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**FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE RESERVE AT CYPRESS CREEK, SEC. 2  
COMMONLY KNOWN AS  
THE SETTLEMENT AT CYPRESS CREEK**

STATE OF TEXAS                   §  
  §  
COUNTY OF HARRIS           §

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESERVE AT CYPRESS CREEK, SEC. 2, COMMONLY KNOWN AS THE SETTLEMENT AT CYPRESS CREEK ("First Amendment") is made on the date hereinafter set forth by Beazer Homes Texas, L.P. a Delaware limited partnership, hereinafter referred to as Declarant;

*W*

WITNESSETH:

WHEREAS, the Declarant filed that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RESERVE AT CYPRESS CREEK, SEC. 2, COMMONLY KNOWN AS THE SETTLEMENT AT CYPRESS CREEK which is recorded under Clerk's File No. Y108034 in the Official Public Records of Real Property of Harris County, Texas (the "Declaration"); and

WHEREAS, reference is hereby made to the Declaration for all purposes, and any and all capitalized terms used herein shall have the meanings set forth in the Declaration, unless otherwise specified in this First Amendment; and

WHEREAS, pursuant to Article XIII of the Declaration, the Declarant, so long as there is Class "B" membership, reserved the exclusive and unilateral right to amend the Declaration, without the joinder or consent of any Owners, entity, Lender or other person for the purpose of clarifying or resolving any ambiguities or conflicts therein, or correcting any inadvertent misstatements, errors or omissions therein; and

WHEREAS, Declarant desires to amend the Declaration to correct an inadvertent omission regarding the nature of Restricted Reserve "C."

NOW THEREFORE, pursuant to the powers retained by Declarant as a Class "B" Member under the Declaration, Declarant hereby makes the following amendment to correct an inadvertent omission in the Declaration, said amendment being consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration, as follows:

FILED FOR RECORD  
8:00 AM

MAR - 9 2005

*Dorothy L. Kaufman*  
County Clerk Harris County, Texas

Article VI, Use Restrictions, Section E. Notices and Easements, Paragraph 5. Restricted Reserve "C", which reads as follows:

Owners of Lots within The Settlement at Cypress Creek are advised that Restricted Reserve "C" is restricted to Amenity Lake/ Open Space use as shown on the recorded plat of the Property. The Declarant and/or the Association shall have the obligation to maintain Restricted Reserve "C." Owners hereby agree to hold harmless the Declarant and the Association, and their successors and assigns and release them from any liability for the existence, placement, and/or maintenance of Restricted Reserve "C" and agree to indemnify the parties released from any damages they may sustain. Owners further grant an easement to the Declarant and the Association for any incidental noise, visibility of Restricted Reserve "C", and/or traffic which may occur due to the existence of Restricted Reserve "C". Owners hereby acknowledge that the Association, its directors, officers, managers, agents, or employees, the Declarant or any successor Declarant have made no representations or warranties nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to water level variances and/or any future change in use of Restricted Reserve "C".

Owners whose lots abut Restricted Reserve "C" shall take care and shall not permit any trash, fertilizers, chemicals, petroleum products, environmental hazards or any other foreign matters to infiltrate Restricted Reserve "C." Any owner permitting or causing such infiltration shall indemnify and hold harmless the Association for all costs of clean up and remediation necessary to restore Restricted Reserve "C" to its condition immediately prior to said infiltration.

shall be amended to read as follows:

Owners of Lots within The Settlement at Cypress Creek are advised that Restricted Reserve "C" is restricted to Amenity Lake/ Open Space use as shown on the recorded plat of the Property. The Amenity Lake and the immediately surrounding area contained within Restricted Reserve "C" are further restricted as protected wetland areas ("Wetlands"). The Declarant and/or the Association shall have the obligation to maintain Restricted Reserve "C" and the Wetlands. Owners hereby agree to hold harmless the Declarant and the Association, and their successors and assigns and release them from any liability for the existence, placement, and/or maintenance of Restricted Reserve "C" or the Wetlands and agree to indemnify the parties released from any damages they may sustain. Owners further grant an easement to the Declarant and the Association for any incidental noise, visibility of Restricted Reserve "C" and the Wetlands, and/or traffic which may occur due to the existence of Restricted Reserve "C" or the Wetlands. Owners hereby acknowledge that the Association, its directors, officers, managers, agents, or

employees, the Declarant or any successor Declarant have made no representations or warranties nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to water level variances and/or any future change in use of Restricted Reserve "C" or the Wetlands.

Owners whose lots abut Restricted Reserve "C" and the Wetlands shall take care and shall not permit any trash, fertilizers, chemicals, petroleum products, environmental hazards or any other foreign matters to infiltrate Restricted Reserve "C" or the Wetlands. Any Owner permitting or causing such infiltration shall indemnify and hold harmless the Association for all costs of clean up and remediation necessary to restore Restricted Reserve "C" or the Wetlands to their condition immediately prior to said infiltration.

In case of conflict between this First Amendment and the Declaration, this First Amendment shall control. All other definitions and restriction shall remain as stated in the Declaration of Covenants, Conditions and Restrictions for the Reserve at Cypress Creek, Sec. 2, commonly known as the Settlement at Cypress Creek.

Invalidation of any one or more the covenants, restrictions conditions or provisions contained in this First Amendment shall in no wise affect any of the other covenants, restrictions, conditions or provisions which shall remain in full force and effect.

The Declaration, except as expressly amended hereby, shall remain in full force and effect, and is hereby ratified and confirmed.

IN WITNESS WHEREOF, this First Amendment to the Declaration of Covenants, Conditions and Restrictions for the Reserve at Cypress Creek, Sec. 2, commonly known as the Settlement at Cypress Creek is executed as of the 4<sup>th</sup> day of March, 2005.

[SIGNATURE PAGE FOLLOWS]

**DECLARANT:**

BEAZER HOMES TEXAS, L.P., a Delaware limited partnership

*John*

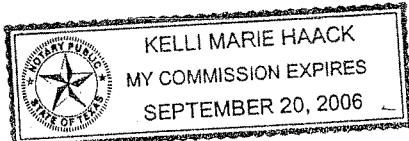
By: Beazer Homes Texas Holdings, Inc., a Delaware corporation, its general partner

By: *DSEP*  
Print Name: DENNIS E. PETRAS  
Title: SR. LAND DEV. OPER. MGR.

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

BEFORE ME, the undersigned authority, on this day personally appeared Dennis E. Petras the Sr. Land Dev. Oper. Mgr. of BEAZER HOMES TEXAS HOLDINGS, INC., a Delaware corporation, the General Partner of BEAZER HOMES TEXAS, L.P., a Delaware limited partnership, known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purposes and consideration therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

Given under my hand and seal of office, this 4<sup>th</sup> day of March, 2005.



Kelli Marie Haack  
Notary Public - State of Texas

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2-23-05 cep

After Recording Return To:

Marc D. Markel  
Roberts Markel Guerry, P.C.  
2500 City West Blvd., Suite 1350  
Houston, Texas 77042

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW THE STATE OF TEXAS COUNTY OF HARRIS. I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

MAR - 9 2005



Brendy B. Kuyper  
COUNTY CLERK  
HARRIS COUNTY, TEXAS