

THE STATE OF TEXAS §

THE COUNTY OF GALVESTON §

**AMENDMENT, MODIFICATION AND RESTATEMENT OF COVENANTS
AND RESTRICTIONS OF LAZY BEND SUBDIVISION**

WHEREAS, heretofore, on or about the 16th of May, 1960 GEORGE W, KESSLER did execute and file of record in the Deed of Trust Records of Galveston County, Texas in Volume 1372, Page 581, certain covenants and restrictions for the purpose of establishing a plan for the improvement and development of all the lots within the said Lazy Bend Subdivision, a Subdivision in Galveston County, Texas, as shown by the Map or Plat of record in the office of the County Clerk of Galveston County, Texas, in Volume 254-A, Page 82, and

WHEREAS, such covenants and restrictions recorded in the said Volume 1372, Page 581 provided that the same shall run with the land and shall be binding upon all parties and persons claiming under him until January 1, 1981, at which time by majority vote of the property owners in said Subdivision the same may be emended, in whole or in part, and

WHEREAS, the undersigned, constituting a majority of the property owners in Lazy Bend Subdivision desire to amend and modify said covenants and restrictions as hereinafter set out, and

WHEREAS, by instrument dated January 6, 1967, the said George W. Kessler did attempt to amend said restrictions and did file an amendment of record in the Office of the County Clerk of Galveston County, Texas, in Volume 1836, Page 303, Deed of Trust Records, and,

WHEREAS, an instrument recorded in Deed Book Vol. 2105, page 45, extending the term of the Building Committee of Lazy Bend Subdivision, and,

WHEREAS, thereafter, certain By-Laws of the Lazy Bend Maintenance Fund Committee were recorded in Volume 1957, Page 194 of the Deed of Records of Galveston County, Texas

NOW, THEREFORE KNOW ALL MEN BY THESE PRESENTS, THAT we, the undersigned, being the owners of more than one-half (1/2) of all the lots or parcels of land in Lazy Bend Subdivision, in consideration of the premises do hereby amend, modify, restate and reestablish a uniform plan for the Improvement and future development, use and enjoyment of Lazy Bend Subdivision, a Subdivision in Galveston County Texas, and hereby adopt the following covenants, conditions and restrictions, which shall run with the land and shall be binding upon all parties or persons owning or to own any lot or parcel of land within said Subdivision, hereby declaring that from and after this date the covenants and restrictions heretofore filed which affect said Subdivision shall be null and void and of no further force or effect. The covenants and restrictions hereinafter set forth shall be binding upon owners of lots or parcels of land in

said Subdivision until July 1, 1990, and then same shall be automatically extended for successive periods of two (2) years each unless by duly recorded instrument filed by a majority of the record property owners in said Subdivision it is agreed to change said covenants, conditions and restrictions in whole or in part.

I.

LAZY BEND ASSOCIATION, INC.

Every owner of a lot in the Lazy Bend Subdivision shall be a member of the Lazy Bend Association, Inc., a non-profit corporation, composed of the owners of lots in the Lazy Bend Subdivision.

Each member shall be entitled to one vote for each lot owned. When more than one person has an ownership interest in a given lot, then the vote for such lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any lot of the Subdivision. In the event that any owner of one or more adjoining lots, or portions thereof, consolidates such lots or portions thereof into one building site for the purpose of constructing improvements thereon, then such owner shall be entitled to one vote.

The members of the Association may remove a member of the Executive Committee or the Architectural Control Committee for cause or without cause, by a sixty-five percent (65%) vote of the members of the Association. Said members shall elect, by a fifty-one percent (51%) percent vote of the Association members present at an annual meeting of the Association, a successor to serve the balance of the term of a Committeeman removed from the Executive Committee.

It shall be the duty of the President of the Lazy Bend Association to notify the members of said Association of the date, time, and place of any meeting of the Association.

The Lazy Bend Association acknowledges that the Members of the Executive Committee and the Architectural Control Committee have the authority to carry liability insurance covering the performance of their duties as Committeeman, the premium for said insurance to be paid by the Association.

II.

LAZY BEND EXECUTIVE COMMITTEE

The Lazy Bend Executive Committee shall consist of six (6) duly elected members of the Lazy Bend Association, plus the President of said Lazy Bend Association, who shall also be a member of the Association. The six (6) duly elected members of the Lazy Bend Association Executive Committee shall serve as members of the board of directors of the Lazy Bend Association, Inc. The duly elected President of

the said Lazy Bend Association Executive Committee shall serve as chairman of the Lazy Bend Association, Inc.

At the first annual meeting of the Lazy Bend Association, the members thereof shall elect by a fifty-one percent (51%) vote of the members present, three (3) Executive Committeemen and the President of the Lazy Bend Association for an initial term of one (1) year, and three Executive Committeemen for an initial term of two (2) years; thereafter the President and all Committeemen shall be elected, by a fifty-one percent (51%) vote of the members of the Association present at such annual meeting, for a term of two (2) years.

In the event of the inability of a Committeeman to serve on said Committee due to resignation, incapacity, death, nonresidence, or any other reason, then the President of the Lazy Bend Association shall call a special meeting of the members of the Lazy Bend Subdivision to elect a successor, by a fifty one percent (51%) vote of the members present, to serve the balance of the term of said Committeeman.

Members of the Executive Committee shall receive no compensation for service on such Committee, but shall be reimbursed for all reasonable and necessary expenses incurred performance of duties on said Committee.

The Executive Committee shall appoint an Architectural Control Committee consisting of three (3) members, from among the members of the Association, the purpose of which shall be to enforce the Building Restrictions *i.e.*, Section V contained herein, and for other purposes specifically delegated to it by the Executive Committee. Members of the Architectural Control Committee shall be appointed for rotating (staggered) three (3) year terms or until removal for cause by the Executive Committee, resignation or other inability to serve in any of these events, a successor(s) shall be appointed by the Executive Committee within thirty (30) days. No individual may serve on the Executive Committee and the Architectural Control Committee simultaneously.

III.

USE RESTRICTIONS

The Subdivision shall be occupied and used only as follows:

Each lot shall be used as a residence for a single family and for no other purpose, except the lots located in Reserves "A" and "B" on the recorded plat of said Subdivision which may be used for either residential or commercial purposes.

No improvement or structure whatsoever, other than a single family dwelling and one (1) detached boathouse, may be erected, placed or maintained on any residential lot.

No outbuilding, basement, tent, shack, garage, boat, or, shed, or temporary building of any kind shall be used as a residence either temporarily or permanently.

No obnoxious or offensive activity shall be carried on in or on any lot.

No rubbish, trash, garbage, or other waste material shall be kept or permitted on any lot except in sanitary containers located in appropriate areas concealed from public view. No lot shall be used for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any lot that will emit foul or obnoxious odors, or will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding lots. No weeds, underbrush or unsightly growths shall be permitted to grow or remain upon the premises.

No water well, septic tank system or cesspool shall be permitted. Owners shall use water and sewage services provided by Galveston County Water Control and Improvement District No. 12, or its successor. The discharge of sewage or waste, whether treated or not, into the canals within the Subdivision is strictly prohibited.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot. However dogs, cats and other household pets may be kept on any lot, so long as they are not kept, bred or maintained for commercial purposes.

No sign of any kind shall be displayed to the public view on a residential lot without the prior written consent of the Executive Committee, except two (2) customary name and address signs of not more than five (5) square feet in size advertising the property for sale or rent.

No boats, trailers, campers, trucks, buses, recreational vehicles, inoperative vehicles of any kind, detached camper rigs or boat rigging shall be parked or stored, even temporarily, on any street or right-of-way.

The speed limit on all streets in the Subdivision is fifteen (15) miles per hour.

IV.

USE OF CANALS

The canals within the Subdivision shall be used only by boats owned by members of the Lazy Bend Association or their guests; all other boats are strictly prohibited. Boats belonging to persons who are not members of this Association are not permitted to enter the canals during times of hurricane or other inclement weather.

At any given time, no member (or their guests) may simultaneously have in the canals boats the total length of which exceeds the length of that member's canal frontage.

The leasing of dock space to non-members is prohibited.

The canals shall be closed to boat traffic on the first Monday of each February and at such other times as the Executive Committee deems closure to be in the best interest of the Subdivision.

No boats used commercially or licensed for commercial use may be parked or kept, in the canals, even temporarily.

The rafting of boats in the canal is prohibited.

Travel on the canals is limited to “no wake” speed.

The discharge of trash or debris into the canal is prohibited.

Association members are not allowed to keep a boat in the canal which has a beam width in excess of fifteen (15) feet. Any member who has a boat in the canal as of January 1, 1988, which exceeds this limit may continue to keep that boat in the canal but may not replace it with a boat which exceeds the limit of fifteen (15) feet beam width.

V.

BUILDING RESTRICTIONS

For the purpose of further insuring the development of the lands so platted as an area of high standards, the owners thereof reserve the power to control the buildings, structures and other improvements placed on each lot, and do delegate such authority to the Architectural Control Committee herein created, on such terms as the said Committee shall deem necessary and proper.

All plans and specifications for the construction of any building, wall, roof, boathouse or other structure to be erected upon any lot, showing the proposed location and elevation thereof, and any remodeling, reconstruction, alteration or addition to any existing building, boathouse, wall, roof or other structure must receive the advance written approval of the Architectural Control Committee prior to beginning such construction, alteration or addition.

No structure of any kind shall be erected, constructed, placed or maintained upon any lot unless the plans and specifications of said structure have received the prior written approval of the Architectural Control Committee. Each building or structure shall be placed on the premises only in accordance with plans and specifications as approved. No changes or deviations in or from such plans and specifications as approved shall be made without the prior written consent of the Architectural Control Committee.

Approval of plans and specifications by the Architectural Control Committee may be refused based on the following: non-compliance with the restrictions, conditions and covenants herein, the location with respect to topography and finish grade elevation, harmony of external design with existing and proposed structures and other purely aesthetic grounds at the discretion of the Committee.

The approval of the Architectural Control Committee of any plans and specifications submitted to it shall be evidenced by written endorsement on such plans and specifications.

In the event that said Committee fails to approve or disapprove such designs or locations within thirty (30) days after said plans and specifications have been submitted to it, then such approval shall not be required and this covenant shall be deemed to have been complied with.

No residential structure shall be placed on any lot unless it's living area has a minimum of fifteen hundred (1500) square feet of floor area, exclusive of porches and garages.

The exterior walls of all residential structures, including garage shall be at least fifty-one percent (51%) brick, brick veneer, stone, stone veneer, concrete or other masonry.

All residences shall have a roof constructed of or covered with (1) composition shingles of G. A. F. Timberline quality or equivalent, (2) crushed marble, slag or pea gravel set in a built up type roof, (3) tile or (4) any other roof that the Architectural Control Committee determines to be acceptable, all subject to approval by the Architectural Control Committee.

VI.

LOCATION OF IMPROVEMENTS

No residence shall be constructed or located nearer to the front lot line than the building setback lines shown on the recorded plat.

No residence shall be constructed or located nearer than five (5) feet to any side lot. In the event that any owner of one or more adjoining lots, or portions thereof, consolidates such lots or portions into one building site for the purpose of constructing improvements thereon, then the setback lines shall be measured five (5) feet from the resulting property lines as indicated in the recorded plat.

All buildings shall face the water.

No residence shall be constructed or located nearer than eight (8) feet to street easement setback line.

No garage or carport which has entry facing street shall be constructed or located nearer than eighteen (18) feet to street easement setback line

VII.

OWNER'S OBLIGATION TO REPAIR AND REBUILD

Each owner shall, at his sole cost and expense, repair his residence, keeping the same in a condition comparable to the condition of such residence at the time of it's initial construction, excepting only normal wear and tear.

If all or any portion of a residence is damaged or destroyed by fire or other casualty, It shall be the duty of the owner thereof, with all due diligence, to rebuild, repair or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within ninety (90) days after the damage occurs, and shall be completed within six (6) months thereafter, unless prevented by causes beyond the control of the owner.

VIII.

BOATHOUSES

All boathouses shall have flat built-up roofs and shall not extend beyond the canal bulkhead line.

In the event that a boathouse is constructed on any vacant lot, then construction of a residential building must be commenced within one (1) year from the time that the construction of the boathouse is completed.

IX.

EASEMENTS

Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Subdivision map.

Lazy Lane shall be permanently closed at the joint property lines of lot 29 in Lazy Bend Subdivision, and Marina Bay Apartments, that tract of land containing 20,149 square feet of land, more or less, out of Reserve A, replat of Lazy Bend, a Subdivision in Galveston County, Texas as shown by the map or plat of record in the office of the county clerk of Galveston County, Texas in volume 254-A, pages 82 & 84, respectively, of the County Clerk's records of Galveston County, Texas.

Lazy Lane shall be opened by the community only during emergency situations including but not limited to flooding or hurricane. Area emergency services such as fire and police departments and ambulance service shall be provided independent means of access to Lazy Lane.

A marked fire lane shall be established along the eastern half of Lazy Lane, beginning at the centerline of Lazy Lane and continuing east to the adjacent property line of Stewart Elementary School, a school located in the Clear Creek Independent School District. Lengthwise the fire lane shall begin at Lazy Lane's junction with Highway 2094 and continue north to the property line adjacent to lot 30 in Lazy Bend Subdivision. Any unauthorized obstruction to this fire lane shall be removed at owner's expense.

The owner(s) of Marina Bay Apartments have agreed, by separate restrictive covenant, to use the western half of Lazy Lane that is within their property lines solely

for the purpose of additional parking. No other unauthorized structures will be permitted within the easement of Lazy Lane.

X.

ASSESSMENTS AND LIENS

Every owner of a lot in Lazy Bend Subdivision does hereby covenant, by acceptance of his deed for such lot, to pay to the Lazy Bend Executive Committee annual assessments and special assessments for capital improvements, to be established and collected as hereinafter provided. The annual and special assessments, together with all penalties, costs, and reasonable attorney's fees shall be a charge on the land and a continuing lien on each lot against which such an assessment is made as well as the personal obligation of the person or persons who owned the lot at the time the assessment fell due.

The Lazy Bend Executive Committee shall make said assessments, collect the payment of said assessments, manage said fund, and arrange for the performance of necessary services and expenses.

These assessments shall be assessed in advance against each lot on the first day of January each calendar year and shall be mailed or delivered to each lot owner. Such assessments shall be paid within thirty (30) days after notice of such assessment. Assessed amounts not paid within that thirty (30) day period shall automatically bear an additional twelve percent (12%) annual penalty until paid.

The Executive Committee may bring an action of law against the owners personally obligated to pay the same: or may foreclose the lien against the property. The Executive Committee shall, on or before the 15th day of March each year, cause to be recorded in the office of the County Clerk of Galveston County, Texas a list of delinquent assessments as of that date.

For the year beginning January 1, 1981, the annual assessment charge shall be the sum totaling one cent (\$.01) per square foot of total land area of each lot. Said assessment may be increased or decreased upon the proposal by the Executive Committee and the approval by fifty-one percent (51%) of the members present at an annual meeting of the Lazy Bend Association.

Those annual assessments shall be applied toward the payment of the following expenses, listed herein for purposes of illustration and not by limitation: the maintenance and repair of streets, bulkheads, fences, entrances, drainage areas, and any other materials, supplies, equipment, property, labor, services, maintenance, repairs, structural alterations, bonds, insurance or taxes which the Executive Committee is required to secure or pay for the maintenance, repair and operation of common areas for the promotion of the health, safety, welfare and recreation of the owners of the Subdivision, and for the enforcement of these restrictions.

In addition to the annual assessments authorized above, the Executive Committee may levy at any time during the year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the common area, including fixtures and property thereon. Any such assessments must be approved by fifty-one percent (51%) of the members present at a meeting of the Lazy Bend Association.

Both annual and special assessments shall be fixed at a uniform rate for all lots.

The assessment lien provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a foreclosure or any procedure in lieu thereof shall not extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

XI.

LAZY BEND ASSOCIATION, INC.

Lazy Bend Subdivision, incorporated in the State Of Texas as Lazy Bend Association, Inc., enjoys all rights, privileges and authority conveyed by the State Of Texas corporation laws.

The by laws of Lazy Bend Association, Inc., shall be drafted in accordance to the covenants and restrictions of Lazy Bend Subdivision but shall not be in conflict with Texas state law.

XII.

RULES OF ORDER

The Executive Committee, Architectural Committee and all other standing committees, whether appointed or elected, shall provide written rules by which the committee shall function to carry out the covenants and restrictions and by laws of Lazy Bend Association, Inc.

The written rules shall be approved or amended by a majority vote of 51% of those present at a public meeting having a quorum of 25% of the property owners of Lazy Bend Subdivision.

XIII.

Inasmuch as the covenants and restrictions contained herein are designed to benefit all property owners individually and collectively, voluntary compliance is expected. They are, however, enforceable by law. If, after verbal and written requests from the appropriate committee, a lot owner should still refuse to correct an illegal or

objectionable condition it will then be accomplished by due process of law, and all costs in connection with doing so will become a charge against the property involved.

No breach of any of the conditions contained herein or reentry by such breach shall defeat or render invalid the lien of any mortgage code in good faith and for value as to the Subdivision or any lot therein; provided, however, that such conditions shall be binding on any owner whose title is acquired by foreclosure, trustee's sale or otherwise.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

XIV.

DEFINITIONS

The purpose of this section shall be to provide specific definitions of language used within the covenants and restrictions. When a conflict with other known definitions occurs, those detailed herein shall prevail. When specific definitions are not listed herein, Webster's Dictionary (current edition) shall prevail.

OWNER(S): Person or persons who have a minimum of 51% interest in real property located within the limits of Lazy Bend Subdivision. This definition shall also be applied to property owner(s).

PERMANENT RESIDENT(S): Person or persons who do not own real property within Lazy Bend Subdivision but whose legal residence is within Lazy Bend Subdivision. This definition shall apply in matters concerning determination of compliance to use restrictions when the term owner(s) does not apply.

GUEST(S): As applied to boat(s) using the canals of Lazy Bend Subdivision, shall mean a boat not owned by a property owner(s) or permanent resident(s) of Lazy Bend Subdivision. Such a boat(s) shall be limited to spending not more than 30 days annually within the bounds of Lazy Bend Subdivision. Such boat(s) shall also be subject to any other restrictions on boat(s) may be applied in Lazy Bend Subdivision.

EXECUTED on this the _____ day of _____, 1981.

Lot No. _____

Signature _____

Signature _____

Print Name(s) _____
