

amended from time to time, shall be binding and enforceable against each Owner in the same manner as any other restriction set forth in this Declaration.

ARTICLE X. VARIANCES

The Board, upon the recommendation of the ARC, or its duly authorized representative, may authorize variances from compliance with any of the architectural provisions of this Declaration, any amendment, Supplemental Declaration, Builder Guideline, or Architectural Guidelines, unless specifically prohibited, including restrictions upon height, size, placement of structures, or similar restrictions, when circumstances such as topography, natural obstruction, hardship, aesthetic, or environmental considerations may require. Such variances must be evidenced in writing, must be approved by at least a majority of the Board, and shall become effective upon execution of the variances which variance shall be signed by a member of the Board. If such variances are granted, no violation of the covenants, conditions, or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all applicable governmental laws and regulations.

No granting of a variance shall be relied on by any Member or Owner, or any other person or entity (whether privy or party to the subject variance or not), as a precedent in requesting or assuming variance as to any other matter of potential or actual enforcement of any provision of this Declaration. Action of the ARC or Board of Directors in granting or denying a variance is a decision based expressly on one unique set of circumstances and need not be duplicated for any other request by any party or the same party for any reason whatsoever.

ARTICLE XI. LIMITATION OF LIABILITY

Neither Declarant, the Association, the ARC, the Board, nor any of the respective officers, managers, partners, directors, members, successors or assigns of the above, shall be liable in damages or otherwise to anyone who submits matters for approval to any of the above-mentioned parties, or to any Owner affected by this Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any matters requiring approval hereunder. Approval by the ARC, the Board, or the Association, nor any of their respective officers, partners, directors, agents, managers, members, successors or assigns, is not

intended as any kind of warranty or guarantee as to the integrity or workability of the plans nor the contractors used.

ARTICLE XII. ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessments

The Owners of any Lot or Homesite, by virtue of ownership of Property within The Reserve at Cypress Creek, covenant and agree to pay to the Association:

1. Annual Assessments; and
2. Special Assessments

The Annual, and Special Assessments together with attorney's fees, interest and costs shall be a charge and continuing lien upon the Homesite and Lot against which each such assessment is made. Each such assessment, together with attorney's fees, interest and costs, shall also be the personal obligation of the person or entity who was the Owner of the land at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

3. Purpose of Assessments

Annual and Special Assessments levied by the Association shall be used for any legal purpose for the benefit of The Reserve at Cypress Creek as determined by the Association and, in particular, may by way of example and not limitation or obligation include maintenance, repair or improvement of any Common Area, sidewalks, fountains, parkways, private streets and roads, boulevards, esplanades, setbacks and entryways, patrol service, fire protection, emergency medical service, street cleaning, street lighting, mosquito control, other services as may be in the Property's and Owner's interest and for promotion of the recreational interests of the Members which may include payment for recreational improvements on recreational sites, reserves and/or Common Area. Parkway, fountains, private streets, roads, esplanades, setbacks and entryways that are not contained in any Common Area may be included in the Association's maintenance if, in the sole discretion of the Board, the maintenance of such areas benefits the Association's Members. Such share agreements for maintenance and improvement shall require the consent of a majority of the total number of directors of the Association. Additionally, assessments levied by the Association may be used, in the sole discretion of the Association, to pay the Association's fair allocation for maintenance costs for the participation in any agreement among other property owners associations (whether residential, multi-family, commercial or mixed use) in the area

and for consolidated programs that provide consistency and economics of scale. Approval to enter such agreements shall require a majority vote of the Board.

C. Annual Assessment

The Property shall be subject to the Annual Assessment, as follows:

1. Creation:

Payment of the Annual Assessment shall be the obligation of each Owner and the Declarant and shall constitute a lien on the Homesite, or Lot(s), binding and enforceable as provided in this Declaration.

2. Rate:

The initial Annual Assessment established by the Association shall not exceed Eight hundred and 00/100 Dollars (\$800.00) per Lot. Declarant shall elect annually in writing to subsidize the approved budget for the subsequent year by paying the difference between the total approved budget for the year less the total amount due by Class A Members, or elect to pay assessments at the rate of fifty percent (50%) of the amount assessed other Class A Members for each Lot owned. Declarant is required to provide written notice to the Board each year by September 1. Otherwise, each Lot owned by Declarant will be billed at the rate of fifty percent (50%) of the assessment of other Lot Owners. A Builder shall only be responsible to pay fifty percent (50%) of the assessment of other Lot Owners, for the period of time that the Builder owns a Lot.

For the purposes of this Article XIII, Section C (2) Declarant shall additionally include Newmark Homes, a Texas corporation, as to Lots owned by Newmark Homes but not yet conveyed to purchasers who intend to use such Lots for residential purposes.

Notwithstanding anything contained in this Declaration to the contrary and by way of clarification, the Declarant's obligation to elect to subsidize the approved budget for the subsequent year or elect to pay assessments at the rate of fifty percent (50%) of the amount assessed other Class A Members for each Lot owned, shall cease for each separate entity heretofore included in the collective reference to Declarant, upon the sale of the last Lot owned by that particular Declarant. (By way of example but not limitation, when Newmark Homes

sells its last Lot, it shall no longer be a Declarant and therefore will no longer be obligated to pay either fifty percent (50%) of the amount assessed or to subsidize the approved budget for the subsequent year. The obligations of the remaining Declarants shall continue as set forth in this Declaration).

3. Commencement

For purposes of calculation, the initial Annual Assessment shall commence on the first day of the first month following the date of the first sale of a Lot to a resident so long as utility lines have been located on such Lot. Annual Assessments shall be due in advance on January 1 for the coming year and shall be delinquent if not paid in full as of January 31 of each year.

4. Proration

An Owner's initial Annual Assessment shall be made for the balance of the calendar year as determined on a pro-rata basis and shall become due and payable on the commencement date described above. The Annual Assessment for any year after the first year shall be due and payable on the first day of January. Any owner who purchases a Lot or Lots after the first day of January in any year shall be personally responsible for a pro-rated assessment amount for that year.

5. Levying of the Assessment

The Annual Assessment shall be levied at the sole discretion of the Board. The Board shall determine the sufficiency or insufficiency of the then current Annual Assessment to reasonably meet the expenses for providing services and capital improvements in The Reserve at Cypress Creek and may, at its sole discretion and without a vote by the Members, increase the annual Assessment in an amount up to ten percent (10%) over the previous year's Annual Assessment. The Annual Assessment may only be increased by more than ten percent (10%) over the preceding year's assessment if such increase is approved by Members in good standing who represent a majority of the votes in The Reserve at Cypress Creek present at a meeting called for said purpose at which a quorum is present in person or by proxy. The Annual Assessment shall not be adjusted more than once in a calendar year nor shall any increase be construed to take effect retroactively, unless otherwise approved by Members representing a

majority of the votes subject to such assessments present at a meeting called for said purpose at which a quorum is present in person or by proxy.

D. Special Assessments for Capital Improvements

In addition to the Annual Assessments authorized above, the Association may levy 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 in the Common Area or any unusual, infrequent expense benefiting the Association, provided that any such assessment shall have the approval of both a majority of the Class A Members and a majority of the Class B Members present at a meeting duly called for this purpose at which a quorum is present. Such Special Assessments will be due and payable as set forth in the resolution authorizing such assessment and shall be levied only against those Owners subject to the Annual Assessment as set forth in Section C hereof and shall be prorated in accordance therewith. The Association, if it so chooses, may levy a Special Assessment against only those Members benefited by or using the capital improvement for which the Special Assessment is being levied. Special Assessments shall be due upon presentment of an invoice, or copy thereof, for the same to the last-known address of the Owner.

E. Collection and Remedies for Assessments

1. The assessments provided for in this Declaration, together with attorneys' fees, interest and costs as necessary for collection, shall be a charge on and a continuing lien upon the land against which each such assessment is made. Each such assessment, together with attorney's fees, interest and costs, shall also be the personal obligation of the Owner of the land at the time the assessment became due. This personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

2. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (1) eighteen percent (18%) or (2) the maximum non-usurious rate of interest. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by reason of non-use or abandonment.

3. In order to secure the payment of the assessments hereby levied, an assessment lien is hereby reserved in each deed from the Declarant to the Owner of each parcel of Property in The Reserve at Cypress Creek, which lien may be foreclosed upon by non-judicial foreclosure

pursuant to the provisions of Section 51.002 of the Texas Property Code (or any successor statute); each Owner grants a power of sale to the Association to sell such property upon default in payment by any amount owed. Alternatively, the Association may judicially foreclose the lien or maintain an action at law to collect the amount owed.

The President of the Association or his or her designee is hereby appointed Trustee to exercise the Association's power of sale. Trustee shall not incur any personal liability hereunder except for his or her own willful misconduct.

Although no further action is required to create or perfect the lien, the Association may, as further evidence give notice of the lien, by executing and recording a document setting forth the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The Association shall also have the right but not the obligation to notify a delinquent Owner's lender, in writing, of such Owner's delinquency and default.

In the event the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 (or any successor statute) and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale no less than twenty one (21) days prior to the date of the proposed foreclosure sale, postage prepaid, registered or certified mail, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association or by hand delivery. At any foreclosure proceeding, any person or entity, including but not limited to the Declarant, Association or any Owner, shall have the right to bid for such Property at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period Property is owned by the Association following foreclosure, 1) no right to vote shall be exercised on its behalf; and, 2) no assessment shall be levied on it. Out of the proceeds of such sale, there shall be paid all expenses incurred by the Association in connection with such default, including attorneys' fees and trustee's fees; second, from such proceeds there shall be paid to the Association an amount equal to the amount of assessments in default inclusive of interest, late charges and attorneys' fees; and, third, the remaining balance, if any, shall be paid to such Owner. Following any such foreclosure, each occupant of any such tract

foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant-at-sufferance and may be removed from possession by any lawful means.

F. Subordination of the Lien to First Mortgages

The lien for assessments, including interest, late charges, costs and attorney's fees, provided for herein shall be subordinate to the lien of any first mortgage on any Lot or Homesite. The sale or transfer of any Lot or Homesite shall not affect the assessment lien. The sale or transfer shall not relieve such Lot or Homesite from lien rights for any assessments thereafter becoming due. Where the mortgagee holding a first mortgage of record or other purchaser of a Lot or Homesite obtains title pursuant to judicial or non-judicial foreclosure of the mortgage, it shall not be liable for the share of the assessments or other charges by the Association chargeable to such Lot or Homesite that became due prior to such acquisition of title. Mortgagees shall not be required to collect any assessments from its Mortgagor. Failure of an owner to pay assessments does not constitute a default under an insured mortgage. However, from the date of foreclosure forward, such assessments shall again accrue and be payable to the Association.

G. Exempt Properties

All properties dedicated to any accepted use by a municipal county, federal, or other governmental authority and all properties owned by charitable or non-profit organizations that are exempt from taxation by federal laws shall be exempt from the assessments created herein and the Owners thereof shall have no voting rights with respect thereto.

H. Notice of Delinquency

The Association or its agent or designee shall be required to give a written notice of the assessment to any Owner who has not paid an assessment that is due under this Declaration. Such notice must be mailed to the Owner's last known address. The address of the Lot, Homesite or Building Site shall be presumed to be the address for proper notice unless written notice of another address shall be provided by the Owner to the Association.

ARTICLE XIII. MODIFICATION AND TERMINATION OF COVENANTS

Each restriction and covenant contained in this Declaration may be amended, modified, or terminated by the filing of a recorded instrument executed by the Association or its legal representatives, successors or assigns. So long as Class B membership exists, approval of seventy-five percent (75%) of

the combined total votes of Class A and Class B Membership shall be required to amend, modify or terminate these restrictions and covenants. When Class B Membership ceases to exist, approval by owners representing two-thirds (2/3) of the Owners of the Lots shall be required to amend, modify or terminate these restrictions and covenants. Upon approval of the Owners, as set out above, and the Association's joinder and approval of said declaration, the declaration shall be signed and acknowledged by the parties thereto and recorded in the Real Property Records of Harris County, Texas, whereupon to the extent of any conflict with this Declaration, the amended declaration shall control.

For so long as there is a Class "B" membership, Declarant reserves to itself and shall have the continuing right, at anytime, and from time-to-time, without the joinder or consent of any Owners, entity, Lender or other person to amend this Declaration for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, and to meet any requirements specified by the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association and any other similarly secured or guaranteed mortgage agency or authority with an interest in any loan related to the Property; provided however, any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration, and shall not impair or materially adversely affect the vested property or other rights of any Owner or his Mortgagee. Specifically related thereto, so long as there is a Class "B" membership, for any Property subject to this Declaration in which the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association or other similarly secured or guaranteed mortgage agency or authority shall have approved said Property for its loan program, no supplemental amendment particular to said Property shall be amended without the prior approval of such agency or authority. However, this limitation of amendment to the supplemental amendments related to said particular Property shall not limit the rights of the Declarant pertaining to the Declaration as otherwise herein reserved. Particularly reserved to the Declarant, is the right and privilege of Declarant to designate the use restrictions applicable to any portion of the Properties, as provided in Article VI hereof; and such designation, or subsequent change of designation, shall not be deemed to adversely affect any substantive right of any existing Owner.