

DECLARATION OF
COVENANTS, CONDITIONS
AND RESTRICTIONS

12/4/01

**AMENDED, EXTENDED AND MERGED RESTRICTIVE COVENANTS FOR
CAPE CONROE, SECTION I AND SECTION II**

THE STATE OF TEXAS

§

§KNOW ALL PERSONS BY THESE PRESENTS

COUNTY OF MONTGOMERY

§

WHEREAS, the undersigned consists of Cape Conroe Property Owners Association, Inc. and the owners of at least 51% of the lots in Cape Conroe, Section I, a subdivision in Montgomery County, Texas, according to the map or plat thereof recorded in Volume 10, at Page 7, of the Map Records of Montgomery County, Texas. The undersigned also consists of the owners of at least 51% of the lots in Cape Conroe, Section II, a subdivision in Montgomery County, Texas, according to the map or plat thereof recorded in Volume 10, Page 30 of the Map Records of Montgomery County, Texas.

WHEREAS, the undersigned desire to amend, extend and merge the restrictive covenants which had been made and filed for Cape Conroe, Section I, and recorded in Volume 772, Page 407 of the Deed Records of Montgomery County, Texas, and the restrictive covenants which had been made and filed for Cape Conroe, Section II and recorded in Volume 789, Page 346 of the Deed Records of Montgomery County, Texas.

WHEREAS the undersigned desire to keep and continue the development of the lots, the amenities, the streets and the easements in Cape Conroe, Sections I and II (herein called the "Subdivision") for the mutual benefit and protection of the owners of such lands.

WHEREAS the undersigned desire for the Cape Conroe Property Owners Association, Inc. to serve the property owners of the subdivision by seeking lawful objectives and by following lawful procedures.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, that the Cape Conroe Property Owners Association, Inc. and the undersigned owners, do hereby make and file the following amended declarations, reservations, protective covenants, limitations, conditions and restrictions (the "Amended Restrictions") regarding the use and improvements on the lots located in said Subdivision owned by the undersigned, including the dedicated roads, avenues, and streets therein as follows:

1. CAPE CONROE PROPERTY OWNERS ASSOCIATION

There shall be at all times a non-profit association known as "Cape Conroe Property Owners Association, Inc." (the "Association"), which shall serve (a) to enforce these restrictions, (b) to collect the annual maintenance fee, (c) to enforce the liens reserved to secure payment of the annual maintenance fee, (d) contract with and employ such persons and entities, and (e) perform such other acts that shall be necessary and proper to carry out the intent and purposes of these

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restrictions. The Association shall be a "Property Owners Association" under the terms of Chapter 202, Texas Property Code, as amended. Every owner of a lot will be a member of the Association; membership shall be appurtenant to and may not be separated from ownership of a lot. On Association matters, members in good standing (defined below) shall be entitled to cast no more than one vote for each lot owned. The phrase, "members in good standing" shall mean those owners of lots in the Subdivision who have paid all Maintenance Fees, interest and attorneys fees charged upon or applicable to their lots in the Subdivision. The Association shall adopt bylaws to regulate its business and elections. The business of the Association shall be conducted by a Board of Directors who shall be elected by the members pursuant to the Bylaws of the Association.

2. BUILDING PERMITS AND ARCHITECTURAL CONTROL

The following provisions apply to all lots in the subdivision, including residential and commercial:

- A. **Architectural Review.** No building shall be erected, placed or altered on any lot, parcel or tract (a "lot") in this subdivision until the owner of such lot has obtained the specific written approval of the Architectural Control Committee (the "Committee") for such building or alteration, based on the final plans, specifications, or other information required by the Committee and submitted by the owner. Only the owner of a Lot may apply for approval of the Committee and only an owner who is a member in good standing and current in paying the maintenance assessments shall be entitled to obtain architectural approval by the Committee. The Committee shall review and decide on each owner's application based on the location of the building or alteration on the owner's lot, the design, the exterior methods of construction, the color, texture, grade and quality of all exterior materials used in the construction or alteration, and whether or not the proposed construction or alteration would be in harmony with other structures in the Subdivision.

All decisions by the Committee shall be based solely on the good faith opinion of the members of the Committee. Neither the Association, the Committee nor any members of the Committee or of the Board of Directors of the Association shall be held or be considered as making any form of representation, warranty or assurance to any contractor, manufacturer, or to the owner or any other person who may intend to reside in or use such building as to the fitness, suitability, or safety of any building or alteration which may be submitted to the Committee for review. It is understood that the members of the Committee shall be volunteers who shall not be held to any higher standard of knowledge, experience, training, or expertise than any other owner in the Subdivision. The Committee shall make reasonable rules and application forms for its purposes, provided such rules are consistent with these Restrictions, and are approved by the Association's Board of Directors.

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The Committee shall endeavor to determine all applications as quickly as possible, however, the passage of time following the date an owner submits an application shall not operate as approval of the owner's application. An application shall not be considered as made unless and until the owner completes all application forms adopted by the Committee and provides final plans and descriptions of all materials and colors to be used. An application shall not be considered as approved by the Committee unless and until the Committee specifically approves an application and provides the owner with the Committee's written approval. Notice of disapproval shall be delivered in person or by certified mail, addressed to the owner's last known address, and such notice will set forth in detail the elements disapproved and the reason therefor. Such notice need not, however, contain any suggestions as to the methods of correcting the matters and things disapproved.

All applications for the Committee to review shall be deemed as including the covenants and conditions set forth below, which shall be binding on the owner and all contractors, subcontractors and suppliers, regardless of whether or not such persons jointed in the application:

- B. **Protection of Streets.** The owner and all contractors shall actively protect the streets in the Subdivision from damage by trucks carrying loads in excess of the load limits of such streets, as determined by Montgomery County, Texas, or by any agency of the State of Texas. If any owner or contractor brings or causes to be brought into the Subdivision any trucks carrying excessive loads of construction materials, fill dirt, excavated dirt, bricks, or concrete then the Committee or the Association shall be entitled to stop all further construction activity on the lot until the owner either alone or with all of his contractors shall have repaired all damages done to the streets of the Subdivision to the satisfaction of Montgomery County, Texas.
- C. **Committee Members.** The Committee shall consist of at least **three** members, who shall be annually appointed, and may be removed and replaced by a 2/3 vote of the members of the Board of Directors of the Association. Upon the effective date of these Amended Restrictions all Committees in Section I and Section II shall end and a single Committee shall be appointed by the Board of Directors of the Association to serve until their successors are appointed. All members of the Committee shall be property owners in the subdivision. No member of the Committee may vote on or participate in the consideration of any lot in which such member may have a conflict of interest. For the purposes of these restrictions, a conflict of interest would arise if a member either owned an interest in a lot or any determination by the Committee would have a direct, material financial impact on a lot owned by the member.
- D. **Committee Procedures and Charges.** The Committee shall make in its discretion

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all determinations called for in these restrictions. Such Committee shall not be entitled either to file suit to enforce these restrictive covenants or to deny or withhold approval of any application for its consideration for any lot solely because the owner of such lot may possibly be in violation of these restrictive covenants at a lot that is different from the lot under consideration at any time. The Committee may charge each applicant a reasonable fee to cover its normal and usual expenses, but the amount of such fee shall be determined by the Board of Directors of the Association.

As a part of each application for new home construction, the Committee may require the owner of the lot to deposit with the Association a bond or a cash deposit in an amount determined by the Board of Directors to be reasonably sufficient to pay the costs of an inspection, if needed, the costs of cleaning up construction trash and debris at the conclusion of construction, and the costs of leveling ruts caused by heavy vehicles at the building site.

- E. **Variances.** The Committee, joined by a majority of the members of the Board of Directors of the Association, may grant or permit variances of any of the matters provided by these restrictions for its review and determination, provided however, no variance shall permit or allow encroachment over any easements, boundary lines, or allow any nuisance that is defined below. All variances shall be in writing and filed in the Real Property Records of Montgomery County, Texas.
- F. **Appeal.** Any owner who disagrees with any determination of the Committee, whether for that owner's lot or on the lot of another owner, and before any construction approved by the Committee commences, may appeal the determination of the Committee to the Association's Board of Directors. For the purposes of this provision, "commence" means and includes execution of a contract to construct improvements as approved by the Committee, or if no contract is signed, then upon the owner's or Contractor's first purchase of substantial materials for such construction.

3. COMMERCIAL LOTS

All lots in Cape Conroe, Sections I and II, including those originally designated as "reserved" or "unrestricted" in the Original Restrictions and the Plats, shall hereafter be called "Commercial Lots" and shall be subject to the provisions of these Amended Restrictions, including, but not limited to, those providing for architectural control, garbage and trash disposal, garbage services, nuisances, the locating of easements and building lines set forth in the recorded plats, temporary structures and residences, fences and plants, signs, access, driveways, culverts, utilities, resubdivision, firearms, materials stored on lots, bulkheads, the maintenance fund, and the duration or these amended restrictions.

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4. RESIDENTIAL LOTS

Except for the commercial lots as described in the preceding paragraph, all lots in the Subdivision shall be known and designated as "residential lots" and shall be used for residential purposes only, and shall be subject to the following restrictions, reservations, protective covenants, limitations and conditions:

- A. **Use.** No dwelling shall be erected, altered, placed or permitted to remain on any of said lots other than a single residence, designated and constructed for use by a single family, together with such servants' quarters, garages and other structures as may be suitable and proper for the use and occupancy of said residents as a single family dwelling. No residence constructed on any lot shall be converted into or thereafter used as duplex, apartment house or any other form of multiple family dwelling, nor shall any residence or combination of residences on separate lots be advertised for use or used as hotels, tourist courts or tourist cottages or as places of abode for transient persons. All construction shall be new construction, so that no used homes or used construction materials shall be incorporated into any home on any lot.
- B. **In Cape Conroe, Section I:**
 1. No single-story dwelling shall be erected on any lots in Block Three (3), unless such dwelling shall have an exterior area of not less than 1800 square feet. One and one-half story houses shall contain at least 1400 square feet on the ground floor and containing a total exterior area of at least 1700 square feet. Two story houses shall contain at least 1400 square feet on the ground floor and contain a total exterior area of 1800 square feet. The square footage as set forth herein shall be exclusive of garages, porches, servants' quarters or other appendages.
 2. Except for the areas listed under Commercial Lots above and all lots in Block Three, no single-story dwelling shall be erected on any lot in the subdivision unless the same shall have an exterior area of not less than 1700 square feet. One and one-half story houses shall contain at least 1200 square feet on the ground floor and shall contain a total exterior area of at least 1600 square feet. Two story houses shall contain at least 1000 square feet on the ground floor and shall contain a total exterior area of 1600 square feet. The term "exterior area" as used herein and hereafter shall be exclusive of garages, porches, servants' quarters or other appendages. A house may be constructed on two adjacent lots, astride the common interior lot line, provided such interior lot line does not include any easements. No building or structure shall be occupied or used until the exterior thereof is completely finished. No building may be erected between the building line as shown on the recorded plat and the street. No building shall be erected nearer than four feet to any side street lot line or interior lot line.

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3. Except for townhouses, which may be erected on lots 27 through 45 and lots 47 and 48, in Block 1, and on lots 1 through 44 in Block 7, no building or structure shall be erected on any lot nearer than **four** feet, including roof overhang, from any interior lot line. For lots 27 through 45 and 47 and 48, of Block 1, any owner of **two** or more adjacent lots may erect on such lots a residence that is not a townhouse design, but that meets the exterior area requirements of subparagraph "2" above and that meets approval of the Committee. The foregoing notwithstanding, the building lines and easements as set forth on the recorded map or plat of the subdivision shall control where applicable.
4. All townhouses erected shall have an interior living area of not less than 1200 square feet. A townhouse may be constructed on **two** adjacent lots, provided the common lot line has no easements. All common or party walls between townhouses shall be built as firewalls under rules and regulations issued by the Committee and all such firewalls shall extend at least **two feet** above the highest roofline where any **two** townhomes meet.

C. In Cape Conroe, Section II:

1. Lot Nos. T-1 through T-72, in Block 14 are designated as townhouse lots. Further, Lots 4 through 54, in Block 1 and Lots 1 through 8 and Lots 27 through 48, in Block 5 may be either for a single dwelling or may be subdivided as townhouse lots; provided however, in the event any such lot is subdivided into townhouse lots each such subdivided townhouse lot shall have a minimum front footage width of 25 feet.
2. All townhouses erected shall have an interior living area of not less than 1700 square feet. A townhouse may be constructed on **two** adjacent lots astride the common interior lot line, provided such common lot line has no easements. All common or party walls between townhouses shall be built as firewalls under rules and regulations issued by the Committee and all such firewalls shall extend at least **two feet** above the highest roofline where any **two** townhomes meet.
3. All dwellings erected on Lots 1 through 21, in block 14 shall have an exterior area of not less than 1800 square feet. One and one-half and two story houses shall contain at least 1800 square feet on the ground floor and shall have an exterior area of not less than a total of 1800 square feet. The term "exterior area" as set forth herein shall be exclusive of garages, open porches, servants' quarters and other appendages.

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4. No single-story dwelling shall be erected on any of the remaining residential lots in the subdivision not specifically referred to in the two preceding sub-paragraphs unless said dwelling shall have an exterior area not less than 1700 square feet. One and one-half and two story houses shall contain at least 1200 square feet on the ground floor and shall contain a total exterior area of at least 1800 square feet. The term "exterior area" as set forth herein shall be exclusive of garages, open porches, servants' quarters and other appendages. A house may be constructed on **two** adjacent lots, astride the common interior lot line, provided such common lot line has no easements.
 5. No building or structure shall be occupied or used until the exterior thereof is completely finished. No building may be erected between the building line as shown on the recorded plat and the street. No building shall be erected nearer than **four** feet to any side street lot line or interior line.
 6. Except for townhouses, no building or structure shall be erected on any lot nearer than **four** feet, including roof overhang, from any interior lot line. The foregoing notwithstanding, the building lines and easements as set forth on the recorded map or plat of the subdivision and the easements hereinafter described shall control where applicable.
- D. **Townhouses.** For all townhomes, the party wall shall be the common wall between any two townhomes, and shall be for the mutual benefit and support of the townhomes using such wall. Each townhouse owner shall have an easement over, under or across each of the townhouse lots that ~~share a party wall~~ with such townhouse, except that such easement shall not apply to the interior living space of any of the adjoining townhouse lots. Such easement shall be solely for the purpose of repairing, maintaining, rebuilding of a townhouse, including foundation repair. No townhouse owner shall be entitled to conduct any repairs to that owner's townhouse, its interior, exterior or subsurface if such repairs would damage any portion of the interior, exterior or foundation of either of the adjoining townhomes. If any two adjoining townhomes are damaged to the extent that the party wall between them must be rebuilt, either in whole or in part, then the owner who pays the cost of rebuilding such party wall shall have a lien upon the adjoining townhouse lot to the extent of one-half of the cost of rebuilding or repairing such party wall. Such lien shall not apply to the cost of sealing the party wall for use as an exterior wall. Such lien may be enforced only when the owner of the townhouse lot who did not pay the cost of rebuilding such party wall begins construction of a townhouse which shall use the repaired party wall as part of such townhouse. The townhouse owner claiming a lien may file for public record an affidavit claiming such lien.

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- E. **Commercial Use Prohibited.** In no event shall any residential lot be used for any business purpose. Any builder with **two** or more completed homes for sale may use no more than **one** such homes as a model home or a temporary sales office. All model homes or homes used as temporary sales offices must be offered for sale, and such homes may not be used as such for more than **six** months after such homes have been completed.
- F. **Construction.** All materials used in the exterior construction of any residence or other structure and all methods of constructing foundations must be approved in writing and in advance by the Committee before any structure may be erected. Only new construction materials shall be used except for used brick which shall be permitted only as approved by the Committee. No concrete blocks shall be used in the construction of exterior, above-ground walls except the fire wall of a townhouse. Buildings shall be built on a slab, or reinforced solid concrete beam foundation, or reinforced concrete block beam foundation. Townhouses will have a **two** hour resistive fire wall for the party wall and a rain water drain pipe will run under the house from the front to the lake. Each house shall have an attached or detached garage designed to hold at least **two** automobiles. In no event shall any existing house, modular or "manufactured" home built off the site be moved or installed on any lot or lots in the subdivision. The exterior construction of any house, be it the primary residence, garage, porches, or appendages thereto, shall be completed within **six** months after the start of the foundation, unless extended by the Committee in writing or prevented by force may such extensions shall not be unreasonably withheld. Foundation design must take special precaution if house could flood from steep slopes or nearby ditches.

5. GARBAGE AND TRASH DISPOSAL

For all lots in the Subdivision, including residential and commercial lots, all household garbage, trash and landscaping waste shall be removed from the Subdivision and properly and lawfully disposed of at least once a week. No lot shall be used to store rubbish, trash, garbage or other waste. All household garbage and trash shall be kept in outside containers, and all such containers shall be kept closed and clean at all times. Except for the days of garbage pick-up, and the evening preceding such days, all household garbage and trash containers shall be kept out of view from the roadways.

6. NUISANCES

- A. **Definitions.** At all times, each lot in the Subdivision whether residential or commercial lots, shall be kept free of nuisances, which means, but is not limited to, the following:

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1. objectionable, detrimental, offensive, dangerous, or unattractive conditions, as determined by the Board of Directors of the Association in its reasonable discretion;
2. open pits, abandoned wells, and ponds that are not cared for and which become havens for insects and other pests;
3. grass, weeds and wild brush more than **one** foot in height, except for state protected wild flowers;
4. privy, cess pool, outdoor toilets (except during construction), untreated septic and gray water drainage;
5. animals, livestock, poultry of any kind that are kept, raised, or bred on any lot except for ordinary household pets, such as dogs and cat. All pets shall be kept within a fenced or walled enclosure and not allowed to run loose;
6. oil and gas exploration and development operations of every kind and character, oil refining, quarrying or mining operations of any kind, including wells, tanks, tunnels, derricks, pumps and the like;
7. construction equipment and machinery, trucks larger than one-ton, tractor-trailer rigs, commercial trucks and delivery vehicles not being actively used in home construction and street repair in the Subdivision, parked on the streets of the subdivision;
8. operation of recreational, off-the-road vehicles including all terrain vehicles (ATV's), off-road motorcycles, and other off-road vehicles such as "go-carts", "dune buggies", and the like, anywhere in the Subdivision, whether on the lots or on the roads of the Subdivision, unless operated by properly licensed drivers and registered as an over-the-road vehicle;
9. parking or storing on any lot or roadway any trailer, whether commercial or otherwise, except those designed and used for recreational purposes, specifically boat trailers (whether with or without a boat), personal water craft (whether with or without a personal water craft), recreational camping trailers, such as "pop-up" tent trailers, and,
10. No vehicle may be parked in the streets or in any driveway, lot or reserve unless such vehicle is in good, driveable condition. No vehicle shall be parked in such a manner or at any location that poses a hazard to normal traffic, such as blocking normal traffic visibility.

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B. Abatement of Nuisances.

1. **Entry.** If the Association determines in its discretion that a nuisance, as defined above, exists on any lot, the Association shall give written notice of such condition to the owner, who must remove such nuisance at no cost to the Association within 15 days after the owner receives such written notice. The Association's written notice must be sent by U.S. Mail, certified or registered, or be delivered personally to the owner or to the owner's duly designated agent. If the Association determines in its discretion that any nuisance poses an immediate and substantial risk of harm to the persons or the property of any one or more of the other residents of the Subdivision, or if the lot owner fails for any reason to remove the nuisance within the time provided by the written notice, then the Association shall be entitled to enter the lot and, if necessary, remove and dispose of the nuisance, without being guilty of trespass, conversion, or any tort or other civil wrong. In taking such action, the Association shall act in good faith and not in any arbitrary or capricious nature or manner. The Association shall seek advice of counsel and shall follow legal rules and procedures. This provision shall not permit any entry into any home without the homeowner's consent.
2. **Costs and Expenses.** The owner of any lot having the nuisance shall be liable to the Association for its reasonable costs and expenses in removing and abating the nuisance, including its reasonable attorney's fees. To the extent necessary to carry out this provision the Association shall have an easement on, over and across the Lot for the purpose of abating and removing any nuisance, in addition to all other rights at law or equity. No lot owner shall be entitled to require the Association to take any action to abate or remove a condition that may be a nuisance if the Association has determined in its discretion that such condition is not of a nature that requires entry onto a lot and removal of a nuisance.

7. EASEMENTS

Certain easements are reserved over and across lots in the subdivision, including residential and commercial lots, as indicated on the recorded subdivision as indicated on the recorded subdivision plat and as further set forth herein, for the purpose of furnishing and moving of all electric power, water, sewage, drainage, telephone services and petroleum substances in and through the subdivision. All contracts, deeds and conveyances of any of said lots or portion thereof are hereby made subject to such easements. In addition to those easements referred to above and shown on the plat, additional easements are hereby dedicated for uses outlined as follows:

A. In Cape Conroe, Section I:

1. An **eight foot** wide easement along the rear lot line of Lots 29, 35, 36, 37, 72, 77, in Block 2.

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2. A **five foot** wide easement along the front lot line of Lots 72, 73, 74, 75, 76 and 77, in Block 1.
3. A **sixteen foot** wide easement along the rear lot line of Lots 6, 7, and 8 of Block 5.

B. In Cape Conroe, Section II:

1. The most northeasterly **five feet** of Lot 11, in Block 17.
2. The most southwesterly **five feet** of Lot 12, in Block 17.
3. The most southwesterly **five feet** of Lot 25, in Block 12.
4. The most northeasterly **five feet** of Lot 26, in Block 12.
5. The most northeasterly **five feet** of Lot 8, in Block 12.
6. The most southwesterly **five feet** of Lot 9, in Block 12.
7. The most southeasterly **five feet** of Lot 7, in Block 14.
8. The most northwesterly **five feet** of Lot 8, in Block 14.

Such easements also include the right to remove all trees and weeds within the easements if such vegetation prevents the effective use of easements. To maintain effective use of easements all such easements further include the right to trim trees and shrubs located on the property belonging to or being a part of this subdivision.

8. TEMPORARY STRUCTURES AND RESIDENCES

For all lots in the subdivision, including residential and commercial lots, no trailer designed for habitation, mobile home, tent, shack, or barn shall be moved upon or built upon such lot in this Subdivision nor shall any detached garage or other out building be used as a temporary or permanent residence in this subdivision. Any owner may install an exterior storage structure on that owner's lot provided such owner obtains advance, written approval of the Committee for such structure. All such exterior storage structures shall only be kept in the rear or back yard of any residence and shall be kept from view from the streets of the Subdivision to the greatest extent possible or practicable.

9. FENCES AND WALLS

For all lots in the subdivision, including residential and reserved lots, no fence or wall shall

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2. A **five foot** wide easement along the front lot line of Lots 72, 73, 74, 75, 76 and 77, in Block 1.

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1. The most northeasterly **five feet** of Lot 11, in Block 17.

2. The most southwesterly **five feet** of Lot 12, in Block 17.

3. The most southwesterly **five feet** of Lot 25, in Block 12.

4. The most northeasterly **five feet** of Lot 26, in Block 12.

5. The most northeasterly **five feet** of Lot 8, in Block 12.

6. The most southwesterly **five feet** of Lot 9, in Block 12.

7. The most southeasterly **five feet** of Lot 7, in Block 14.

8. The most northwesterly **five feet** of Lot 8, in Block 14.

Such easements also include the right to remove all trees and weeds within the easements if such vegetation prevents the effective use of easements. To maintain effective use of easements all such easements further include the right to trim trees and shrubs located on the property belonging to or being a part of this subdivision.

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be located between any Street and any Building Line. All fences built of lumber shall be treated to retard decay. No fence or wall may be higher than **six feet, six inches** unless approved in writing, in advance, by the Committee.

10. SIGNS

For all residential lots and commercial lots in the subdivision, no signs of any kind shall be displayed to the public view on any tract or lot except no more than **one sign** advertising the property for sale or signs used by a builder or owner to advertise the property during the construction and sales period. Signs may be placed only on the particular property that is for sale. A commercial lot may have one commercial sign which has been approved in advance by the Architectural Control Committee. Owners of waterfront lots may place two signs on their lots advertising such lots for sale, but only one of such signs may face the street and the second sign must then face Lake Conroe shoreline.

11. ACCESS

For all lots in the subdivision, including residential and commercial lots, no driveways or roadways may be constructed on any lot in this subdivision that will furnish access to any adjoining lots or property without the express written consent of the Committee.

12. DRIVEWAYS

For all lots in the subdivision, including residential and commercial lots, all driveways and other areas used for stopping, parking or driving must be paved before any new house may be occupied in this Subdivision. All parking lots and driveways must be paved before used by any commercial business in this subdivision.

13. CULVERTS

For all lots in the subdivision, including residential and commercial lots, all drain tiles and culverts or culverts in any drainage ditch (including road) ditches shall have inside diameter of at least the size required by Montgomery County, Texas for such uses, and such tiles or culverts must be approved in advance of installation by the Committee and by any governmental entity exercising control over drainage.

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14. UTILITIES

Each and every residence shall be required to connect to the water and sewer lines as soon as they are made available. Dwellings in the Subdivision may use electricity or natural gas from utility companies that distribute such products. No tanks with a capacity of more than 100 pounds may be installed at any dwelling for propane, butane or other forms of energy without advance approval by the Board of Directors. Such approval shall depend upon the decision of the Board after taking into consideration the location of the dwelling involved, safety of the persons involved and in the Subdivision, and the risk of harm to the environment.

15. RESUBDIVISION

No lot whether residential or commercial, may be resubdivided without the written approval of the Committee, and the Board of Directors of the Association and must comply with applicable government regulations for resubdivision or replatting.

16. FIREARMS

The discharge of firearms is expressly prohibited within the subdivision. The Association shall not be responsible for safety and security.

17. MATERIALS STORED ON LOTS

On all lots in the subdivision, whether residential or commercial, no building material or debris of any kind shall be placed or stored upon any lot except during construction.

18. LAKE FRONT LOTS

For all Lots, whether townhouse or otherwise, that border Lake Conroe, only bulkheads, piers and boat docks may be built on a lakefront lot prior to building a residence on any such lot, and such structures must be approved in advance of construction by the Committee, as with other structures. Once a bulkhead is built on a lot the owner of such lot shall be obligated to maintain such bulkhead in good repair and appearance. If a bulkhead on any lot either meets or extends across a vacant lot, the owner of either adjoining lots shall have an easement over and across the vacant lot for the purpose of maintaining the bulkhead. If the owner of any lakefront lot, fails to maintain or repair the bulkhead on that owner's lot and in order to repair such bulkhead and prevent further damage either the owner of an adjoining lot or the Association or both must incur reasonable and necessary expenses to maintain or repair any part of a bulkhead, such parties shall have a lien upon the lot where the repairs are made to the extent the owner of the lot where the repairs are made either fails or refuses to repair the bulkhead or to pay the proportionate part of the repairs that apply to such lot.

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For such purposes, the owners of lakefront lots and the Association shall have an easement to enter over and across any lakefront lot for the purpose of repairing any bulkhead, and such parties shall not be guilty of trespass. Before such repair easement or lien or both may be effective the parties desiring to enter a lakefront lot for such repairs shall give the owner of the lot to be affected by the repairs no less than 30 days advance written notice of the need repairs by U.S. certified mail addressed to the owner of such lot as reflected on the current books and records of the Association.

19. MAINTENANCE FUND

The following charges and obligations apply to all lots in the subdivision, including residential and commercial.

- A. **Administration.** The Maintenance Fund shall be administered, held, collected, and disbursed by the Cape Conroe Property Owners Association, Inc., a Texas non-profit corporation (the "Association"). The business and affairs of the Association shall be managed by its Board of Directors, who shall be elected by and shall serve terms of office as provided in its Bylaws.
- B. **Determination.** Each lot shall be subject to an annual maintenance fee in an amount to be recommended by the Board of Directors of the Association by its annual budget which must be determined and submitted for approval at an annual membership meeting of the Association. Annual membership meetings shall be held on the date specified for such meetings in the Association's Bylaws. At such meeting a quorum, as specified by the Bylaws must be present and such matter must pass by a majority of the votes present at such meeting, whether in person or by proxy. If any recommended increase is not approved, then the Maintenance Fee then in effect shall remain in effect. The annual maintenance fee shall be collected and dispersed by the officers of the Association or by their designated agents..
- C. **Collection.** All past due maintenance fees shall bear interest from their due date at the rate of eighteen percent (18%) per annum until paid, provided however, the Board of Directors of the Association may set a lower rate for any fiscal year by an appropriate resolution adopted prior to the beginning of such year. Such maintenance fees shall be a covenant running with the land, and to secure payment thereof, a Mechanic's Lien is hereby retained on each lot by the Association, subject and inferior, however, to a purchaser money lien or construction money lien, or both.
- D. **Adjustment.** Such annual maintenance fees may be adjusted at any time on any lot by the Board of Directors as may be required by any "Housing Authority" or "Regulating Agency" or "Governmental Agency" to meet any requirements or rules of such Agencies.

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- E. **Lien.** There is hereby reserved, set over and transferred into the Association a maintenance lien upon each lot in the Subdivision to secure payment of the annual maintenance assessment. Such lien automatically attaches to and applies against each lot and shall remain first, primary and superior to all titles, liens and interests in each lot in the Subdivision except that such lien shall not be superior to any bona fide purchase money vendor's lien or builder's and mechanic's lien for the construction of a dwelling upon any lot. Such lien shall secure payment of the annual maintenance fee, and all interest, and attorney's fees to become due and payable to the Association for any lot.
- F. **Foreclosure.** This lien so established, may be foreclosed upon after notice of delinquency to the owner of any lot, as and in the same manner as is provided for the foreclosure of a mortgage upon real property under the laws of the State of Texas. Any such action of foreclosure will entitle the lienholder to reasonable attorney's fees and other allowed costs and penalties.
- G. **Application of Funds.** Funds arising from such maintenance fee shall be applied, so far as sufficient, toward the common good of the community, civic betterment, municipal, educational and public recreational purposes (but not by way of limitation) as follows:
1. To render constructive civic welfare for the promotion of the social welfare of the community and of the citizens of the Subdivision, to arouse civic consciousness by means of active participation constructive projects which will improve the community, state and nation.
 2. To promote and provide community services and educational and public recreational services and facilities for residents of the Subdivision.
 3. To acquire, maintain and construct buildings and property for public services and educational and recreational facilities.
 4. To do any other thing necessary or desirable or of general benefit to the community.

20. DURATION OF RESTRICTIONS

- A. **Term.** For Cape Conroe, Section I, the effective date for these Amended Restrictions is May 1, 2002. For Cape Conroe, Section II, the effective date for these Amended Restrictions is September 29, 2002. For both sections, these amended restrictions shall remain in full force and effect until midnight June 30, 2010. Thereafter these restrictions shall be automatically renewed for additional successive periods of **ten** years each unless the owners of at least **51%** of the lots in the subdivision shall, by instrument in writing duly placed of record, elect to terminate or

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amend these restrictions and the force and effect thereof.

- B. **Amendment During Term.** At any time after the effective date, other than the dates specified above, 80% of the members of the Association's Board of Directors and the owners of two-thirds of the lots in the entire subdivision may amend or change these restrictions by their written and recorded vote. For any such amendment to become effective all voting by the Board of Directors and the owners must be completed and recorded within the same twelve-month period.

21. MISCELLANEOUS PROVISIONS

The following provisions apply to all lots in the subdivision including residential and commercial:

- A. **Benefit.** All covenants and restrictions are for the benefit of the entire subdivision and shall be binding upon and enforceable by every purchaser, his (her) successors, heirs and assigns.
- B. **Severability.** Invalidity of any one of the covenants or restrictions by judgment or any court shall in no way affect any of the other provisions which shall remain in full force and effect.
- C. **Application.** All of the restrictions, easements and reservations herein provided and adopted as a part of said subdivision shall apply to each and every lot and when such lots are conveyed the same shall be conveyed subject to such restrictions and reservations as contained herein, and also such limitations as are shown on the maps or plats of Cape Conroe, Section I and Cape Conroe, Section II, Montgomery County, Texas. When lots with such reservations, easements, restrictions, etc., are so referred to by reference thereto in any such deed or conveyance to any lot or lots in said subdivision the same shall be the same force and effect as if said restrictions, covenants, conditions, easements and reservations were written in full in such conveyance, and each contract and deed shall be conclusively held to have been so executed, delivered and accepted upon the express conditions, reservations, easements and restrictions as herein stated and set forth.
- D. **Enforcement.** Enforcement of these restrictions and covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate the same, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitory or mandatory, or to obtain any other relief authorized by law. Such enforcement may be by the owner of any of said lots or by the Association, or its successors or assigns.

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- E. **Paragraph Headers and Fonts.** The paragraph and section names, headers and other uses of various fonts in this document are to facilitate the reading of this document and are not used to affect meaning of the text.
- F. **Transition.** From and after the effective date of this document, any home or structure built or altered according to the standards of the original restrictions in effect for Cape Conroe, Section 1, and for Cape Conroe, Section 2, and for which written approval had been granted or waived by the Committee, shall not be in violation of the provisions of this document. Subject to approval of the Committee, such buildings may be remodeled according to the standards of the restrictions in effect when the buildings were originally built. If any such buildings are damaged by fire, storm or other catastrophic event, then such buildings may be repaired and rebuilt to their original condition according to the restrictions in effect when the buildings were originally built. If, upon any remodeling or rebuilding following a catastrophic damage, the Committee determines that such repair or remodeling should involve a substantially new or different exterior design, then such buildings must meet the requirements of this document.

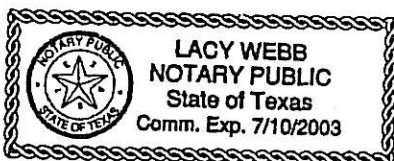
APPROVED AND ADOPTED this 25th day of April, 2002.

CAPE CONROE PROPERTY OWNERS ASSOCIATIONS, INC.

BY: Paul M. Pittman
 NAME: PAUL M. PITTMAN
 TITLE: PRESIDENT

THE STATE OF TEXAS
 COUNTY OF MONTGOMERY

This instrument was acknowledged before me this 25th day of April, 2002, by Paul M. Pittman, the President of **CAPE CONROE PROPERTY OWNERS ASSOCIATION, INC**, a Texas Non-Profit Association.



Lacy Webb
 NOTARY PUBLIC - State of Texas

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