

RESTRICTIONS AND COVENANTS APPLICABLE TO
CAPE MALIBU SUBDIVISION,
MONTGOMERY COUNTY, TEXAS
Sixth Revision

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENT:
COUNTY OF MONTGOMERY §

WHEREAS on the 25th day of August, 1965, THE BONANZA CORPORATION caused to be filed of record in Volume 602, Page 383, of the Deed Records of Montgomery County, Texas, certain Restrictions and Covenants applicable to CAPE MALIBU SUBDIVISION ; Being 73.290 acres of land out of and a part of the Wm. Weir Survey, Montgomery County, Texas, Abstract No. 42, and also being a part of a 100 acre tract described in Volume 444, Page 459, and also a part of a 295 acre tract described in Volume 405, Page 174, of the Deed Records of Montgomery County, Texas.

The undersigned, being OWNERS, do ratify and adopt this Sixth Revision of the Restrictions and Covenants, which completely replaces all earlier editions. As of the EFFECTIVE DATE of this revision the OWNERS of LOTS their successors and/or assigns are bound by these provisions.

DEFINITIONS

- 1. ARCHITECTURAL CONTROL COMMITTEE is formed to review architectural plans with regard to compliance with the Restrictions and Covenants. This committee is established under the BYLAWS of the ASSOCIATION.

- 2. ASSOCIATION refers to the Cape Malibu Property Owners Association, Inc., a non-profit Texas Corporation and its successors and/or assigns.

- 3. BOARD shall mean and refer to the Board of Directors duly elected under the BYLAWS of the ASSOCIATION.

4. BYLAWS shall refer to the rules adopted by the ASSOCIATION to govern its activities and regulate its affairs.
5. COMPOSITE BUILDING SITE consists of one or more adjoining LOTS (or portions thereof) combined into a single building site which is treated as one LOT and is eligible for a single vote.
6. EFFECTIVE DATE is the next day after properly amended Restrictions and Covenants have been recorded in the Deed Records of Montgomery County, Texas.
7. FAMILY UNIT consists of owners of record living together in a single residence on a single LOT or COMPOSITE BUILDING SITE. This unit will be eligible for a single vote.
8. LOT (S) shall mean and refer to any lot shown on the SUBDIVISION plat that is restricted hereby for single family residential dwellings only.
9. MEMBER (S) refers to all parties who are owners of a LOT, portion of a LOT or multiple LOTS in the SUBDIVISION and who enjoy the full rights and privileges, including the right to a single vote, afforded by membership in the ASSOCIATION. Not more than a single vote is allowed for shared ownership of a LOT.
10. OWNER (S) shall mean and refer to the record owner, whether one or more persons or entities, who are entitled to unrestricted powers to dispose of the LOT (fee simple) which is part of the SUBDIVISION, but excluding those parties having such interest merely as security for the performance of an obligation.
11. ELIGIBLE OWNER refers to the OWNER or OWNERS of a single LOT or multiple LOTS in the SUBDIVISION who is a MEMBER, having paid all assessments and fees no later than the time of the vote and enjoying the full rights and privileges of the ASSOCIATION. Only an ELIGIBLE OWNER has the right to a single vote in any election defined by the Restrictions and Covenants.
12. SUBDIVISION refers to the properties (excepting designated reserved areas and Block 10) of the Cape Malibu Subdivision as per map or plat filed for record in Volume 7, Page 285, Map Records of Montgomery County, Texas.

GENERAL PROVISIONS

1. **TERM:** These renewed, extended and amended Restrictions and Covenants, subject to amendment pursuant to Article Two (2) below, are to run with the land, and shall be binding upon all OWNERS of lands affected, their respective heirs, executors, administrators, successors and assigns, and any part of same, for a period of fifteen (15) years from the date hereof, at which time said covenants shall be extended automatically for successive periods of ten (10) years.
2. **AMENDMENT TO TERM:** These renewed, extended and amended Restrictions and

Covenants may at any time during the term hereof, or any extension, be amended in whole or in part by the majority vote of the ELIGIBLE OWNERS in the SUBDIVISION, subject to these Restrictions, by executing and acknowledging an appropriate agreement or agreements, in writing for such purpose and filing the same for record in the Office of the County Clerk of Montgomery County, Texas. The agreement(s) so executed for this purpose shall be acknowledged by the person executing the same in the same manner as is required for the execution of Deeds entitled to be recorded in the County Clerk's Office. The amended Restrictions and Covenants become active on the EFFECTIVE DATE.

3. SEVERABILITY: The failure promptly to enforce any of these renewed, extended and amended Restrictions and Covenants shall not bar their enforcement. The invalidation of any one or more of these renewed, extended and amended Restrictions and Covenants by any Court of competent jurisdiction in no way shall affect any of the other renewed, extended and amended Restrictions and Covenants, but they shall remain in full force and effect.

4. ENFORCEMENT: For a violation or a breach of any of these renewed, extended and amended Restrictions and Covenants, by any person, or by virtue of any judicial proceedings, the ASSOCIATION on behalf of the OWNERS, or any of them severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them.

4a. DELAYS: No delay or omission on the part of the ASSOCIATION or the OWNERS in the SUBDIVISION in exercising any rights, power, or remedy herein provided upon the event of any violation or breach of these renewed, extended and amended Restrictions and Covenants, shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the ASSOCIATION for or on account of its failure to bring any action on account of any violation or breach of these renewed, extended and amended Restrictions and Covenants, or for imposing restrictions herein which may be unenforceable by the ASSOCIATION.

5. LIENS: Liens upon any LOT, building site or tract of land in this SUBDIVISION given to secure payment of notes for purchase money advanced, or for improvements made or to be made, or for the extension or renewal of such indebtedness or notes, or any part thereof, shall not be invalidated or affected in any way by any violation of these covenants on the part of any person or party acquiring any such LOT, building site or tract of land; such liens shall remain in full force and priority in the case of any court judgment against such owner of such LOT, building site or tract of land; said premises shall remain subject to such liens; and no release of any restrictive covenants, or any part thereof shall be construed as against the original purchaser, his heirs, executors, administrators, assigns or successors, as the case may be; and sale under a foreclosure of such liens as hereinabove recited shall pass title to such premises subject to the restrictive covenants then in effect.

6. ARCHITECTURAL CONTROL: No building or other improvements shall be erected, placed or altered on any LOT until the construction plans and specifications and a plan showing the location of the structure, and complete plan of septic system showing relation to LOT lines and water lines have been approved by the ARCHITECTURAL CONTROL COMMITTEE as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Approval shall be as provided in Part 8 hereof.

The purpose of the ARCHITECTURAL CONTROL COMMITTEE'S approval process is to ensure that the colors, finishes and materials of residences and any other structures on residential LOTS will harmonize with and enhance the general character of the residential

neighborhood and surrounding properties. Exterior wall construction materials such as brick, masonry, wood, aluminum siding and vinyl siding are acceptable exterior cladding and building materials. An example of exterior building cladding that is not acceptable is metal ribbed panels. The foregoing examples of acceptable and unacceptable exterior materials are by way of example only. The ARCHITECTURAL CONTROL COMMITTEE reserves the right, and is given that right herein, to make the decision as to whether the materials and quality of workmanship are in harmony of external design with existing structures is met. The ARCHITECTURAL CONTROL COMMITTEE reserves the right and is herein given the right and discretion to establish other requirements deemed appropriate for this SUBDIVISION. These decisions, that have been approved by the BOARD, are generally communicated to the OWNERS through letters, the "Before You Build" document and other means.

7. ARCHITECTURAL CONTROL COMMITTEE: This committee will be established under control of the ASSOCIATION with at least one member of the committee being a member of the BOARD. Neither the members of the committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant.

8. PROCEDURE: The ARCHITECTURAL CONTROL COMMITTEE's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

9. EASEMENTS: It is understood and agreed that the easements granted herein are reserved as permanent easements for the purpose set forth in said paragraphs and are not subject to the time limit applicable to other restrictions.

10. LANDS END: Ownership of Lands End (Lands End Park on the deed) was deeded to the ASSOCIATION for the exclusive use and enjoyment of the property owners and their guests. To ensure that these facilities will remain available to the property owners, the BOARD is specifically required to obtain an affirmative vote of a majority of the ELIGIBLE OWNERS before altering the ownership or control of Lands End.

RESTRICTIONS

1. LAND USE: No LOT, building site or tract shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any LOT other than one detached single dwelling house, a private two (2) car garage or carport for family vehicle storage, storage facilities, and bathing, toilet, dressing rooms for private pools, or garage apartments for use by family members or as servant quarters. Rent or lease of garage apartments is specifically not allowed. No business of any type, kind, or character, subject to Article Two (2) Trade or Business Use, below, shall be done or carried on upon said residential area. All parts of said SUBDIVISION are hereby designated as a residential area, except as hereinafter explicitly excluded.

The minimum requirements for building are (1) detached single dwelling house, not to exceed two and one half (2 ½) stories in height, for a total height of twenty seven (27) vertical feet above original grade level, a private two (2) car garage or carport, (3) a hard surface driveway and (4) an approved sanitary sewer.

2. TRADE OR BUSINESS USE: No trade or business activity shall be permitted upon

any LOT in the SUBDIVISION. This provision shall not be deemed to prohibit the use by residents of room(s) in their homes for offices used in connection with their professional businesses or post-retirement business, both passive and active as long as the activities conducted out of such offices do not detract from the residential character of the SUBDIVISION. The phrase "Detract from the residential character of the SUBDIVISION" shall, when used herein, mean having a nature such that a reasonable person would, after observing the property, ascertain that a business or commercial activity is being conducted on the property. Such prohibited activities may include, but not be limited to the following (i) placement of business signs on the premises, (ii) permanent or semi-permanent parking of obvious commercial vehicles or equipment on or adjacent to the premises.

3. EASEMENTS: Easements as shown and called for on the official plat of said SUBDIVISION have been dedicated for the installation, operation and maintenance therein of utilities servicing the needs of residents of this SUBDIVISION. Ground easements are drawn and marked on the official plat. Any facilities such as storm sewers, drainage ditches, water mains, centralized sanitary sewers, gas mains, electric power lines and telephone lines will be installed upon street right-of-way and easements as dedicated on the official plat. Title to all utility systems and to all parts thereof shall remain vested in the person, firm, corporation, or political unit having due and legal authority to install, own and operate such system, and no right of ownership therein, or of any part thereof, shall pass to any owner of real property in this SUBDIVISION by virtue of such ownership. The owners of utility systems shall have the right of ingress and egress for purposes of installation, operation and maintenance, and, for like purposes, shall have prior rights in the use of land under easement as against the owner of such land.

4. BUILDING SITES: A building site consists of one LOT, or one or more LOTS or parts of LOTS, or parts of two or more adjoining LOTS. A COMPOSITE BUILDING SITE made up of whole or fractional parts of adjacent LOTS shall be no smaller in area and have no less footage than the largest single LOT as shown on the official plat. Under no circumstances shall a residence be built on less than one whole LOT as dedicated on the official plat. When a COMPOSITE BUILDING SITE is formed both front and side set back lines shall be measured from the resulting perimeter property lines rather than from the LOT lines as indicated on the plat.

5. BUILDING TYPE AND SIZE: The building erected upon any building site shall consist of not more than one single-family dwelling establishment. No building shall be erected upon any building site, nor any building altered, placed or permitted to remain on such site other than a one single-family dwelling, together with housing space for usual family requirements, such as garage, household laundry, storage, or servant's quarters.

The covered part of the dwelling proper, exclusive of open porches, carports, garages, and servants quarters will contain a minimum of 1,600 square feet if erected on any of the LOTS described as follows:

ALL of Lots Numbers One (1) through Seventeen (17), inclusive in Block Number One (1): ALL of Lots Numbers Seven (7) through Twelve (12), inclusive in Block Number Three (3): ALL of Lots One (1) through Twelve (12), inclusive in Block Number Four (4): ALL of Lots Numbers One (1) through Twelve (12) inclusive in Block Number Five (5): ALL of Lots Numbers One (1) through Eight (8), inclusive in Block Number Six (6): ALL of Lots Number Five (5)

through Ten (10) and ALL of Lots Numbers Twenty One (21) through Thirty Two (32), inclusive in Block Number Seven (7): ALL of Lots Numbers Twenty Four (24) through Twenty Six (26), inclusive in Block Number Eight (8) of the SUBDIVISION.

The covered part of the dwelling proper, exclusive of open porches, carports, garages and servants quarters will contain a minimum of 1,800 square feet if erected on any of the LOTS described as follows:

ALL of Lot Number Eighteen (18), in Block Number One (1): ALL of Lots Numbers One (1) through Six (6), inclusive in Block Number Three (3): ALL of Lots Numbers Nine (9) through Fourteen (14), inclusive in Block Number Six (6): ALL of Lots Number One (1) through Four (4) and ALL of Lots Numbers Eleven (11) through Twenty (20), inclusive in Block Number Seven (7): ALL of Lot Numbers One (1) through Twenty Three (23), inclusive in Block Number Eight (8), of the SUBDIVISION.

The covered part of the dwelling proper, exclusive of open porches, carports, garages and servants quarters will contain a minimum of 2,000 square feet if erected on any of the LOTS described as follows:

ALL of Lots Numbers One (1) through Thirty-two (32), inclusive in Block Number Two (2): ALL of Lots Numbers One (1) through Thirty-three (33), inclusive in Block Number Nine (9), of the SUBDIVISION.

No building shall be erected off the premises and moved onto said SUBDIVISION. That is, no other building shall be moved from other premises into this SUBDIVISION and all buildings or units shall be constructed and erected on said premises. In the event of a multi-story dwelling unit, the ground floor area, exclusive of open porches and garages, shall not be less than one thousand (1,000) net square feet. Garages may be built attached to or separate from the dwelling proper.

6. BUILDING LOCATIONS ON SITE: For these purpose porches, stoops, bays and covered areas are considered a part of the building. No part of any building shall be closer than twenty (20') feet from the front property line or closer than five (5') feet to side division lines of building sites. The drip line of eaves shall be kept back from side and back property lines by at least one foot. In cases where building is done adjacent to easements, encroachments upon such easements by any part of such building, including foundations, and eaves, shall be at the OWNER'S risk. All residences shall be erected with the front thereof facing the street with the smallest area adjacent to said building site. That is, the residence shall be erected fronting on the street adjacent to the smallest frontage of said site.

7. BOATHOUSE and BOAT SLIP: Plans for a boathouse, boat slip or any other structure to be constructed on the LOT or which projects beyond the LOT line or into the waters of Lake Conroe must be approved by the ARCHITECTURAL CONTROL COMMITTEE before construction may begin. A permit must also be obtained from the San Jacinto River Authority, which has a published set of requirements.

A five (5') foot set back from the property line running perpendicular to the bulkhead must be observed, same as for location of the house on the LOT. Width of boathouse or boat slip must be limited to half the length of the bulkhead. Enclosed storage areas as a part of the boathouse or boat slip must be limited to eight (8') feet wide. Width is defined as the dimension running parallel with the bulkhead or width of LOT. The boathouse, which has an overhead lifting mechanism, must be covered with a roof or sundeck, which is architecturally compatible with the dwelling. Boat slips, which do not have overhead boat lifting devices, do not require a roof or sundeck.

If a common lot line of adjacent lots intersects the shoreline at other than a perpendicular angle, that common line will be extended at such an angle as to provide a fair allotment of lakefront in front of each LOT. If a boathouse or boat slip cannot be constructed without adversely affecting adjacent LOTS, it will be the responsibility of the adjacent OWNERS to resolve the conflict.

8. SEQUENCE OF BUILDING: No housing for garage, servant's quarters, boathouse or other service function, of the dwelling establishment shall be erected or placed upon any building site until construction of the dwelling proper has been started and is actually under way. All exterior construction, including painting, must have been completed within twelve (12) months after beginning construction of the foundation.

9. TEMPORARY STRUCTURES AND UTILITY BUILDINGS: No temporary building or structure will be erected on any LOT in this SUBDIVISION, nor will any building of any type or for any purpose be erected on any LOT in this SUBDIVISION prior to the construction of a dwelling, as per these restrictions and approved by the ARCHITECTURAL CONTROL COMMITTEE. No temporary structures such as a trailer, tent, shack, shed, storage room or garage shall be used at any time on any building site in this SUBDIVISION as either temporary or permanent residence. No metal buildings will be acceptable, nor can any storage building be more than one hundred twenty (120) square feet in size.

10. WATER SUPPLY: Water for this SUBDIVISION will be provided by distribution lines connected with a central water system and no water wells shall be made, bored or drilled, nor any type or kind of private system installed or used, except that a private well may be drilled at the OWNER'S option for sprinkler systems or similar non-drinkable water use. This water system must not be inter-connected or interfere with the SUBDIVISION water system.

11. SANITARY SEWERS: All dwellings constructed in this SUBDIVISION, prior to occupancy, must have an on-site wastewater treatment system installed which has been approved by the ARCHITECTURAL CONTROL COMMITTEE and must be permitted and inspected by the San Jacinto River Authority.

No wastewater systems will be allowed to drain septic water into ditches or the lake or upon the surface of any ground in this SUBDIVISION. Septic systems must be maintained to operate properly at all times with all effluent being absorbed into the soil without creating an offensive odor.

In the situation where an existing system fails to function that system may be repaired and continue to function as the same type of system. However, if it is required to replace or modify the system then a new permit is required.

12. WALLS AND FENCES: Walls and fences, if any, shall be no higher than six (6')

feet above ground; shall be no closer to front street property lines than the front of the dwelling located on said lot and no closer than five (5') feet to side street lines. Any erection of any wall, fence or other improvement on any easement shall be at the OWNER'S risk. Construction of any fence requires the written approval of the ARCHITECTURAL CONTROL COMMITTEE.

13. NUISANCES: No nuisance shall be maintained nor any noxious or offensive activity carried on any LOT, building site or tract of land in this SUBDIVISION; nor shall anything be done thereon which may or might become a nuisance to the neighborhood.

14. GARBAGE AND TRASH DISPOSAL: Garbage and trash or other refuse accumulated in this SUBDIVISION shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this SUBDIVISION is or may be created. No LOT shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Burning of household garbage is not allowed. Burning tree leaves and limbs on easements are not allowed.

15. ON THE STREET PARKING: At all times those areas of street right-of-way between pavement and property lines shall be maintained free from encumbrances by personal or private property, except for the routine parking of passenger vehicles in operable condition and in reasonably regular use.

15a. STORAGE OF VEHICLES: No commercial vehicles, construction or like equipment, trailers, inoperable vehicles of any kind, or other similar items shall be parked or stored permanently or semi-permanently on any public street, right-of-way, easement, vacant LOT, or on or beside driveways. For purposes of this paragraph "commercial vehicles" shall not include standard size automobiles or trucks or vans of three-quarter (3/4) ton or less even though they may have some commercial insignia placed on them, unless the insignia is of a character deemed to be a nuisance by the ARCHITECTURAL CONTROL COMMITTEE. Further, for purposes of this paragraph "inoperative vehicles" shall be those vehicles that are not legal for highway use, including but not limited to, those without current inspection stickers or current license plates.

Additionally, no boat, recreational vehicle, bus, camper, pick-up camper, travel trailer, boat trailer, utility trailer, bus or variation of any of these items shall be stored permanently or semi-permanently on any LOT or portion thereof unless the method of storage is compatible with all of the following:

1. The front of such stored items is no closer to street (facing street of residence) than the front side of the existing residence, porches and overhangs not included, and the side of such stored vehicle is no closer to side property line than the normal set back as required herein for placement or location of structures; and

2. For corner LOTS, stored items can be placed on the side that adjoins another LOT as long as they meet the above or preceding conditions.

16. SIGNS: No signs or devices of any type or kind shall be in public view on any building site in this addition, except for builder's signs during the construction and sales period, or to advertise a property for sale, in which latter case one installation on the building site of not more than five (5) square feet of sign space shall be the maximum allowable.

17. PETS, POULTRY AND LIVESTOCK: No animals of any kind, livestock, or poultry shall be raised, bred or kept on any LOT, except that dogs, cats and other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. All pets

must be kept confined or on a leash at all times. Non compliance will be subject to removal, of the animal(s) by authorities.

18. MINERAL DEVELOPMENT: No oil well drilling, oil development operation or oil refining of any kind shall be permitted upon or on any LOT, nor shall oil wells, tanks or mineral excavations be permitted on any LOT. No derrick or other structures designed for use in drilling for oil, or natural gas shall be erected, maintained or permitted upon any of said LOTS; provided, however, that this provision shall not prevent the leasing of the land above described or any portion thereof for oil, gas and mineral purposes and the development of same, it being contemplated that said premises or portions thereof may be developed from adjacent lands by directional drilling operations.

19. SIGHT DISTANCE AT INTERSECTIONS: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner LOT within the triangular area formed by the street property lines and a line connecting them at points twenty five (25') feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any LOT within ten (10') feet from the intersection of the street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

20. STREETS OR PASSAGEWAYS: No street or passageway shall be erected on, over, or through any LOT or block (except driveways to a house, garage or carport located on such LOT or block) except as shown on the map or plat of such SUBDIVISION.

21. CUTTING TREES: No trees over five (5") inches in diameter will be removed from street Right-of-way (sixty (60) feet wide) except as is absolutely necessary for access by automobile from street into LOTS. No cutting of trees, eight (8") inches in diameter or larger, is allowed before building plans have been approved by the ARCHITECTURAL CONTROL COMMITTEE except for dead trees and/or to prevent danger to adjacent structures or roadways.

22. DRAINAGE: Natural drainage of streets, LOTS or roadway ditches will not be impaired by anybody. Driveway culverts must conform to Montgomery County Standards and be of sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting the flow.

23. MAINTENANCE OF LOTS: The owner of a LOT or LOTS in this SUBDIVISION will be required to keep said property free of underbrush, weeds, and grass or any other unsightly or offensive growth from the date of purchase of said LOT. This requirement is effective on unoccupied LOTS as well as occupied LOTS. For the purpose of this and all other covenants, a LOT or LOTS purchased under contract for deed will be considered to be owned by the purchaser the same as if it had been deeded to said purchaser. The ASSOCIATION will have the authority to employ laborers to mow and clean any LOT that is unkempt and bill the OWNER of said LOT for cost of work done. Funds used will be maintenance funds collected from OWNERS.

24. ASSESSMENTS FOR MAINTENANCE: In order to assure the private and exclusive use by OWNERS and their guests of the facilities of this SUBDIVISION the streets have been dedicated to OWNERS instead of the public and must be maintained by said OWNERS along with other community facilities. In order to assure continued and perpetual maintenance, on a fair and equitable basis, all LOTS are subject to, and all LOT purchasers agree to the following

method and procedure of assessment for maintenance funds.

All LOTS in this SUBDIVISION are subject to an annual levy for maintenance of streets, recreational facilities and other community support activities. The ASSOCIATION is fully responsible for the administration of the maintenance fees. Any such funds collected must be expended on items as above stated and an annual report made to the OWNERS in this SUBDIVISION at the address registered by OWNERS with the ASSOCIATION. Mailing of such report to the last known address of each OWNER will constitute compliance with regards to this requirement.

The full amount of the above mentioned maintenance levy may be charged on no more than two (2) LOTS owned by any one OWNER. If one OWNER owns more than two (2) LOTS a fee will be levied in the amount of fifty (50%) percent of the single LOT fee for each additional LOT or portion thereof. The amount of this levy may be changed by a majority vote in which fifty (50%) percent of the ELIGIBLE OWNERS cast a ballot.

25. LIENS AND PENALTIES: Failure of a property owner to pay the above mentioned levy will constitute a lien on the property so owned and the OWNER will forfeit the right to vote and the privilege of use of any and all of the facilities in this SUBDIVISION. The right to vote and the right to use of the facilities will be restored only upon payment of levy, penalties and interest.

Any maintenance charge not paid when due shall bear interest from the date it became due until paid, at a floating rate equal to the widely published U. S. prime rate on the first business day of the fiscal year, plus two (2%) percent per annum, but in no event shall such floating rate exceed the maximum rate allowed by applicable law.

To secure the payment of maintenance fees and other charges levied on a LOT, a Lien for the benefit of the ASSOCIATION shall be and is hereby reserved in each deed. Said lien to be enforceable through appropriate proceedings at law by such beneficiary; provided, however, that each lien shall be secondary, subordinate, and inferior to all liens, present and future, given, granted and created by or at the instance and request of the OWNER of that LOT to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the construction of improvements on any such LOT. And if any such maintenance fee charge is accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien; and further provided that as a condition precedent to any proceeding to enforce such lien upon any LOT upon which there is an outstanding valid and existing first mortgage lien, for the aforesaid purpose or purposes, the ASSOCIATION shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action. The notice shall be sent to the nearest office of such first mortgage holder by prepaid U. S. certified mail, and shall contain a statement of the delinquent fees and charges upon which the proposed action is based. Upon the request of any such first mortgage lien holder, the ASSOCIATION shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular LOT covered by such first mortgage lien to the holder thereof.

26. MULTI-OWNERSHIP: Corporate or multi-ownership of any LOT in this SUBDIVISION, except husband and wife ownership or FAMILY UNITS, will exclude all such OWNERS from use of recreational facilities in this SUBDIVISION, except that such group of multi-owners or corporation may designate one person or husband and wife as having the privileges of use of facilities, and then the person or persons so designated will have all the rights

and privileges of an individual or husband and wife ownership, including the privileges of guests using the community facilities subject to Rules and Regulations then in force.

27. **RULES GOVERNING USE OF FACILITIES:** Rules and regulations governing the use of recreational facilities in this development will be made and enforced by the ASSOCIATION. Persons violating said rules and regulations are subject to having their privilege of use of said facilities withdrawn by such party in authority.

28. **CREATION OF PROPERTY OWNERS ASSOCIATION:** At the request of the developer, the OWNERS in this SUBDIVISION organized a property owners association with a Charter and BYLAWS and have their purpose clearly set forth. Said ASSOCIATION has elected and will maintain a Board of Directors according to the BYLAWS who will administer funds and govern said ASSOCIATION under the authority assigned to them. The developer having been satisfied that said ASSOCIATION is properly organized for the benefit of the OWNERS, the developer has conveyed unto said ASSOCIATION all of the community facilities in the development and assigned to them the authority to collect and administer the funds as set forth herein.

29. All reserved areas designated and Block Ten (10) as designated on plat are excluded from these restrictions and none of the Restrictions or Covenants herein shall apply to these tracts, except that the sanitation restrictions as set forth in paragraph eleven (11) will apply to said tracts.

30. **VIOLATIONS:** If there exists on the EFFECTIVE DATE of the adoption of these renewed, extended and amended Restrictions and Covenants, any violation hereof with respect to the square footage and/or elevation of residence and garages, quality and grade of roofing materials and/or placement (location) on the LOT of any residence, or any part of a residence, (including eaves, steps, driveways, patios, garages, carports and/or servants or guest quarters, or boat houses or piers), or any violation with respect to accessory structures or improvements, and which on said date is not subject to either (i) any pending review or a denial by the applicable ARCHITECTURAL CONTROL COMMITTEE, or (ii) a suit filed by the ASSOCIATION and or resident(s) of the SUBDIVISION to compel the compliance with the applicable restrictions, such violation(s) shall be waived by all parties having the right hereunder to compel compliance.

However, should any such residence or any part thereof, accessory structure, or improvement that would but for this exception constitute a violation hereof, thereafter be destroyed or otherwise removed from property subject to these renewed, extended and amended Restrictions and Covenants, then any replacement, as well as other future improvements, placed on said property must be constructed in compliance herewith in all respects.

OWNERS voting are attached

1. Unless otherwise provided herein, all capitalized terms used herein shall have the same meaning as those terms are used and defined in the Restrictions and Covenants; provided however, in recognition of the prohibition in Section 209.0059(a) of the Texas Property Code, for purposes of this Amendment, all references herein to “ELIGIBLE OWNER” or “ELIGIBLE OWNERS” shall include all OWNER(S), as defined in the Restrictions and Covenants, and such references are not limited to just those MEMBERS of the Cape Malibu Property Owners Association, Inc. who have paid all assessments and fees to the ASSOCIATION.

2. The following paragraph 2A is added under the section of the Restrictions and Covenants entitled “RESTRICTIONS”, to-wit:

2A. Renting or leasing of LOTS on a daily, weekly, monthly, or other temporary basis is strictly prohibited. OWNERS may only rent or lease their property to parties who will occupy the property as their primary residence. All leases and rental agreements shall be for periods not less than 12 months and renewable in not less than 12 month increments. All leases and rental agreements shall clearly prohibit all forms of subleasing, and shall firmly and clearly bind the tenants to abide by these Restrictions, the Bylaws, and the Rules and Regulations of the ASSOCIATION. OWNERS must notify the ASSOCIATION when their properties are leased or rented, to include providing the name of the tenant, a copy of the lease or rental agreement, and current mailing address of the OWNER.

3. The third grammatical paragraph of paragraph 24 under the section of the Restrictions and Covenants entitled “RESTRICTIONS” is deleted in its entirety and following paragraph substituted therefor:

Notwithstanding the foregoing, in situations where the same OWNER or OWNERS own more than two (2) LOTS that are part of a COMPOSITE BUILDING SITE or where the same OWNER or OWNERS own more than two (2) LOTS that are not part of a COMPOSITE BUILDING SITE but the LOTS have no structures or other improvements on them, the maintenance assessment for each LOT in excess of two (2) shall be one-half (50%) of the regular assessment.

4. Except as specifically amended and modified herein, the Restrictions shall remain in full force and effect as originally written.

5. This Amendment is AGREED TO by the OWNERS of LOTS in Cape Malibu as evidenced by their signatures below or by the signature of their attorney-in-fact as authorized by the attached Ballots, Proxies, and Powers of Attorney.

6. Attached to this instrument and specifically made a part hereof is a Certificate of the Board of Directors of the ASSOCIATION stating that the required number of OWNERS have agreed to this Amendment by signing below or by authorizing their attorney-in-fact to execute this Amendment on their behalf.