits, roads and easements. Some leased property from the Upper Neches River Authority has been designated as a park area and to that extent will be treated as Common Property.

Section 2. Use of Common Properties. The Association shall have the right to limit the number of guests of Members and make such rules and regulations as may be deemed to the best interest of the Association with respect to the use of the Common Properties.

- A. Members must be with guest(s) with respect to the use of the Common Properties.
- B. Members must reserve the pavilion and park area for parties, reunions, and other uses, through the Secretary.
- C. No campers, trailers used for camping, or motor homes will be allowed overnight in the park area.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any lot by acceptance of deed therefor or by contract of sale, whether or not it shall be so expressed in such deed, contract or other conveyance, shall be deemed to covenant and agree to pay the Association: (1) Monthly assessments of charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided, shall be charged on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such monthly assessment, together with such interest thereon and cost of collection thereof, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the properties, the maintenance of roads, streets, street lights and other common properties including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. Basis of Monthly Assessments. Monthly assessments shall begin with the first day of the month following the sale and the initial monthly assessment shall be \$10.00 per lot.

Section 4. Special Assessments for Capital Improvements. In addition to the monthly assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only from the date of the assessment, 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 properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each Member who is voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance, setting forth the purpose of the meeting.

There will be an annual road fee charged per Owner due June 1 for the purpose of major road repair which shall be deposited in a separate savings account. The road fee amount due is as follows:

Due June 1, 2018	\$125.00
Due June 1, 2019	\$150.00
Due June 1, 2020	\$175.00
Due June 1, 2021 and ongoing until amended	\$200.00

Section 5. Initiation and Transfer Fee. Any Person acquiring a lot in Cape Tranquility Homeowner's Association with or without structures on them, must pay a \$500.00 Initiation and Transfer Fee at the time of closing and is subject to full monthly dues in accordance with Sections 3 and 4 above. The Initiation and Transfer Fee is per transaction, not per lot.

Section 6. Change in Basis of Monthly Assessments. From and after January 1, 1982, of the year immediately following the commencement of assessments, the monthly assessment may be changed by a vote of the Members, provided that any such change shall have the approval of two-thirds (2/3) of the Members voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance, setting forth the purpose of the meeting.

Section 7. Quorum for Any Action Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

- a. At the first meeting called as provided in Sections 4 and 5 hereof, the presence at the meeting of Members or of proxies entitled to cast seventy-five percent (75%) of all the votes of the membership shall constitute a quorum.
- b. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in Sections 4 and 5 hereof, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Due Date of Assessments. The monthly assessments provided for herein shall become due and payable on the first (1st) day of each month after the commencement date hereinabove set out and the due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing the assessment.

A \$35.00 late fee will be charged to any homeowner that is 61 days late on any dues, fees or other charges owed to the Association. For each month thereafter, a \$10 per month fee will be charged until the money owed is paid. The Board has the right to waive this fee when it feels circumstances are warranted.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall, upon the commencement date herein provided, prepare a roster of the properties which shall be kept by the Secretary of the Association, and shall be open to inspection by any Member.

The Board of Directors will appoint a President, Vice President and any other officer(s) as may be needed. The office of President is limited to two (2) terms (one year each) in succession. There is no limitation to the number of terms other officers may serve.

There will be a one thousand dollar (\$1,000.00) spending limit by the Board of Directors except for road repair or liability insurance.

Section 10. Effect of Non-Payment of Assessment: Personal Obligations of Owner, Lien, Remedies of Association. If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, forthwith become a continuing lien on the property which shall bind such property in the hands of the then-Owner, his heirs, devisees, personal representatives and assigns. The personal obligations of the Then-Owner to pay such assessments, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

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 ten-percent (10%) per annum and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the Court, together with the cost of the action. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his property.

A lien will be filed on any Property Owner when the Owner is four (4) months delinquent on monthly assessments, special assessments, mowing fees or any money owed to the Association.

Section 11. Subordination of the Lien to Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- a. All Common Properties as defined in Article I, Section 1, hereof.
- b. All properties exempted from taxation by the laws of the State of Texas upon the terms and to the extent of such legal exemption.

ARTICLE VI **ARCHITECTURAL CONTROL**

No trees shall be removed except by utility companies as required in furnishing of utility services, and no building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the details, plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by an Architectural Control Committee composed of three (3) or more representatives and an alternated appointed by the Board. In the event the Committee fails to approve or disapprove any such

detail, design, plan, specification or location within thirty (30) days after submission to it, or in any event if no suit to enjoin has been commenced prior to the completion thereof, approval will not be required and this article will be deemed to have been fully complied with. The Architectural Control Committee will meet together. If a Member is unable to attend, the President, Vice President or the alternate will represent the absent Member.

ARTICLE VII **EXTERIOR MAINTENANCE**

Section 1. Exterior Maintenance. The Owner of each lot shall keep the same mowed and free and clear of weeds such as will be in keeping with the other property and the general community area at all times.

In addition to maintenance upon the Common Properties, the Association may, after notice to the Owner as hereinafter provided, provide exterior maintenance upon each lot which is subject to assessment under Article V hereof as follows: clear, mow and maintain lots, trim trees, shrubs, hedges and lawns, paint, repair, replace and care for roofs, and other exterior improvements.

Section 2. Notice to Owner. Prior to the performance of exterior maintenance by the Association upon any lot as hereinabove provided in Section 1 hereof, the Association shall give to such Owner notice in writing of the need for such maintenance and of the intention of the Association to perform such maintenance if Owner should fail to perform it within ten (10) days of the receipt of such notice.

Section 3. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the lot upon which such maintenance is done and shall be added to and become part of the monthly maintenance assessment or charge to which such lot is subject under Article V hereof, and as part of such monthly assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article V hereof.

Section 4. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any lot at all reasonable times for the purpose of performing such exterior maintenance.

Section 5. Assessment for Damage. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE VIII **RESTRICTIVE COVENANTS**

Each of the specifically numbered lots shown upon any recorded subdivision map of the Properties (as distinguished from such land, if any, within the limits of such subdivisions which is not specifically platted and numbered as lots) shall be impressed with the following restrictions, covenants and conditions for the purpose of carrying out a general plan of development and maintenance of the premises.

Section 1. Land Use. No lot shall be used for other than residential purposes (except as elsewhere herein provided), and no soil or trees shall be removed for any commercial use. Cutting of trees shall be limited to the extent necessary for clearing the foundation site and driveway for construction and any additional cutting of trees shall be done only upon approval of the Architectural Control Committee.

Section 2. Building Size. No building shall be erected on any lots in Cape Tranquility other than one (1) single-family dwelling with garage. The floor area (that enclosed for heating and/or air conditioning) of any dwelling shall be not less than eight hundred (800) square feet for lots located off the water and one thousand (1,000) square feet for waterfront lots. All homes are to be custom built. They are also required to have at a minimum a two (2) car, twenty (20) x twenty (20) foot garage constructed on a cement pad with an eighteen (18) foot paved driveway connecting to the community road the house/garage is located on.

Section 3. Lot Size and Subdivision. No subdivision or re-subdivision of any lot or combination of lots in Cape Tranquility Subdivision Unit No. 2 shall be permitted.

Section 4. The Architectural Control Committee must approve all house plans and type of construction, in writing, prior to commencing construction. This includes fencing, storage buildings, etc. Wood exteriors shall be stained or painted with two (2) coats of paint or stain, if, in the opinion of the Architectural Control Committee this should be done. All structures shall be new construction, using new material. The Architectural Control Committee must approve all contractors or builders. Commercial, industrial or farm type metal buildings are not allowed.¹

Section 5. No residence shall be located on any lot nearer than twenty (20) feet to the front lot line, nor nearer than five (5) feet to the side or back lot line of any lot. No outbuilding (unless connected to the house) shall be constructed nearer than forty (40) feet to the front lot line nor nearer than five (5) feet to the side or back line. The measurement will begin at the edge of the foundation. In the event of common ownership on more than one (1) lot and the construction of one (1) building on more than one (1) lot, the combined area owned shall be considered as one (1) lot for these purposes only. As to lots which are adjacent to the water front, the Owner may build up to the three hundred fifty-five (355) elevation line.

Section 6. All swimming pools must be fenced in and the gate kept locked.

Section 7. Roofs. In the construction of all buildings, any normal roofing, except corrugated and/or tin, may be used unless not approved by the Architectural Control Committee.

Section 8. Temporary Residences: Facilities. No structure of a temporary character, trailer, mobile home, motor home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently; however, upon approval of the Architectural Control Committee, a temporary shelter such as a motor home, travel trailer or camper may be kept on the lot until the outside of the house is complete, at which time it must be removed from the lot. No used structure of any sort shall be moved onto any lot. All improvements shall be completed with four (4) months from the beginning of construction. The time begins when framing begins. No permanent outhouses shall be permitted on any part of the property. All lavatories, toilets and bath facilities shall be installed indoors and shall be connected with adequate grease traps, septic tanks and lateral line constructions to comply with the specifications of the State and local health authorities, and no outside or surface toilets shall be permitted under any circumstances. Septic tank and lateral line installations shall also require written approval of the Architectural Control Committee.

Section 9. Animals. No residential lot shall be used for the purpose of keeping, breeding or raising any animals for commercial purposes, or as a place for keeping horses, mules, cattle or other animals or poultry; provided, however, that the occupants of each residence may keep the usual and customary domestic or household pets. Pets will be limited to two (2) in number. Stray dogs and/or cats will be taken to the pound in Athens unless a Member adopts the animal, cares for it, gives necessary shots and the animal is not vicious.

Section 10. Sanitation and Unsightly Objects. All lots shall be kept clean and free of trash, rubbish, garbage, debris or other unsightly objects or materials at all times. Trash, garbage or other waste shall be disposed of in a sanitary manner and all containers or other equipment for the storage or disposal of garbage and trash shall be kept in a clean, sanitary condition and hidden from view from the street on which the house faces. The Architectural Control Committee shall have the right to direct entry upon any lot for the removal of refuse piles

or other unsightly objects or materials at the expense of the Owner, and any such entry shall not be deemed a trespass.

Section 11. Garage Storage. Any garage being used for storage shall be kept closed at all times except when in immediate use for ingress or egress.

Section 12. Unused Vehicles. No unused automobiles or vehicles of any kind, except hereinafter provided, shall be stored or parked on any lot, except in a closed garage, or on any residential street. "Unused vehicle" shall be defined as any vehicle which has not been operated for a period of one (1) week or longer.

Section 13. Nuisances. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon or any condition permitted to exist thereon which may be or become an annoyance, nuisance or hazard to the health of the neighborhood.

Section 14. Driveways. No private residence driveway shall be permitted on or from the county road joining the development on the west side, except driveways are permitted to Lots 115, 116, 117 and 118 on County Road 4202. Culvert pipe of 12 inches must be used in bar ditches for driveway entrance or entrances. Any other size culvert pipe requires approval of the Architectural Committee.

Section 15. Firearms. Use of firearms on the premises is prohibited.

Section 16. Shoreline and Park Area Easements. The shoreline and park area easements, except water front Owners' easements shown on the recorded plat, is hereby designated and dedicated for the benefit, use and enjoyment of all Owners and Members. As to water front lots, an easement and deed is on file in the Deed Records of Henderson County, Texas, in favor of the Upper Neches River Authority, providing for certain rights including but not limited to the right to overflow, flood or cover land up to the three hundred fifty-five (355) foot contour, and notice is hereby given of such provision.

Section 17. Billboards and Signs. No billboards, signboards or advertising displays of any kind shall be installed, maintained or permitted to remain on any residential lot, except that one (1) sign of durable painted material containing not more than three (3) square feet of surface area may be displayed for the sale or rent of a dwelling, house or unimproved lot.

Section 18. Fences, Walls, Hedges and Shrubs. In order that all of the lots in the subdivision may have visual view of the lake, all trees, including those located on the Upper Neches River Authority easements, shall be trimmed up to a height approved by the Architectural Control Committee to accomplish this overall purpose. For the same reason, any fence shall be restricted to approximately four (4) feet in height; however, no chain link or stockade fence will be allowed in front of a house. All such fences, walls, hedge rows and shrubs away from the house shall be constructed or planted only after the approval of the Architectural Control Committee.

Section 19. Boats and Trailers. No boats or boat trailers shall be parked or stored except temporarily nearer to the street than the front of the house situated thereon or on a vacant lot no closer to the street than the front of the nearest house is to the street.

Section 20. House Trailers. No house trailer, mobile home, camper (not to include camper on pickup bed), or similar wheeled vehicle shall be stored or parked on any street or lot except as follows: a recreational vehicle which includes motor homes and travel trailers) may be parked without a garage upon an improved lot provided it is located no closer to the street than the front of the residence, or house next to it, and the location is neat and reasonable. It may never be used to live in as a residence on a permanent basis.^{1 and 2}

Section 21. Commercial Vehicles. No commercial-type vehicles or trucks shall be stored or parked on any lot except in a closed garage, nor parked on any residential street except while engaged in delivery to or transport from a residence.

Section 22. Outside Lines, Antennas & Similar Structures. Outside clothes lines, carports, patio covers, free-standing basketball boards and other similar structures shall not be allowed unless approved by the Architectural Control Committee.

Section 23. Water Wells. No water well shall be drilled upon any of the said lots by the Owners thereof as long as water for domestic uses shall otherwise be available to the Owners of said lot,

Section 24. Garage Sales. No garage, yard or estate sales will be permitted in Cape Tranquility.

Section 25. Mobile Home or Manufactured Homes. No mobile homes or manufactured home shall be placed, stored or parked on any street or lot in the Cape Tranquility subdivision.

**ARTICLE IX
GENERAL PROVISIONS**

Section 1. Duration. The restrictions, covenants and conditions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to the Declaration, their respective legal representatives, heirs, successors and assigns for a term not to exceed thirteen (13) years and to expire on May 10, 2010, after which time said covenants shall be automatically extended for successive periods of then (10) years unless signed by an instrument signed by the then two-thirds (2/3) of the lots which have been recorded, agreeing to change said restrictions, covenants and conditions in whole or in part.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed postpaid to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these restrictions, covenants and conditions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any of such restrictions, covenants or conditions, either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by the Association or any Owner to enforce any restriction, covenant or condition herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these restrictions, covenants or conditions by Judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF this 29th day of September, 2018.

CAPE TRANQUILITY HOMEOWNERS' ASSOCIATION,

By: /s/ Nathan Lesniewski
Nathan Lesniewski, President

/s/ Dan Parsons
Dan Parsons, Vice President

/s/ Joseph Greene III
Joseph Greene III, Director

/s/ Karl Hyzer
Karl Hyzer, Director

/s/ Robert Gordon
Robert Gordon, Director

ATTEST:

/s/ Karen McKee
Karen McKee, Secretary

CERTIFICATE OF CORPORATE SECRETARY

I hereby certify that as Secretary of Cape Tranquility Homeowners' Association, Inc., the foregoing Restrictions, Covenants and Conditions (Amended and Restated) was approved on the 29th day of September, 2018, at the Special Meeting of Homeowners at which a quorum was present. This updates and entirely replaces any previously recorded Restrictions, Covenants and Conditions for this subdivision.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 1st day of October, 2018.

/s/ Karen McKee
Karen McKee, Secretary / Treasurer
Cape Tranquility Homeowners' Association

STATE OF TEXAS

COUNTY OF HENDERSON

BEFORE me, on this day personally appeared Karen McKee, the Secretary of Cape Tranquility Homeowners' Association, Inc., known by me (or satisfactorily proven) to be the person whose name is subscribed to this instrument, and acknowledged to me that she executed the same for the purpose herein expressed and in the capacity herein stated, and as the act and deed of said corporation.

Given under my hand and seal of office this 1st day of October, 2018.

/s/ Barbara Westbrooks
Notary Public – State of Texas

RECORDED WITH HENDERSON COUNTY CLERK ON OCTOBER 1, 2018
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