

Windcliff Harbor Homeowners Association

Amended and Restated Restrictive Covenants of Windcliff Harbor and the Metcalf Addition (Merged into Windcliff Harbor in 2002)

The Undersigned, constituting at least sixty (60%) percent of the owners of lots in Windcliff Harbor, the plat of which is recorded in Volume 6, Page 94, Plat Records of Smith County, Texas, and at least sixty (60%) percent of the owners of lots in the Metcalf Addition, the proposed plat of which appears in Volume 1412, Page 284, Deed Records of Smith County, Texas, herein collectively referred to as the "subdivisions, do hereby:

A. Revoke and rescind all prior Restrictive Covenants and Building Codes addecting the subdivisions, same being of record as follows:

Volume 1311, Page 451

Volume 1313, Page 289

Volume 1412, Page 281

Volume 1444, Page 721

Volume 6365, Page 125

Official Public Records of Smith County, Texas.

B. Merge Windcliff Harbor and the Metcalf Addition into one subdivision ("the subdivision") for the purpose of establishing uniform restrictive covenants and building codes and maintaining the lots and structures in the subdivision in an appropriate manner, and

C. Declare that the lots in the subdivision shall be subject to the covenants and restrictions as herein after set forth.

I.

Definitions

A. **Association.** The Homeowners Association, which shall consist of each and every person or entity who is an owner of record of a lot(s) in the subdivision. Each such owner shall have one vote for each lot owned.

B. **Officers.** The officers of the Association shall consist of a President, Vice-President, Secretary and Treasurer elected annually

C. **Architectural Control Committee.** The Architectural Control Committee ("the committee") shall consist of three (3) lot owners appointed annually by the President of the Association.

II. Covenants and Restrictions

- A. No building, fence, wall or other structure shall be commenced, erected, altered, changed, or maintained upon any lot in the Windcliff Harbor subdivision until the details, plans and specifications thereof have been submitted to and approved in writing by the Architectural Committee. In the event the Committee fails to approve or disapprove any such details, plans or specifications within 45 days after submission to it, approval will not be required and this provision shall be deemed to have been fully complied with.
- B. In the event the owner of any lot shall allow same to become unkempt and uncared for, or the building thereon to become unsightly or in a state of disrepair, exterior maintenance upon such lot and structure thereon in the nature of mowing, trimming trees, shrubs or hedges and lawns, and painting or repairing structures may be performed by the Association. In the event such becomes necessary, The Association shall give to the owner of such lot(s) notice in writing of the need for such maintenance, and of the intention of the Association to perform such maintenance should the owner fail to perform it within 15 days after the receipt of such notice. The cost of such exterior maintenance so performed by the Association shall be assessed against the lot on which such maintenance is done and shall become a lien thereon upon the filing of a statement of facts by the Association in the Deed Records of the county in which the land is located. However, any such lien shall be subject to the rights of any prior good faith lienholder.
- C. No lot shall be used for other than residential or recreational purposes and no commercial enterprises or businesses or any type or character shall be maintained on any lot.
- D. No building shall be erected on any lot other than single family dwellings or cottages having a living area (that enclosed for heating and/or air conditioning) of less than one thousand six hundred (1,600) square feet including garage
- E. No subdivision or resubdivision of any lot, or combination of lots, shall be permitted except upon prior approval of the Association. All structures located on any lot shall be set back from the front lot line a minimum of twenty-two (22) feet and from the side lot line a minimum of six (6) feet. For the purpose of construing this provision, all lots shall be deemed to front on the street on which such lot shall have the least frontage, provided that variations from the provisions of this article may be granted on corner lots by the Association.
- F. The exterior of all residences, garages and outbuildings shall be constructed of brick, brick veneer, stone, glass or decorative wood, such as cedar, redwood or cypress; or such other materials as may be approved by the Committee.
- G. All roofs on residences, garages and outbuildings shall be wood or composition shingles, or equivalent, or such other as may be approved by the committee.

H. No structure of a temporary nature, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, and no used structure of any sort shall be moved onto any lot. Only a pier and/or boathouse may be constructed on any lot prior to the main residence building. The exterior of any improvement shall be completed within six (6) months after the beginning of construction of such improvement, but no improvements are required to be commenced at any particular time. Factory built camping trailers, campers on pick-ups and motorhomes of good design and appearance with self-contained sanitary facilities will be allowed to camp on any lot, up to sixty (60) days per year. It is specifically provided, however, that no more than one (1) such vehicle shall be permitted on any lot at the same time. Notice must be given to the Association upon arrival to camp.

I. All lavatories, toilets and other bath facilities shall be installed indoors and shall be connected with adequate grease traps, septic tanks and lateral lines. Minimum requirements for the construction of septic tanks and lateral lines for permanent residential improvements are those issued by the Upper Neches River Authority.

J. No residential lot shall be used as a place for keeping horses, mules, cattle or other animals or poultry; provided, however, that occupants of each residence may keep the usual and customary domestic or household pets, such as cats or dogs, provided same are not kept, bred or raised for commercial purposes. If any household pet becomes a problem, the Association may request that control action be taken by the owner. If not action, which has been requested, the Association may have the animal removed by the appropriate authorities.

K. All lots shall be kept clean and free of trash, rubbish, garbage, debris or other unsightly objects and nature at all times. All trash, garbage and other waste shall be disposed of in a sanitary manner and all containers and other equipment for storage and disposal of garbage and trash shall be kept covered and in a clean and sanitary condition inside garages or otherwise hidden from view from the street.

L. Any garage used for storage shall be kept closed at all times except when in immediate use for ingress or egress.

M. No unused automobiles or vehicles of any kind, except as hereinafter provided, shall be stored or parked on any lot, except in a closed garage or on any residential lot or street. "unused vehicle" is defined as any vehicle which is incapable of being driven and operated and has been so for a period of six (6) months or longer.

N. No obnoxious or offensive activities shall be carried on upon any lot, nor shall anything be done, or any condition permitted to exist thereon which may be or may become an annoyance, nuisance or hazard to the health of the neighborhood.

O. An easement for the installation, operation and maintenance of utilities is reserved on, over and under a strip of land five (5) feet along each side lot line and rear lot line and the right of entry for such purpose is expressly reserved.

- P. No billboards, signs or advertising displays of any kind shall be installed, maintained or permitted to remain on any residential lot, except that one (1) sign containing not more than five (5) square feet of surface area may be displayed for the sale or rent of a residence and/or lot.
- Q. No fence, wall or shrub shall be used for or serving as the purpose of a fence and be maintained in front of the building set back line herein provided.
- R. No commercial type of vehicle or truck may be stored or parked on any lot, except in a closed garage, nor parked on residential streets, except while engaged in the delivery to or transport from a residence. For the purpose of this covenant, a three-quarter ton or smaller vehicle shall not be deemed to be a commercial vehicle or truck.
- S. The restrictions, covenants and provisions of this 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 lot(s) subject to these restrictions, their respective legal representatives, heirs, successors or assigns, for a term of twenty (20) years from the date of this declaration, after which time, said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the owners of sixty (60) percent of the lots in such subdivision has been recorded, agreeing to change said restrictions, covenants and conditions in whole or in part.
- T. Enforcement of these restrictions, covenants and conditions shall be by 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 thereof, or to recover damages, and against the land to enforce any lien created by these covenants, and failure on the part of the Association or any owner to enforce any restrictions, covenants or conditions herein contained shall in no event be deemed as a waiver of a right to do so thereafter.
- U. Invalidation of any one of these restrictions, covenants or conditions by judgment or order of court shall in nowise affect any other provision which shall remain in full force and effect.
- V. In the event that there presently exists, as of the date of this instrument, any non-conformance with these restrictions, then and in that event only, such non-conformance shall not be considered as a violation hereof.

Recorded December 29, 2002 in the property records of Smith County, Texas by Chris Sweaks, President and Sylvia McKay, Secretary/Treasurer of the Windcliff Harbor Homeowners Association.