HARBOR OAKS

RESOLUTION AFFECTING WATERWAYS & MOORING

(Adopted in 1994)

FILE NO. 196232
County Clerk, Aransas County, Texas

IMAGE NO. 208365

RESOLUTION AFFECTING ALL WATERWAYS AND MOORING AREAS IN THE HARBOR OAKS PROJECT

added Aug 24

STATE OF TEXAS :
: KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF ARANSAS :

THAT WHEREAS, on July 10, 1994, there was held a meeting at the Community Building of the Pacific Southwest Bank, Highway 35 N., Rockport, Texas, of HARBOR OAKS PROPERTY OWNERS' ASSOCIATION, INC., a Texas non-profit corporation, upon notice thereof having first been given, and after determining that a quorum was then and there represented, the business of the meeting was taken up and considered; and

WHEREAS, in the restrictions, covenants and conditions to the Harbor Oaks Project in Part IV, paragraph 2, it is provided:

> "No structure or obstruction of any nature whatsoever shall be constructed or allowed by any Lotowner on, in or under any waterway. This will not prevent the construction of any water line, sewer line or other developmental features by the Developer when the same do not interfere with navigation. Docks, piers and mooring posts (except those constructed by the Developer for use of the owners of the water-view lots in Unit 5/Unit 6)* may be constructed within the mooring areas only after the size, design and placement of such have been approved in writing by the Committee."

*This additional parenthetical phrase appears in the restrictions to Units 5 and 6 only.

HARBOR OAKS, UNIT 1	#64031, Volume 150, Pages 321 et seq. at page 323, Deed Records, Aransas County, Texas
HARBOR OAKS, UNIT 2	#76965, Volume 187, Pages 293 et seq. at page 296, Deed Records, Aransas County, Texas
HARBOR OAKS, UNIT 4	#87101, Volume 213, Pages 262 et seq. at page 265, Deed Records, Aransas County, Texas
HARBOR OAKS, UNIT 4, SANDPIPER HOLLOW	#99787, Volume 241, Pages 155 et seq. at page 158, Deed Records, Aransas County, Texas
*HARBOR OAKS, UNIT 5	#96867, Volume 234, Pages 33 et seq. at page 36, Deed Records, Aransas County, Texas

*HARBOR OAKS, UNIT 6	#95470, Volume 230, Pages 333 et seq. at page 337, Deed Records, Aransas County, Texas
HARBOR OAKS, UNIT 7	#95840, Volume 231, Pages 263 et seq. at page 266, Deed Records, Aransas County, Texas; and

WHEREAS, in the restrictions, covenants and conditions to all of the Harbor Oaks Project (except for Harbor Oaks, Unit 4, Sandpiper Hollow, and Harbor Oaks, Unit 7, Shorewood Estates) in Part III, paragraph 6, it is provided:

> "The Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of these restriction"; and

WHEREAS, Harbor Oaks, Unit 4, Sandpiper Hollow and Harbor Oaks, Unit 7, Shorewood Estates restrictions, covenants and conditions in Part III, paragraph 6 provide:

> "Decisions of the Committee are subject to the provisions of Section III, of the Protective Restrictions and Covenants and Landowners Agreement, Harbor Oaks, Unit One (1), as recorded in Volume 150, Page 321 et seq. of the Deed Records of Aransas County, Texas, and final approval of the Committee therein named is mandatory"; and

WHEREAS, by Special Warranty Deed dated August 9, 1978, Canoe Lake Corp., Trustee, conveyed to Harbor Oaks Property Owners' Association, Inc. all waterways and common areas in the Harbor Oaks Project (and in particular Parcel NINTH, a waterway known as Turkey Neck Channel), togetner with the "Maintenance Fund," the rights to impose and collect such maintenance charge, as well as all of Grantor's powers, rights, liens, responsibilities, duties and authority under the terms of said Part VI of each of said documents, said right to collect a maintenance charge being further therein reserved and retained in four (4) other conveyances as therein described, all as more fully set out in said Special Warranty Deed as shown of record under Clerk's File #101172, being also Volume 244, Pages 393 et seq., Deed Records, Aransas County, Texas; and

WHEREAS, in the restrictions, covenants and conditons to Harbor Oaks, Units 5 and 6, Canoe Lake Corp., Trustee, therein called "Trustee" (the predecessor of these certain powers, rights, liens, responsibilities, duties and authorities), it is provided in Part VI, paragraph 10:

> Each owner of a waterfront lot shall maintain the portion of the bulkhead adjacent to his lot in good condition. If such portion of the bulkhead should be in need of repair from any

> cause other than defects in original construction, the Trustee may give written notice to the owner of said lot; and if such owner fails to make the needed repairs within ninety (90) days after such notice is given, then the Trustee may do so, using the Maintenance Fund. The owner shall be obligated to pay to the Trustee the amounts so expended, with interest at the maximum legal rate, and the amounts so expended shall be a special assessment and charge against the lot involved, and be secured by a lien against same, in the same manner and with the same rights of enforcement as in the case of the general maintenance charge as provided above. Likewise, the owners of water-view lots having access to and owning the docking facilities constructed for their benefit, shall each maintain their own boat dock, and shall share pro rata the maintenance of the pier, mooring area, and bulkhead adjacent thereto, and if such owner or owners fail to make the needed repairs within ninety (90) days after such notice is given, then the Trustee may do so out of the Maintenance Fund, and such owner or owners shall be obligated to the Trustee for the amount so expended as hereinabove set out, and such amount shall likewise be secured by a lien against the lot or lots of such owner or owners"; and

WHEREAS, in document bearing Clerk's File #120732, being also Volume 296, Pages 332-333, Deed Records, Aransas County, Texas, the architectural control committee, herein called "the Committee," of the various Units in the Harbor Oaks Project designated Harbor Oaks Property Owners' Association, Inc. as a representative to act for each subdivision; and

WHEREAS, in the Definitions to each of the retrictions, covenants and conditions to each of the Units in the Harbor Oaks Project, in Part II, paragraph 3, it is provided:

> "A "waterway" is any area covered by water, whether it be a canal or lake, except that boat slips constructed for private purposes shall not be considered part of any waterway"; and

WHEREAS, in the Definitions to the restrictions, covenants and conditions to Harbor Oaks Unit 6, in Part II, paragraph 7, second part, it is provided:

"In addition, Developer is providing docking facilities (consisting of docks, mooring posts and pier) located in the mooring area of Turkey Neck adjacent to Block A, Green Area, for the benefit of the waterview lots of Unit 6 and proposed future Unit 5 of said development, as shown in the detail of the mooring area upon the recorded map of said Unit 6, and a separate boat dock, together with the joint use of the pier, shall be conveyed to each owner of a waterview lot in Unit 6; the ownership of each boat dock shall be by the person owning the correspondingly numbered lot in Block One (1) of said Unit 6. The ownership of such docking facilities shall be in the owners of the waterview lots of Unit 6 and the Developer (to the exclusion of all other owners in the Harbor Oaks Project), and no other present property owners in the project shall have any right to the use of, nor any responsibility for maintenance or other liability in connection with such docking facilities; provided, however, Developer reserves the right to transfer and convey its rights in said facility to others in connection with proposed future Unit 5 of the development"; and

WHEREAS, in the Definitions to the restrictions, covenants and conditions in Harbor Oaks Units 5 and 6, in Part II, paragraph 8, it is provided:

"A 'mooring area' is that portion of a waterway designated as such on the plat of such subdivision within which limited mooring facilities may be constructed as set forth in paragraph 2 of Part IV, below. Developer reserves the right hereafter to designate additional mooring areas along waterways adjoining areas not included in Unit 6"; and

WHEREAS, after a presentation of these matters in detail and after a motion was made and seconded, a vote was taken which by a vote of 118 yes and a vote of 4 no, it was RESOLVED THAT THE GENERAL INTENT, EFFECT AND PURPOSE OF THESE RESTRICTIONS PROVIDE THE FOLLOWING:

1. The definition of "waterway" was intended to include any area covered by water, whether it be a canal or lake, and that the exception as provided for "boat slips constructed for private purposes" was intended to apply only to those instances where a private lot owner might cut into his own bulkhead to make a

private boat slip and that such was governed by those provisions in Part III, paragraph 2, second sentence, to each of the restrictions, covenants and conditions, which provide:

> "Likewise, no bulkheads constructed by the developer shall be cut or any slips for boats be constructed unless plans and specifications therefor shall be prepared by a professional engineer (licensed by the State of Texas), and then submitted to and approved by the Committee."

This general intent, effect and purpose of these restrictions is further supported by the language in Part II, paragraph 8 (Definitions) which provides that a "mooring area" is a portion of a waterway "within which **limited** mooring facilities may be constructed as set forth in paragraph 2 of Part IV" (bold print emphasis and underline added).

2. The restrictions, covenants and conditons to the Harbor Oaks Project in paragraph 2 of Part IV firstly prohibit any structure or obstruction of any nature whatsoever in or under any waterway and unless there can be found an exception, the structure or obstruction shall not be (i) constructed or (ii) allowed.

3. Those exceptions to the general prohibition of any structure or obstruction of any nature whatsoever in or under any waterway are as follows:

(a) Waterlines, sewer lines or other developmental features by the "Developer" (Canoe Lake Corp.).
(b) Docks, piers and mooring posts constructed by the Developer for use of the owners of the water-view lots in Units 5 and 6.
(c) Docks, piers and mooring posts constructed within the mooring areas after the size, design and placement of such have been approved in writing by the Committee.

4. The restrictions, covenants and conditions to the Harbor Oaks Project in numerous places prohibit unsightly matters, and in particular in paragraph 16 of Part IV it is provided:

> "All waterways shall at all times be kept free of debris, trash, rubbish, garbage or other unsightly or unsanitary articles or hazards to navigation. None of the foregoing or any other foreign matter shall be at any time deposited, dumped or left in any waterway, nor shall any hazard to navigation, or boats, hulks, derelicts, or other floating objects other than properly tended or moored boats be at any time permitted in any waterway." [underline added],

and in paragraph 8 of Part IV it is provided:

> "No structure of a temporary character, and no ...tent, shack, garage, barn or other outbuilding, or any part thereof, shall be placed on any lot or used as a residence or dwelling," and

it is the decision of the Committee that it was the general intent, effect and purpose of these restrictions that no such "tent, shack, garage, barn or other outbuilding, or any part thereof" be constructed or be allowed to remain in any waterway.

5. The proper tending and mooring of boats and articles used for the same is allowed, which includes the use of reasonably necessary lines, pulleys and other devices, but would not include unsightly tires for bumper guards, for example.

6. In order for the architectural control subcommittee to carry out its ministerial duties, the Committee (Harbor Oaks Property Owners' Association, Inc.) herein gives the following guidelines (in addition to those given hereinabove):

a. These guidelines apply not only to Turkey Neck Channel but to all waterways within the Harbor Oaks Project.

b. The following types of articles constitute (i) a structure not excepted from the general pronibition against items of any nature whatsoever as may be placed in or that may remain in a waterway, (ii) an obstruction, (iii) an interference with navigation, or (iv) an unsightly article, herein called Prohibited Articles, to-wit:

(1) Any wall, fence, partition or similar vertical, upright construction, whether open, one-sided or closed, whether solid, partially open, slatted or otherwise, and regardless of the material or materials used therein, man-made or otherwise.

(2) Any sign, board, flag, canvas, bamboo, palm leaves or other item which partially or otherwise interferes with vision in the waterway.

(3) Any roof, canopy, tent, shack, barn or covering of any type, whether temporary or permanent and regardless of the material used, whether man-made or otherwise.

(4) Trash cans, storage containers, vestibules, lattice screening.

(5) Any clothes lines or lines from which items are hung for drying such as wet clothes, swim suits, wet life preservers, or items being repaired.

(6) The accumulation of ordinary items which by reason of their being kept in the open constitute what would appear to be a disorganized external display of unsightly items to the ordinary and reasonable person in a restricted subdivision such as the Harbor Oaks Project.

(7) Used or secondhand materials.

(8) Any activity connected with what is commonly known as a commercial, trade, business or professional activity of any nature; that is, the mooring and docking of commercial fishing boats such as shrimp boats and charter boats, other than what is commonly referred to as one-to six-passenger bay or gulf sport fishing boats, and in no instance where customers come and go from any part of the lands or waterways of the Harbor Oaks Project. That is, the lots (lands) are restricted against business and the mooring areas are similarly restricted.

(9) Any item or activity prohibited on a land site (e.g., out-side toilets, storage of building materials, prohibited radio or television aerials or guy wires, and long delays in construction) shall likewise be a prohibited item or activity in a mooring area.

c. The following types of articles are excepted from the general prohibition against items of any nature whatsoever as may be placed or that may remain in a waterway, or constitute an obstruction, or interfere with navigation, or constitute an unsightly article, herein called Allowed Articles, to-wit:

(1) Lines, tackle, cables and other devices for properly holding, raising or otherwise moving or securing a boat in a dock slip or mooring area (but this shall not include unsightly used tires or noticeable parts thereof, bright colors and paints, or large reflectors.

(2) Upright water pipes, faucets and lines, for water and electricity, to use in connection with boats in the mooring areas (but not to be used in connection with permanent or temporary residences in a boat, which is prohibited). The use of a boat as a residence on waterways in the Harbor Oaks Project, temporary or permanent, is restricted and prohibited just as would be the use of a house trailer, bus, truck or similar vehicle on the land site areas of the Harbor Oaks Project.

(3) Reasonable lighting for safety or security, but not to constitute a nuisance to owners of nearby lots and not to constitute a hazard to navigation because of the brightness or direction of the lighting, and in no event shall any flashing light be allowed nor outdoor speaker.

These final decisions in interpreting the general intent, effect and purpose of these restrictions shall be binding upon and inure to the benefit of and may be enforced by the persons or entities to which other provisions in these restrictions apply (reference here being made to Part IX of the restrictions), shall carry the same severability provision as contained in Part X, and shall have the same duration as provided in Part VII.

This document shall be recorded in the Official Public Records of Real Property of Aransas County, Texas, and shall hereafter constitute constructive notice hereof to all persons or entities to which this document applies.

SIGNED this the 11th day of August, 1994.

HARBOR OAKS PROPERTY
OWNERS' ASSOCIATION, INC.

By: Jack Salyer
Jack Salyer, President

STATE OF TEXAS :

This instrument was acknowledged before me on the 11th day of August, 1994, by Jack Salyer, President of HARBOR OAKS PROPERTY OWNERS' ASSOCIATION, INC., a Texas corporation, on behalf of said corporation.

[Place Seal Below]

MARY LYNN TURNER
Notary Public
State of Texas
My Comm Exp 9-14-94

Mary Lynn Turner
Notary Public, State of Texas
Commission expires:
Printed name: Mary Lynn Turner

FILED FOR RECORD
At 12:05 P. M.
AUG 12 1994
Peggy L. Friebele
PEGGY L. FRIEBELE
COUNTY CLERK, ARANSAS CO., TEXAS
Filed by & return to:
Calvin W. Schaefer
Call 729-7500

State of Texas)
)
County of Aransas)
I hereby certify that this instrument was Filed on 8-12-94
12:05 P.M. and was duly Recorded in the Official Public Records of
Aransas County, Texas, under File No. 196232 on 8-12-94

Peggy L. Friebele
PEGGY L. FRIEBELE
COUNTY CLERK
ARANSAS COUNTY, TEXAS