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**RESTATED AND AMENDED
RESERVATIONS, RESTRICTIONS, AND COVENANTS FOR
COMMODORE CAPE SUBDIVISION, POLK COUNTY, TEXAS**

2008 MAY 30 PM 1:05

Barbara Jiddleton

COUNTY CLERK, POLK CO.

THE STATE OF TEXAS *
COUNTY OF ~~TRINITY~~ ^{POLK} *

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, on June 18, 1969, John M. Dawson, Trustee, executed Deed Restrictions for Section Two of Commodore Cape Subdivision (referred to herein as the "1969 Restrictions"). The Deed Restrictions were filed on October 27, 1969, at Volume 242, Page 99, et seq, Official Records of Polk County, Texas; and

WHEREAS, on December 16, 1971, Carl B. Ausfahl, General Partner of "Commodore Cape", executed Reservations and Amended Restrictions for Section 1, 2, & 3 of Commodore Cape Subdivision (referred to herein as the "1971 Restrictions"). These 1971 Restrictions were filed December 16, 1971 at Volume 262, Page 346, et seq, Official Records of Polk County, Texas. Texas; and

WHEREAS, on February 11, 1972, Carl B. Ausfahl, General Partner, executed filed Reservations and Amended Restrictions for Section 1 & 2 of Commodore Cape Subdivision (referred to herein as the "1972 Restrictions", which were filed on February 11, 1972, at Volume 264, Page 340, et seq, Official Records of Polk County, Texas; and

WHEREAS, on March 23, 1972, Carl Ausfahl, General Manager, filed Restrictive Covenants for Section 3, of Commodore Cape Subdivision (referred to herein as "1972 Section 3 Restrictions"), which Restrictive Covenants were filed on March 23, 1972 at Volume 265, Page 508, et seq, Official Records of Polk County, Texas; and

WHEREAS, on April 21, 1977, Carl Ausfahl, executed Amendment of Restrictive Covenants to Section Three of Commodore Cape Subdivision, (referred to herein as "1977 Amended Restrictions Section Three"), which Amendment to Restrictive Covenants to Section Three was filed on April 22, 1977, at Volume 328, Page 696, et seq, Official Records of Polk County, Texas.; and

WHEREAS, on April 21, 1977, Carl Ausfahl, filed Restrictive Covenants for Section 4, of Commodore Cape Subdivision (referred to herein as "1977 Section Four Restrictions"), which Restrictive Covenants were filed on May 11, 1977 at Volume 329, Page 669, et seq, Official

Records of Polk County, Texas; and

WHEREAS, on September 2, 1989, a document entitled "Amendment to Restrictions of Commodore Cape Subdivision" (referred to herein as the "1989 Amended Restrictions"), was executed by the Architectural Committee of Commodore Cape, and filed on November 28, 1989, at Volume 744, Page 132, et seq, Official Records of Polk County, Texas; and

WHEREAS, on February 8, 1998, a document entitled "Amendment to Restrictions of Commodore Cape Subdivision" for Section 1, 2, 3, & 4 of Commodore Cape Subdivision (referred to herein as the "1998 Amended Restrictions") was executed by was executed by the Architectural Committee of Commodore Cape, which Amended Restrictions were filed at Volume 1084, Page 896, et seq, Official Records of Polk County, Texas; and

WHEREAS, on June 27, 2000, a document entitled "Amendment to Restrictions of Commodore Cape Subdivision" for Section 1, 2, 3, & 4 of Commodore Cape Subdivision, (referred to herein as 2000 Amended Restrictions"), was executed by the was executed by the Architectural Committee of Commodore Cape, and which 2000 Amended Restrictions were filed on September 8, 2000, at Volume 1188, Page 93, et seq, Official Records of Polk County, Texas; and

WHEREAS, on July 3, 2000 Articles of Incorporation were filed for the "Commodore Cape Property Owners Association", ("Association"), as a non-profit property owners association, and a Certificate of Incorporation issued on the same date; and

WHEREAS, on July 1, 2004, a document entitled "Amendment to Restrictions of Commodore Cape Subdivision" for Section 1, 2, 3, & 4 of Commodore Cape Subdivision, (referred to herein as 2004 Amended Restrictions"), was executed by the officers and directors of Commodore Cape Property Owners Association, which 2004 Amended Restrictions were filed at Volume 1404, Page 98, et seq, Official Records of Polk County, Texas; and

WHEREAS, the original deed restrictions provided for amendment by the following procedure:

These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them until June 1st, 2000, A.D., at which time said covenants shall be automatically extended for successive periods of Ten (10) years, unless an instrument signed by a majority of the then owners of the tract has been recorded, agreeing to change said covenants in whole or in part;

and

WHEREAS, the Board of Directors of the Association have determined that the deed restrictions should be amended as provided herein;

NOW, THEREFORE, the Association's Board of Directors hereby restate and amend the Restrictions applicable to Commodore Cape Subdivision, Polk County, Texas, subject to ratification and approval by a majority of the lot owners of the property in the Subdivision, to be as follows:

Restrictions

1. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them until June 1, 2020 A.D., at which time said covenants shall be automatically extended for successive periods of Ten (10) years, unless an instrument signed by a majority of the then owners of the tract has been recorded, agreeing to change said covenants in whole or part. Additionally, the Association shall have the right at any time hereafter to make such reasonable changes in or waivers of any or all of the above restrictions, conditions, covenants as the Association in its sole discretion may deem reasonably necessary or desirable, subject to the approval of the Association's members by a two-thirds (2/3) in favor of such change in or waivers of any or all of the restrictions, conditions, and covenants by the members of the association, represented in person or by proxy, at a special or annual meeting at which is quorum is had and notice is given of the intended change(s).
2. Enforcement of Deed Restrictions.
 - (a) Subject to the provisions of the (d) of this paragraph, if any person or entity, as defined hereinafter, whether or not lawfully in possession of any real property hereunder, shall either (i) violate or attempt to violate any restriction or provision herein or (ii) suffer to be violated (with respect to the real property in which such

person or entity has rights other than the rights granted by this sentence) any restriction or provision herein, it shall be lawful for the Association and/or any person or entity, as defined hereinafter, possessing rights with respect to any real property hereunder, to prosecute any proceedings at law or in equity against any such person or entity violating, attempting to violate and/or suffering to be violated any restriction or provision herein to (i) prevent such violation, (ii) recover damages of other dues for such violation, and (iii) recover court costs and reasonable attorney's fees incurred in such proceedings. "Person or entity", as used in the immediately preceding sentence hereof, shall include, but shall not be limited to, all owners and purchasers of any real property hereunder, as well as all heirs, devisees, assignees, legal representatives and other persons or entities who acquire any of the rights (with respect to the real property hereunder) of the owner or purchaser of any real property hereunder.

- (b) The Association has the right, but not the exclusive duty, to take action to enforce any violation of these deed restrictions.
- (c) Neither the Architectural Committee, nor the members of said Committee, nor the directors nor officers of Commodore Cape Property Owners Association, shall have any liability or responsibility at law nor in equity on account of the enforcement of, or on account of the failure to enforce, these restrictions. An exercise of discretionary authority by the Association or other representative of the Developer concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.

- (d) Notwithstanding any other provisions hereof, the Association shall not be liable nor subject to any proceeding at law or in equity on account of any violation or attempted violation of any restriction or provision herein which occurs during such time as there is in force a contract to purchase the property where such violation or attempted violation takes place.
3. The violation of any restriction or covenant herein shall not operate to invalidate any mortgage, deed of trust, or other lien acquired and held in good faith against said property or any part thereof, but such liens may be enforced against any and all property covered thereby, subject nevertheless to the restrictions herein.
 4. No building shall be erected, placed or altered on any building tract in this subdivision until the plans, specifications and plat plans showing the location of such building has been approved in writing by the Architectural Committee appointed by the Board of Directors of the Association, as to conformity and harmony of external design with the existing structures in the subdivision, and as to location with respect to topography and finished ground elevation. In the event of death or resignation of any member of said committee, the Board of Directors of the Association shall appoint a property owner in good standing to replace such member of said committee. The Board of Directors shall have the authority to develop, adopt and enforce architectural guidelines, by resolution duly adopted, which architectural guidelines shall be filed of record with the County Clerk of Polk County, Texas.
 5. The Property Owners' Association shall have the same authority over the boat launching areas and park areas and no structure of improvement shall be placed thereon except as a community projects and upon approval of the Architectural Committee. The Board of Directors shall have the authority to adopt rules and regulations concerning the boat ramp,

pier, park and other common areas.

6. No part of any structure erected on Section 1, lots 1-20 and Section 2, Lots 128-131 may be higher than twenty-five feet (25') from the highest elevation on site.
7. Garbage depositories, clothes lines and LP gas storage tanks on every site must be enclosed and hidden from view from all residences in Commodore Cape.
8. No outside privies or toilets shall be permitted in this subdivision. All toilets shall be inside the houses and prior to the occupancy the same shall be connected to a central sewage disposal system if there is one in existence at such time to serve the subdivision, but if no central sewage disposal system is in existence at such time, then all sewage (dark and gray) shall be connected to a Trinity River Authority (T.R.A.) approved system, and shall be subject to the inspection and approval of such authority, provided, however, that when a central sewage treatment plant and disposal system shall be established to serve this subdivision, whether publicly owned or privately owned or operated, then all of the tract owners and/or occupants to whom such sewage disposal service is available shall connect their premises thereto for sewage disposal, paying the established rates and all connection fees or charges therefore at their expense and from and after the time such sewage disposal service becomes available to any lot, no septic tank whether therefore or thereafter built or installed, shall be used in connection with any tract.
9. The drainage of sewage system effluent into a road, street, alley, ditch, other owner's property or any waterway either directly or indirectly is prohibited. Overflow from an absorption type sewage system onto other owner's property is prohibited. Aerobic type sewage system must have an affluent pump timer.
10. No tract other than the areas marked "Reserved" for park and boat launch shown on the plat

of said subdivision filed for record, shall be used except for residential purposes. The term "residential purposes" as used herein shall be held and construed to exclude hospitals, clinics, duplex houses, apartment houses, boarding houses, hotels, and all other commercial uses and all such uses of said property are hereby expressly prohibited. No building shall be erected, altered, placed or permitted to remain on any residence tract other than on detached single family dwelling and a private garage. Any rental or lease shall provide, in writing, that the renter or lessee has received a copy of the Deed Restrictions and agrees to be bound by same and comply with all Deed Restrictions. Rental or lease of the lot and residence shall not relieve the property owner from compliance with these Deed Restrictions.

11. All residences shall be located in accordance with the twenty foot building lines shown on the plat of said subdivision and all residences shall be constructed on the tract to front the street of which such tract faces. No residences shall be located nearer than five (5) feet to any sideline. House must front parallel to front building line. Driveways and sidewalks are excluded from the twenty feet building line and the 5 feet sideline restrictions.
12. No noxious or offensive activity shall be carried on upon any lot or shall anything be done thereon which may be an annoyance or nuisance to the neighborhood. Outdoor burning of tree limbs, grass, leaves, or other paper or wood products is permitted. Residents must comply with any local burn bans that may be in effect and should always practice fire safety. Burning of toxic materials is strictly prohibited.
13. No structure of temporary character, trailer, mobile house, tent, shack, garage, barn, or other outbuildings shall be used on any tract any time as a residence either temporarily or permanently. No building material of any kind or character shall be placed or stored upon a lot or premises until the owner thereof is ready to commence construction or improvements

thereon.

14. No residential structure shall be located on a residential tract in Sections 1, 2, 3, and/or 4 unless its living area has a minimum of 1200 square feet of floor area, exclusive of porches and garages.
15. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential tract, except that reasonable number of dogs, cats, or other domestic household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose. Dogs are not allowed to run loose in the subdivision.
16. Signs shall only be permitted on the lots in this subdivision as authorized by Section 202.009 of the Texas Property Code, as may be amended from time to time by the Texas Legislature. A property owner shall have the right to display "for sale" signs for the sale of their home and/or lot, provided that the sign does not exceed 2' x 3', and further provided that the sign is to be removed within thirty (30) days after sale. A property owners shall be entitled to display "vendor" or "contractor" signs, but any such signs shall be removed within thirty (30) days of completion of the work.
17. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any tract, nor shall oil well, tanks, tunnels, mining excavations or shafts be permitted on any tract. No derrick or structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any tract.
18. No tract shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes, and/or storage of junk or unusable motor vehicles, trailers, tractors equipment, building materials. All motor vehicles parked on any tract shall be maintained in operating condition with license plates and inspection stickers if required by law. Garbage and waste

shall not be kept except in sanitary containers.

19. No fence, wall, hedge or detached improvement shall be erected, grown, or maintained on any part of any tract forward of the front of a residence, or the building line of a vacant tract.
20. No building of frame construction shall be erected on any tract unless same shall at time of construction receive at least one coat of stain or two coats of paint. Wood shingles are not permitted as roofing material.
21. Outside construction of all residences shall be completed within four (4) months from date of beginning construction unless such period is extended in writing by Architectural Committee.
22. No boat docks, piers, boat houses, boat storage sheds, slips, pilings or rip-rap shall be constructed, placed or excavated until plans and specifications shall be approved in writing by the Architectural Committee.
23. No boats or trailers may be stored in front of a residence or the building line of a vacant tract.
24. (A) Upon the sale or execution of contract for deed, the Purchaser shall be liable for the maintenance charge per year as set by the Commodore Cape Property owners' Association payable to the "COMMODORE CAPE MAINTENANCE FUND", to be paid by the owner of each lot in conjunction with a like charge to be paid by the owners of other lots in Commodore Cape, the same to be secured by Vendor's Lien upon such lots, and such sum shall be paid at the time of the purchase of a lot and each January 31 thereafter, and said charge and lien are hereby assigned to each committee.

(B) Such monthly charge may be adjusted from year to year said Committee as the needs

of the property may in its judgment require, any increase of more than 10% must be agreed to by a majority of the lot owners.

- (C) Funds arising from said charge shall be applied so far as is sufficient towards the payment of maintenance expenses of construction cost incurred for any or all of the following purposes: cost of enforcing deed restrictions, lighting, improving and maintaining the streets, improving and maintaining the boat ramp and park and doing any other thing necessary or desirable in the opinion of said Committee to keep the property neat and in good order and which is considered of general benefit to the owners or occupants of the subdivision, it being understood that the judgment of said committee in expenditure of said funds shall be final so long as such judgment is exercised in good faith.
- (E) All conveyances of lots shall be subject to such maintenance charge and by acceptance of his deed or contract for deed, each purchaser consents and acknowledges that the Association shall have no obligation to furnish maintenance or do any other thing described in this paragraph other than from maintenance funds.
- (F) Maintenance fees not paid by January 31 will be charged a collection fee of \$10.00 per month per lot, or as may be otherwise established by the Board of Directors by resolution duly adopted. Current maintenance fee is \$90.75 per lot per year.

25. Special Assessment for Capital Projects. In addition to the Maintenance Fee assessment set forth in paragraph 24 of these 2008 Restated and Amended Restrictions, the owners of lots purchased in said Subdivision shall be subject to a "Special Assessment" for road repairs, in such amount as may be established by the Association at a special or annual meeting at which notice for an election for the assessment of said Special Assessment is given. Should

the special assessment be approved by a two-third (2/3) vote of the members, represented in person or by proxy, of the Property Owners Association at the annual meeting of the Property Owners Association, then the Special Assessment shall become effective on the date noticed, with the proceeds from such special assessment being ear-marked for the specific purpose set forth in the notice of such election. Said Special Assessment shall be secured by a lien against said lot, and failure to pay said Special Assessment shall constitute a foreclosure lien against said lot. This lien is in the form of an assessment to run with the ownership of said lots. The Special Assessment shall be deemed delinquent if not paid within thirty (30) days of the date set forth in the notice as being the date the Special Assessment is due.

26. The Architectural Committee shall be composed of three, or more, members, appointed by the Board of Directors of the Association, who shall serve at the discretion and pleasure of the Board of Directors. The ACC shall have the authority to develop guidelines which guidelines shall be approved by the Board of Directors by resolution duly adopted.
27. It is the property owner's responsibility to maintain their property. If a property owner does not maintain his/her property and it becomes a health hazard, fire hazard, hazard to other property owner property, or an unattractive nuisance, the Association shall have the right, but not the sole responsibility, after notice by letter and then by registered mail, to hire someone to clean up or make necessary repairs. The property owners association would then bill the owner giving a set number of days to respond before filing lien against the property. A lien securing the cost of such work, together with any attorney's fees incurred by the Association in enforcing this deed restrictions, shall be granted to the Association which may be enforced by judicial foreclosure.

28. All commercial vehicles weighing in excess of 10,000 pounds or commercial vehicles with more than 5 axles are prohibited from parking in the subdivision whether in common areas, roadways, or private drives. This restriction expressly prohibits eighteen-wheelers or tractor-trailer rigs access to Commodore Cape. This restriction does not prohibit occasional and temporally parking that is necessitated by certain pick-up or delivery or large items or building materials on vehicles in the subdivision.
29. Metal wall panel systems are prohibited on buildings constructed in the subdivision. These include but are not limited to M panel, R panel, corrugated panel and other types whose use is normally commercial or industrial. Small pre-fabricated metal storage building of 150 square feet of floor space or less are allowed as are metal roof panel systems.
30. A. Each person(s) acquiring a lot or residential dwelling in Commodore Cape Subdivision shall automatically become a member of the Commodore Cape Property Owners Association, a non-profit Texas Corporation formed for the benefit of the property owners of Commodore Cape, and the Property Owners Association shall be a property owners association as defined by the Texas Property Code. Each member will abide by the rules of the corporation and the covenants and restrictions set forth in this document. The Property Owner's association shall have the duty, but not the sole duty, and authority to uphold these restrictions and covenants, and provide for the maintenance and upkeep for the common areas of the subdivision. Which Property Owners; Association by and through it's Board Of Directors shall appoint among others, the Architectural Committee, which shall be composed of three members, (appointed by the Board of directors of the property Owners Association), or more if desired, and a member of the Board and a secretary.

- (b) Any lot owner who brings a lawsuit against the Property Owners Association alleging a violation of any duty of the Property Owners Association to enforce the deed restriction, or alleging that the Property Owners Association, or any director, officer and/or agent of the Property Owners Association, shall be liable to the Property Owners Association for any legal fees and costs incurred in defending such lawsuit.
- (c) Notwithstanding any provision to the contrary, nothing herein or in the plats above referenced shall be deemed, interpreted or construed as imposing any obligation or obligations whatever upon the Property Owners Association, and the Property Owners Association shall not be liable under any provisions hereof or thereof for any charge, assessment, breach, act or omission to act.

31. Partial invalidation of any covenant or restriction, by court judgment or otherwise, shall not effect, in any way, the validity of all other covenants, restrictions, reservations and conditions, all of which shall remain in full force and effect. Acquiescence, regardless of time involved, in any violation shall not be deemed a waiver of the right to enforce against the violator or others the conditions and covenants so violated or any other conditions; Commodore Cape Property Owners Association shall have the right to require that the same be corrected, and recover cost of any actions necessary to enforce corrections, including but not limited to attorney's fees. Any court ordered award of attorney's fees incurred for prosecution such violation shall be secured by a lien against the property of the property owner found by a court to be in violation of these deed restrictions. Gazebos or small buildings intended for storage of lawn furniture, equipment or similar use must be complimentary to the architectural style of the residence on the property. All such buildings

must be approved by the architectural committee prior to erection.

32. No carport may be extended past the front building line and must comply with other set back requirements. Any items stored under a carport must be kept neat and orderly. All such carports must be approved by the architectural committee prior to erection.
33. Owners must submit plans to the architectural committee for approval before construction of any structure on a vacant lot.
34. The property Owners' Association may suspend the voting rights of any property owner for a period during which any assessment against such owner's tract remains unpaid or for any infraction of these published rules and regulations.
35. Maintenance of Lot(s). All lots must be kept in a sanitary and attractive condition, and regular cutting of grass and weeds is required. No lot may be used for the storage of material or equipment except when necessary for normal residential requirements or for the Architectural Committee approved construction of improvements on the lots. Lots must be kept free of the accumulation of garbage, trash or rubbish. All clothes lines, yard equipment or storage piles shall be kept screened by a service yard, drying yard or similar facility so as to conceal them from view of neighboring lots, streets or other properties. In the event of default on the part of the owner of any lot in observing the above requirements, and if such default continues after thirty (30) days written notice thereof, the Association may take action to correct the default. The Association, or others authorized by the Association, may cut weeds and grass, remove garbage, trash and rubbish or do any other thing necessary to secure compliance with these Restrictions, so as to place said lot in a neat, attractive, and sanitary condition. There will be no liability associated with this action. The defaulting owner will be charged for the reasonable cost of such work and associated materials. The

owner agrees with the purchase of a lot in Commodore Cape to pay such statement immediately upon receipt. If the statement is not paid within thirty (30) days of the date due, then said amount shall accrue interest at the rate of ten (10%) per cent per annum. The payment of such charge is secured by the same lien on the property in question, which secures the charge for such work, the interest accrued, and legal fees and related costs in prosecuting and collecting said amount. Said lien shall only be judicially foreclosed.

EXECUTED by the Board of Directors of Commodore Cape Property Owners Association, a Texas non-profit corporation, on the dates set forth by the respective acknowledgments, subject to the filing of a written instrument reflecting approval by at least a majority of the property owners, pursuant to the Deed Restrictions referenced above.

LARRY SONTAG

STATE OF TEXAS *

COUNTY OF POLK *

This instrument was acknowledged before me on the _____ day May, 2008, by LARRY SONTAG, Director of Commodore Cape Property Owners Association.

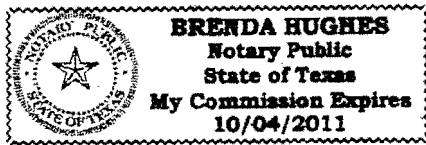
Notary Public, State of Texas

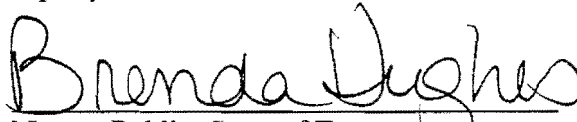

GINGER SEPULVEDA

STATE OF TEXAS *

COUNTY OF POLK *

This instrument was acknowledged before me on the 30th day May, 2008, by GINGER SEPULVEDA, Director of Commodore Cape Property Owners Association.




Notary Public, State of Texas

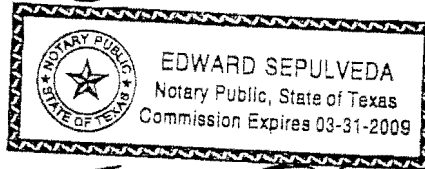
Grace Nodruft
GRACE NODRUFT
NODRUFT *gn*

STATE OF TEXAS *

COUNTY OF POLK *

This instrument was acknowledged before me on the 20th day May, 2008, by GRACE NODRUFT, Director of Commodore Cape Property Owners Association.

Edward Sepulveda
Notary Public, State of Texas



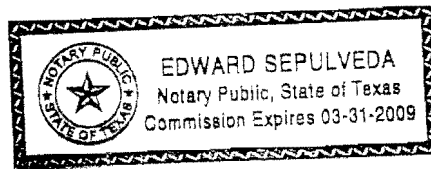
Larry Sontag
LARRY SONTAG

STATE OF TEXAS *

COUNTY OF POLK *

This instrument was acknowledged before me on the 30th day May, 2008, by LARRY SONTAG, Director of Commodore Cape Property Owners Association.

Edward Sepulveda
Notary Public, State of Texas



H. B. Deviney
H. B. DEVINEY

STATE OF ARKANSAS *

COUNTY OF MARION *

This instrument was acknowledged before me on the 30th day May, 2008, by H. B. DEVINEY, Director of Commodore Cape Property Owners Association.



Marilyn J. Fouts
Notary Public, State of ~~Texas~~ ARKANSAS

Prepared in the law offices of:

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