

W025247

08/21/02 300822870 W025247

\$99.00

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE RESERVE AT CYPRESS CREEK

After Recording Return To:  
Marc D. Markel  
Roberts ◊ Markel ◊ Guerry ◊ L.L.P.  
2500 City West Blvd., Suite 1350  
Houston, Texas 77042

RECEIVED  
SEP 13 2002

## TABLE OF CONTENTS

ARTICLE I.	DEFINITIONS OF TERMS.....	2
ARTICLE II.	PURPOSE AND INTENT .....	5
ARTICLE III.	PROPERTY SUBJECT TO RESTRICTIONS.....	5
A.	PROPERTY INITIALLY ENCUMBERED.....	5
B.	ANNEXATION OF ADDITIONAL PROPERTY.....	5
ARTICLE IV.	MEMBERSHIP AND VOTING RIGHTS.....	6
A.	ELIGIBILITY .....	6
B.	MEMBERSHIP .....	6
C.	VOTING RIGHTS .....	7
1.	<i>Class A Membership:</i> .....	7
2.	<i>Class B Membership:</i> .....	7
D.	VOTING PROCEDURES.....	7
ARTICLE V.	EFFECTIVE DATE OF DECLARATION .....	7
ARTICLE VI.	USE RESTRICTIONS.....	8
A.	RESIDENTIAL USES PERMITTED .....	8
B.	NON-PERMITTED USES .....	8
C.	PARKING AND PROHIBITED VEHICLES.....	9
D.	SCREENING .....	11
E.	OUTSIDE STORAGE AND TRASH COLLECTION.....	11
F.	NOTICES AND EASEMENTS .....	12
1.	<i>Utilities and General</i> .....	12
2.	<i>Easements for Green Belt, Pond Maintenance and Flood Water and Other Landscape Reserves</i> .....	12
3.	<i>Easements to Serve Additional Property</i> .....	13
4.	<i>Monuments and Fences</i> .....	14
5.	<i>Lift Station Site</i> .....	16
6.	<i>Detention/Drainage Reserves</i> .....	16
G.	SIGNS .....	16
H.	RESERVATION OF MINERALS .....	18
I.	COMMON AREAS.....	18
J.	WINDOW TREATMENTS.....	19
K.	DEED RESTRICTION ENFORCEMENT.....	19
1.	<i>Authority to Promulgate Rules and Regulations</i> .....	19
2.	<i>Attorney's Fees and Fines</i> .....	19
3.	<i>Remedies</i> .....	20
4.	<i>Enforcement by Owners</i> .....	20
5.	<i>Private Streets and Utilities:</i> .....	20
L.	ANTENNAS .....	20
M.	GENERAL NUISANCES .....	21
N.	TREE REMOVAL .....	22
O.	ANIMALS AND PETS .....	22

P. SWIMMING POOLS/SPAS.....	23
Q. OUT BUILDINGS/ACCESSORY BUILDINGS .....	23
R. WINDOW AIR CONDITIONING UNITS.....	23
S. LAKES, PONDS AND OTHER WATER BODIES.....	23
<b>ARTICLE VII. ARCHITECTURAL RESTRICTIONS .....</b>	<b>24</b>
A. ARCHITECTURAL REVIEW COMMITTEE - "ARC" .....	24
B. ARC APPROVAL REQUIRED.....	24
C. BUILDING SETBACKS .....	26
D. LANDSCAPING.....	26
E. GRADING AND DRAINAGE.....	27
F. TEMPORARY STRUCTURES .....	27
G. GARAGES .....	27
H. MINIMUM SQUARE FOOTAGE.....	27
<b>ARTICLE VIII. MAINTENANCE .....</b>	<b>28</b>
A. GENERAL MAINTENANCE .....	28
B. LANDSCAPING.....	28
C. DWELLING EXTERIOR .....	28
D. OTHER HAZARDS .....	29
E. LIABILITY, COST AND APPROVAL.....	29
<b>ARTICLE IX. STANDARDS AND PROCEDURES .....</b>	<b>29</b>
<b>ARTICLE X. VARIANCES .....</b>	<b>30</b>
<b>ARTICLE XI. LIMITATION OF LIABILITY.....</b>	<b>30</b>
<b>ARTICLE XII. ASSESSMENTS .....</b>	<b>31</b>
A. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS .....	31
B. PURPOSE OF ASSESSMENTS.....	31
C. ANNUAL ASSESSMENT.....	32
1. <i>Creation</i> .....	32
2. <i>Rate</i> .....	32
3. <i>Commencement</i> .....	33
4. <i>Proration</i> .....	33
5. <i>Levy of the Assessment</i> .....	33
D. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS .....	34
E. COLLECTION AND REMEDIES FOR ASSESSMENTS.....	34
F. SUBORDINATION OF THE LIEN TO FIRST MORTGAGES.....	36
G. EXEMPT PROPERTIES .....	36
H. NOTICE OF DELINQUENCY .....	36
<b>ARTICLE XIII. MODIFICATION AND TERMINATION OF COVENANTS.....</b>	<b>36</b>
<b>ARTICLE XIV. GENERAL PROVISIONS .....</b>	<b>38</b>
A. SEVERABILITY .....	38
B. COMPLIANCE WITH LAWS .....	38
C. GENDER AND NUMBER .....	38

D. HEADLINES ..... 38  
E. GOVERNING LAW..... 38  
F. FINES FOR VIOLATIONS..... 39  
G. BOOKS AND RECORDS..... 39  
H. NOTICES..... 39  
I. MERGERS..... 39  
J. CURRENT ADDRESS AND OCCUPANTS ..... 39  
K. SECURITY..... 40



conditions, covenants, easements, reservations and restrictions, including levying, collecting and disbursing the assessments; and

WHEREAS, there has been or will be incorporated one or more non-profit corporations created under the laws of the State of Texas, including the first being The Reserve at Cypress Creek Community Association, Inc. whose directors have established By-Laws by which said Association shall be governed through its Board of Directors, for the purpose of exercising the functions aforesaid and any other duties as set out in the By-Laws and/or other Dedicatory Instruments as that term is defined in the Texas Property Code.

NOW, THEREFORE, Declarant hereby declares that the Property shall be developed, improved, sold, used and enjoyed in accordance with, and subject to the following plan of development, including the assessments, conditions, covenants, easements, reservations, and restrictions hereinafter set forth, all of which are hereby adopted for, and placed upon said Property and shall run with the Property and be binding on all parties, now and at anytime hereinafter, having or claiming any right, title or interest in the Property or any part thereof, their heirs, executors, administrators, successors and assigns, regardless of the source of, or the manner in which any such right, title or interest is or may be acquired, and shall inure to the benefit of each Owner of any part of the Property.

#### **ARTICLE I. DEFINITIONS OF TERMS**

The following words when used herein shall have the following meanings when capitalized (unless the context requires otherwise and the term is then not capitalized):

- A. "ARC" means the Architectural Review Committee established for the Property as set forth in Article VII, Section A.
- B. "Assessment" means the assessment levied against all Lots for the purposes set out in Article XII, Section C, or for any other charge authorized by this Declaration, the By-laws, or Rules and Regulations.
- C. "Architectural Guidelines" mean a publication of the ARC, if any, that may set forth various standards relating to exterior harmony of any and all improvements placed upon or constructed on any lot, which publication may be amended without notice to owners.

- D. "Association" means THE RESERVE AT CYPRESS CREEK COMMUNITY ASSOCIATION, INC., a Texas non-profit corporation, its successors, assigns, or replacements which has jurisdiction over all properties located within the land encumbered under this Declaration, as same may be amended from time to time as additional property is annexed into The Reserve at Cypress Creek, as allowed under this Declaration.
- E. "Board" means the duly elected Board of Directors of the Association as provided within the By-laws.
- F. "Builder" means an individual or entity that purchases multiple Lots from the Declarant for the purpose of constructing Dwellings thereon, which Dwellings will be offered for sale to purchasers. "Builder" shall not include an individual or entity constructing additions onto a Dwelling already in existence, performing repairs or maintenance or re-constructing or replacing a Dwelling after demolition or destruction, either partial or complete.
- G. "Building Guidelines" means general guidelines, if any, as to construction types and aesthetics as set by the ARC, which may be changed without notice to the Owners.
- H. "By-Laws" means the By-Laws of The Reserve at Cypress Creek Community Association, Inc., as they may be amended from time to time.
- I. "Common Area" means all real property owned in fee or held in easement by the Association for the common use and enjoyment of the Owners and shall include areas designated by Declarant to be conveyed by deed or easement to the Association.
- J. "Declarant" means Beazer Homes Texas, L.P. its successors and assigns, as may be evidenced by a written instrument recorded in the public records of the Harris County Clerk's office and Pacific United, L.P., a Texas limited partnership its successors and assigns, as may be evidenced by a written instrument recorded in the public records of the Harris County Clerk's office..
- K. "Declaration" means this Declaration of Covenants, Conditions, and Restrictions for The Reserve at Cypress Creek or any other property brought under the control of this document, or any supplemental declaration and/or amendment thereto.
- L. "Dwelling" means a structure or structures intended for residential use.

- M. "Homesite" means one or more Lots upon which a single family Dwelling may be erected subject to this Declaration.
- N. "Lake-front Lot" shall mean any Lot and any other Lots so designated by Declarant in this Declaration and/or in a subsequent filing; even if a common area is between the Lot and the lake.
- O. "Lot" means a parcel of Property as defined by the recorded plat and/or any replat thereof as one lot in the Map Records of Harris County, Texas, and encumbered by this Declaration. Homesites may be comprised of more than one Lot; each such Lot will be subject to the rights and duties of membership in the Association. There shall be an assessment due for each Lot owned as defined by the then plat of record.
- P. "Member" means an Owner, as defined in this article, who is in good standing per Article IV, Section B, "Membership."
- Q. "Owner" means an owner of any portion of the Property. Persons or entities holding title only as a lienholder shall not be an Owner for purposes of this Declaration.
- R. "Property" means all of the property subject to this Declaration as same may be amended and/or supplemented from time to time as additional property is annexed into The Reserve at Cypress Creek as allowed under this Declaration.
- S. "Recreational Sites" means Common Area Property that is set aside for use as recreational facilities, reserves, or green space and is encumbered by this Declaration, a recorded plat, or both.
- T. "Special Assessment" means an assessment levied under Article XII, Section D for a specific purpose.
- U. "The Reserve at Cypress Creek " and/or "The Reserve" means The Reserve at Cypress Creek Subdivision, located in Houston, Harris County, Texas. The Reserve at Cypress Creek Subdivision is more particularly described on the Plat recorded under Clerk's File No. V 916686 and Film Code No. 516249, of the Plat Records of Harris County, Texas, which may be amended and/or supplemented as additional land is annexed into the subdivision by the recording of a Supplemental Declaration.



## ARTICLE II. PURPOSE AND INTENT

The Reserve at Cypress Creek, as initially planned, is intended to be a residential development that is planned to feature residential uses and provide for the common welfare of the community.

This Declaration shall serve as the means by which design, maintenance and use of the Property and Eligible Property anticipated to be a part of The Reserve at Cypress Creek will be established.

## ARTICLE III. PROPERTY SUBJECT TO RESTRICTIONS

### A. Property Initially Encumbered

The Property that is initially encumbered by this Declaration and is therefore a part of The Reserves at Cypress Creek Subdivision is more particularly described on the map or plat thereof, filed under Clerk's File No. V 916686 and Film Code No. 516249, of the Official Public Records of Real Property of Harris County, Texas. Owners of Property are Members of the Association and have executed this Declaration.

### B. Annexation of Additional Property

Without the joinder of any other Owners or Members, the Declarant reserves the exclusive right for the twenty-five (25) years following the execution of this Declaration to annex any additional property. So long as there is Class "B" Membership, no additional property may be annexed without the prior approval of the Department of Housing and Urban Development and/or Department of Veterans Affairs. Such annexation shall be accomplished by the execution and filing for record of a Supplemental Declaration setting forth the land being annexed and/or the specific restrictions relating to such property, if different, provided the maintenance fee provision shall be uniform as to all Lots.

The right of the Declarant to annex land under this Section shall pass to the Association upon the expiration of the twenty-five (25) year term granted above or upon the termination of Class "B" Membership pursuant to Article IV, Section C, whichever occurs first.

## ARTICLE IV. MEMBERSHIP AND VOTING RIGHTS

### A. Eligibility

Eligibility to vote or serve as a representative, director or officer, after the expiration of the term of the initial Board of Directors, shall be predicated upon a Member being in good standing with the Association. To be in good standing, the Member must have all assessments of every type and category paid up to date and have no outstanding financial obligations to the Association that are delinquent. Additionally, no Member shall be allowed to vote or hold office if that Member is noted of record (or within the records of) the Association to have a deed restriction violation on one or more Lots in The Reserve at Cypress Creek.

### B. Membership

The sole criteria to become a Member of the Association is to hold title to a Lot within The Reserve at Cypress Creek. This is not to imply that any holder of a mere security interest (such as a mortgagee, or holder of any other lien against property) would be a Member, unless that holder of the security interest foreclosed and thereby became the Owner of the Lot(s). Membership is appurtenant to and runs with the land. Membership is not severable as an individual right and cannot be separately conveyed to any party or entity. Multiple owners of any single Lot must vote in agreement (under any method they devise among themselves), but in no case shall such multiple Owners cast portions of votes. The vote attributable to any single Lot must be voted in the same manner (i.e. all votes for, or all votes against a particular issue).

All duties and obligations set forth in this Declaration are the responsibility of each Member. No waiver of use of rights of enjoyment created by this Declaration shall relieve Members or their successors or assigns of such duties or obligations. Mandatory membership shall begin with the execution of this Declaration and pass with title to the land (regardless of any method of conveyance) to any subsequent grantee, successor, or assignee of Members.

In consideration for payment of Assessments, all Owners of Lots in The Reserve at Cypress Creek and subsequently annexed sections if any, shall have the right to the use and enjoyment of recreational facilities in The Reserve at Cypress Creek.

C. Voting Rights

The Association shall have two classes of membership, Class A and Class B, as follows:

1. Class A Membership:

Class A Members shall be all Members with the exception of Class B Members, if any. Each Class A Member's voting rights shall be based on the number of Lots and shall be determined as follows:

One (1) vote shall be granted to Class A Members for each Lot owned.

2. Class B Membership:

Class B Members shall include the Declarant and such Owners as the Declarant may, in its sole discretion, confer Class B Membership status upon. Each Class B Member's voting rights shall be based on the number of Lots owned, and shall be determined as follows:

Ten (10) votes per platted Lot shall be granted to Class B Members.

Declarant shall retain its Class B membership and retain control and authority to appoint all members of the Board of Directors of the Association until the Declarant has sold seventy-five percent (75%) of the platted lots, or the Declarant desires to release such control and authority to the Association as evidenced by an instrument recorded in the Real Property Records of Harris County, or January 1, 2022, whichever occurs first. At such time, any remaining Class B Members shall be converted to Class A Members and elections shall be held to elect the Members of the Board of Directors of the Association pursuant to the provisions of the Articles of Incorporation and the By-Laws of the Association.

D. Voting Procedures

Class A and Class B members shall exercise their votes as set out in the By-Laws.

**ARTICLE V. EFFECTIVE DATE OF DECLARATION**

This Declaration shall be effective as of the date this document is recorded in the Real Property Records of Harris County, Texas.

## ARTICLE VI. USE RESTRICTIONS

### A. Residential Uses Permitted

Homesites within The Reserve at Cypress Creek shall be used exclusively for single-family residential purposes. The term "single family" as used herein shall refer not only to the architectural design of the Dwelling but also to the permitted number of inhabitants, which shall be limited to a single family, as defined below. No multi-family Dwellings may be constructed on any Homesite. No building, outbuilding or portion thereof shall be constructed for income property, such that tenants would occupy less than the entire Homesite. It is permitted for tenants to lease a residence in The Reserve at Cypress Creek, so long as tenants are leasing the entire land and improvements comprising the Homesite.

No Homesite shall be occupied by more than a single nuclear family. For purposes of these restrictions, a single nuclear family shall be defined as any number of persons related within the second degree of consanguinity or affinity, living with not more than one (1) person who is not so related as a single household unit and one household employee of such household unit. It is not the intent of the Declarant to exclude from a Homesite any individual who is authorized to so remain by any state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law.

### B. Non-Permitted Uses

1. No trade or business may be conducted in or from any Dwelling or Homesite, except that residential use within a Dwelling so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property; (c) the business activity does not involve visitation of the Dwelling or Homesite by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of The Reserve at Cypress Creek; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of The Reserve at Cypress Creek, as may be determined in the sole discretion of the Board. A day-care facility, home day-care facility,

church, nursery, pre-school, beauty parlor, or barber shop or other similar facility is expressly prohibited.

The terms "business" and "trade" as used in this provision shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the manufacture or provision of goods for or to persons other than the provider's family, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does not generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Dwelling shall not be considered a trade or business within the meaning of this Section. This Section does not apply to any activity conducted by the Declarant or by a builder with approval of the Declarant with respect to its development and sale of the Property. Garage sales or yard sales (or any similar vending of merchandise) conducted on any Homesite more than once per year shall be considered business activity and therefore prohibited.

No business vehicles displaying commercial signs or advertising shall be permitted to be parked within public view in residential sections of The Reserve at Cypress Creek, other than service vehicles contracted by owners of Homesites to perform specific services. No vehicles with more than two axles shall be permitted to be parked or stored for a period in excess of twelve (12) hours per week in a residential section of The Reserve at Cypress Creek, without prior written permission of the Association, whose approval will be issued at its sole and absolute discretion.

2. No livestock, domestic or wild animals, nor plants or crops shall be raised on any Homesite or the Property for the purpose of breeding or selling same, whether for profit or not. Exchange of such animals, plants or produce for anything of value to the seller shall constitute a sale of the merchandise and therefore prohibited under this provision.

C. Parking and Prohibited Vehicles

No motor vehicles or non-motorized vehicle, boat, trailer, marine craft, recreational vehicle, camper rig off of truck, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement or right-of-way, unless such vehicle or object is completely concealed from public view inside a garage or enclosure approved by the ARC. Passenger automobiles,

passenger vans, motorcycles, or pick-up trucks that: (a) are in operating condition; (b) as qualified by current vehicle registration and inspection stickers; (c) are in daily use as motor vehicles on the streets and highways of the State of Texas; (d) do not exceed six feet nine inches (6'9") in height, or eight feet (8') in width and (e) have no commercial advertising located thereon, may be parked in the driveway on a Lot, however, no vehicle shall be parked so as to obstruct or block a sidewalk or be parked on a grassy area. The restriction concerning commercial advertising shall not apply to any vehicles, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity. Storage of any vehicles in the street is prohibited. Storage shall mean the parking of a vehicle for more than seven (7) days in any calendar month.

No more than three (3) vehicles (passenger cars or non-commercial trucks or vans consistent with the residential use of a Homesite) may be parked on the driveway of a Homesite at any time. Such vehicles to be parked on a Homesite must meet the restrictions of this Declaration and at all times be operable, unless otherwise completely concealed in an enclosed garage, have current license tags, state inspection stickers, and comply with current mandatory insurance under the laws of the State of Texas. Any vehicle not in daily use as a motor vehicle on the streets and highways of the State of Texas and not in compliance with the foregoing shall be considered stored on the property and such storage is strictly prohibited unless same is completely concealed in an enclosed garage. No vehicle that cannot physically fit within the designed garage of the Dwelling with the door closed will be construed as a vehicle incident to residential use of a Homesite. Additional rules and regulations for the use, maintenance, and parking on private and/or public streets may be promulgated by the Association.

Recreational vehicles, such as mobile homes, campers, and boats are not considered vehicles incident to the residential use of a Homesite and therefore are not permitted to be stored on Homesites for any period of time greater than seventy-two (72) hours. A recreational vehicle with not more than two (2) axles may be parked in front of or on the Homesite for up to seventy-two (72) hours for loading, and unloading only.

Parking of any vehicle other than in a driveway or within an enclosed garage of a Homesite or other paved area provided for parking is expressly prohibited.

D. Screening

No Member or occupant of any portion of the Property shall permit the keeping of articles, goods, materials, utility boxes, refuse, trash, storage tanks, or like equipment on the Property which may be considered a nuisance or hazard in the sole opinion of the Board of Directors. Air conditioners, garbage containers, antennas to the extent reasonably possible and pursuant to Article VI, Section L. Antennas, or like equipment, shall not be kept in the open, exposed to public view, or exposed to view from adjacent Homesites. Air conditioners, utility boxes, garbage containers, and antennas to the extent reasonably possible and pursuant to Article VI, Section L. Antennas, or like equipment must be screened from view and placed in a location first approved in writing by the ARC. Such screen shall be of a height at least equal to that of the materials or equipment being stored, but in no event shall such screen be more than six feet (6') in height. Added screening must also be provided to shield such stored materials and equipment from grade view from adjacent Dwellings. Utility boxes must be screened so that they are not visible from the street and as may be set out in the Builder Guidelines. A combination of trees, hedges, shrubs or fences should be used as screening material, as same may be set out in the Builder Guidelines. All screening designs, locations, and materials are subject to prior ARC approval. Any such screening installed must be maintained in a clean and neat manner at all times, and may not detract from the appearance of the Property.

E. Outside Storage and Trash Collection

No equipment, machinery, or materials of any kind or nature shall be stored on any Homesite forward of the fence at the front wall of the house situated thereon, unless the equipment, machinery or materials is being used temporarily (not more than one week) and is incident to repair or construction of the Dwelling or Homesite. All equipment, machinery, and materials shall be properly stored out of sight of every other Homesite immediately after use of such item, and all trash, debris, excess, or unused materials or supplies shall likewise be disposed of immediately off of the Homesite, or stored out of view until trash collection occurs.

Trash may only be placed outside for collection the evening before collection. Such trash must be contained to protect from animals or spillage and trash cans must be removed from sight the same evening of collection.

F. Notices and Easements

1. Utilities and General

There are hereby reserved unto Declarant, so long as the Declarant owns any Property, the Association, and the designees of each (which may include, without limitation, Harris County and any utility) access and maintenance easements upon, across, over, and under all of the Property to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining any or all of the following which may exist now or in the future: cable television systems, master television antenna systems, monitoring and similar systems, roads, walkways, bicycle pathways, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on Property that Declarant owns or within easements designated for such purposes on recorded plats of the Property. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Dwelling; any damage to a Homesite resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person or entity exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Homesite.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, cable company and natural gas supplier easements across all the Common Areas for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters boxes, installation equipment, service equipment, and any other device, machinery or equipment necessary for the proper functioning of the utility; however, the exercise of this easement shall not extend to unauthorized entry into the Dwelling on any Homesite, except in an emergency. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property, except as may be approved by the Board of Directors or Declarant.

2. Easements for Green Belt, Pond Maintenance and Flood Water and Other Landscape Reserves

Declarant and Association reserve for itself and its successors, assigns and designees the non-exclusive right and easement, but not the obligation, to enter upon the green belts, and other



landscape reserves, ponds, and other bodies of water located within the Property (a) to install, keep, maintain and replace pumps in order to obtain water for the irrigation of any of the Common Area, (b) to construct, maintain and repair any fountain, wall, dam, or other structure retaining water therein, and (c) to remove trash and other debris and fulfill their maintenance responsibilities as provided in this Declaration. Declarant's rights and easements hereunder shall be transferred to the Association at such time as Declarant shall cease to own Property subject to the Declaration, or such earlier time as Declarant may decide, in its sole discretion, and transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the green belts, ponds, or other bodies of water to the extent reasonably necessary to exercise their rights and responsibilities under this Section.

There is further reserved, for the benefit of Declarant, the Association, and their designees, a perpetual, non-exclusive right and easement of access and encroachment over Common Areas and Homesites (but not the Dwellings thereon) extending from the rear Lot line of Lots bordering any ponds or other bodies of water a distance of sixteen feet (16') in order: (a) to temporarily flood and back water upon and maintain water over such portions of the Property; (b) to fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the ponds, or other bodies of water within the Common Areas; (c) to maintain and landscape the slopes and banks pertaining to such ponds or other bodies of water; and (d) to enter upon and across such portions of the Property for the purpose of exercising rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other person or entity liable for damage resulting from flood due to hurricanes, heavy rainfall, or other natural disasters.

### 3. Easements to Serve Additional Property

The Declarant and Association and its duly authorized agents, representatives, and employees, as well as its designees, successors, assignees, licensees and mortgagees, shall have and there is hereby reserved an easement over the Common Areas for the purposes of enjoyment, use, access and development of any annexed property, whether or not such Property is made subject to this Declaration. This easement includes but is not limited to a right of ingress and

egress over the Common Areas for construction of roads and for tying in and installation of utilities on any annexed property.

Declarant agrees that if an easement is exercised for permanent access to any annexed property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance to any access roadway serving the property. Such agreement shall provide for sharing of costs based on the ratio that the number of Dwellings or buildings on that portion of the property that is served by the easement and is not made subject to this Declaration bears to the total number of Dwellings and buildings within the Properties and on such portion of the property.

#### 4. Monuments and Fences

The Association is hereby granted an easement to place, maintain and repair a monument or marker at any entrance to The Reserve at Cypress Creek.

All fencing installed on the portion of any Lot which abuts green belts, lakes, ponds, and other landscaping reserves shall be wrought iron in appearance and shall be in a location and of a material and design as required in this Section and as approved by the ARC. However, access to such green belts, lakes ponds and/or other landscaping reserves, if any, shall be through approved access points located on the Common Areas only. Gate access from individual Lots is strictly prohibited except on rear Lot lines adjacent to green belts, which rear gates are subject to prior ARC approval.

Special Fencing Requirements: Side fencing between any and all Lots where only the rear of the Lot abuts and/or is contiguous to green belts, lakes, ponds or other landscaping reserves shall be required with wood fencing not to begin any nearer than sixteen feet (16') from the rear property line of approved wrought iron fence which shall be located and run from the rear property line as established by the plat along the side property line, which shall not exceed six feet (6') in height and shall be identical in construction and design to the fence which separates the Lot from the green belts, lake, pond or other landscaping reserves.

All fencing installed on the portion of Lake-front Lots which abut or are adjacent to the lake shall be wrought iron in appearance and shall be in a location and of a material and design

as required by the Builder Guidelines, this section, and as approved by the ARC. An Owner's Lot shall be considered a Lake-front Lot for fencing requirements even if a common area is between the Lot and the lake.

On all other Lots, side and rear fencing shall be required and shall be in a location and of a material and design as required by this Section, the Building and/or Architectural Guidelines and as approved by the ARC.

Owner shall be responsible for the maintenance, repair and/or replacement of all fences in existence at time of transfer from Builder to Owner. Replacement fences shall be of a similar material and design as originally constructed. The maintenance of any portion of a fence which lies between Lots shall be the joint responsibility of each Lot owner on whose property the fence lies between. In the event an Owner fails to repair, replace or maintain said fence in a manner consistent with the subdivision in the sole discretion of the Board of Directors, the Association shall have the right, but not the obligation, to enter such property for the repair and/or replacement of such fence after notice to the Owner. Any expense incurred by the Association in effectuating such repairs/replacement shall be the responsibility of the Owner and shall be secured by the continuing lien on the Lot.

Notwithstanding anything contained herein to the contrary, The Declarant and/or the Association is hereby granted an easement for the right to install a perimeter fence along the eastern perimeter of the Property that abuts Telge Road. The Declarant and/or the Association shall have the obligation to maintain the perimeter fence, if one is installed, along the eastern perimeter of the Property that abuts Telge Road.

The easements granted to the Association under this Section may be exercised without notice to the Owner(s) across or on whose property the monument or marker is placed. However, except in the event of an emergency or a situation requiring immediate action, the Owner(s) of such property shall be notified as to when the Association will exercise its easement to repair, maintain or replace the monument or marker.

5. Lift Station Site

There is a lift station located within Restricted Reserve "E" on the recorded plat for The Reserve at Cypress Creek. Owners hereby agree to hold harmless the Declarant and the Association, and their successors and assigns and release them from any liability for the placement, construction, design, operation, maintenance and replacement of the lift station 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, odors, and/or traffic which may occur in the normal operation and/or maintenance of the lift station.

6. Detention/Drainage Reserves

Owners of Lots within The Reserve at Cypress Creek are advised that Restricted Reserves "B" and "D" are restricted to detention/drainage use as shown on the recorded plat of the Property. The Declarant and/or the Association shall have the obligation to maintain the Detention/Drainage Reserves. 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 the Detention/Drainage Reserves 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 the Detention/Drainage Reserves, and/or traffic which may occur due to the existence of the Detention/Drainage Reserves. 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 the Detention/Drainage Reserves.

G. Signs

No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling, fence or other improvement upon such Lot so as to be visible from public view except the following:

(1) For Sale Signs. An Owner may erect one (1) sign on his Lot, not exceeding 2'x3' in area, fastened only to a stake in the ground and extending not more than three (3') feet above the surface of such Lot advertising the property for sale.

(2) Political Signs. Not more than two political signs, not exceeding 2' x 3' in area, may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than thirty (30) days in advance of the election to which they pertain and shall be removed within three (3) days after such election.

(3) School Spirit Signs. Signs containing information about one or more children residing in the Dwelling and the school they attend shall be permitted so long as the sign is not more than 36" x 36" and is fastened only to a stake in the ground. There shall be no more than one sign for each child under the age of eighteen (18) residing in the Dwelling, and said signs may not be displayed more than ten (10) days in any calendar month, for more than three (3) months in a calendar year.

(4) Security Signs/Stickers. Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the Dwelling shall be permitted so long as the sign is not more than 8" x 8" or the sticker is no more than 4" x 4". There shall be no more than one sign and no more than six (6) stickers located on the windows or doors. Stickers shall also be permitted upon windows and doors for the "Child Find" program or a similar program sponsored by a local police and/or local fire department.

All signs within The Reserve at Cypress Creek are subject to the Builder Guidelines and Bulletins promulgated by the ARC.

A Builder and/or the Declarant may place certain information and advertising signs on Lots without the prior permission of the ARC, so long as such signs are similar to those listed as acceptable for Builder use in the Builder Guidelines promulgated by the ARC and so long as such signs do not otherwise violate this Declaration.

If any sign is placed within The Reserve at Cypress Creek in violation of this Declaration, the Association or its agents shall be authorized to enter upon any Lot or Homesite and remove and/or dispose of any such sign violation, and in doing so shall not be subject to any liability for trespass, other

tort or damages in connection with or arising from such entry, removal and/or disposal nor in any way shall the Association or its agent be liable for any accounting or other claim for such action.

H. Reservation of Minerals

The Property and any future land made subject to this Declaration are hereby subjected to the following reservation and exception: Declarant hereby reserves unto itself and its successors, assigns and predecessors in title in accordance with their respective interests of record all oil, gas and other minerals in, on and under said land, but Declarant on behalf of itself and its successors, assigns and predecessors in title hereby waives the right to use the surface of the land, other than that land or easements owned by Declarant or other owners of oil, gas or other minerals for exploring, drilling for, producing and mining oil, gas and other minerals, provided that Declarant hereby retains and reserves the right on behalf of itself and its successors, assigns and predecessors in title to pool the land with other lands for development of oil, gas and other minerals and the right to drill under and through the subsurface of the land below the depth of one hundred feet (100') by means of wells located on the surface of land or easements owned by Declarant or other owners of oil, gas or other minerals. Such exceptions, retained rights and reservations shall inure to the benefit of Declarant, its predecessors in title and their respective successors and assigns in accordance with their respective interest of record.

I. Common Areas

The Association, subject to the rights of the Members set forth in this Declaration and any amendments, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon and shall keep it in good, clean, attractive and sanitary condition. Any conveyance or encumbrance of the Common Areas shall be subject to the Owner's easement. The Common Area cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the lot Owners (excluding the developer). The mortgaging, dedication, and/or conveyance of Common Areas shall require approval of the Department of Housing and Urban Development and/or Department of Veterans Affairs so long as there is a Class B membership. If ingress or egress to any residence is through the Common Area, any conveyance or encumbrance of such area is subject to the lot Owner's easement. Every Owner has a right and easement of enjoyment to the Common Area, which is appurtenant to the title to the Lot. No Member may appropriate any portion of the Common Areas or any improvement thereon for his or her own exclusive use. Absolute liability is not imposed on Lot owners for damage to Common Area or Lots in The Reserve.

J. Window Treatments

Within three (3) months of occupying a Dwelling on any Homesite, an Owner shall install appropriate window treatments in keeping with the aesthetics of The Reserve at Cypress Creek. Appropriate window treatments would include, by way of illustration, curtains and draperies with backing material of white, light beige, cream, light tan, or light gray; blinds or mini-blinds of the same colors or natural wood; and/or shutters of the same colors or natural wood. No other window treatment color may be visible from the exterior of the Dwelling.

Expressly prohibited both before and after the initial three (3) months of occupancy are any temporary or disposable coverings not consistent with the aesthetics of The Reserve at Cypress Creek, such as reflective materials, newspapers, shower curtains, fabric not sewn into finished curtains or draperies, other paper, plastic, cardboard, or other materials not expressly made for or commonly used by the general public for window coverings in a residential subdivision of the same caliber as The Reserve at Cypress Creek.

K. Deed Restriction Enforcement

1. Authority to Promulgate Rules and Regulations

The Board of Directors has the authority to promulgate reasonable rules and regulations concerning enforcement of the covenants and restrictions contained in this Declaration, any Supplemental Declaration and/or amendments concerning the use and enjoyment of Common Areas.

2. Attorney's Fees and Fines

In addition to all other remedies that may be available, after notice and an opportunity to be heard as required by §209 of the Texas Property Code as same may be amended, the Association has the right to collect attorney fees and/or fines as set by the Board from any Owner that is in violation of this Declaration, any applicable Supplemental Declaration or amendments, any Architectural Guidelines, the Building Guidelines, or any other rule or regulation promulgated by the Association.

3. Remedies

Every Owner shall comply with all provisions of this Declaration, the By-Laws, and the rules and regulations of the Association, all other dedicatory instruments of the Association and any amendments or supplements to any of the foregoing. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association. In addition, the Association may avail itself of any and all remedies provided in this Declaration, any amendment, Supplemental Restriction, the By-Laws or any other dedicatory instruments.

4. Enforcement by Owners

Each lot owner is empowered to enforce the covenants.

5. Private Streets and Utilities:

The streets within the Property are private streets. The Northwest Harris County Municipal Utility District No. 5 (hereinafter referred to as "MUD 5") will own and maintain all water, sewer and drainage facilities, including storm drains. The Declarant hereby grants to MUD 5, or its successor utility district, an easement of ingress and egress to the Property, to construct and maintain all water, sewer and drainage facilities, including storm drains.

In the event the Declarant and/or the Association fails to maintain the private streets, MUD 5, or its successor utility district, may make such repairs as it deems necessary to maintain the streets and paving at the expense of the Association.

L. Antennas

No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any Homesite, which is visible from any street, common area or other Lot unless it is impossible to receive signals from said location. In that event the receiving device may be placed in a visible location as approved by the ARC. The ARC may require as much screening as possible while not substantially interfering with reception. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a



portion of the Property. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No broadcast antenna mast may exceed the height of the center ridge of the roofline. No Multichannel Multipoint Distribution Service ("MMDS") antenna mast may exceed the height of twelve feet (12') above the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property. The Declarant by promulgating this Section is not attempting to violate the Telecommunications Act of 1996 ("the Act"), as may be amended from time to time. This Section shall be interpreted to be as restrictive as possible while not violating the Act.

In the event that it is impossible to receive a signal from a non-visible location, the installation of antennas shall be subject to Rules and Regulations which may be promulgated by the Association setting out preferred alternate locations for antennas.

M. General Nuisances

No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, animal, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding Homesites, Recreational Sites, or Common Areas.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Property. There shall not be maintained any plants, animals, device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for residential monitoring purposes, shall be installed or operated on the Property, unless required by federal, state or local regulation. The use and discharge of firecrackers and other fireworks is prohibited within the Property.

It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Homesite. The pursuit of hobbies or other visible activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, that might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours.

N. Tree Removal

No trees greater than three (3) caliber inches to be measured at a point six (6) inches above grade shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved by the ARC. In the event of an intentional or unintentional violation of this Section, the violator may be required to replace the removed tree with one (1) or more comparable trees of such size and number, and in such locations, as the Association may determine necessary, in its sole discretion, to mitigate the damage.

O. Animals and Pets

No animals, livestock (including swine of any kind) or poultry of any kind shall be raised, bred, or kept on any portion of the Property, except that dogs, cats, or other usual and common household pets, not to exceed a total of two (2) pets, may be permitted in a Dwelling. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. No pets are permitted to roam free. If, in the sole discretion of the Association, any pet endangers the health, makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners of other Dwellings or the owner of any portion of the Property it shall be removed upon request of the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs and cats shall at all times whenever they are outside a Dwelling and/or fence be confined on a leash held by a responsible person.

P. Swimming Pools/Spas

No above ground swimming pools are permitted. Above ground spas are permitted so long as they do not exceed length of ten feet (10') by width of ten feet (10') and thirty-six inches (36") high. All swimming pools and spas require architectural approval as set out in Article VII herein.

Q. Out Buildings/Accessory Buildings

No out building and/or accessory building (including, but not limited to sheds, greenhouses, gazebos, play houses, shade trellis) shall be constructed or placed on a Lot within The Reserve at Cypress Creek without the prior written approval of the Association. The Association shall have the right without the obligation to promulgate rules, regulations and guidelines regarding the size, quality, location and type of these structures.

R. Window Air Conditioning Units

No window or wall type air conditioners shall be permitted to be used, placed or maintained on or in any building on the Lots, with the exception that window or wall type air conditioners shall be permitted for the benefit of a garage if such air conditioning unit is located at the rear of the garage unit, screened from public view, and is screened from view by any other Lot, Common Area or Dwelling. All window air conditioning units require architectural approval as set out in Article VII herein.

S. Lakes, Ponds and Other Water Bodies

Swimming, fishing, boating, or other similar activities shall not be permitted within the lakes, ponds, or other bodies of water within The Reserve at Cypress Creek. The Board of Directors has the right to promulgate rules and regulations governing the use of the lakes, ponds, and other bodies of water. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or other bodies of water within or adjacent to Property.

Notwithstanding the foregoing, the Association, and the Declarant (for so long as the Declarant owns property that is or may be subjected to this Declaration) may use and regulate the use of any lakes, ponds or other bodies of water within The Reserve at Cypress Creek for the irrigation of the Common Areas, for any other purpose deemed appropriate by the Board or Declarant, subject to the terms of any easement agreement affecting such use. The Declarant's rights under this Section shall be superior to any rights of the Association.

## ARTICLE VII. ARCHITECTURAL RESTRICTIONS

### A. Architectural Review Committee - "ARC"

The initial ARC shall be composed of three (3) individuals designated by Declarant, one of whom may be designated as representative to act on behalf of the ARC. The Declarant reserves the right to appoint replacements as necessary by reason of resignation, removal or incapacity. The Declarant shall retain the right of ARC appointment until the first to occur of the following::

1. the Declarant no longer owns any Lots in The Reserve at Cypress Creek, or
2. the Declarant so desires to relinquish its authority over ARC appointment,

At such time, the Board of Directors of the Association shall have the right to replace such ARC members by duly appointing three Owners in good standing with the Association. The Board of Directors reserves the right to appoint replacements as necessary by reason of resignation, removal or incapacity. Such removal and/or appointment shall be at the sole discretion of the Board of Directors.

The Board of Directors shall have the right to review any action or non-action taken by the ARC and shall be the final authority.

At any time prior to the happening of (1) or (2) above, the Declarant may, without obligation, assign to the Board of Directors the responsibility for review and approval of modifications to existing Dwellings.

The ARC shall have the right, but not the obligation, to promulgate Building Guidelines and/or Architectural Guidelines as to construction types and aesthetics as set by the ARC, which may be changed at any time by the ARC without notice to the Owners.

### B. ARC Approval Required

No buildings, additions, modifications or improvements shall be erected, placed or performed on any Homesite until the construction plans and specifications including, but not limited to, the site plan, design development plan, and exterior plan have been submitted in duplicate to and approved in writing by the ARC as hereinafter provided. Builder may submit their design plans as master design plans, which plans shall include all specifications, including specifications as to brick color and paint color, that may be used when building each design. The ARC or Board of Directors may, at their sole discretion, retain and/or delegate review of plans and specifications to a designated AIA architect or

other such person or firm as may be designated by the Board of Directors, experienced or qualified to review same, who may then render an opinion to the ARC or Board of Directors. Approval of plans and specifications shall not cover or include approval for any other purpose and specifically, but without limitation, shall not be construed as any representation as to or responsibility for the structural design or engineering of the improvement or the ultimate construction thereof. In the event the ARC fails to approve such plans and specifications within thirty (30) days after the receipt thereof, they shall be deemed to be disapproved. The ARC or its assignee, at its sole discretion and to the extent wherein not expressly prohibited by this Declaration and any amended or Supplemental Declaration, is hereby permitted to approve in writing deviations in the general use restrictions set forth in Article VI in instances where, in its judgment, such deviations will result in a more common beneficial use and enhance the overall development plan for the Property. The approval of a deviation in the general use restrictions by the ARC does not obligate the ARC to approve a similar deviation at a later time. Notwithstanding any other provision contained herein, any Dwellings, additions, or improvements erected or placed on any Homesite shall be deemed to comply with the building requirements of the ARC and related covenants contained in the Declaration unless the ARC so notifies the Owner otherwise in writing within four (4) years from the completion thereof. This provision, however, shall not be deemed a waiver of the right of the ARC or Declarant to enforce the continuing restriction of use contained herein.

The ARC shall have the authority hereunder to require any Owner or Owner's agents or contractors to cease and desist in constructing or altering any improvements on any Homesite, where such actions have not first been reviewed and approved, constitute a violation of the Declaration, the Building Guidelines or any other documents promulgated by the ARC. The violating Owner shall remove such violating improvements or sitework at its sole expense and without delay, returning same to its original condition or bringing the Homesite into compliance with the Declaration, ARC documents and any plans and specifications approved by the ARC for construction on that Homesite. If an Owner proceeds with construction that is not approved by the ARC, or that is a variance of the approved plans, the Association may assess fines as provided in Article XIV, Section F and may continue to assess such fines until ARC approval is granted or the violation is removed. This Declaration is notice of such liability for violation and Owners hereby agree to bear the cost and expense to cure any violations according to this provision, regardless of the substantial cost, time or loss of business involved.

Written notice may be delivered to Owner or any agent or contractor with apparent authority to accept same and notice shall be binding on Owner as if actually delivered to Owner.

The ARC or its agents or assigns shall have the right, but not the obligation, to enter any Homesite to determine if violations of this Declaration, the Building Guidelines, or any other documents promulgated by the ARC exist. In so doing, the ARC shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry nor in any way shall the Association or its agent be liable for any accounting or other claim for such action.

The ARC shall have the right to set reasonable time constraints for both the commencement and completion of construction, which constraints shall be no less than ninety (90) days to commence construction and nine (9) months to complete construction. If construction fails to start before the designated commencement date or is not completed before the designated completion date the plans shall be deemed not approved.

The ARC has the right to charge a review fee, to be established by the Board of Directors, for review of any plans or specifications submitted for approval to the ARC.

C. Building Setbacks

No Dwelling or other structure shall be erected nearer to any street or property line than that allowed by the applicable plat or other recorded documents, provided that a minimum five foot (5') side setback shall be observed on all Lots, with the exception of detached garages which may be constructed thirty-six inches (36") from side property lines provided such garage is constructed at least sixty-five feet (65') from the front property line. Driveways shall be permitted to be placed within a setback as approved by the ARC.

D. Landscaping

All open, unpaved space in the front and at the sides of a Homesite, shall be planted and landscaped. Landscaping in accordance with the plans approved by the ARC must be installed prior to occupancy of any Dwelling constructed on the Property.

Any significant changes in the existing landscaping on any Homesite must have written approval from the ARC.

E. Grading and Drainage

Topography of each and every Homesite must be maintained with proper grading and drainage systems such that runoff of water (rain or other precipitation, or manmade irrigation) does not cause undue erosion of the subject Homesite itself or any other Homesites, whether adjacent to the subject Homesite or not, or the Common Areas. Owners causing (either directly or indirectly) erosion or other incident damage to personal or real property due to inadequate or defective grading or drainage measures on their own Homesite, or because of excess runoff shall be liable to all such damaged parties for the replacement, repair and/or restoration of such damaged real or personal property.

Owner shall be responsible for ensuring that all local, state and federal rules and regulations regarding drainage and run-off are met.

F. Temporary Structures

Temporary Structures may only be erected on undeveloped Property by builders or the Declarant with the prior approval of the ARC. Even temporary structures shall be maintained in good condition and all construction debris shall be contained to the site. Time limitations for such structures are limited to the period of active and exclusive construction and sales within The Reserve at Cypress Creek.

G. Garages

Dwellings must at all times have either attached or detached garages capable of housing a minimum of two (2) full size vehicles. Garages are required to maintain fully operational overhead doors which are in good condition at all times.

H. Minimum Square Footage

All one-story Dwellings must contain a minimum of one thousand eight hundred (1800) square feet of living area which shall not include porches, garages or non-air conditioned areas.

I. Lake-Front Lots

The following Lots are hereby designated as Lake-front Lots:

- Lots One (1) and Two (2); Block One (2); Section One (1)
- Lots Twenty-five (25) through Forty-three (43); Block One (2); Section One (1)
- Lot Fifty-seven (57); Block (2), Section One (1)

There are special fencing requirements for the portions of all Lake-Front Lots that abut the Lake (Restricted Reserve "B"). Such fencing shall be mandatory and shall be as set out in the Builder Guidelines and subject to prior ARC approval.

## ARTICLE VIII. MAINTENANCE

### A. General Maintenance

Each Owner shall maintain and keep in good repair his or her Dwelling and all structures, parking areas and other improvements, including mail box, driveway and its apron portion forward of the building line comprising the Homesite. All structures and other improvements designed to be painted must be kept painted and the paint may not be allowed to become faded, cracked, flaked or damaged in any manner. Grass, vegetation and weeds on each Homesite shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. Grass growing onto or over sidewalks, driveways, and curbs shall be presumed to be unattractive.

### B. Landscaping

In the event any Owner of any Homesite within the Property fails to maintain the landscaping, grass or vegetation of a Homesite in a manner consistent with the overall standard established within the Property and satisfactory to the Board of Directors of the Association, the Association, after ten (10) days' notice to the Owners of the Homesite setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right but not the obligation, through its agent, contractors and/or employees, to enter upon said Homesite and to maintain, cut, trim and/or restore such landscaping, grass or vegetation at the Owner's expense.

### C. Dwelling Exterior

In the event any Owner of any Homesite fails to maintain the exterior of the Homesite, including the exterior of the Dwelling or other structures and the parking areas, in a manner consistent with the overall standard established within the Property as solely determined by the Board of Directors of the Association, the Association, after thirty (30) days' notice to the Owner of the Homesite setting forth the action intended to be taken by the Association and after approved by a two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its agents, contractors and/or employees, to enter upon said Homesite and to repair, maintain, or restore the exterior of the Dwelling, sidewalks, other structure or parking areas at the Owner's expense.



D. Other Hazards

To the extent necessary to prevent rat infestation, diminish fire hazards and/or diminish hazards caused by structural damage, the Association shall have the right, but not the obligation, through its agents, contractors and/or employees, to enter any unoccupied Dwelling, or other improvement located upon such Homesite, without notice to take the action necessary to prevent such rat infestation, diminish such fire hazards or diminish hazards caused by structural damage at the Owner's expense.

E. Liability, Cost and Approval

Neither the Association nor its agents, contractors, or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance, landscaping or other work authorized in this Article. The cost of such exterior maintenance, interior hazard diminution and other work shall be the personal obligation of the Owner of the Homesite on which it was performed and shall become part of the Assessment payable by the Owner and secured by the lien retained in the Declaration. Alternately, the Association or any Owner of a Homesite may bring an action at law or in equity to cause the Owner to bring said Homesite into compliance with these restrictions.

All Members' replacement, repair and restoration practices as to the improvements on Property within The Reserve at Cypress Creek are subject to the prior approval of the ARC and must comply with all Builder and/or Architectural Guidelines which may change from time to time, as found necessary and appropriate in the ARC's sole discretion.

## **ARTICLE IX. STANDARDS AND PROCEDURES**

The ARC may establish and promulgate the Building Guidelines and/or Architectural Guidelines, which the ARC may modify or amend as it deems necessary and appropriate for the orderly development of the Property and The Reserve at Cypress Creek, including, but not limited to, those portions of the Building Guidelines regarding workmanship, materials, building methods, living area square footage, observance of requirements concerning installation and maintenance of public utility facilities and services, and compliance with governmental regulations. The Building Guidelines may be amended by the ARC without notice, but they shall not be applied retroactively to reverse a prior approval granted by the ARC or the Association to any Owner or prospective purchaser of any Homesite. The rules, standards, and procedures set forth in the Building Guidelines, as same may be

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 pro rated 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.

## ARTICLE XIV. GENERAL PROVISIONS

### A. Severability

The invalidity of any one or more of the provisions of this Declaration shall not affect the validity of the other provisions thereof.

### B. Compliance with Laws

At all times, each Owner shall comply with all applicable federal, state, county, and municipal laws, ordinances, rules, and regulations with respect to the use, occupancy, and condition of the Homesite and any improvements thereon. If any provision contained in this Declaration or any supplemental declaration or amendment is found to violate any law, then the provision shall be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by law.

### C. Gender and Number

The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof applicable either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

### D. Headlines

The titles and captions for this Declaration and the sections contained herein are for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

### E. Governing Law

The provisions in this Declaration shall be governed by and enforced in accordance with the laws of the State of Texas. Any and all obligations performable hereunder are to be performed in Harris County, Texas.

F. Fines for Violations

The Association may assess fines for violations of the restrictive covenants contained in this Declaration, other than non-payment or delinquency in assessments, in amounts to be set by the Board of Directors, which fines shall be secured by the continuing assessment lien set out in this Declaration.

G. Books and Records

The books, records and papers of the Association shall, upon written request and by appointment, during normal business hours, be subject to inspection by any Member, for any proper purpose. The Articles of Incorporation, By-Laws, and this Declaration shall likewise be available, upon written request, for inspection, by appointment during normal business hours by any Member at the office of the Association, for any proper purpose as set forth in the By-Laws.

H. Notices

Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

I. Mergers

Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, the Association's properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation or to a like organization or governmental agency. The surviving or consolidated association shall administer any restrictions together with any Declarations of Covenants, Conditions and Restrictions governing these and any other properties, under one administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration. Any such merger or consolidation shall require approval of the Department of Housing and Urban Development and/or Department of Veterans Affairs so long as there is a Class B membership.

J. Current Address and Occupants

Owners are required to notify the Association in writing of their current address if other than the physical address of the Lot or Homesite at all times. If an Owner fails to notify the Association of their

current address, the Association shall use the address of the Lot or Homesite as the current address. If Owner leases the property, he shall supply the name of the tenant present upon the execution of any lease.

K. Security

NEITHER THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, NOR THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. NEITHER SHALL THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR SUCCESSOR DECLARANT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT DOES NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY DWELLING AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO DWELLINGS AND TO THE CONTENTS OF DWELLINGS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, 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, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 12<sup>th</sup> day of August, 2002.

BEAZER HOMES TEXAS, L.P. a Delaware limited partnership, By: Beazer Homes Texas Holdings, Inc., a Delaware corporation, the General Partner; Beazer Homes Holding Corp., a Delaware corporation the Limited Partner

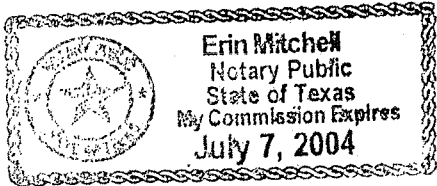
*By*

By: *Dan Olson*  
Print Name: \_\_\_\_\_  
Print Title: **Dan R. Olson**  
**Authorized Agent**  
**Houston Division**

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

BEFORE ME, the undersigned authority, on this day personally appeared *Dan R. Olson*, the *Authorized Agent* 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 expressed.

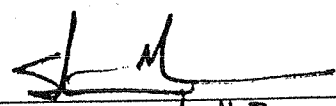
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this *8* day of *August*, 2002.



*Erin Mitchell*  
Notary Public – State of Texas

PACIFIC UNITED, L.P., a Texas limited partnership, by Pacific United Development Corporation, its general partner

*gac*



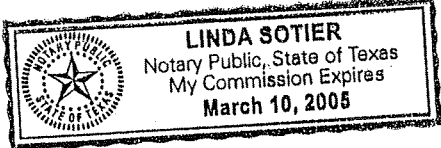
Print Name: Steve VanHofe  
Print Title: Senior V. P.

STATE OF TEXAS §  
  §  
  §  
COUNTY OF ~~HARRIS~~ Ft. Bend §

BEFORE ME, the undersigned authority, on this day personally appeared Steve VanHofe the SI. Vice President of Pacific United Development Corporation the general partner of PACIFIC UNITED, L.P. 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 12<sup>th</sup> day of August, 2002.

Linda Sotier  
Notary Public - State of Texas



FILED  
2002 AUG 21 PH 3:19  
*Bevally A. Kayman*  
COUNTY CLERK  
HARRIS COUNTY TEXAS

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

RECORDERS MEMORANDUM  
ALL BLACKOUTS, ADDITIONS AND CHANGES  
WERE PRESENT AT THE TIME THE INSTRUMENT  
WAS FILED AND RECORDED.

AUG 21 2002



*Bevally A. Kayman*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

**ROBERTS ♦ MARKEL ♦ GUERRY P.C.**

*Attorneys And Counselors At Law*  
2500 City West Boulevard, Suite 1350  
Houston, Texas 77042  
Telephone (713) 840-1666  
Facsimile (713) 840-9404

[rhimani@rmgattorneys.com](mailto:rhimani@rmgattorneys.com)

Jeffrey D. Roberts  
Marc D. Markel  
Theodore L. Guerry  
Ross Asher  
John Bradley Mitchell  
Richard S. Crowther  
Clayton R. Hearn  
Stephanie L. Quade

Nancy M. Bell  
Diane C. Bistodeau  
Tamara L. Simich  
Lisa L. Gambrell  
Andrew J. Wupper  
Pamela W. Montgomery  
Laura M. Alaniz  
Gregory W. Smith  
Richa Himani  
Charlotte B. Floeck  
Keyla S. McCullum

*Richa Himani*  
*Attorney at Law*

August 25, 2003

Mr. Scott Burrer  
Beazer Homes  
10235 W. Little York, Suite 240  
Houston, TX 77040

*Re: Recorded Deeds for the Reserve at Cypress Creek*  
*Our File No: 1460-013*

Dear Scott:

Please find enclosed a copy of the following recorded documents:

1. Deed granting certain reserves to Northwest Harris County Municipal Utility District No. 5 (recorded on August 11, 2003 under Clerk's File No. W915791); and
2. Deed granting certain reserves to the Reserve at Cypress Creek Community Association, Inc. (recorded on August 11, 2003 under Clerk's File No. W915792).

The originals of the documents shall be retained in our office.

By copy of this letter I am forwarding a copy of the recorded Deeds to Carolyn Bonds of Crest Management and Steve Vonhofe of Pacific United.

Please do not hesitate to call us if you have any questions.

Very truly yours,

  
Richa Himani

Enclosures

Cc: Steve Vonhofe  
Pacific United, L.P.  
1470 First Colony Blvd.

Suite 200  
Sugar Land, Texas 77479

Carolyn Bonds  
Crest Management  
16360 Park Ten Place, Suite 310  
Houston, Texas 77084-5049



700  
15  
B

DEED  
(Without Warranty)

W915792  
08/11/03 100233469

\$15.00

STATE OF TEXAS §  
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

That, Beazer Homes Texas, LP, a Delaware limited partnership and Pacific United, L.P., a Texas limited partnership, hereinafter collectively referred to as "GRANTOR", for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable considerations to GRANTOR in hand paid by the Reserve at Cypress Creek Community Association, Inc., a Texas non-profit corporation, hereinafter called "GRANTEE", the receipt and sufficiency of which is hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD, AND CONVEYED, and by these presents does GRANT, BARGAIN, SELL AND CONVEY unto the said GRANTEE, all of that certain real property together with all appurtenances and improvements situated thereon and rights with respect thereto, all located in Harris County, Texas, as described in Exhibit "A" attached and made a part hereof ("the Property").

lu

THIS CONVEYANCE is made and the Property is accepted as is and with all faults, and subject to all valid and subsisting restrictions, rights-of-way, mineral and royalty reservations, maintenance charges together with any lien securing said maintenance charges, zoning laws, ordinances of municipal or governmental authorities and conditions and covenants, if any, applicable to and enforceable against the Property, of record in the Office of the County Clerk of Harris County, Texas.

TO HAVE AND TO HOLD with all and singular, the rights and appurtenances thereto in anywise belonging unto said GRANTEE, Grantee's successors and assigns forever. As a material part of the consideration for this Deed Without Warranty, Grantor and Grantee agree that Grantee is taking the Property "AS IS" with any and all latent and patent defects and that there is no warranty by Grantor that the Property is fit for a particular purpose. Grantee acknowledges that it is not relying upon any representation, statement or other assertion with respect to the Property condition, but is relying upon its examination of the Property. Grantee takes the Property under the express understanding there are no warranties.

THIS CONVEYANCE IS MADE SUBJECT TO:

1. All easements, restrictions, building set-back lines and other matters appearing of record in Harris County, Texas, and affecting the above described property or any part thereof.
2. Grantor hereby retains an easement for ingress and egress across the Property.
3. The agreement by and between Grantor and Grantee that Grantee hereby assumes any and all tax obligations for the calendar year 2003 and all years thereafter on the above described property.
4. Grantor hereby retains the right to grant additional easements.
5. Grantor hereby retains all minerals rights in, on, and under the Property.

6. Grantee's sole permitted use of the property shall be as landscaping, detention, drainage and open space as same are designated on the recorded plat for the Reserve at Cypress Creek which plat and reserves are more particularly described on the attached Exhibit "A". Such use may not be changed without the prior written approval of Grantor, its successors or assigns and Grantee.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THIS DEED IS MADE AND ACCEPTED (A) WITHOUT RECOURSE ON GRANTOR AND (B) WITHOUT REPRESENTATION AND WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED OR STATUTORY) BY GRANTOR. GRANTOR IS CONVEYING THE PROPERTY COVERED BY THIS DEED ON AN "AS IS, WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT REPRESENTATION OR WARRANTY (ALL OF WHICH GRANTOR DISCLAIMS).

EXECUTED this the 31<sup>st</sup> day of July, 2003.

Address of Grantee:

10235 West Little York  
Suite 140  
Houston, Texas 77047  
Harris County

**GRANTORS:**

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

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

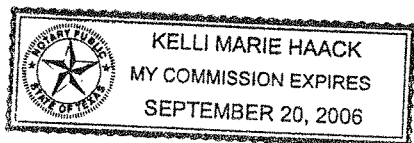
By: [Signature]  
Print Name: Dan Olson  
Print Title: Gen. Mgr. Land

(4)  
Zou

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

BEFORE ME, the undersigned authority, on this day personally appeared Dan Olson the Vice President Land of BEAZER HOMES TEXAS HOLDINGS, INC. the general partner of BEAZER HOMES TEXAS, L.P. 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 31<sup>st</sup> day of July, 2003.



Kelli Marie Haack  
Notary Public - State of Texas

PACIFIC UNITED, L.P., a Texas limited partnership

*Jan*

By: Pacific United Development Corp., its general partner

By: *[Signature]*  
Name: By: Steve VonHofe  
Title: Division President  
Houston

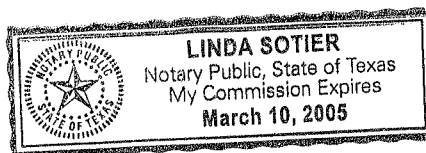
STATE OF TEXAS §

COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared steve Von Hofe the Division President of Pacific United Development Corp., the general partner of PACIFIC UNITED, L.P., 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 1<sup>st</sup> day of August, 2002.<sup>3</sup>

*Linda Sotier*  
Notary Public - State of Texas



FILE FOR RECORD  
8:00 AM

AUG 11 2003

*Beverly R. Highman*  
County Clerk, Harris County, Texas

After Recording Return To:

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

**EXHIBIT "A"**

Restricted Reserve "A", 1.564, Landscape/Open Space, acres located in the Reserve at Cypress Creek according to the plat thereof recorded under Clerk's File No. V916686 and Film Code No. 516249 of the Plat Records of Harris County, Texas.

Restricted Reserve "B", Detention/Drainage, 3.245 acres located in the Reserve at Cypress Creek according to the plat thereof recorded under Clerk's File No. V916686 and Film Code No. 516249 of the Plat Records of Harris County, Texas.

Restricted Reserve "C", Landscape/Open Space, 0.751 acres located in the Reserve at Cypress Creek according to the plat thereof recorded under Clerk's File No. V916686 and Film Code No. 516249 of the Plat Records of Harris County, Texas.

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

AUG 11 2003



*Dorely B. Kayman*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

DEED  
(Without Warranty)

W915792  
08/11/03 100233469

\$15.00

STATE OF TEXAS §  
COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

That, Beazer Homes Texas, LP, a Delaware limited partnership and Pacific United, L.P., a Texas limited partnership, hereinafter collectively referred to as "GRANTOR", for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable considerations to GRANTOR in hand paid by the Reserve at Cypress Creek Community Association, Inc., a Texas non-profit corporation, hereinafter called "GRANTEE", the receipt and sufficiency of which is hereby acknowledged and confessed, has GRANTED, BARGAINED, SOLD, AND CONVEYED, and by these presents does GRANT, BARGAIN, SELL AND CONVEY unto the said GRANTEE, all of that certain real property together with all appurtenances and improvements situated thereon and rights with respect thereto, all located in Harris County, Texas, as described in Exhibit "A" attached and made a part hereof ("the Property").

THIS CONVEYANCE is made and the Property is accepted as is and with all faults, and subject to all valid and subsisting restrictions, rights-of-way, mineral and royalty reservations, maintenance charges together with any lien securing said maintenance charges, zoning laws, ordinances of municipal or governmental authorities and conditions and covenants, if any, applicable to and enforceable against the Property, of record in the Office of the County Clerk of Harris County, Texas.

TO HAVE AND TO HOLD with all and singular, the rights and appurtenances thereto in anywise belonging unto said GRANTEE, Grantee's successors and assigns forever. As a material part of the consideration for this Deed Without Warranty, Grantor and Grantee agree that Grantee is taking the Property "AS IS" with any and all latent and patent defects and that there is no warranty by Grantor that the Property is fit for a particular purpose. Grantee acknowledges that it is not relying upon any representation, statement or other assertion with respect to the Property condition, but is relying upon its examination of the Property. Grantee takes the Property under the express understanding there are no warranties.

THIS CONVEYANCE IS MADE SUBJECT TO:

1. All easements, restrictions, building set-back lines and other matters appearing of record in Harris County, Texas, and affecting the above described property or any part thereof.
2. Grantor hereby retains an easement for ingress and egress across the Property.
3. The agreement by and between Grantor and Grantee that Grantee hereby assumes any and all tax obligations for the calendar year 2003 and all years thereafter on the above described property.
4. Grantor hereby retains the right to grant additional easements.
5. Grantor hereby retains all minerals rights in, on, and under the Property.

700  
15  
B

lu

6. Grantee's sole permitted use of the property shall be as landscaping, detention, drainage and open space as same are designated on the recorded plat for the Reserve at Cypress Creek which plat and reserves are more particularly described on the attached Exhibit "A". Such use may not be changed without the prior written approval of Grantor, its successors or assigns and Grantee.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THIS DEED IS MADE AND ACCEPTED (A) WITHOUT RECOURSE ON GRANTOR AND (B) WITHOUT REPRESENTATION AND WARRANTY OF ANY KIND (WHETHER EXPRESS, IMPLIED OR STATUTORY) BY GRANTOR. GRANTOR IS CONVEYING THE PROPERTY COVERED BY THIS DEED ON AN "AS IS, WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT REPRESENTATION OR WARRANTY (ALL OF WHICH GRANTOR DISCLAIMS).

EXECUTED this the 31<sup>st</sup> day of July, 2003.

Address of Grantee:

10235 West Little York  
Suite 140  
Houston, Texas 77047  
Harris County

**GRANTORS:**

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

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

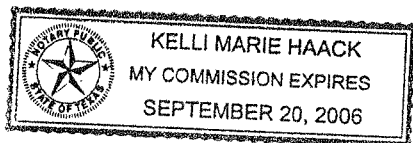
By: [Signature]  
Print Name: Dan Olson  
Print Title: S. V. P. Loan

(4)  
Low

STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Dan Olson the Vice President Loan of BEAZER HOMES TEXAS HOLDINGS, INC. the general partner of BEAZER HOMES TEXAS, L.P. 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 31<sup>st</sup> day of July, 2003.



Kelli Marie Haack  
Notary Public - State of Texas

PACIFIC UNITED, L.P., a Texas limited partnership

*Jon*

By: Pacific United Development Corp., its general partner

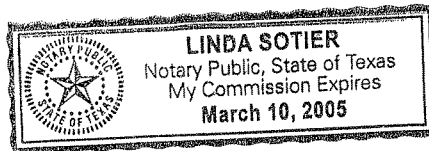
By: *[Signature]*  
Name: By: Steve VonHofe  
Title: Division President  
Houston

STATE OF TEXAS §  
  §  
COUNTY OF FORT BEND §

BEFORE ME, the undersigned authority, on this day personally appeared Steve Von Hofe the Division President of Pacific United Development Corp., the general partner of PACIFIC UNITED, L.P., 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 1<sup>st</sup> day of August, 2002.<sup>3</sup>

*[Signature]*  
Notary Public - State of Texas



FILE FOR RECORD  
8:00 AM

AUG 11 2003

*[Signature]*  
County Clerk, Harris County, Texas

After Recording Return To:

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

**EXHIBIT "A"**

Restricted Reserve "A", 1.564, Landscape/Open Space, acres located in the Reserve at Cypress Creek according to the plat thereof recorded under Clerk's File No. V916686 and Film Code No. 516249 of the Plat Records of Harris County, Texas. D

Restricted Reserve "B", Detention/Drainage, 3.245 acres located in the Reserve at Cypress Creek according to the plat thereof recorded under Clerk's File No. V916686 and Film Code No. 516249 of the Plat Records of Harris County, Texas.

Restricted Reserve "C", Landscape/Open Space, 0.751 acres located in the Reserve at Cypress Creek according to the plat thereof recorded under Clerk's File No. V916686 and Film Code No. 516249 of the Plat Records of Harris County, Texas.

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

AUG 11 2003



*Bonny B. Kayman*

COUNTY CLERK  
HARRIS COUNTY, TEXAS