

BYLAWS OF CAPE MALIBU PROPERTY OWNERS ASSOCIATION, INC.

MAY 1, 1983

Amended and Restated January, 2012

ARTICLE I

Name, Location and Definitions

Section 1 Name: The Name of this Association shall be Cape Malibu Property Owners Association, Inc.

Section 2 Location: The principle office shall be located at the Cape Malibu Lands End facility. The mailing address will be 15816 Malibu East, Willis, TX 77318.

Section 3 Definitions: The following definitions are exactly the same as the definitions contained in the Sixth Revision of the Restrictions and Covenants.

ARTICLE II

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 lots 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.

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.

ARTICLE II

Purpose of the ASSOCIATION

Section 1 The purpose of the ASSOCIATION is to do any and all things necessary for the maintenance and upkeep of the roads, parks, and all other properties of the SUBDIVISION; not privately owned, and to collect and manage all monies and funds paid and collected for the purposes of such maintenance; to uphold and carry out the restrictions and covenants passed by the ASSOCIATION; all to the end of the enhancement of property values and for the betterment of the property known as the SUBDIVISION and the benefit and welfare of the OWNERS thereof; and to collect and manage such monies and funds for such purposes in the manner in which the membership shall so direct.

ARTICLE III

Section 1 Membership and Time and Place of Meeting: All parties who are the OWNERS of a LOT, LOTS or a portion of a LOT in said SUBDIVISION. shall be MEMBERS of the ASSOCIATION. Membership shall be appurtenant to and may not be separated from ownership of a LOT, LOTS or portions of a LOT.

The BOARD shall have the option of offering a discount for on-time payment of the maintenance fee.

Should all dues and assessments not be paid in full by the last day of the fiscal year for which the dues are owed the BOARD, after complying with any statutory notice requirements and other prerequisites required by applicable law, may suspend a MEMBER'S privilege of using the common areas and recreational facilities in the SUBDIVISION. Such suspension shall continue until all dues, assessments and fees owed by the MEMBER are paid or for such shorter period as determined by the BOARD or required by law.

The key provided for access to Lands End facilities is supplied to MEMBERS who are in good standing. Should this status change or if their LOT is sold the key is to be returned to the ASSOCIATION.

The Annual Meeting of the MEMBERS of the ASSOCIATION shall be held at 2:00 p.m. on the third Sunday in September each year at Lands End, Cape Malibu, Montgomery County, Texas at which time the directors will be elected. Other regular and special meetings of the general membership of the ASSOCIATION shall be called by the President. All such meetings are to be held at Lands End in Cape Malibu unless the MEMBERS are notified otherwise.

Section 2 Notice of Meetings: Notice of each meeting of the MEMBERS of the ASSOCIATION shall be given by the Secretary and approved by the President or Vice President by mailing a copy of such notice to each MEMBER at the post office address which such MEMBER has registered with the ASSOCIATION, at least seven (7) days before the date of the meeting, except for consideration of BYLAWS Changes, which require three (3) weeks notice as specified in Article VIII of these BYLAWS.

Section 3 Quorum: The presence, either in person or by proxy, at any meeting, of MEMBERS entitled to cast at least twenty-five (25%) percent of the total votes of the Association shall constitute a quorum for any action. Absentee, electronic and faxed ballots shall also count for purposes of establishing a quorum. In the absence of a quorum at a meeting of the MEMBERS, the meeting shall be adjourned and immediately reconvened for the sole purpose of conducting Director elections. The quorum required for election of DIRECTORS at the reconvened meeting shall be the number of votes cast in person, by proxy, by absentee ballot, or electronic ballot.

For all matters other than the election of Directors, if the number of MEMBERS necessary to constitute a quorum at any annual or special meeting of the MEMBERS shall fail to attend in person, by proxy, or by casting votes by absentee or mailed ballot or by electronic or faxed ballot, the MEMBERS present in person or by proxy may reschedule any such meeting without notice other than by announcement at the meeting until the number requisite to constitute a quorum shall be present, either in person or by proxy. At any such adjourned meeting at which a quorum may be present in person, or by proxy, or by absentee or mailed ballot or electronic or faxed ballot, any business may be transacted which might have been transacted at the meeting as originally notified or called.

Section 4 Voting: At all membership meetings, each OWNER who is a MEMBER shall be entitled to one vote, and in the event that a LOT is owned by more than one party in said SUBDIVISION, then, and in that event, such parties shall be entitled to one vote. In the event one individual owns more than one LOT, such individual shall be entitled to only one membership with a single vote.

Section 5 Organization: At all meetings of the MEMBERS, the President, or in his absence the Vice President, shall act as Chairman, and the Secretary of the ASSOCIATION, or in his/her absence, any person appointed by the Chairman shall act as Secretary.

The votes of any MEMBER may be given by such MEMBER in person, or by his proxy, appointed by an instrument in writing, subscribed by such MEMBER and delivered to the Secretary at the meeting, by absentee or mailed ballot, or by electronic ballot by electronic mail or facsimile.

Any vote cast must be in writing and signed by the Member as required by Section 209.0058 of the TEXAS PROPERTY CODE. Electronic votes constitute written and signed ballots.

Absentee ballots may not be counted, even if properly delivered, if the MEMBER attends any meeting to vote in person so that any vote cast at a meeting by the MEMBER supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal. Absentee or electronic ballots may not be counted on the final vote of a proposal if the motion was amended at a meeting of the MEMBERS to be different from the exact language on the absentee or electronic ballot. Any solicitation for votes by absentee ballot by the ASSOCIATION must include an absentee ballot that contains each proposed action and provides an opportunity to vote for or against the proposed action, instructions for delivery of the completed absentee ballot, including the delivery location, all of which are required by Section 209.00592 of the TEXAS PROPERTY CODE.

At all meetings of the MEMBERS, all matters, except those the manner of deciding which is especially regulated by Statute and except as otherwise provided for in these BYLAWS, shall be decided by the vote of a majority of the MEMBERS present or represented by proxy and those voting by absentee ballot or electronic ballot by electronic mail or facsimile.

A person who is a candidate in an ASSOCIATION election or who is otherwise the subject of an ASSOCIATION vote, or a person related to that person within the third degree of consanguinity or affinity, as determined under Chapter 573 of the TEXAS GOVERNMENT CODE, may not tabulate or otherwise be given access to the ballots cast in the election or vote.

An OWNER may, not later than the fifteenth (15th) day after the date of a meeting at which an election was held, require a recount of votes in accordance with Section 209.0057 of the TEXAS PROPERTY CODE.

ARTICLE IV
Directors

Section 1 General Powers: All of the general powers of the ASSOCIATION shall be vested in and exercised by the BOARD. The number of directors shall be five (5), unless changed in the manner specified for amending the BYLAWS under Article VIII. At least two (2) of the Directors shall be home OWNERS in Cape Malibu.

Section 2 Term of Office: The term of office for each Director shall be until the second annual meeting following his election. A Director replacing another Director during a term shall serve only until the next annual meeting, unless re-elected. In order to obtain staggered terms of office, at the time of election of Directors in 1984, two Directors will be elected for one year and three Directors elected for two years. Thereafter, all Directors will be elected for two-year terms.

Section 3 Election of Directors shall be by majority vote of the MEMBERS present and voting in person or by proxy and those voting by absentee or mailed ballot or by electronic ballot by electronic mail or facsimile, at a duly constituted annual meeting with a quorum present.

Section 4 Organization: At all meetings of the BOARD, the President, or in his absence, the Vice President, shall act as Chairman, and the Secretary of the ASSOCIATION, or in his absence, any person appointed by the Chairman shall act as Secretary.

Section 5 Resignation or Removal: Any Director of the ASSOCIATION may resign at any time by giving written notice to the President or Secretary of the ASSOCIATION. Any or all of the Directors may be removed at any time by at least 2/3 of the MEMBERS present at a duly constituted meeting of the ASSOCIATION at which a quorum is present.

Section 6 Vacancy: In case any vacancy shall exist in the BOARD caused by death, disability, resignation or removal, the Directors at any regular or special meeting may elect a Director or Directors to fill such vacancy or vacancies by vote of the remaining Directors.

Section 7 Director Appointments: Any BOARD MEMBER whose term has expired must be elected by the MEMBERS of the ASSOCIATION. A BOARD member may be appointed by the BOARD only to fill a vacancy caused by a resignation, death, disability, or removal as provided in these bylaws. A BOARD MEMBER appointed to fill a vacant position shall serve the unexpired term of the predecessor BOARD MEMBER.

Section 8 Annual Meeting: The annual meeting of the BOARD shall be held immediately following the annual meeting of the MEMBERS, and at the same place. Notice of such annual meeting shall be given in the same manner as provided for the annual meeting of the ASSOCIATION, and may be included in such notice. Such notice may be waived by written notice signed by all of the Directors.

Section 9 Special Meetings: Special meetings of the BOARD shall be held whenever called by the President or Vice President. Notice of such meeting shall be mailed to each Director, addressed to him at his last known post office address, or shall be delivered personally, or communicated by telephone, at least five (5) days before the day on which the meeting is to be held. Each such notice shall state time and place, but need not state the purpose. Notice of any meeting need not be given to any Director, if waived by him in writing or by telegram and the presence of any Director at any meeting shall be considered as a waiver by him of notice of such meeting.

Section 10 Quorum and Manner of Voting: Except as otherwise provided by Statute and these BYLAWS, a majority of the Directors in office at the time of any special meeting of the BOARD shall be required in order to constitute a quorum for the transaction of business at such meeting; and the act of the majority of the Directors present at any such meeting shall be the act of the BOARD. Directors may be represented at any meeting and may vote by proxy.

Section 11 Meeting and Officers: The BOARD shall hold its meetings at Lands End Park in said SUBDIVISION in Montgomery County, Texas, or it may meet at any such other place or places within the State of Texas as may be designated in the notice of such meetings.

Section 12 Open BOARD Meetings; Executive Session: Regular and special BOARD meetings shall be open to MEMBERS, subject to the right of the BOARD to adjourn a meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the ASSOCIATION'S attorney, matters involving the invasion of privacy of individual OWNERS, or matters that are to remain confidential by request of the affected parties and agreement of the BOARD. Following any executive session, any decision made in the executive session shall be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual OWNERS, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary shall include a general explanation of any expenditures approved in executive session.

Section 13 Meeting Notice to Members: MEMBERS shall be given notice of the date, hour, place, and general subject of a regular or special meeting of the BOARD, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be (a) mailed to each MEMBER not later than the tenth (10th) day or earlier than the sixtieth (60th) day before the date of the meeting; or (b) provided at least seventy-two (72) hours before the start of the meeting by (i) posting the notice in a conspicuous manner reasonably designed to provide notice to the MEMBERS in a place located on the ASSOCIATION'S common property, or on conspicuously located private property within the SUBDIVISION, or by posting the notice on an Internet website maintained by the ASSOCIATION, and (ii) by sending the notice by e-mail to each OWNER who has registered an e-mail address with the ASSOCIATION.

Section 14 Meetings Without Notice: The BOARD, by any method of communication, including electronic and telephonic meetings, may meet without prior notice to MEMBERS, if each director may hear and be heard by every other director, or the BOARD may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate BOARD attention. The action taken without notice to the MEMBERS must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes at the next regular or special meeting of the BOARD. Notwithstanding the authority to meet without notice to the MEMBERS, the BOARD may not, without prior notice to the MEMBERS, consider or vote on fines; damage assessments; initiation of foreclosure actions; initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; increases in assessments; levying of special assessments; appeals from a denial of architectural control approval; or the suspension of a right of a particular MEMBER before the MEMBER has an opportunity to attend a BOARD meeting to present the MEMBER'S position, including any defense on the issue.

ARTICLE V Officers

Section 1 The officers of the ASSOCIATION shall be a President, Vice President, Secretary, Treasurer, and Architectural Chairman. One person may hold and perform the duties of more than one of said offices.

Section 2 Election, Term of Office, and Qualifications: The officers of the ASSOCIATION shall be elected by the BOARD by a majority of the entire BOARD. All officers shall hold office only during the pleasure of the BOARD. Each officer shall continue in office until his successor shall have been duly elected and qualified in his stead, or until, he/she shall have resigned or shall have been removed by the BOARD.

Section 3 Vacancies: Vacancies in any office because of death, resignation, removal, or any other cause, shall be filled by the Directors at a regular or special meeting of all the then remaining Directors for that purpose.

Section 4 President: The President shall preside at all the meetings of The BOARD and ASSOCIATION, and shall perform such duties as he/she may from time to time be authorized to perform by the Directors.

Section 5 Vice-President: At the request of the President, or in his/her absence or disability, the Vice-President shall perform the duties of the President.

Section 6 Secretary: The Secretary shall keep the records and books of the ASSOCIATION and complete minutes of all membership and Directors meetings. He/she shall perform all other duties that usually pertain to his/her office, or are delegated to him/her by the BOARD and he/she shall keep a complete list of the names and addresses of the MEMBERS.

Section 7 Treasurer: The Treasurer shall have the custody of all the monies and securities of the ASSOCIATION. He/she shall keep regular books. All monies shall be deposited by him/her in such depository as shall be selected by the Directors. In addition, he/she shall perform all duties usually pertaining to his/her office or delegated to him/her by the BOARD. The Treasurer shall be bonded by a licensed bonding company; the fee for which shall be paid by the ASSOCIATION.

Section 8 Checks on the ASSOCIATION: Checks on the ASSOCIATION are required to be signed as provided by the BOARD.

Section 9 Legal Counsel: The Legal Counsel shall advise the President and other BOARD MEMBERS on legal matters concerning the SUBDIVISION.

Section 10 ARCHITECTURAL CONTROL COMMITTEE Chairman: The Chairman of the ARCHITECTURAL CONTROL COMMITTEE and committee MEMBERS, who are approved by the BOARD, shall approve architectural plans in compliance with the current Restrictions and Covenants.

ARTICLE VI

Section 1 Audit: The BOARD will select an outside auditor to make an annual audit of funds. The audit is to be completed and presented at the annual meeting.

Section 2 Fiscal Year: The fiscal year will be July 1st through June 30th for taxes and operations reporting.

ARTICLE VII

All resolutions of the BOARD may be repealed in the same manner in which they were passed.

ARTICLE VIII

The BYLAWS or any of them may be repealed, altered, or amended at any regular or special meeting of the MEMBERS of the ASSOCIATION by a majority vote of those represented at the meeting either by their presence, by signed proxies, by absentee or mailed ballot, by electronic ballot or by faxed ballot, provided that: (1) The quorum requirement of Article III, Section 3 has been satisfied, and (2) any proposed change in the BYLAWS has been published and mailed to the membership by postmark at least three weeks in advance of the scheduled meeting.

ARTICLE IX

Section 1 Indemnification and Insurance of Directors and Officers: Each director and each officer or former director or officer of this corporation shall be indemnified by the corporation for expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him, or any action, suit, or proceeding to which he may be a party by reason of his being, or having been, such director or officer, and against such sums as independent counsel selected by the BOARD shall deem reasonable payment made in settlement of any such claim, action, suit, or proceeding primarily with a view to avoiding expenses of litigation; provided, however, that no director or officer shall be indemnified with respect to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in respect of the matter in which indemnity is sought, or with respect to any matters which shall be settled by the payment of sums which counsel selected by the BOARD shall not deem reasonable payment made primarily with a view to avoiding expenses of litigation, or with respect to matters for which such indemnification would be against public policy. Such right of indemnification shall be in addition to any other rights to which directors or officers may be entitled. It is the intention of these bylaws that officers and directors be indemnified to the maximum extent permitted by Texas law.

This corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability.

These Bylaws were approved by the BOARD of Directors of the ASSOCIATION on the 10th day of January, 2012.

CAPE MALIBU PROPERTY OWNERS
ASSOCIATION, INC.

By: Dean Miller
DEAN MILLER, President

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on January 24, 2012, by DEAN MILLER, President of CAPE MALIBU PROPERTY OWNERS ASSOCIATION, INC., a Texas nonprofit corporation.

William T. Fowler

Notary Public – State of Texas

