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DECLARATION OF PROTECTIVE COVENANTS

FOR

CINCO RANCH SOUTHWEST RESIDENTIAL PROPERTIES

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**DECLARATION OF PROTECTIVE COVENANTS
FOR
CINCO RANCH SOUTHWEST
RESIDENTIAL PROPERTIES**

This Declaration of Protective Covenants for Cinco Ranch Southwest Residential Properties (as it may be amended, the "**Declaration**") is made by Terrabrook Cinco Ranch Southwest, L.P., a Delaware limited partnership, on behalf of itself and its successors and assigns ("**Declarant**").

PREAMBLE

Cinco Ranch Southwest is a mixed-use planned community located in the Fort Bend County, Texas, which consists or may consist of a variety of residential and commercial uses. This Declaration establishes a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of various residential properties and common areas within Cinco Ranch Southwest.

An integral part of the plan for operation and administration of Cinco Ranch Southwest is Cinco Ranch Residential Association II, Inc., which has been incorporated as a non-profit corporation pursuant to the Texas Business Organizations Code to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

This document does not, and is not intended to, create a condominium under Texas law.

DECLARATION

The Declarant, by executing and recording this Declaration, declares that the property described in Exhibit "A," and any additional property made subject to this Declaration by Supplemental Declaration or amendment, shall constitute the residential planned community of Cinco Ranch Southwest referred to in this Declaration as the "**Community**" or "**Residential Properties**"). This Declaration shall encumber the title to such property, shall govern the development and use of such property, and shall be binding upon the Declarant and the future owners of any portion of such property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter holds any legal, equitable, or beneficial interest in any portion of such property. This Declaration shall also be binding upon Cinco Ranch Residential Association II, Inc., its successors and assigns (the "**Residential Association**").

Article 1

Governing Documents

A community is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agrees to uphold. Those principles are set forth in the community's governing documents, which bind the community together, give it structure, and provide guidance to all who participate in its growth and evolution.

1.1. Scope and Applicability.

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Declaration as the "**Governing Documents**," include this Declaration and the other documents described in Table 1.1, as they may be amended. All owners and occupants of property in the Community, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

GOVERNING DOCUMENTS	
Declaration: (recorded)	this Declaration for Cinco Ranch Southwest Residential Properties, which creates obligations that are binding upon the Residential Association and all present and future owners of any portion of the Residential Properties
Supplemental Declaration: (recorded)	a recorded Supplemental Declaration to this Declaration, which submits additional property to this Declaration, creates easements over property described in such Supplemental Declaration, imposes additional obligations or restrictions on such property, designates special areas as described in Article 3, or any of the foregoing
Certificate of Formation: (filed with Secretary of State)	the Certificate of Formation of Cinco Ranch Residential Association II, Inc., as they may be amended, which establish the Residential Association as a nonprofit corporation under Texas law
By-Laws: (attached as Exhibit "D")	the By-Laws of Cinco Ranch Residential Association II, Inc., adopted by its Board of Directors, as they may be amended, which govern the Residential Association's internal affairs, such as voting, elections, meetings, etc.
Design Guidelines: (Declarant adopts; initial set attached as Exhibit "E")	the design standards and architectural and aesthetics guidelines adopted pursuant to Article 5, as they may be amended, which govern new construction and modifications to property within the Community, including structures, landscaping, and other items
Rules: (initial set attached as Exhibit "C")	the rules of the Residential Association adopted pursuant to Article 7, which regulate use of property, activities, and conduct within the Residential Properties
Board Resolutions: (Board adopts)	the resolutions which the Residential Association's Board of Directors adopts to establish rules, policies, and procedures for internal governance and Residential Association activities and to regulate the operation and use of property which the Residential Association owns or controls

Table 1.1 - Governing Documents

1.2. Additional Covenants and Restrictions.

The owner of any property within the Community may impose covenants on such property in addition to those set forth in the Governing Documents, with such approval as may be required pursuant to Article 17. If the provisions of any such additional covenants are more restrictive than the provisions of this Declaration, the more restrictive provisions shall control. The Residential Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

1.3. Conflicts and Ambiguities.

If there are conflicts between any of the Governing Documents and Texas law, Texas law shall control. If there are conflicts between or among any of the Governing Documents, then the Certificate of Formation, Declaration, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

The Governing Documents use diagrams, tables, and keynotes to illustrate concepts and assist the reader. If there is a conflict between any diagram, table, or keynote and the text of the Governing Documents, the text shall control.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

The Residential Association's board of directors ("**Board**") may, by resolution, resolve any ambiguities in the Governing Documents, and the Board's reasonable interpretation of an ambiguous provision shall be determinative.

1.4. Definitions.

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found immediately following the Table of Contents for this Declaration. All other terms used in the Governing Documents have their usual, commonly accepted definitions.

1.5. Interpretation of Certain References.

Community-Wide Standard. Where the Governing Documents require compliance with the "**Community-Wide Standard**," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Declaration, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Article 5). The Community-Wide Standard may or may not be set out in writing. The Declarant initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as Cinco Ranch Southwest matures.

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the person or entity whose consent or approval is required.

Discretion and Determination. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall mean the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, to the extent that the Declarant, the Board, or any other Person is authorized in the Governing Documents to exercise discretion or make a determination, such Person may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Person. References in the Governing Documents to a "Person" or "Persons" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recording or the recording of a legal instrument, shall refer to an instrument filed or recorded, or the filing or recording of a legal instrument, in the Office of the County Clerk of Fort Bend County, Texas, or such other place designated as the official location for filing documents affecting title to real estate in Fort Bend County in order to make them a matter of public record.

Article 2 Community Administration

Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Declarant, the Residential Association, the owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This Article identifies these stakeholders and describes their roles in administering the Community.

2.1. The Declarant.

The Declarant has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The Declarant's proposed plan for development of the Community is described in the general plan for Cinco Ranch Southwest approved by Fort Bend County, Texas, as it may be amended, which encompasses all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B" of this Declaration (the "General Plan"). However, the Declarant is not obligated to submit property shown on the General Plan to this Declaration. In addition, the Declarant may submit property to this Declaration that is not shown on the General Plan.

The Declarant has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Declarant may exercise certain of these rights throughout the "Development and Sale Period," which is the period of time during which the Declarant, any "Declarant Affiliate," or any Builder (as defined in Section 2.4) owns real property in the Community primarily for development or sale or has an unexpired option to expand the Community pursuant to Article 16. A "Declarant Affiliate" is any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

The Declarant has reserved other rights that may be exercised during the "Declarant Control Period," which is the period of time that the Declarant is entitled to appoint a majority of the members of the Resi-

dential Association's Board. It begins on the date of the Residential Association's incorporation and terminates upon the first of the following to occur:

(a) when 75% of the total number of Units (as defined in Section 3.1) contemplated by the General Plan are substantially complete and either occupied or ready for occupancy and have been conveyed to persons other than a Declarant Affiliate or a Builder holding title for purposes of construction and resale;

(b) December 31, 2040; or

(c) when, in its discretion, the Declarant voluntarily and expressly surrenders such right in a recorded instrument.

The Declarant has certain approval rights for a limited period as provided in the By-Laws after the termination of the Declarant Control Period.

The Declarant may assign its status and rights as the Declarant under the Governing Documents to any Declarant Affiliate or any person who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale; however, there shall be no more than one Declarant at any time. Such assignment shall be made only in a recorded instrument signed by both parties.

2.2. The Residential Association and its Board.

The Declarant has established the Residential Association as the primary entity responsible for administering the Residential Properties in accordance with the Governing Documents. On most matters, the Residential Association acts through the Board, which is selected as provided in Section 2.1 and the By-Laws. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Residential Association's members. Unless the Governing Documents or Texas law specifically provide otherwise, the Board may exercise the Residential Association's rights and powers without a vote of the membership.

The Residential Association may exercise all rights and powers that the Governing Documents and Texas law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Residential Association or its members.

In exercising the Residential Association's rights and powers, making decisions on the Residential Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Residential Association's affairs, Board members and the Residential Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

2.3. The Owners.

Each Person that holds record title to a Unit, as defined in Article 3, is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than

one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Articles 5, 6, and 7 of this Declaration. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Residential Association and through service to the Community in various committee and leadership roles, as described in Articles 3 and 4 and in the By-Laws.

2.4. Builders.

Much of the responsibility and credit for helping to create Cinco Ranch Southwest rests with those Persons who acquire one or more unimproved lots or parcels of land within the Community from the Declarant for further subdivision or development and resale in the ordinary course of their business ("**Builders**"). The Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Residential Association.

2.5. Additional Associations.

Portions of the Community may have special requirements that lead the Declarant or a Builder to establish a separate condominium or homeowners association ("**Additional Association**") to administer additional covenants applicable to that particular area. However, nothing in this Declaration requires the creation of an Additional Association, and the jurisdiction of any Additional Association shall be subordinate to that of the Residential Association.

Additional Associations, if any, are responsible for administering the additional covenants applicable to the property within their jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property which they own or which their respective covenants designate as being for the common benefit of their members.

2.6. Mortgagees.

If a Unit is made subject to a mortgage or other form of security instrument affecting title to a Unit ("**Mortgage**"), then the holder or beneficiary of that Mortgage ("**Mortgagee**") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Article 15.

2.7. Cinco Ranch Commercial Association II, Inc.

The Declarant has established Cinco Ranch Commercial Association II, Inc., a Texas non-profit corporation (the "**Commercial Association**"), whose membership consists primarily of the owners of properties intended for commercial, institutional, or multi-family rental purposes within Cinco Ranch Southwest, to administer other portions of Cinco Ranch Southwest pursuant to the Declaration for Cinco Ranch Southwest Commercial Properties (the "**Commercial Declaration**") and various governing documents referenced in such Commercial Declaration (collectively referred to as the "**Commercial Documents**"). It is the Declarant's intent that the Residential Association and the Commercial Association shall cooperate in the administration of the property within their respective jurisdictions and in the enforcement of the Governing Documents and Commercial Documents, respectively, to maintain and preserve high standards of architecture, maintenance, and use throughout Cinco Ranch Southwest.

2.8. Cinco Ranch Community Council, Inc.

The Founder has created Cinco Ranch Community Council, Inc. (the "**Community Council**") as a vehicle for undertaking activities and projects to enhance and sustain the Community and its environs. While the Community Association and the Commercial Association are created primarily to manage the real property and enforce restrictions and standards established for properties within their respective jurisdictions, the Community Council exists to empower, encourage, and provide a means for Owners and residents of Cinco Ranch Southwest and others to participate in and benefit from community-oriented affairs, services, projects, programs, and activities. It is the Founder's intent that the Community Association, the Commercial Association, and the Community Council work together and cooperate in performing these complimentary roles within Cinco Ranch Southwest. The Community Association may, but shall not be obligated to, provide financial support to the Community Council over and above such amounts as the Community Council may be entitled to collect directly from the Owners pursuant to the Community Council Covenant for Cinco Ranch Southwest recorded by the Founder and running with the title to all or any portion of the Community (the "**Community Covenant**").

The Community Council's affairs are administered by a board of trustees selected as provided in its by-laws ("**Council Board**"). The Community Council has the rights and responsibilities described in its by-laws and certificate of formation and in the Community Covenant. The Community Association and all Owners are subject to the Community Covenant and to the Community Council's jurisdiction. In the event of a conflict between the Governing Documents and the Community Council's governing documents with respect to the Community Council's rights and responsibilities, the Community Council's governing documents shall control.

Article 3 Community Structure and Organization

The Community consists of parcels of property, referred to as Units, which are intended for the exclusive use of the Owner and occupants of the Unit, as well as property that is intended for the common use of some or all of the residents of the Community. Units may be assigned to Service Areas to permit the Residential Association to provide special services and benefits to particular areas of the Community.

3.1. Designations of Properties Comprising the Community.

Units. The Governing Documents use the term "Unit" to refer to each portion of the Community which is depicted as a separately identified lot, parcel, or airspace on a recorded subdivision plat or in a recorded condominium instrument and which is designated on the General Plan or otherwise intended for development, use, and occupancy as an attached or detached residence for a single family (which may include condominium units intended for residential use, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include multi-family rental apartments).

The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures and other improvements on such land. A parcel of land under single ownership and intended for construction of more than one residence is considered a single Unit until a subdivision map, plat, or condominium in-

strument is recorded dividing it into more than one Unit. The subdivision and combination of Units is subject to the provisions of section 7.1(d).

Common Area. Any property and facilities that the Residential Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "Common Area." The Common Area also includes any property that the Residential Association holds under a lease and any easements in favor of the Residential Association. The Declarant and others may establish and convey Common Area to the Residential Association as provided in Section 9.1.

Limited Common Area. Certain portions of the Common Area may be designated as "Limited Common Area" and assigned for the exclusive use or primary benefit of less than all Units or Units in specified portions of the Community. Limited Common Areas might include such things as entry features, private streets, and recreational facilities, among other things, that benefit only a portion of the Community.

The Declarant may designate property as Limited Common Area and assign it to particular Units on Exhibit "A" to this Declaration, or in the Supplemental Declaration by which the property is submitted to the terms of this Declaration, or in the deed conveying such property to the Residential Association.

Area of Common Responsibility. All of the properties and facilities for which the Residential Association has responsibility under the Governing Documents, or for which the Residential Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "Area of Common Responsibility," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way. The initial Area of Common Responsibility is described in Article 9.

Other Properties. In addition to the above, the Community may include property dedicated to the public and property owned or controlled by an Additional Association for the common use and enjoyment of its members.

3.2. Service Areas.

 Units within Service Areas, if designated, will be subject to assessments for special benefits or services which the Residential Association provides, as described in Section 12.1(b).

Units may be part of one or more "Service Areas" in which the Units share Limited Common Areas or receive special benefits or services from the Residential Association that the Residential Association does not provide to all Units within the Community. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing or land use type and may include Units that are not contiguous.

The Declarant may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area either in Exhibit "A" or in a Supplemental Declaration. During the Development and Sale Period, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration to change Service Area boundaries.

In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation pursuant to Section 10.2.

The Owners of Units within each Service Area may elect a "Service Area Committee" in accordance with the By-Laws to represent and act on behalf of the Owners with respect to the services and benefits that the Residential Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

3.3. Neighborhoods.

Units are grouped into "Neighborhoods" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Residential Association's membership. A Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another. Each Neighborhood will elect one "Voting Delegate" to cast the votes allocated to Units in that Neighborhood on matters requiring a vote of the Owners, as described in Article 4.

The Declarant initially will assign Units to a specific Neighborhood (by name or other identifying designation) either in Exhibit "A" or in a Supplemental Declaration submitting the Unit to the terms of this Declaration. During the Development and Sale Period, the Declarant may unilaterally record a Supplemental Declaration, or an amendment to this Declaration or any previously recorded Supplemental Declaration, to designate or change Neighborhood boundaries. Thereafter, the Board may amend this Declaration or any Supplemental Declaration to re-designate Neighborhood boundaries; however, the Board may not combine two or more existing Neighborhoods without the consent of Owners of a majority of the Units in the affected Neighborhoods.

* * *

Article 4 Residential Association Membership and Voting Rights

The Residential Association is a mechanism by which each Owner can participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

4.1. Membership.

The Residential Association initially has two classes of membership: **Owner Membership**, which is comprised of all Owners of Units (including Builders and the Declarant, if they own Units), and the **Declarant Membership**, which consists solely of the Declarant. All persons holding a membership in the Residential Association are referred to in this Declaration as "**Members**."

Every Owner of a Unit is automatically a member of the Residential Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Residential Association's Secretary, except that only the individuals residing in the Unit may use any Common Area recreational facilities available for use by Owners.

The Declarant holds the sole Declarant membership. The Declarant membership shall terminate upon expiration of the Development and Sale Period, or on such earlier date as the Declarant determines and declares in a recorded instrument.

The Declarant may, by Supplemental Declaration, create additional classes of membership comprised of the Owners of Units within any portion of the additional property submitted to this Declaration. The Declarant shall specify in any such Supplemental Declaration the rights, privileges, and obligations of the members of any class of membership created by that Supplemental Declaration.

4.2. Voting.

Each Unit is allocated one equal vote, subject to the limitations on voting set forth in this Declaration and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.8.

Due to the number of Units that may be developed in Cinco Ranch Southwest, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood elect a "Voting Delegate" and an alternative Voting Delegate, in the manner provided in the By-Laws, to cast the votes of all Units in the Neighborhood (other than Units owned by the Declarant) on matters requiring a vote of the Residential Membership, except where the Governing Documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Voting Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Voting Delegate" and may personally cast the vote allocated to such Owner's Unit on any issue requiring a vote of the Voting Delegates under the Governing Documents. The Declarant shall be considered the Voting Delegate for, and may personally cast the vote(s) allocated to, any Unit(s) which it owns until expiration of the Development and Sale Period.

The Voting Delegate, or, in his or her absence, the alternative Voting Delegate, attends Residential Association meetings and casts all votes allocated to Units that he or she represents on any matters as to which such Voting Delegate is entitled to vote under the Governing Documents. A Voting Delegate may vote all votes it is entitled to cast in its discretion and may, but need not, poll the Owners of other Units which he or she represents prior to voting. A Voting Delegate may cast all votes which it represents as a block or split them (i.e., cast a portion in favor and a portion against a particular proposal, to reflect the perceived preferences of the Neighborhood it represents as indicated by any poll conducted by the Voting Delegate) but shall not be entitled to fractionalize any single vote.

Voting Delegates are elected solely to facilitate the voting process. They are subordinate to the Board, and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Residential Association governance beyond voting on matters put to a vote of the membership. Voting Delegates shall have no authority to meet in their capacity as Voting Delegates or to conduct business outside of a meeting duly called in accordance with the By-Laws provisions for membership meetings.

In any situation in which an Owner is entitled personally to exercise the vote for his or her Unit, if there is more than one Owner of the Unit any co-Owner may cast the vote for the Unit or consent to any action requiring approval of the Owners on behalf of all co-Owners of the Unit; however, no more than one vote shall be cast for any Unit. If two or more co-Owners seek to exercise the Unit's vote independently, neither shall be recognized except that the Unit's vote shall be counted as an abstention for purposes of establishing a quorum.

Article 5 Architecture, Landscaping and Aesthetic Standards

The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and aesthetic standards. This Article explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.

5.1. General.

All site work, landscaping, structures, improvements, and other items placed on a Unit or Common Area in a manner or location visible from outside of existing structures ("**Improvements**") are subject to standards for design, landscaping, and aesthetics adopted pursuant to this Article ("**Design Guidelines**") and the approval procedures set forth in this Article, except as this Article or the Design Guidelines may otherwise specify.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling or building constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect or professional building designer unless alternative plans are otherwise accepted and approved pursuant to this Article. The decision to accept or reject alternative plans shall be in the sole discretion of the Reviewer.

Approval under this Article is not a substitute for any approvals or reviews required by Fort Bend County or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This Article shall not apply to structures existing on any portion of the Community prior to submitting it to this Declaration, or to the Declarant's or any Declarant Affiliate's design and construction activities, or to the Residential Association's design and construction activities during the Declarant Control Period.

5.2. Design Review Authority.

(a) *Declarant.* The Declarant shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings that are substantially complete and occupied or ready for occupancy. The Declarant may designate one or more persons to act on its behalf in reviewing any application and may establish a committee ("**Declarant's Review Committee**") comprised of such persons as the Declarant deems appropriate (which may but need not include Builders, architects, engineers, or other professionals), to review applications and make recommendations to the Declarant of approval or disapproval during the period of time that the Declarant holds reviewing authority under this Article. In reviewing and acting upon any request

for approval, the Declarant and its designee, including any Declarant's Review Committee, act solely in the Declarant's interest and owe no duty to any other Person.

From time to time, the Declarant may delegate any or all of its rights under this Article to other Persons or committees, including any committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Declarant's right to revoke such delegation at any time and reassume its prior control, and (ii) the Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Declarant has any rights under this Article, the jurisdiction of others shall be limited to such matters as the Declarant specifically delegates.

(b) *Design Review Committee.* Upon the Declarant's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Declarant's rights under this Article, the Board shall appoint a Design Review Committee ("**Design Review Committee**" or "**DRC**") to assume jurisdiction over matters within the scope of the delegated authority or this Article, respectively. The DRC shall consist of at least three, but not more than seven, persons, who shall serve and may be removed and replaced in the Board's discretion, except that during the Development and Sale Period the Declarant shall at all times be entitled to appoint at least one member of the DRC. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Residential Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Declarant's rights under this Article, the DRC shall notify the Declarant in writing within three business days of any action (i.e., approval, partial approval, or disapproval) it takes under this Article. A copy of the application and any additional information the Declarant may require shall accompany the notice. The Declarant shall have 10 business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC.

Unless and until such time as the Declarant delegates all or a portion of its reserved rights to the DRC or the Declarant's rights under this Article terminate, the Residential Association shall have no jurisdiction over architectural matters.

(c) *Reviewer.* For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer**."

(d) *Fees; Assistance.* The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. Upon request of the Reviewer, the Association shall retain or employ an architect, building designer, or other qualified professional with experience in residential building construction selected by the Reviewer to assist in reviewing applications under this Article. The Board may include the compensation of such persons in the Residential Association's annual operating budget.

 Initially, the Declarant reviews applications for proposed Improvements. Thereafter, the Board of Directors will appoint a Design Review Committee to review applications for proposed improvements. The Declarant or the Design Review Committee is referred to as the "**Reviewer**." The Reviewer sets fees for reviewing applications.

5.3. Guidelines and Procedures.

(a) *Design Guidelines.* THE INITIAL DESIGN GUIDELINES ARE ATTACHED AS EXHIBIT "E," BUT ARE SUBJECT TO AMENDMENT AS PROVIDED IN THIS SECTION. THE DESIGN GUIDELINES MAY CONTAIN GENERAL PROVISIONS APPLICABLE TO ALL OF CINCO RANCH SOUTHWEST AS WELL AS SPECIFIC PROVISIONS THAT VARY BASED ON THE TYPE OF STRUCTURE, USE, OR LOCATION WITHIN THE COMMUNITY. THE DESIGN GUIDELINES ARE INTENDED TO FACILITATE THE DESIGN REVIEW PROCESS BY PROVIDING GUIDANCE TO OWNERS AND CONTRACTORS REGARDING MATTERS OF PARTICULAR CONCERN TO THE REVIEWER. THE DESIGN GUIDELINES ARE NOT THE EXCLUSIVE BASIS FOR THE REVIEWER'S DECISIONS, AND COMPLIANCE WITH THE DESIGN GUIDELINES DOES NOT GUARANTEE APPROVAL.

The Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Declarant also delegates the power to amend to the DRC. Upon termination or delegation of the Declarant's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive. Any amendment to the Design Guidelines shall be effective upon recording.

The Reviewer shall make the Design Guidelines, as they may be amended, available to Owners and their contractors upon request.

(b) *Procedures.* Unless the Design Guidelines provide otherwise, no activities within the scope of this Article (as described in Section 5.1) may begin on any portion of the Residential Properties until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines may require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Article 18 or judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Declarant's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond within the time period required above, the applicant may send written notice to the Reviewer requesting action on the application and if the Reviewer fails to respond within 30 business days after receipt of such written notice, then approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within 12 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

The Reviewer may exempt certain activities from the application and approval requirements of this Article, if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

5.4. No Waiver of Future Approvals.

The people reviewing applications under this Article will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.5. Variances.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify a variance, but no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Declarant's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

5.6. Limitation of Liability.

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; it does not create any duty to any Person. Review and approval of any application pursuant to this Article may be based purely on aesthetic considerations. The Reviewer is

not responsible for the structural integrity or soundness of approved construction or modifications, for materials used, for compliance with building codes and other governmental requirements, or for ensuring that structures are fit for their intended purpose, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners. Neither the Reviewer nor any member of the DRC shall have any liability for approving plans that are inconsistent with the Design Guidelines provided that such person acted in good faith in approving such plans. Neither the Declarant, the Association, the Reviewer, nor any member of the DRC shall have any liability for construction delays or schedule modifications resulting from any Person's failure to obtain or delays in obtaining approval of plans or approval for modifications to previously approved plans.

The Declarant, Declarant Affiliates, the Residential Association, its officers, the Board, any committee, and any member of any of the foregoing, shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Declarant has approved or featured such contractor as a Builder; (d) view preservation; or (e) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Residential Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the By-Laws.

5.7. Certificate of Compliance.

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article or the Design Guidelines. The Residential Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Residential Association from taking enforcement action against an Owner for any condition known to the Residential Association on the date of such certificate.

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Article 6 Maintenance, Repair and Replacement

One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the Community. This Article describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.

6.1. Maintenance by Owners.

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Residential Association or an Additional Association pursuant to this Declaration, any Supplemental Declaration, or by law.

Each Owner whose Unit abuts Common Area or the right-of-way of any public street shall also be responsible for maintaining and irrigating the landscaping (a) between the Unit boundary and the nearest

curb of such public street, except where there is a fence easement in favor of the Residential Association pursuant to Section 13.6; and (b) between the Unit boundary and any wall or fence located on adjacent Common Area or right-of-way within 10 feet of the Unit boundary. However, Owners may not remove trees, shrubs, or similar vegetation from these areas without prior approval pursuant to Article 5. Owners shall have no responsibility for maintaining neighborhood entry features or landscaping associated with such features.

6.2. Maintenance by Additional Associations.

An Additional Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

Any Additional Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of its boundary. An Additional Association shall not remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article 5.

The Residential Association may assume maintenance responsibility for property of any Additional Association, either by contract or agreement with the Additional Association, or upon the Board's determination, pursuant to Article 8, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard.

6.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Residential Association or an Additional Association having jurisdiction over the Unit (if any) carries such insurance, which they shall have no obligation to do unless otherwise specified in a recorded Supplemental Declaration or other recorded covenants applicable to the Unit. If the Residential Association assumes responsibility for insuring a Unit pursuant to this Declaration or any applicable Supplemental Declaration, the premiums for such insurance shall be levied as a Service Area Assessment against the benefited Unit and the Owner thereof. This section is for the benefit of all Owners and failure to maintain required insurance shall subject an Owner to disciplinary action by the Residential Association; however, nothing in this section shall obligate the Residential Association to monitor compliance or ensure that Owners maintain the required insurance on Units.

Within 90 days after damage to or destruction of a structure on a Unit which the Owner is responsible for insuring, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Article 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any portion of the Community may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This Section shall apply to an Additional Association with respect to its common property in the same manner as if the Additional Association were an Owner and its common property were a Unit.

6.4. Maintenance and Repair of Party Walls and Similar Structures.

Except as may otherwise be provided by state law, a written agreement between Owners, or other recorded documents applicable to affected Units:

(a) Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner whose Unit is served by the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) Any Owner's right to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(d) To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Article 18.

Article 7 Use and Conduct

In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this Article sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.

7.1. Use, Occupancy, and Transfer of Interests in Units.

(a) ***Residential and Related Uses.*** Units may be used only for residential and related purposes, except as the Declarant may otherwise authorize with respect to construction, marketing and sale activities of the Declarant and Builders it designates, and as otherwise authorized in this section. A business activity shall be considered "related" to a residential use and thus permitted under this Section only if conducted by a person or persons residing in the Unit and only if the business activity:

- (i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;
- (ii) complies with applicable zoning requirements;
- (iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and
- (iv) is consistent with the residential character of that portion of the Community in which the Unit is located and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners to whom such Owner is related or with whom such Owner is affiliated do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure.

(b) **Leasing.** For purposes of this Declaration, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit. Leasing of Units is prohibited except in strict compliance with the following:

(i) Any Unit that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased, except that the Board may, by resolution, authorize Owners to lease any garage apartment, detached "in-law suite" or "guest house" approved pursuant to Article 5 separate from the main dwelling;

(ii) The Owner and any other Owners to whom such Owner is related or affiliated, shall not individually or collectively lease or offer for lease more than one Unit at the same time; and

(iii) No signs shall be posted on the Unit, elsewhere within the Community, or on right-of-way adjacent to the Community, advertising the availability of the Unit for rent or for lease, except that an Owner may post one standard real estate sign on the Owner's Unit, not to exceed four feet in height, the total message area of which does not exceed 12 square feet (all sides combined), advertising the Unit for rent or lease; and

(iv) The lease shall provide for a minimum initial term of at least six months. The Unit may not be subleased and the lease may not be assigned during the initial six-month term. In the event of termination of the lease after the tenant has taken occupancy and prior to the end of such six-month minimum initial term, the Owner may not enter into a new lease with a term commencing prior to the date on which the previous lease would have expired without prior approval of the Board, which shall not be granted unless the Board determines, after consideration of the facts and circumstances, that the Owner

acted in good faith, with no intent to circumvent the requirements of this subsection (b), and could not reasonably have anticipated the early termination of the previous lease at the time the lease was signed.

All leases shall be in writing and shall provide that the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease. The Owner must give the tenant copies of the Governing Documents prior to the tenant taking occupancy of the Unit. Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Residential Association's managing agent of the lease and provide an alternate mailing address for the Owner, a copy of the lease, and any additional information the Board may reasonably require.

The Board may adopt Rules governing leasing and subleasing in accordance with Sections 7.2 and 7.3 that are in addition to, but consistent with, this subsection (b).

(c) *Transfer of Title; Resale Certificate.* Any Owner other than the Declarant desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

No Owner shall transfer title to a Unit unless and until it has requested and obtained a resale certificate signed by a representative of the Residential Association as described in Section 207.003(b) of the Texas Property Code ("**Resale Certificate**") indicating, in addition to all other matters described in Section 207.003(b), that, as of the date of such certificate: (A) all assessments (or installments thereof) and other charges against the Unit due and payable through the date of the certificate have been paid; and (B) there are no violations of the Governing Documents that have not either been cured or waived in writing by the Residential Association. The Residential Association shall deliver a Resale Certificate, along with a current copy of the Governing Documents, within 10 days after the Residential Association's receipt of written request from an Owner or Owner's agent, or a title insurance company acting on behalf of the Owner. If the Resale Certificate indicates that there are known conditions on the Unit which violate the Governing Documents, or that there are amounts due and unpaid to the Residential Association on account of the Unit, the Owner shall cure any such violations and pay any such unpaid amounts prior to transfer of title and, upon doing so, may request an update to the Resale Certificate to reflect such action. The Residential Association may charge a reasonable fee to assemble, copy, and deliver Resale Certificate and other information required Texas law to be provided, and may charge a reasonable fee to prepare and deliver an update of a resale certificate.

Upon acceptance of title to a Unit, the new Owner of the Unit shall pay to the Residential Association an administrative transfer fee to cover the administrative expenses associated with updating the Residential Association's records. Such fee shall be in such amount as the Board may reasonably determine necessary to cover its costs, including, but not limited to, any fees charged by a management company retained by the Residential Association for updating its records.

(d) *Subdivision and Combination of Units.* No Person other than the Declarant shall subdivide or change the boundary lines of any Unit or combine Units without the Declarant's prior written approval during the Development and Sale Period and the Board's prior written approval thereafter. Any such action shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or

new boundaries of the affected Unit(s). Unless a revised or amended plat reflecting a boundary change has been approved and recorded pursuant to this subsection, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling; therefore, the Owner of such adjacent Units shall be responsible for separate assessments for each such Unit.

(e) **Timesharing.** No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

7.2. Rulemaking Authority and Procedures.

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Residential Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Declarant, the Board, and the Voting Delegates are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

(a) **Declarant Authority.** So long as the Declarant has the right unilaterally to amend this Declaration pursuant to Section 20.2, the Declarant may unilaterally amend Exhibit "C" to add new Rules or to modify or rescind existing Rules.

(b) **Board Authority.** Subject to the Board's duty to exercise judgment and reasonableness on behalf of the Residential Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval. The Board shall provide notice to the Owners of any proposed Rule change, in the manner provided for posting of notice of Board meetings under the By-Laws, at least five business days prior to the Board meeting at which the proposed Rule change is to be put to a vote. At any such meeting, Owners shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(c) **Membership Authority.** The Voting Delegates entitled to cast at least 75% of the votes in the Residential Association may rescind existing Rules at any meeting of the Residential Association duly called for such purpose. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval.

(d) **Effective Date.** A Rules change adopted under this Section 7.2 shall be reflected in an amendment to Exhibit "C" executed by the Declarant or the Residential Association, or both, as applicable, and recorded. Any such amendment shall take effect upon recording or 30 days after the date on which written notice of the Rules change is given to the Owners, whichever is later.

(e) **Administrative and Operating Policies.** The procedures set forth in this section do not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, safety regulations, or the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(f) **Conflicts.** No action taken under this Section 7.2 shall have the effect of modifying or repealing the Design Guidelines or any provision of this Declaration other than the Rules. In the event of a conflict

between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Declaration (exclusive of the Rules), the Declaration shall control.

 Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Declarant, the Board, and the Members have the authority to adopt and modify rules as needed to address new or changing circumstances.

7.3. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) *Similar Treatment.* Similarly situated Units shall be treated similarly; however, the Rules may vary by location, use or other distinct characteristics of areas within the Community.

(b) *Displays.* No Rule shall prohibit the Owner or occupant from displaying political, religious, or holiday symbols and decorations on his or her Unit of the kinds normally displayed on residential or non-residential properties, as applicable, in comparable planned communities in the Houston metropolitan area, nor shall any Rule regulate the content of political signs. However, the Residential Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size, number, and time period within which they may be displayed, consistent with Texas law.

(c) *Household Composition.* No Rule shall interfere with an Owner's freedom to determine household composition, except that the Residential Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area, so long as in compliance with applicable fair housing laws.

(d) *Activities Within Dwellings.* No Rule shall interfere with the activities carried on within a dwelling, except that the Residential Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Residential Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(e) *Allocation of Burdens and Benefits.* No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area set forth in this Declaration to the detriment of any Owner over that Owner's objection expressed in writing to the Residential Association. Nothing in this provision shall prevent the Residential Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article 12.

(f) *Leasing and Transfer of Units.* No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; however, the Rules may require a minimum lease term of up to six months. Minimum lease terms may vary from one portion of the Community to another. The

Rules may also require that Owners use Board-approved lease forms (or include specific lease terms) and may impose a reasonable administrative fee in connection with the Board's review of a lease.

(g) *Abridging Existing Rights.* No Rule shall require that an Owner or occupant dispose of personal property kept in or on the Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

(h) *Reasonable Rights to Develop.* No Rule may unreasonably interfere with the ability of the Declarant, any Declarant Affiliate, or Builder to develop, market, and sell property in the Community.

(i) *Interference with Easements.* No Rule may unreasonably interfere with the exercise of any easement, except as set forth in Section 7.2(e) and Section 13.1(d).

7.4. Owners' Acknowledgment and Notice to Purchasers.

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Residential Association may have adopted changes to the Rules. For convenience, a copy of the Rules and administrative policies are available from the Residential Association upon request; **HOWEVER, FOR ALL LEGAL PURPOSES OWNERS ARE ADVISED TO OBTAIN COPIES OF THE RECORDED DOCUMENTS FROM THE COUNTY CLERK'S OFFICIAL RECORDS.** The Residential Association may charge a reasonable fee for providing copies to cover its reproduction cost.

* * *

Article 8 Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them, and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This Article sets forth the obligation to comply and the remedies available to the Residential Association for noncompliance.

8.1. Compliance.

Every Owner, occupant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Article. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants of or visitors to their Units and for any damage to the Area of Common Responsibility that such occupants or visitors cause.

8.2. Remedies for Non-Compliance.

The Residential Association, the Declarant, any Declarant Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may

impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

(a) ***Sanctions Requiring Prior Notice and Hearing.*** After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Residential Association); however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Residential Association provides (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Residential Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents or to bring any Unit into compliance with the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article 5 and the Design Guidelines from continuing or performing any further activities in the Community;

(vii) levy Specific Assessments to cover costs the Residential Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents or in repairing damage to any portion of the Area of Common Responsibility resulting from actions of any Owner or occupant of a Unit, their contractors, subcontractors, agents, employees, or invitees; and

(viii) record a notice of violation with respect to any Unit on which a violation exists.

If, after notice and an opportunity for a hearing, the violation continues or recurs within 12 months after the date of such notice, the Board may impose any of the above sanctions without further notice or opportunity for another hearing.

(b) ***Other Sanctions.*** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or an Additional Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Additional Association's property, respectively, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Additional Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) *Powers Relating to Additional Associations.* The Residential Association also shall have the power to require specific action to be taken by any Additional Association in connection with its obligations and responsibilities under this Declaration, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

An Additional Association shall take appropriate action required by the Residential Association in a written notice within the reasonable time frame set by the Residential Association in the notice. If the Additional Association fails to comply, the Residential Association shall have the right to effect such action on behalf of the Additional Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

 All Owners are required to abide by the Governing Documents. If an Owner fails or refuses to obey the Governing Documents, the Owner may be subject to various penalties including fines and the loss of the right to use the Common Areas.

8.3. Board Decision to Pursue Enforcement Action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Residential Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Residential Association's resources; or

(d) it is not in the Residential Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Residential Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

8.4. Attorneys Fees and Costs.

In any action to enforce the Governing Documents, if the Residential Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs reasonably incurred in such action.

8.5. Enforcement of Ordinances.

The Residential Association, by contract or other agreement, may enforce applicable county ordinances and Fort Bend County may enforce its ordinances within the Community.

Article 9 Property Management

One of the Residential Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of the Community. This Article establishes the Residential Association's obligation to accept property that the Declarant designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of the Community.

9.1. Acceptance and Control of Residential Association Property.

(a) *Transfers and Conveyances by Declarant.* The Declarant, its designees, or any Declarant Affiliate, and with the Declarant's written consent, any Builder, may transfer or convey to the Residential Association interests in real or personal property within or for the benefit of the Community, and the Residential Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Declarant's written request, the Residential Association shall reconvey to the Declarant, or any Declarant Affiliate or Builder, any unimproved real property that the Declarant originally conveyed to the Residential Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

The Declarant shall have the right to convey any property to the Residential Association as Common Area subject to easements permitting persons who are not members of the Residential Association to use and enjoy such Common Area upon payment to the Residential Association of reasonable use fees.

The Declarant may also transfer and assign to the Residential Association any continuing obligations and responsibilities under development agreements or conditions of development approvals relating to the Community, including any obligation to post or maintain maintenance bonds on improvements within

public rights-of-way or other portions of the Area of Common Responsibility. The Residential Association shall accept, assume, and fulfill all such obligations and responsibilities as the Declarant shall assign to it.

(b) *Management and Control.* The Residential Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Residential Association. The Residential Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Residential Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

9.2. Maintenance of Area of Common Responsibility.

The Residential Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

- (a) the Common Area;
- (b) community signage, entry features, monumentation, and landscaping installed by the Declarant at entrances to the Community, whether located on Common Area or in public rights-of-way;
- (c) decorative fencing or walls located on Common Area or within the fence or wall easements described in Section 13.6, and landscaping between such fencing or walls and the back-of-curb of the street within any adjacent public rights-of-way;
- (d) lakes and ponds that are part of the stormwater drainage, detention and retention facilities serving more than one Unit or any Unit and the Common Area, to the extent required by the terms of any development agreement, recorded plat, or agreement with the levee improvement district which owns or controls them;
- (e) any path or trail system installed by the Declarant through utility or pipeline easements within or adjacent to the Community;
- (f) such portions of any additional property as may be dictated by the Declarant, this Declaration, any Supplemental Declaration, any Covenant to Share Cost recorded pursuant to Section 9.5, or any covenant or agreement for maintenance entered into by, or otherwise binding on, the Residential Association; and
- (g) any property and facilities that the Declarant or any Declarant Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Residential Association and its Members. The Declarant shall identify any such property and facilities by written notice to the Residential Association, and they shall remain part of the Area of Common Responsibility until the Declarant or Declarant Affiliate revokes such privilege of use and enjoyment by written notice to the Residential Association.

The Declarant or the Residential Association may, but shall not be obligated to, install paths or trails through portions of the Community and within power and gas line easements running through or adjacent to the Community. In some cases, such paths or trails may be comprised of concrete or other hard surface materials. In other cases, such paths or trails may have no finished surface or may be comprised of pervious material such as crushed rock. All paths and trails may not be built to the same standard and neither

the Declarant nor the Residential Association shall have any duty to improve or maintain all paths and trails to the same standard.

The Residential Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, or property owned or maintained by an Additional Association, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Residential Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

9.3. Discontinuation of Operation.

The Board shall have the authority to establish operating hours for Common Area facilities (which may vary by season), to temporarily close or interrupt operation of Common Area facilities to perform maintenance or repairs, or to cease operation of Common Area facilities if it determines it to be in the Association's best interest to do so; however, during the Development and Sale Period, any decision to cease operations indefinitely shall be subject to the prior written approval of the Declarant.

9.4. Restoring Damaged Improvements.

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Residential Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Residential Association shall repair or reconstruct damaged Common Area improvements unless:

- (a) this Declaration is terminated pursuant to Section 20.1;
- (b) repair or restoration would be illegal under any state or local statute or ordinance governing health or safety;
- (c) the Declarant, during the Development and Sale Period, and Voting Delegates entitled to cast at least 75% of the total votes in the Residential Association, or in the case of a Limited Common Area, Owners of at least 67% of the Units to which the Limited Common Area is assigned, vote within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or estimates of the loss, or both, are not available to the Residential Association within such 60-day period, then the period shall be extended until such funds or information are available. Except as provided above, no Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

 *This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible not to repair or rebuild if the Owners who benefit from the Common Area prefer not to rebuild.*

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained

by the Residential Association in a neat and attractive condition consistent with the Community-Wide Standard.

The insurance proceeds, if any, attributable to any Units or Limited Common Areas that are not rebuilt shall be distributed to the Owners of the damaged Units or the Units to which such Limited Common Areas were assigned, or to their respective lienholders, as their interests may appear, in proportion to their relative liability for Residential Association expenses. The Residential Association shall retain and place in a capital improvements account for the benefit of all Owners, the Owners within the affected Service Area, or the Owners of Units to which such Limited Common Areas were assigned, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the membership, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

9.5. Relationships with Other Properties.

The Declarant may prepare, execute, and record a document creating a covenant to share costs by which the Owners of Units in the Community and the owners of properties located adjacent to or in the vicinity of the Community will be obligated to share costs of maintaining certain mutually beneficial properties and/or providing certain mutually beneficial services, as described in such document ("Covenant to Share Costs"). The Covenant to Share Costs may obligate the Residential Association to provide such maintenance and other services to such property and may authorize the Residential Association to collect a specified portion of the costs it incurs from the owners of such other properties or any owners association having jurisdiction over such other properties. In addition, the Residential Association may contract with the owner of any neighboring property or any levee improvement district to provide for an assumption by the Residential Association of maintenance of any lakes, levees, detention facilities, or rainfall collection area benefiting the Community and/or the sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

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Article 10 Provision of Services

In addition to its property management role, the Residential Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This Article describes some of the services the Residential Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

10.1. Provision of Services to Units.

The Residential Association may negotiate bulk rate contracts for utility and other services on behalf of the Owners and arrange for or provide services to Owners and their Units, directly or through contracts with the Declarant or other third parties. The Residential Association may enter into bulk service agreements by which a particular service is provided to all Units, or to all Units which have been improved with a

completed dwelling and conveyed for residential occupancy ("Occupied Units"), or it may offer various services at the option of each Owner, or any of the foregoing. By way of example and not limitation, such services might include such things as cable television, community technology, utilities, fire protection, security, trash collection, landscape maintenance, pest control, and caretaker services.

Any Residential Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Article 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Residential Association to provide such services.

10.2. Provision of Services to Service Areas.



Service Areas are not part of the initial plan for the Community, but may be designated in the future. If Service Areas are created, their members may be subject to additional assessments.

(a) ***Service Areas Designated by Declarant.*** The Residential Association shall provide services to Units within any Service Area designated by the Declarant pursuant to Section 3.4 as required by the terms of any Supplemental Declaration applicable to the Service Area.

(b) ***Service Areas Designated by Board.*** In addition to Service Areas which the Declarant may designate pursuant to Section 3.4, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Residential Association (i) special benefits or services which are not provided to all Units, or (ii) a higher level of service than the Residential Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 12.2(c).

10.3. Community Technology.

(a) ***Community Systems.*** The Declarant may provide, or may enter into and assign to the Residential Association or cause the Residential Association to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, telephone, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("**Community Systems**"). Any such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Community Systems as the Declarant determines appropriate.

The Residential Association may enter into a bulk rate service agreement providing access to any such Community System for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Residential Association may assess the charges as a Service Area Assessment or Specific Assessment pursuant to Article 12 and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

(b) *Opportunities for Community Interaction.* The Residential Association may make use of computers, the Internet, and expanding technology to facilitate community notices and interaction and encourage participation in Residential Association activities. For example, the Residential Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Residential Association-sponsored activities. To the extent Texas law permits, and unless otherwise specifically prohibited in the Governing Documents, the Residential Association may send notices by electronic means, hold Board or Residential Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

Article 11

Residential Association Insurance

The Residential Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This Article describes the minimum types and amounts of coverage that the Residential Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

11.1. Required Coverages.

The Residential Association shall obtain and maintain in effect the following insurance coverage, if available, or if not available, the most nearly equivalent coverage as is available:

(a) Blanket property insurance covering "all risks of direct physical loss" on a replacement cost basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area;

(ii) property within any Service Area, to the extent specified in any applicable Supplemental Declaration; and

(iii) other portions of the Area of Common Responsibility, to the extent that the Residential Association has responsibility for repair or replacement in the event of a casualty.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Residential Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Residential Association and its Members for property damage or personal injury caused by the negligence of the

Residential Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$5,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Residential Association shall obtain such additional coverage or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage with a limit of at least \$1,000,000.00; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Residential Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments (as defined in Section 12.2) on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Residential Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Fort Bend County, Texas area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

11.2. Deductibles.

The Residential Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage under Section 11.4. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

 *Persons who cause damage in the Community may be held responsible for the insurance deductible payable on any insurance claim related to such damage.*

11.3. Policy Requirements.

All Residential Association policies shall provide for a certificate of insurance to be furnished to the Residential Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Residential Association insurance shall:

(a) be written with a company authorized to do business in Texas which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Residential Association as trustee for the benefited parties. All policies shall be for the benefit of the Residential Association and its members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include a co-insurance waiver or an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Residential Association;

(g) provide a waiver of subrogation against any Owner or household member of an Owner; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Residential Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Residential Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies that provide:

(a) a waiver of subrogation as to any claims against the Residential Association's directors, officers, employees, and manager;

 *Subrogation is a legal concept by which one person is substituted in the place of another with respect to a lawful claim or right. For example, once they have paid a claim by an insured party, insurance companies generally have the right to step into the shoes of the insured party and sue anyone that the insured party could have sued.*

(b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least 30 days' prior written notice to the Residential Association of any cancellation, substantial modification, or non-renewal;

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

11.4. Insurance Premiums.

Premiums for all Residential Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense unless the Board reasonably determines that other treatment of the premiums is more appropriate.

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Article 12 Residential Association Finances

This Article provides for various types of funding to cover expenses that the Residential Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this Article authorizes the Residential Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this Article.

12.1. Residential Association Expenses.

(a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Residential Association incurs, or expects to incur, in connection with the ownership, maintenance, improvement, and operation of the Area of Common Responsibility, in performing its responsibilities and exercising its authority under the Governing Documents, and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**" Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or original construction costs unless the Declarant and Voting Delegates entitled to cast a majority of the total votes in the Residential Association approve such expenditure. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

The characterization of a particular expense as a "Common Expense" shall not preclude the Residential Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Declaration, any Supplemental Declaration, or any other recorded covenants or agreements.

(b) **Service Area Expenses.** All expenses that the Residential Association incurs or expects to incur in connection with the ownership, maintenance and operation of Limited Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses.**" Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Service Areas receiving the same service.

12.2. Budgeting for and Allocating Residential Association Expenses.

(a) *Preparation of Budget.* At least 45 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year ("**General Budget**"). In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Residential Association expects to incur for the benefit of such Service Area in the coming year ("**Service Area Budget**").

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any income expected from sources other than assessments levied against the Units (including any Covenant to Share Costs established pursuant to Section 9.5), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

(b) *Calculation of Base Assessments.* The Board shall establish a rate of assessment which it believes will be sufficient, after taking into account any other income the Board wishes to consider, to fund the General Budget when levied equally against all Units subject to assessment under Section 12.5. The total assessment against each such Unit for its share of the General Budget shall be levied as a "**Base Assessment**," subject to the provisions of subsection (d).

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Declarant under Section 12.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Residential Association and the Declarant.

(c) *Calculation of Service Area Assessments.* For each Service Area Budget, the Board shall establish a rate of assessment which it believes will be sufficient to fund such Service Area Budget when levied against all Units in the Service Area that are subject to assessment under Section 12.5. The total assessment

against each Unit for its share of the Service Area Budget shall be levied as a "**Service Area Assessment**," subject to the provisions of subsection (d). Service Area Assessments shall be levied equally against all Units in the Service Area that are subject to assessment under Section 12.5, except that a Supplemental Declaration may provide that any portion of the assessment intended for exterior maintenance, insurance, or replacement reserves which pertain to structures on Units may be levied on each of the benefited

Community Association Funds	
	General Operating Fund Service Area Operating Funds Reserve Funds for Repair and Replacement of Capital Items
Primary Sources of Income	
	Base Assessments Service Area Assessments Special Assessments Specific Assessments Founder Subsidy (if any) One-time Contributions to Working Capital
Secondary Sources of Income	
	Facilities Rental Monetary Penalties Interest on Reserves and Delinquent Assessments Late Charges

Units in proportion to the benefit received, as the Board may reasonably determine.

All funds that the Residential Association collects as Service Area Assessments shall be accounted for separate from the Residential Association's general funds and shall be expended solely for the benefit of the Service Area for which they were collected.

(d) Notice of Budget and Assessment; Right to Disapprove. At least 30 days prior to the effective date of any budget the Board adopts, the Board shall send a summary of the budget, together with notice of the amount of the Base Assessment or any Service Area Assessment to be levied pursuant to such budget, to the Owner of each Unit responsible for a share of the expenses covered by such budget. The Common Expense budget shall automatically become effective unless disapproved at a meeting by Voting Delegates representing at least 75% of the total votes in the Residential Association and by the Declarant, during the Development and Sale Period. Each Service Area budget shall automatically become effective unless disapproved at a meeting by Owners of at least 75% of the Units within the Service Area and by the Declarant, during the Development and Sale Period. There shall be no obligation to call a meeting to consider the budget except, in the case of the General Budget, on petition of the Voting Delegates as provided for special meetings in the By-Laws, and in the case of a Service Area Budget, on petition of Owners of at least 67% of the Units within the Service Area to which such budget applies. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is ratified.

(e) Budget Revisions. The Board may revise the budget and adjust the Base Assessment or Service Area Assessments any time during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (d) above.

12.3. Special Assessments.

The Residential Association may levy "Special Assessments" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Declaration, any Special Assessment for Common Expenses may be adopted by the Board unless it would exceed, on a per Unit basis, 10% of the Base Assessment levied against each Unit for the year in which the Special Assessment is adopted, in which case it shall require the affirmative vote or written consent of Voting Delegates entitled to cast at least 75% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units. Any Special Assessment for Service Area Expenses may be adopted by the Board unless it would exceed, on a per Unit basis, 10% of the Service Area Assessment levied against each Unit in the Service Area for the year in which the Special Assessment is adopted, in which case it shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 12.1(c). In addition, during the Development and Sale Period, any Special Assessment shall also be subject to the Declarant's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

12.4. Specific Assessments.

The Residential Association may levy "Specific Assessments" against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services which the Residential Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service; and

(b) in the case of an Occupied Unit, to cover the charges for services provided to all Occupied Units pursuant to any bulk service or similar agreement entered into by the Residential Association pursuant to Section 10.1; and

(c) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws before levying any Specific Assessment under this subsection (b); and

(d) to cover the Unit's pro rata share of any costs that the Residential Association incurs in bringing any Additional Association of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Additional Association and the Owners of Units comprising it and an opportunity for such Owners to be heard before levying any such assessment; and

(e) to cover any deductible assessed against the Owner of Unit pursuant to Section 11.2; and

(f) to cover any other amounts that the Governing Documents authorize the Residential Association to charge to a particular Owner or levy against any particular Unit.

12.5. Authority to Assess Owners; Time of Payment.

The Declarant hereby establishes and the Residential Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the date on which the Unit is made subject to this Declaration or the effective date of the Residential Association's first budget, whichever is later. The Base Assessment and Service Area Assessment, if any, levied on each Unit for the year in which the Unit is made subject to this Declaration shall be prorated according to the number of months remaining in the fiscal year at the time the Unit becomes subject to the Declaration.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year.

If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

12.6. Obligation for Assessments.

(a) **Personal Obligation.** By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 12% per annum or such

higher rate as the Board may establish, subject to the limitations of Texas law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments at the rate of assessment established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Residential Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units or to all Units within the Service Area to which the Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Residential Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

 By acquiring a Unit in the Community each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, the Owner will be charged late fees and interest on all past due amounts. Owners may not reduce their assessments because of any action or inaction by the Residential Association.

(b) Declarant's Financial Obligations to Residential Association. The Declarant shall be liable for assessments on any Units it owns that are subject to assessment under this section, except that during the Declarant Control Period, the Declarant may annually elect to satisfy its obligation to pay Base Assessments, Service Area Assessments, and Special Assessments for on Units it owns either by paying such assessments in the same manner as any other Owner, or by paying (i) any shortfall under the applicable budget resulting from events other than failure of other Owners to pay their assessments, including any shortfall in budgeted contributions to reserves in accordance with the applicable budget. After termination of the Declarant Control Period, the Declarant shall pay Base Assessments on any Units it owns that are subject to assessment under Section 12.5 in the same manner as any other Owner liable for such assessments.

Regardless of the Declarant's election under this section, any of the Declarant's financial obligations to the Residential Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

(c) Assessment Statement. Within 10 days after receipt of a written request from any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, delivered personally or sent by certified mail, first-class postage prepaid, return receipt requested to the Residential Association's registered agent or designee, the Residential Association shall issue a written statement setting forth the amount of any unpaid assessments with respect to such Unit, the amount of current periodic assessments and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered personally or by certified mail, first-class postage prepaid, return receipt requested, or by such other means as may be stated in the request.

The Residential Association may require the payment or authorize its agent to charge a reasonable processing fee for issuance of such statement. Such statement shall be binding upon the Residential Association as to Persons who rely thereon in good faith.

12.7. Lien for Assessments.

(a) *Existence of Lien.* The Residential Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Texas law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (i) liens and encumbrances recorded prior to this Declaration and which the Residential Association has assumed or taken subject to; (ii) the liens of all real estate taxes and other governmental assessments or charges, and (iii) the lien or charge of any Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit and recorded prior to the assessment becoming delinquent.

The Residential Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Residential 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 Residential Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien. **The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with *Tex. Prop. Code* Section 51.002, as it may be amended, in like manner of any deed of trust on real property.** Each Owner hereby grants to the Residential Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with *Tex. Prop. Code* Section 51.002, as it may be amended.

 In order to secure the obligation of each Owner to pay its share of Residential Association expenses, the Residential Association has a lien against each Unit. If an Owner does not pay his or her assessments on time, the Residential Association may foreclose the lien on such Owner's Unit, causing it to be sold to pay the past due assessments. The Residential Association may also sue an Owner in court to recover past due assessments.

(b) *Enforcement of Lien.* The Residential Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit, subject to the Owner's right of redemption, if any, under Texas law. While a Unit is owned by the Residential Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Residential Association. The Residential Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) *Effect of Sale or Transfer.* Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage having priority over the Residential Association's lien pursuant to Section 12.7(a) shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

12.8. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by the Declarant or a Declarant Affiliate as are included in the Area of Common Responsibility; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by any Additional Association for the common use and enjoyment of its members, or owned by the members of an Additional Association as tenants-in-common.

In addition, the Residential Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c) of the Internal Revenue Code.

12.9. Capitalization of Residential Association.

Upon each transfer of title to a Unit after the initial conveyance by the Declarant, the new Owner shall pay to the Residential Association, immediately upon taking title to the Unit, a contribution to the working capital of the Residential Association in the amount of one-sixth of the annual Base Assessment that would be payable on the Unit for the year in which the transfer of title occurs without regard to any partial year proration. Such working capital shall be for the purpose of funding initial start-up expenses, operating expenses, and other expenses the Residential Association incurs pursuant to this Declaration and the By-Laws, and, to the extent not required to fund expenses, for helping to fund operating or other reserves. These amounts shall be one-time payments in addition to, not in lieu of, the annual Base Assessment levied on the Unit and shall not be considered an advance payment of such assessments.

12.10. Use and Consumption Fees.

The Board may charge use, consumption, or activity fees to any Person using Residential Association services or facilities or participating in Residential Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

Article 13 Easements

The easements created in this Article establish the rights of Owners to use the Common Area and create various rights for the benefit of owners, the Declarant, the Residential Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property. Others relate to the rights of the Residential Association to come upon property of others to fulfill its responsibilities.

13.1. Easements in Common Area.

The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Residential Association;
- (c) certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area," if any;
- (d) the Board's right to:
 - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
 - (ii) suspend an Owner's right to use Common Area facilities;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
 - (v) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
 - (vi) permit use of any recreational facilities situated on the Common Area by persons who do not own property subject to this Declaration or reside in the Community, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and
 - (vii) permit any Person to use Common Areas, at such charge or no charge as the Board may determine, for the purpose of offering and conducting classes or similar activities for the benefit of interested Owners and residents and such other individuals as the Board may specify, whether offered on a fee basis for profit or otherwise;
 - (viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- (e) the right of the Declarant and its designees to use the Common Area pursuant to Section 17.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her entire Unit (as opposed to leasing only a garage apartment, in-law suite, or guest house authorized pursuant to Section 7.1(b)) shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.



An easement is one person's right to go onto or do something on the property of another.

13.2. Easements of Encroachment.

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.



An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, unintentional encroachments to remain.

13.3. Easements for Utilities, Etc.

(a) *Installation and Maintenance.* The Declarant reserves for itself, its successors, assigns, and designees, perpetual exclusive easements throughout the Residential Properties (but not through a structure) for the purpose of:

(i) installing utilities and infrastructure, Community Systems, security and similar systems, and drainage systems to serve the Residential Properties;

(ii) installing walkways, pathways and trails, street lights, and signage on property the Declarant or the Residential Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspecting, maintaining, repairing, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access to read, maintain, and repair utility meters.

Notwithstanding the above, the Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, and to condition such access on negotiated terms.

(b) *Specific Easements.* The Declarant also reserves the non-exclusive right and power to grant and record such specific easements, consistent with Section 13.3(a), as it deems necessary or appropriate to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) *Minimal Interference.* All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the

structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

13.4. Easements to Serve Additional Property.

The Declarant reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," 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 Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property which is not submitted to this Declaration, the Declarant, or its successors or assigns, shall enter into a reasonable agreement with the Residential Association to share the cost of maintenance that the Residential Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

13.5. Easements for Maintenance, Emergency, and Enforcement.

By this Declaration, the Declarant grants to the Residential Association easements over the Residential Properties as necessary to enable the Residential Association to perform maintenance under Section 9.2 and exercise its enforcement rights under Section 8.2. The Residential Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

 *The Residential Association may come onto a Unit to perform maintenance or to address violations of the covenants but will give prior notice unless there is an urgent need to enter the property.*

13.6. Easement for Fence and Landscape Maintenance.

The Declarant reserves for itself, the Residential Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement over portions of the Community lying within 20 feet of the perimeter boundary of the Community, and within 20 feet of the back-of-curb of any public thoroughfare within or adjacent to the Community, for the purpose of constructing, installing, maintaining, repairing, and replacing perimeter fencing or walls and landscaping along the perimeter boundary of the Community, or along public thoroughfares adjacent to or running through the Community. Nothing in this Section shall obligate the Declarant, the Residential Association, or any Builder to install fencing, walls, or landscaping, the installation of such items being in the sole discretion of the Declarant and the Residential Association.

13.7. Easements for Lake and Pond Maintenance and Flood Water.

The Declarant reserves for itself, the Residential Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access over the lakes, detention ponds or other bodies of water and wetlands within the Community, and over the Common Area and Units (but not the dwell-

ings thereon) adjacent to or within 50 feet of such lakes, detention ponds or other bodies of water and wetlands, in order to perform such maintenance and repair as the Board may deem appropriate, which may include maintenance of shorelines, bulkheads, and water quality, algae control, removal of silt and debris, removal of dead or diseased trees, shrubs, and plants; and taking action to control any condition or remove any thing that constitutes a potential health or safety hazard. All persons entitled to exercise this easement shall use reasonable care in and repair any damage resulting from the intentional exercise of such easement. Nothing in this Section shall be construed to make the Declarant or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.



The Declarant and the Residential Association have the right to access property adjacent to lakes, ponds, streams and wetlands for maintenance purposes.

Article 14 Disclosures and Waivers

This Article discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this Article.

14.1. Public Access.

Most, if not all, of the streets within the Community are public streets and, as a result, the general public may be able to gain access to Common Areas, including but not limited to greenbelts, parks, trails and paths, and other neighborhood spots conducive to gathering and interaction. The Residential Association may, but shall have no obligation to, control such access or police the Common Areas to identify and eject unauthorized persons.

14.2. Safety and Security.

EACH OWNER AND OCCUPANT OF A UNIT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE COMMUNITY. THE RESIDENTIAL ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE COMMUNITY DESIGNED TO PROMOTE OR ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR HIMSELF OR HERSELF AND HIS OR HER PROPERTY. HOWEVER, THE RESIDENTIAL ASSOCIATION, THE DECLARANT, AND DECLARANT AFFILIATE SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE COMMUNITY, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING SECURITY MONITORING SYSTEMS OR ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE COMMUNITY, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES

UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND SHALL BE RESPONSIBLE FOR INFORMING ANY TENANTS AND OTHER OCCUPANTS OF SUCH OWNER'S UNIT THAT THE RESIDENTIAL ASSOCIATION, ITS BOARD AND COMMITTEES, AND THE DECLARANT AND DECLARANT AFFILIATES ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE COMMUNITY ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.

14.3. Changes in General Plan.

Each Owner acknowledges that Cinco Ranch Southwest is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Residential Association nor any Additional Association shall engage in, or use Residential Association funds to support, any protest, challenge, or other form of objection to withdrawal of property pursuant to Section 17.1(e) or changes in uses or density of property within Cinco Ranch Southwest, or changes in the General Plan as it relates to property outside Cinco Ranch Southwest, without the Declarant's prior written consent.

14.4. View Impairment.

Neither the Declarant, any Declarant Affiliate, nor the Residential Association, guarantee or represent that any view over and across the Units, Common Areas, or open space within the Community, will be preserved without impairment. The Declarant, Declarant Affiliates, and the Residential Association shall have no obligation to relocate, prune, or thin trees or shrubs on the Common Area. The Residential Association shall have the right to add trees and other landscaping to the Common Area. There shall be no express or implied easements for view purposes or for the passage of light and air.

14.5. Notices and Disclaimers as to Community Systems and Services.

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Declarant, Declarant Affiliates, Residential Association, and their respective successors or assigns, shall not be liable for, and shall not be obligated to refund, rebate, discount, or offset any applicable fees as a result of any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

The Owner of each Unit shall be responsible for ensuring that the dwelling on such Unit is pre-wired to connect to any Community System installed by or at the request of the Declarant pursuant to Section 17.7. If such wiring is installed by a party other than the provider of the Community System, the Owner shall contact the provider of the Community System upon completion of such installation and arrange for the provider of the Community System to inspect the wiring to ensure compatibility with the Community System. If authorized by the Declarant, the provider of the Community System may charge the Owner of the Unit a reasonable fee for such inspection. If it is determined that the wiring is not compatible, the Owner of the Unit shall promptly arrange for such wiring to be replaced with wiring that is compatible with the Community System.

14.6. High Voltage Power Lines; Radio and Telecommunication Towers.

Every Owner and occupant of a Unit is hereby advised that high voltage power transmission lines and radio and telecommunication towers and related equipment may now or hereafter be located within or in the vicinity of Cinco Ranch Southwest. While various studies have failed to establish any causal relation-

ship between living in proximity to high voltage power transmission lines or radio towers and cancer or other diseases, there remains some speculation that such a relationship may exist. Every Owner and occupant of a Unit must evaluate such risk for themselves prior to making a decision to purchase or occupy a Unit. The Declarant, any Declarant Affiliate, Builders, the Residential Association, and their respective members, partners, affiliates, officers, directors, agents, and employees, shall not be liable for any damage or injury to any Person or any property arising out of or related to the construction, installation, maintenance, or operation of, or proximity to, high voltage power transmission lines and/or radio or telecommunication towers, or any such towers that may now or hereafter be located in or in the vicinity of Cinco Ranch Southwest.

14.7. Stormwater Facilities.

Some Units are located adjacent to Common Area containing lakes, ponds or stormwater detention or retention facilities that may from time to time contain water. Owners and occupants of such Units have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear, or otherwise disturb vegetation within natural areas located within the Common Area between the boundary of the Unit and the water's edge, or within the nondisturbance buffer on any Unit.

14.8. Use of Nonpotable Water for Irrigation.

Each Owner and occupant of a Unit, and their respective guests and invitees, are hereby advised that the water used to irrigate property within or adjacent to Cinco Ranch Southwest may be treated effluent, re-use water or "gray water." Although such water is considered safe for irrigation and limited contact, it is not suitable for human or animal consumption and should not be used for drinking, bathing, swimming, or any purpose other than irrigation.

14.9. Natural Conditions.

The Community contains a number of manmade, natural and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including insects, venomous and non-venomous snakes and other reptiles, coyotes, alligators, and other animals, some of which may pose hazards to persons or pets coming in contact with them. Each Owner and occupant of any Unit, and every person entering the Community (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or through the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community. Neither the Residential Association, the Declarant, any Builder, nor the members, partners, affiliates, officers, directors, agents or employees of any of them, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement or propagation of any plant or wildlife within or through the Community.

The natural areas described in this Section may also contain creeks, ponds, or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Unit shall enter upon, or permit their guests or any other person acting on their behalf to enter upon or disturb, such areas in any way without the Residential Association's or the Declarant's prior written approval.

14.10. Special Tax Districts.

All or portions of the Community may be located within Cinco Ranch Southwest Municipal District No. 1, 2, 3 or 4 and, in such case, may be subject to all assessments, charges and ad valorem taxes imposed

by such District, in addition to such assessments as the Residential Association may impose pursuant to this Declaration.

14.11. Utility Easements.

Portions of the Community may be subject to easements for power transmission lines and natural gas pipelines. The Residential Association shall have no responsibility for providing maintenance to such areas or improving them to the Community-Wide Standard.

* * *

Article 15 Rights of Lenders

In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this Article sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Residential Properties.

15.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which has provided a written request to the Residential Association within the preceding 12 months (such request to state the name and address of such holder, insurer, or guarantor, its loan number, and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Residential Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Residential Association.

15.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.3. Notice to Residential Association.

Upon request, each Owner shall furnish to the Residential Association the name and address of the holder of any Mortgage encumbering such Owner's Unit and the loan number.

15.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Residential Association does not receive a written response from the Mortgagee within 30 days of the date of the Residential Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Article 16

Expansion of the Community

It is not practical to develop, market and sell a community the projected size of Cinco Ranch Southwest all at one time. Therefore, the Declarant intends to develop the Community in phases to meet demand. This Article establishes procedures by which the Declarant and the Residential Association may expand the Community.

16.1. Expansion by Declarant.

The Declarant may, from time to time, submit to the terms of this Declaration all or any portion of the property described in Exhibit "B" by recording a Supplemental Declaration describing the additional property to be submitted. The Declarant may record such a Supplemental Declaration without the consent of any Person except the owner of such property, if not the Declarant.

The Declarant's right to expand the Community under this section expires when all property described in Exhibit "B" has been submitted to this Declaration or 40 years after this Declaration is recorded, whichever is earlier. Until then, the Declarant may transfer or assign this right to any Declarant Affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Declarant.

Nothing in this Declaration shall require the Declarant or any successor to submit additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever. The Declarant may submit different parcels of property to this Declaration at different times. The Declarant gives no assurances as to the boundaries of the parcels that may be submitted to this Declaration, or as to the order in which the Declarant may submit different parcels of property to this Declaration, as to whether buildings erected on any additional property submitted to this Declaration will be compatible with other buildings in the Community in terms of architectural style, quality of construction, principal materials employed in construction, or size.

16.2. Expansion by the Residential Association.

The Residential Association also may submit additional property to this Declaration by recording a Supplemental Declaration describing the additional property. Any Supplemental Declaration which the Residential Association records must be approved by Voting Delegates entitled to cast more than 50% of the total votes in the Residential Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Declarant's consent is required. The Residential Association's President and Secretary, the owner of the property, and the Declarant, if the Declarant's consent is required, shall sign the Supplemental Declaration.

16.3. Additional Covenants and Easements.

Any Supplemental Declaration that the Declarant records may impose additional covenants and easements on the property described in such Supplemental Declaration, such as covenants obligating the Residential Association to maintain and insure such property and authorizing the Residential Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplemental Declaration submitting new property to this Declaration or may be set forth in a separate Supplemental Declaration applicable to property previously submitted to this Declaration. If someone other than the Declarant owns the property, then the Supplemental Declaration must be signed by such owner evidencing such owner's consent. Any Supplemental Declaration may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property described in the Supplemental Declaration, in order to reflect the different character and intended use of such property.

16.4. Effect of Filing a Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording unless otherwise specified in the Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property made subject to this Declaration shall be assigned voting rights in the Residential Association and assessment liability in accordance with the provisions of this Declaration.

* * *

Article 17 Additional Rights Reserved to the Declarant

This Article reserves various rights to the Declarant, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Declarant's development and sale of property in the Community, to enable the Declarant to respond to Owners' concerns, and to protect various property rights and other interests of the Declarant.

17.1. Special Development Rights.

In addition the rights specifically reserved to the Declarant under Article 16 with respect to expanding the Community, the Declarant reserves the right, during the Development and Sale Period, to:

- (a) create Units, Common Areas, and Limited Common Areas, and to designate roadways, within any portion of the Community which it owns;
- (b) subdivide or combine any Unit or Units which it owns in order to create larger or additional Units, Common Areas, and/or Limited Common Areas;
- (c) convert any Unit which it owns into Common Area, Limited Common Area, or roadways;
- (d) adjust the boundaries of any Units that it owns and any Common Area or Limited Common Area;
and
- (e) amend this Declaration or any Supplemental Declaration to withdraw property from the Community and the coverage of this Declaration, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the

property to be withdrawn, if not the Declarant. If the property is Common Area, the Residential Association shall consent to such withdrawal.

17.2. Marketing and Sales Activities.

Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Declarant and its designees or assigns may construct, use, and maintain such facilities and conduct such activities upon portions of the Common Area and other property they own as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, parking facilities, exterior lighting features or displays, and special events. Declarant and authorized Builders whom the Declarant may designate shall have easements for access to and use of such facilities at no charge. Such right shall specifically include the right of the Declarant and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge and to restrict use or access to such facilities by the Residential Association, its members and others as long as they are being used for any such purpose. There shall be no limit on the number or location of such facilities, except as otherwise restricted by state law or local ordinance or regulations.

17.3. Access for Development Purposes.

During the Development and Sale Period, the Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area and roadways within the Community for the purpose of:

- (a) exercising any rights reserved to the Declarant pursuant to this Declaration, including the rights set forth in Sections 17.1 and 17.2; and
- (b) making, constructing, and installing any improvements indicated on recorded subdivision maps or plats of the Community and such other improvements to the Common Area and to the Exhibit "B" property as it deems appropriate; and
- (c) making repairs or correcting any condition on the Common Area or any Unit.

17.4. Right to Approve Changes in Community Standards.

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Declarant.

17.5. Additional Covenants and Restrictions.

During the Development and Sale Period, no one other than the Declarant or a Declarant Affiliate may record any additional covenants or restrictions affecting any portion of the Community without the Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

17.6. Exclusive Rights to Use Name of Development.

No Person other than the Declarant or a Declarant Affiliate shall use the name "Cinco Ranch Southwest" or any derivative of such name or in any logo or depiction associated with Cinco Ranch Southwest in any printed or promotional material or on any Internet website without the Declarant's prior written consent. However, Owners may use the name "Cinco Ranch Southwest" in printed or promotional matter

where such term is used solely to specify that particular property is located within Cinco Ranch Southwest, and the Residential Association shall be entitled to use the word "Cinco Ranch Southwest" in its name.

17.7. Community Systems.

The Declarant reserves for itself, Declarant Affiliates, and their respective successors and assigns, a perpetual right and easement over all of the property in the Community to install and operate such Community Systems as the Declarant, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the area. The Declarant also has the right to charge or authorize any provider to charge individual users a reasonable fee, not to exceed the maximum allowable charge for such service, as defined from time to time by the laws, rules, and regulations of any government authority having jurisdiction.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

17.8. Easement to Inspect and Right to Correct.

The Declarant reserves for itself, Builders, and others it may designate, the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Residential Properties to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

 *The Declarant, or someone it designates, may enter any Owner's property to inspect and correct problems with the Unit. The Declarant must give the Owner of the Unit prior notice, unless it is an emergency.*

17.9. Right to Notice of Design or Construction Claims.

Neither the Residential Association, any Owner, or any other Person shall initiate the dispute resolution procedures under Article 18, nor retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation against the Declarant or a Builder involving such design or construction, including any claim for breach of contract or warranty or violation of statutory or common law requirements, unless the Declarant or Builder, as applicable, has been first notified in writing, by certified mail, and given an opportunity to meet with the Residential Association and the Owner of any affected Unit to discuss the concerns, conduct its own inspection, and take action to remedy any problem in accordance with this Section. Any notice to the Declarant or a Builder under this Section shall include a description of the nature and location of the alleged defect in design or construction ("**Defect**"), a description of any damage suffered as the result of the Defect, the date on which the Defect was discovered, and dates and times during ordinary business hours that the Declarant or Builder may meet with the Owner of the affected Unit or a representative of the Residential Association to conduct an inspection.

Nothing in this Section obligates the Declarant or any Builder to inspect, repair, replace, or cure any Defect. However, if the Declarant or Builder elects to repair any Defect, it will so notify the Residential Association (if the Defect involves Common Area) or the Owner of the affected Unit (if the Defect is in a Unit) within 30 days after conducting such inspection and the Residential Association or Owner shall permit the Declarant or Builder, its contractors, subcontractors, and agents access as needed during ordinary business hours to make such repairs which, once begun, shall be completed within a reasonable time, subject to the nature of the repair and unforeseen circumstances and events. All applicable statutes of limitations shall be tolled during the period of inspection and cure under this Section, not to exceed the earlier of (i) 120 days after the date the Declarant or Builder receives written notice of the Defect in accordance with this Section; or (ii) the Declarant's or Builder's delivery to the claimant of written notice that the Declarant or Builder does not intend to take any further action to remedy the Defect.

Any dispute as to the adequacy of the proposed repairs to resolve the problem or as to whether repairs that the Declarant, its contractors, or subcontractors have performed have remedied the Defect, the Declarant may appoint a third-party inspector who is knowledgeable and experienced in residential home construction to inspect the Defect and make a determination as to whether any proposed solution is adequate or as to whether the Defect has been remedied. The Residential Association, the Declarant, and the Owner of any affected Unit agree to accept and abide by the decision of the inspector.

If the Residential Association or any Owner fails to comply with this Section, the Declarant shall not be liable for any general, special, or consequential damages, costs, or diminution in value that might have been avoided had the Declarant been given the notice and opportunity to repair described in this Section.

17.10. Right to Transfer or Assign the Declarant's Rights.

The Declarant may transfer any or all of the Declarant's special rights and obligations set forth in this Declaration or the By-Laws in whole or in part, temporarily or permanently, to other Persons. However, such a transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No transfer or assignment of the Declarant's status as the Declarant or as the Declarant Member shall be effective unless it is in a recorded instrument which the Declarant has signed. The Declarant may permit other Persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless desired to evidence the Declarant's consent to such exercise.

17.11. Termination of Rights.

Except as otherwise specified above, the rights reserved to the Declarant in this Article shall terminate on the earlier of (a) termination of the Development and Sale Period; or (b) the Declarant's recording of a written statement that all sales activity has ceased.

Article 18

Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between owners or between an owner and the Residential Association, the Declarant or others involved in the Community. This Article commits the parties to any such a dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes

in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Residential Association's membership before the Residential Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

18.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) **Bound Parties.** The Declarant, the Residential Association and its officers, directors, and committee members, all Owners and other Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

(b) **Claims.** As used in this Article, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article 5, which shall not be subject to review.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

- (i) any suit by the Residential Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Residential Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Residential Association's ability to enforce the provisions of Articles 5, 6, or 7 of this Declaration (relating to creation and maintenance of community standards);
- (iii) any suit that does not include the Declarant, a Declarant Affiliate, or the Residential Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 18.2;
- (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article; and
- (vi) any suit by the Residential Association to enforce the Governing Documents where the Residential Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Residential Association filing suit.

summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, except as otherwise provided in Section 18.3.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) *Settlement.* Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

18.3. Initiation of Litigation by Residential Association.

(a) *Voting Delegate Approval.* In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Residential Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Voting Delegates entitled to cast at least 75% of the total votes in the Residential Association and by 75% of the Voting Delegates, except that no such approval shall be required for actions or proceedings:

- (i) initiated during the Declarant Control Period;
- (ii) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens;
- (iii) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (iv) initiated against any contractor, vendor, or supplier of goods or services, other than the Declarant or a Builder, arising out of a contract for services or supplies; or
- (v) to defend claims filed against the Residential Association or to assert counterclaims in proceedings instituted against it.

This subsection (a) shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

(b) *Mandatory and Binding Arbitration.* Notwithstanding any other provision of this Declaration, any Claim by the Residential Association or any Owner or group of Owners arising out of alleged defects in the Common Areas or other portions of the Area of Common Responsibility that is not resolved by mediation shall be submitted to final and binding arbitration in accordance with the is subsection (b). The Claimant shall have 30 days following termination of mediation pursuant to 18.2(c) to submit the Claim to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, or the Claim shall be deemed abandoned and the Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; however, nothing in this section shall release or discharge the Respondent from any liability to Persons not a Party to the foregoing proceedings. Unless the parties agree otherwise, there shall be one arbitrator. The arbitrator may grant any remedy or relief that the arbitrator considers just and equitable. The decision of the arbitrator shall be final, and judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

Each Owner, by accepting a deed to a Unit, waives any right to have a Claim within the scope of this subsection (b) resolved by judicial proceedings, including any right to trial by jury. This subsection (b) is an agreement of the Bound Parties to arbitrate the Claims described in this subsection and may be specifically enforced by any Bound Party. The Bound Parties acknowledge that any Claim subject to this subsection (b) involves a transaction in interstate commerce and shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §1, et seq., to the exclusion of any inconsistent state law, regulation or judicial decision.

If any party commences litigation in violation of this Section, then upon the other party's written objection, the party commencing litigation shall immediately stipulate to the dismissal of that litigation without prejudice. If the party commencing the litigation fails to make that stipulation within five days after the filing of such written objection, that party shall reimburse the other parties for their costs and expenses, including reasonable attorneys fees, incurred in seeking a dismissal or stay of that litigation if such dismissal or stay is obtained.

(c) *Good Faith; Fees.* The parties shall participate in good faith in all mediation and arbitration proceedings. The venue of the mediation or arbitration proceeding shall be determined by the mediator or arbitrator, as the case may be. The fees and expenses of the mediation or arbitration proceeding (including the fee of the mediator and arbitrator) shall be shared equally by the parties. Each party shall pay its own expenses (including without limitation attorneys fees and costs and expenses of preparation and presentation of proofs), except that the prevailing party in any arbitration proceeding shall be entitled to an award of reasonable attorneys fees and costs.

* * *

Article 19 Changes in the Common Area

Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of, or rights to use, Common Area. This Article explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.

19.1. Assignment and Reassignment of Limited Common Area.

(a) *Assignment.* The Board may assign any portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and Voting Delegates representing a majority of the total votes in the Residential Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Declarant's written consent.

(b) *Use by Others.* Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Residential Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

19.2. Condemnation.

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Residential Association in lieu of and under threat of condemnation with such approval as may be required under Section 19.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Residential Association to be disbursed as follows:

 A public entity such as a town, county, or state has the power to condemn property for its own uses and generally has to pay the value of the property to do so.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Residential Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, during the Development and Sale Period, and Voting Delegates entitled to cast at least 75% of the total votes in the Residential Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring damaged improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 19.4.

19.3. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required under Section 19.4.

 Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

19.4. Transfer, Mortgaging, or Dedication of Common Area.

The Residential Association may transfer or dedicate portions of the Common Area to Fort Bend County, Texas, or any local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Voting Delegates entitled to cast at least 75% of the total votes in the Residential Association and, during the Development and Sale Period, the written consent of the Declarant; or

(b) if Limited Common Area, upon written approval of Owners of at least 67% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Residential Association to be used as the Board determines, unless otherwise directed by Voting Delegates at the time such sale or mortgage is authorized pursuant to Section 19.4(a). The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner directed by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized pursuant to Section 19.4(b).

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

Article 20 Duration and Amendment of Declaration

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This Article sets out procedures by which either the Declarant or the Owners as a group may amend this Declaration to address such changes.

20.1. Duration.

This Declaration shall remain in effect perpetually, subject to such amendments as may be adopted pursuant to Section 20.2, and may not be terminated except by a recorded instrument referencing and expressly terminating this Declaration, which instrument is signed by at least 67% of the then Owners of Units subject to the Declaration. In addition, the written consent of Fort Bend County shall also be required, if and so long as the ordinances of Fort Bend County require a mandatory membership association to maintain Common Areas within the Community. This Declaration shall terminate on the date specified in any such termination instrument. This section shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

20.2. Amendment.

(a) *By the Declarant.* In addition to the specific amendment rights granted elsewhere in this Declaration, during the Declarant Control Period, the Declarant may unilaterally amend this Declaration for any purpose.

(b) *By Membership.* Except as otherwise specifically provided above or elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent of Owners of not less than 67% of the Units, or Voting Delegates entitled to cast not less than 75% of the total votes in the Residential Association. During the Development and Sale Period, the Declarant's written consent shall also be required.

Any amendment pursuant to this Section shall be prepared, executed, certified and recorded on behalf of the Residential Association by any officer designated for such purpose or, in the absence of such designation, by the Residential Association's President.

(c) *Validity and Effective Date.* Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Declarant Member without the written consent of the Declarant or the Declarant Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment.

No action to challenge the validity of an amendment may be brought more than two years after its recording. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

(d) *Exhibits.* Exhibits "A" and "B" are incorporated by this reference and this Article shall govern amendment of those exhibits, except as otherwise specifically provided in this Declaration. Exhibit "C" is attached for informational purposes only and may be amended as provided in Article 7 or pursuant to Section 20.2. Exhibit "D" is attached for informational purposes only and may be amended as provided in that exhibit. Exhibit "E" is attached for informational purposes only and may be amended as provided in Article 5 or pursuant to Section 20.2.

* * *

EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Fort Bend County, Texas, and being more particularly described on that certain plat of Cinco Ranch Southwest, Section 2, filed in the Office of the County Clerk of Fort Bend County, Texas on April 11, 2006 as Instrument No. 20060095, as such plat may be revised and amended, the Units within such property being designated NEIGHBORHOOD NO. 2;

TOGETHER WITH:

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Fort Bend County, Texas, and being more particularly described as on that certain plat of Cinco Ranch Southwest, Section 3, filed in the Office of the County Clerk of Fort Bend County, Texas on April 11, 2006 as Instrument No. 20060097, as such plat may be revised and amended, the Units within such property being designated NEIGHBORHOOD NO. 3;

TOGETHER WITH:

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Fort Bend County, Texas, and being more particularly described on that certain plat of Cinco Ranch Southwest, Section 4, filed in the Office of the County Clerk of Fort Bend County, Texas on April 11, 2006 as Instrument No. 20060098, as such plat may be revised and amended, the Units within such property being designated NEIGHBORHOOD NO. 4.

EXHIBIT "B"

Expansion Property

THAT REAL PROPERTY more particularly described by metes and bounds on Exhibit "B-1" attached hereto;

LESS AND EXCEPT that land initially submitted to this Declaration as described on Exhibit "A."

In addition to the above, as the owner or with the written consent of the owner, the Declarant may also submit to the terms of the Declaration any real property situated within five miles of the perimeter boundaries of the property described on Exhibit "A" or this Exhibit "B."

Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplemental Declaration in accordance with Article 16.

EXHIBIT "B-1"

Land Subject to Annexation

(continued)

Metes and Bounds Description
2,345.0 Acres
W.M. Andrus Survey, A-752
John Rich Survey, A-706
J. S. Mimms Survey, A-598
I. & G.N.R.R. Survey, A-365
I. & G.N.R.R. Survey, A-364
G.C. & S.F.R.R. Survey, A-409
Cartlidge & Ferguson Survey, A-444
J. R. Foster Survey, A-574
S. M. Williams Survey, A-463
Brooks and Burleson Survey, A-144
Walton, Hill & Walton Survey "B", A-434 and
Walton, Hill & Walton Survey "A", A-435
Fort Bend County, Texas

Being 2,345.0 acres of land situated in the W. M. Andrus Survey, A-752, the John Rich Survey, A-706, the J. S. Mimms Survey, A-598, the I. & G.N.R.R. Survey, A-365, the I. & G.N.R.R. Survey, A-364, the S. M. Williams Survey, A-463, the G.C.&S.F.R.R. Survey, A-409, the Cartlidge & Ferguson Survey, A-444, the J.R. Foster Survey, A-574, the Brooks and Burleson Survey, A-144, the Walton, Hill and Walton Survey, A-434, and the Walton, Hill & Walton Survey, A-435, all of Fort Bend County, Texas, and being a portion of the following nine tracts of land conveyed to Terrabrook Cinco Ranch Southwest, L.P.: a called 847.4831-acre tract described in deed recorded under Fort Bend County Clerk's File Number (F.N.) 2002071214 of the Fort Bend County Official Records (F.B.C.O.R.), a called 488.578-acre tract described in deed recorded under F.N. 2002071031 of said F.B.C.O.R., a called 180.2-acre tract described in deed recorded under F.N. 2003159919 of said F.B.C.O.R., a called 90.03-acre tract described in deed recorded under F.N. 2002089411 of said F.B.C.O.R., a called 108.997-acre tract described in deed recorded under F.N. 2002071041 of said F.B.C.O.R., a called 318.48-acre tract described in deed recorded under F.N. 2002071380 of said F.B.C.O.R., a called 4.103-acre tract described in deed recorded under F.N. 2002071042 of said F.B.C.O.R., a called 59.3355-acre tract described in deed recorded under F.N. 2002071043 of said F.B.C.O.R., and a called 178.04-acre tract described in deed recorded under F.N. 2004086008 of said F.B.C.O.R.; said 2,345.0 acres being more particularly described by metes and bounds, with all bearings referenced to the Texas Coordinate System of 1927, South Central Zone:

BEGINNING at a 5/8-inch iron rod found for the northwest corner of a called 225.048 acre tract of land described in deed recorded under File Number 8752236 of said F.B.C.O.R., being the southwest corner of said 488.578 acre tract, and being in the easterly right-of-way line of FM 1463 (100 feet wide);

EXHIBIT "B-1"

Land Subject to Annexation

(continued)

THENCE, North 02°08'42" West, along said easterly right-of-way line, a distance of 441.99 feet to a 5/8-inch iron rod with cap stamped "SURVCON INC" found for an angle point;

THENCE, North 01°56'42" West, continuing along said easterly right-of-way line, a distance of 5,233.98 feet to a 3/4-inch iron pipe found for the northwesterly corner of the herein described tract on the line common to said John Rich Survey and the Alex Phillips Survey, A-300;

THENCE, North 87°47'03" East, departing said easterly right-of-way line and along said common survey line, a distance of 2,352.73 feet to a 3/4-inch iron pipe found for an angle point;

THENCE, South 46°27'41" East, departing said common survey line, a distance of 2,053.41 feet to a 3/4-inch iron pipe found for an angle point;

THENCE, North 61°17'45" East, a distance of 12.09 feet to a 3/4-inch iron pipe found for an angle point;

THENCE, North 77°58'35" East, a distance of 425.89 feet to an axle found for an angle point, same being the most westerly corner of said I. & G.N.R.R. Survey, A-364;

THENCE, North 42°37'51" East, along the westerly line of said I. & G.N.R.R. Survey, A-364, a distance of 5,219.81 feet to a 1-inch iron pipe found for the most northerly corner of the aforementioned 318.48 acre tract, being the most northerly corner of said I. & G.N.R.R. Survey;

THENCE, South 46°25'08" East, along the southeasterly line of said I. & G.N.R.R. Survey, A-364, a distance of 1,014.59 feet to a 1/2 inch iron rod (bent) found for and angle point;

THENCE, South 47°28'47" East, continuing along the northeasterly line of said I. & G.N.R.R. Survey, A-364, a distance of 4,270.39 feet to a 5/8 inch iron rod with plastic cap stamped "SURVCON INC." found for the most westerly corner of said 318.48 acre tract;

THENCE, South 42°49'39" West, along the southerly line of said 318.48 acre tract, a distance of 953.03 feet to a 5/8 inch iron rod with plastic cap stamped "SURVCON INC. " found for the northerly corner of said 108.997 acre tract,

THENCE, South 46°27'27" East, along the northeasterly line of said 108.997 acre tract, a distance of 2,471.15 feet to a PK nail found for the most westerly corner of said 108.997 acre tract, being the most northerly corner of a called 125.000-acre tract described in deed recorded under F.N. 2002029242 of said F.B.C.O.R.; ;

EXHIBIT "B-1"

Land Subject to Annexation

(continued)

THENCE, South 43°22'13" West, along the line common to said 108.997 acre and 125.000-acre tracts, a distance of 2,316.97 feet to a 5/8 inch iron rod with plastic cap stamped "Benchmark Eng" found for the most westerly corner of said 125.000-acre tract;

THENCE, South 46°37'11" East, along the southwesterly line of said 125.000 acre tract, a distance of 2,373.43 feet to a 5/8 inch iron rod with plastic cap stamped "Benchmark Eng " found for the most southerly corner of said 125.000 acre tract, and being on the northwesterly line of the aforementioned 178.04-acre tract;

THENCE, North 42°22'31" East, along the line common to said 125.000-acre tract and said 178.04 acre tract, a distance of 2,280.72 feet to an iron rod with cap found for corner;

THENCE, South 46°27'24" East, a distance of 54.80 feet to a point for corner;

THENCE, South 47°35'14" East, a distance of 1,475.26 feet to a point for corner;

THENCE, South 02°06'33" West, a distance of 1,951.31 feet to a point for corner in the existing northerly right-of-way line of F.M. 1093 (100 feet wide);

THENCE, South 83°01'35" West, along said northerly right-of-way line of F.M. 1093, a distance of 4,284.58 feet to a 3/4 inch iron pipe found for an angle point;

THENCE, South 83°01'05" West, continuing along said northerly right-of-way line of F.M. 1093, a distance of 1,728.65 feet to a 3/4-inch iron pipe found for corner, same being a southeasterly corner of a called 3.000-acre tract conveyed to Jane Harwood McGall and Stephen Harwood recorded under Volume 707, Page 701 of the Fort Bend County Deed Records;

THENCE, North 47°57'27" West, departing said northerly right-of-way line of F.M. 1093 and along the easterly line of said 3.000-acre tract, a distance of 698.85 feet to a 1/2-inch iron pipe found for an angle point of the herein described tract, same being a common corner of said 59.3355-acre tract and said 3.000-acre tract;

THENCE, South 03°04'39" East, along the common line of said 59.3355-acre tract and said 3.000 acre tract, a distance of 528.66 feet to a 1/4-inch iron pipe found in said northerly right-of-way line of F.M. 1093 for an angle point of the herein described tract, same being a southeasterly corner of said 59.3355-acre tract and the southwesterly corner of said 3.000-acre tract;

THENCE, South 83°01'49" West, along said northerly right-of-way line of said F.M. 1093, a distance of 1,513.23 feet to a point for the southeast corner of a called 1.764 acre tract described in deed recorded under File Number 2003159920 of said F.B.C.O.R.;

EXHIBIT "B-1"

Land Subject to Annexation
(continued)

THENCE, North 16°23'24" West, departing said northerly right-of-way line, along the line common to said 59.3355-acre tract and said 1.764 acre tract, a distance of 974.99 feet to a point for the north corner of said 1.764 acre tract, being the most easterly southeast corner of the aforementioned 180.2 acre tract;

THENCE, South 83°00'54" West, a distance of 900.00 feet to a 5/8 inch iron rod with plastic cap stamped "SURVCON INC. " found for an angle point;

THENCE, South 06°57'23" East, a distance of 961.84 feet to a 5/8 inch iron rod with plastic cap stamped "SURVCON INC." found for the most southerly southeast corner of said 180.2 acre tract, being in said northerly right-of-way line of F.M. 1093;

THENCE, South 83°00'54" West, along said northerly right-of-way line of said F.M. 1093, a distance of 1899.75 feet to a point for the southwest corner of said 180.2 acre tract, from which a found 1/2 inch iron pipe bears 1.02 feet;

THENCE, North 02°51'43" West, a distance of 3,525.97 feet to a point for the northwest corner of said 180.2 acre tract, being a point in the southerly line of said 847.4831 acre tract, from which a found 1/4 inch iron pipe bears North 03°10'41" West, 0.60 feet;

THENCE, North 88°17'55" West, along the southerly line of said 847.4831 acre tract, a distance of 4,288.58 feet to the POINT OF BEGINNING, and containing within its bounds a computed area of 2,345.0 acres of land.

Prepared by:
SURVCON INC.
5757 Woodway
Houston, Texas 77057
Ph. 713-780-4123
Job No. 60004794-01
June 27, 2006
J:\TCB_SUBDIVISIONS\CINCO\CINCO SW M-B\DOC\2345acreMB.doc



James B. McAllister, Jr.
6-27-06

EXHIBIT "C"

Initial Rules

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article 5, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any appropriate circumstances.

The following shall apply to all of the Residential Properties until such time as they are modified pursuant to the Declaration.

1. **General.** The Units within the Residential Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Declarant or its designees to assist in the sale of property described in Exhibit "A" or "B," offices for any property manager retained by the Residential Association, or business offices for the Declarant or the Residential Association) consistent with this Declaration and any Supplemental Declaration.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within the Residential Properties, except to the extent undertaken by the Declarant in the course of development:

(a) Parking of "occupant vehicles" on Units in places other than the garage or driveway serving the Unit, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages. For purposes of this provision, a vehicle shall be considered an "occupant vehicle" if it is parked on the Unit four or more hours per day, four or more day in any seven-day period. A vehicle shall be considered "inoperable" if it is obviously inoperable or does not have a current operating license. A vehicle shall be considered "stored" if it put up on blocks or covered with a tarpaulin and remains in such state for 7 consecutive days without prior approval of the Board;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. In the case of dogs and cats, a maximum of two such pets shall be considered reasonable. Those pets which are permitted to roam free, or make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units are subject to removal in accordance with Fort Bend County's ordinances and enforcement procedures. Dogs shall be kept on a leash or otherwise confined in compliance with County ordinances whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity (other than grilling or other food preparation) that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;

EXHIBIT "C"

Initial Rules (continued)

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(j) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(k) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Residential Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article 5;

(l) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Community or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(m) Regular or frequent use of any Unit to host religious activities, motivational meetings, classes, parties, or similar activities requiring the parking of a number of vehicles exceeding the number that can be accommodated in the host's garage, driveway, and the right-of-way immediately in front of and adjacent to the Unit. For purposes of this clause, "regular or frequent use" shall refer to holding any one or a combination of such activities on a daily or weekly basis or with such other frequency as exceeds what is normal or typical for a residential community

(n) Swimming, wading, or use of boats or other watercraft with gasoline-powered engines on any pond within the Community, except that the Declarant and the Residential Association may use gasoline-powered boats for construction, maintenance, and repair of such ponds;

(o) Any yard sale, garage sale, moving sale, rummage sale, estate sale, or similar activity, except that each Owner may conduct one such sale on his or her Unit per calendar year; and

EXHIBIT "C"

Initial Rules

(continued)

(p) Posting of any signs on Units, Common Areas, or rights-of-way within or adjacent to the Community, except that:

(i) the Declarant and the Residential Association may post signs as they deem appropriate;

(ii) subject to the limitations in Section 7.1 of the Declaration, an Owner may post one standard real estate sign not to exceed four feet in height, the total message area of which does not to exceed 12 square feet (all sides combined), advertising the Unit on which it is posted "for sale" or "for lease;"

(iii) the Owner or occupant of a Unit may post temporary political signs on the Unit, not to exceed two feet in height or 8 square feet of message area (all sides combined) per sign, for up to 90 days prior to an election or referendum and up to 10 days after the election or referendum, provided that such signs have a professional appearance and contain no profanity or derogatory or offensive language, graphics, or markings, as the Board may determine in its sole discretion.

(q) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article 5; and

(r) Any modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article 5 of the Declaration. This shall include, without limitation, signs, basketball hoops, and swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers, and similar structures; hedges, walls, dog runs, animal pens, or fences of any kind; decks; storage sheds; and satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Antennas**") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Declarant and/or the Residential Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Cinco Ranch Southwest, should any master system or systems be utilized by the Residential Association and require such exterior apparatus.

3. **Prohibited Conditions.** The following shall be prohibited in the Community:

EXHIBIT "C"

Initial Rules
(continued)

(a) Plants, animals, devices, or other things 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 Community; and

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair.

EXHIBIT "D"

By-Laws of Cinco Ranch Residential Association II, Inc.

BY-LAWS
OF
CINCO RANCH RESIDENTIAL ASSOCIATION II, INC.

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**BY-LAWS
OF
CINCO RANCH RESIDENTIAL ASSOCIATION II, INC.**

**Article 1
Name, Principal Office, and Definitions**

1.1. Name.

The name of the corporation is Cinco Ranch Residential Association II, Inc. (the "**Residential Association**").

1.2. Principal Office.

The Residential Association may have such offices in Harris County or Fort Bend County, Texas as the Board may determine or as the Residential Association's affairs may require.

1.3. Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the meaning ascribed to them in the Declaration of Protective Covenants for Cinco Ranch Southwest recorded by Terrabrook Cinco Ranch Southwest, L.P., a Delaware limited partnership ("**Declarant**") in the Office of the County Clerk of Fort Bend County, Texas, as it may be amended (the "**Declaration**"). The term "**majority**," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**Article 2
Membership: Meetings, Quorum, Voting, Proxies**

2.1. Membership.

The Residential Association shall have two classes of membership: Owner Membership and Declarant Membership, as more fully described in the Declaration. Provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

The Residential Association shall hold meetings at the Residential Association's principal office or at such other suitable place the Board may designate.

2.3. Membership Meetings.

(a) *General.* Residential Association meetings shall be of the Voting Delegates unless the Board otherwise specifies or Texas law otherwise requires; however, any Member may attend a Residential Association meeting. The first Residential Association meeting, whether an annual or special meeting, shall be held within one year after the Residential Association's incorporation.

(b) *Annual Meetings.* The Board shall schedule regular annual meetings of the Members to occur within 90 days before the close of the Residential Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) *Special Meetings.* The President may call special meetings of the Members. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or within 30 days after receipt of a petition stating the purpose of the meeting and signed by at least 50% of the Voting Delegates or by Members holding at least 10% of the total votes in the Residential Association.

2.4. Notice of Meetings.

At least 10 but not more than 60 days before any meeting of the membership, the President, the Secretary, or the officers or other persons calling the meeting shall deliver or cause to be delivered to each Voting Delegate and alternate Voting Delegate a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including the general nature of any proposed amendment to the Declaration or By-Laws, any proposed budget changes, any proposal to remove a director, and any other matter required by *Tex. Business Organizations Code* §§ 22.253 and 22.303. If proxies are permitted, the notice shall also state the procedures for appointing proxies. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 10.5.

The Board shall set a record date for determining who is entitled to receive notice of a meeting and shall prepare an alphabetical list of the names of all Persons entitled to vote, indicating (i) the address of each Person, and (ii) the number of votes each Person is entitled to cast at the meeting. Not later than the second business day after the date notice of the meeting is given, and continuing through the meeting, the list shall be made available at the Residential Association's principal office, as identified in the notice of the meeting, for inspection and copying by Members and/or Voting Delegates entitled to vote at the meeting, or their agents, for the purpose of communication with other Members and/or Voting Delegates concerning the meeting.

The Residential Association shall also make the list available at the meeting for inspection at any time during the meeting or any adjournment of the meeting.

2.5. Waiver of Notice.

Waiver of notice of a Residential Association meeting shall be deemed the equivalent of proper notice. Any Voting Delegate or alternate may waive, in writing, notice of any Residential Association meeting, either before or after such meeting. A Voting Delegate or alternate's attendance at a meeting shall be deemed a waiver by such Voting Delegate and alternate of notice of the time, date, and place thereof, unless the Voting Delegate or alternate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted

at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.6. Adjournment of Meetings.

If any membership meeting cannot be held because a quorum is not present, persons entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time at least 5 but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Voting Delegates or their alternates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Voting Delegates to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Declaration or applicable law for specific actions, must approve any action taken.

2.7. Voting.

(a) ***Voting Rights.*** Members shall have such voting rights as are set forth in the Declaration, which provisions are specifically incorporated by this reference. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue as to which the Voting Delegate representing their Unit would be entitled to vote under the Governing Documents.

A membership vote on any matter may be conducted at a meeting or by mail, facsimile transmission, electronic message, or to the extent permitted by Texas law, a secure web-based voting system, or any combination of those methods, as provided in Section 2.11. The Board shall establish voting procedures to provide reasonable assurance that the person casting the vote is the Voting Delegate or, if the Member is entitled personally to cast his or her vote, then the Member or the Member's proxy appointed pursuant to Section 2.8.

(b) ***Election of Voting Delegates.*** The Residential Members, other than the Declarant, owning Units within each Neighborhood shall elect a Voting Delegate to cast all votes attributable to their Units on all Residential Association matters requiring a membership vote, except as otherwise specified in the Declaration or these By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate.

The Board shall call for the first election of a Voting Delegate and alternate Voting Delegate from each Neighborhood at such time as the Board determines that there are a sufficient number of Owners and Neighborhoods to warrant representative voting. The first Voting Delegates elected shall serve until the close of the annual meeting following the first anniversary of their election. Thereafter, the Board shall call for an election of Voting Delegates and alternates on an annual basis to coincide with the annual meeting, with Voting Delegate's terms to commence upon the close of such annual meeting and expire upon the close of the next annual meeting following their election.

Voting Delegate elections shall be by ballots cast by mail, computer, or at a meeting of the Owner Members within such Neighborhood, as the Board determines. Upon written petition signed by Owner Members holding at least 51% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. Candidates for election as Voting Delegates may be nominated by the Board, a nominating committee the Board may appoint, or from the floor at any meeting at which such election is to be held. In addition or in the alternative, any Person may submit his or her name for consideration.

The presence, in person or by proxy, or the filing of ballots of Owner Members representing at least 20% of the total votes attributable to Units in the Neighborhood shall constitute a quorum for any Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Neighborhood, the Board may appoint a Voting Delegate or alternate Voting Delegate to represent such Neighborhood until a successor is elected.

Subject to the above quorum requirement, in any election of Voting Delegates the candidate who receives the greatest number of votes shall be elected as the Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. In the event of a tie vote among the leading candidates, the Voting Delegate shall be determined by drawing names from a hat, with the first person drawn being the Voting Delegate and the second being the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one year or until their successors are elected, whichever is longer.

(c) ***Removal of Voting Delegates.*** Any Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owner Members representing a majority of the total number of Units in the Neighborhood that the Voting Delegate represents.

2.8. Proxies.

Voting Delegates may not vote by proxy but only in person or through their designated alternates; however, any Voting Delegate who is entitled to cast only the vote(s) for his own Unit(s) pursuant to the Declaration, these Bylaws, or Texas law may cast such vote(s) in person or by proxy. Likewise, if a Member is entitled personally to cast the vote for his Unit on any matter, he or she may vote in person or by proxy, subject to the limitations of Texas law and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, shall be signed by the Member or the Member's duly authorized attorney-in-fact, and shall be dated and filed with the Residential Association's Secretary prior to any vote being taken at the meeting for which it is to be effective. Unless the proxy specifically provided otherwise, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Unit for which it was given, (b) the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.9. Quorum.

(a) Prior to the election of Voting Delegates, except as these By-Laws or the Declaration otherwise provide, the presence of Members or their proxies entitled to cast at least 20% of the total votes in the Residential Association shall constitute a quorum at any membership meeting, and the casting of ballots representing at least 20% of the total votes in the Residential Association shall constitute a quorum for any membership vote conducted by means other than at a meeting; provided, if a quorum is not established at any meeting when initially called or for any membership vote when initially conducted, then the quorum for any subsequent attempt to convene such meeting or conduct such membership vote shall be reduced to 10%.

(b) After the election of Voting Delegates, except as these By-Laws or the Declaration otherwise provide, the presence of Voting Delegates or their alternates representing at least a majority of the total number of Voting Delegates and at least a majority of the total votes in the Residential Association shall constitute a quorum at all membership meetings, and the casting of ballots representing at least a majority of the total votes in the Residential Association shall constitute a quorum for any membership vote by Voting Delegates conducted by means other than at a meeting.

2.10. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Residential Association meetings. The Secretary shall ensure that minutes of the meetings are prepared, reflecting all resolutions adopted and all other transactions occurring at such meetings. The minutes shall be kept with the Residential Association's books and records.

2.11. Action Without a Meeting.

(a) Any action that the Declaration, the Certificate of Formation, or applicable law requires to be taken at a meeting of the Members or Voting Delegates may be taken without a meeting, without prior notice and without a vote, if all Members or Voting Delegates entitled to vote on such matter sign a written consent specifically authorizing the proposed action. Such consents shall be signed within 180 days after receipt of the earliest dated consent, dated, and delivered to the Residential Association. Such consents shall be filed with the Residential Association's minutes and shall have the same force and effect as a vote of the Members or Voting Delegates at a meeting.

(b) Alternatively, any action that may be taken at a meeting of the Members or Voting Delegates may be taken without a meeting if (i) the Residential Association mails or delivers a written ballot or consent form to every Person entitled to vote on the action, setting forth the proposed action and providing an opportunity to approve or disapprove the proposed action; and (ii) the number of votes cast equals or exceeds the quorum required for a meeting to consider such action; and (iii) the number of votes cast in favor of the proposed action equals or exceeds the number of votes required to approve such action. Voting instructions or solicitations for any vote conducted in a manner other than at a meeting must indicate the number of responses needed to satisfy the quorum requirement, the percentage of votes necessary to approve any action other than election of directors, and the deadline for casting the ballot in order to be counted. A ballot once cast may not be revoked. The Board shall notify the Members of the results of the vote within 30 days after the expiration of the voting period.

Article 3

Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The Board shall govern the Residential Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Declarant Member, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within Cinco Ranch Southwest.

If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Residential Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time, except in the case of directors that the Declarant Member appoints.

3.2. Number of Directors.

The Board shall consist of three to seven directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office.

(a) *Initial Board.* The initial Board shall consist of the three directors identified in the Certificate of Formation, who shall serve until their successors are appointed or elected as provided in this Section.

(b) *Directors During Declarant Control Period.* Except as otherwise provided in this subsection (b) and in Section 3.5, the Declarant Member may appoint, remove, and replace Board members until termination of the Declarant Control Period. During such period, the Owner Members shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Owner Members are referred to as "Owner Directors"):

(i) Within 60 days after the time that Owners other than the Declarant, Declarant Affiliates, or Builders own 25% of the maximum number of Units contemplated by the General Plan or whenever the Declarant earlier determines, the President shall call for an election by which the Owner Members shall be entitled to elect one of the three directors. The remaining directors shall be appointees of the Declarant. The Owner Director shall be elected for a term of two years or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) Within 60 days after the time that Owners other than the Declarant, Declarant Affiliates, or Builders own 50% of the maximum number of Units contemplated by the General Plan or whenever the Declarant earlier determines, the Board shall be increased to five directors and the President shall call for an election by which the Owner Members shall be entitled to elect two of the five directors. The Declarant shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If

such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) *Directors After the Declarant Control Period.* Not later than termination of the Declarant Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the Owner Members shall be entitled to elect five of the seven directors. Three directors shall be elected to serve until the second annual meeting following their election and two directors shall be elected to serve until the third annual meeting following their election, as such directors determine among themselves. The Declarant Member shall be entitled to continue to appoint one director to serve until the second annual meeting following such election and one director to serve until the third annual meeting following such election.

Thereafter, upon expiration of the term of office of each director, the Owner Members shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

The diagram below illustrates the concept of transition of control of the Board during and after the Declarant Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS					
Initial Board	25% of Total Units Conveyed	50% of Total Units Conveyed	Termination of Declarant Control Period	1 st Annual Meeting After Termination	2 nd Annual Meeting After Termination
Declarant	Owner	Owner	Owner	Owner	Owner
Declarant	Declarant	Owner	Owner	Owner	Owner
Declarant	Declarant	Declarant	Owner	Owner	Owner
		Declarant	Owner	Owner	Owner
		Declarant	Owner	Owner	Owner
			Declarant	Owner	Owner
			Declarant	Declarant	Owner

3.4. Nomination and Election Procedures.

(a) *Nomination of Candidates.* At least 30 days prior to any election of any Owner Director, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners. The Nominating Committee shall serve until the close of the election for which they were appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Owner Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the Owner Members and to solicit votes.

(b) *Election Procedures.* At each election, voting shall be by ballot, which may be cast in any manner authorized by the Board consistent with Section 2.7. Each Owner Member may cast all votes assigned to the Units it represents for each position to be filled by an Owner Director. Notwithstanding this, if the number of candidates equals the number of positions to be filled and there are no nominations from the floor, any Owner may move to accept the slate of candidates nominated by the Nominating Committee, and, if approved, no balloting shall be required.

3.5. Removal of Directors and Vacancies.

Any Owner Director may be removed, with or without cause, by (a) the vote of Owner Members holding a majority of the votes entitled to be cast for the election of such director; or (b) the vote of Voting Delegates entitled to cast at least 75% of the total votes in the Association including, during the Development and Sale Period, the votes of the Declarant Member. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Owner Members, the Owner Members shall elect a successor for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who has three consecutive unexcused absences from Board meetings. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next election by the Owner Members, at which time a successor may be elected to serve the remainder of the term.

The Declarant shall have no unilateral right to remove or replace Owner Directors, and neither the Owner Members or the Board shall have any right to remove or replace directors that the Declarant appoints. The Declarant may appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Declarant.

B. Meetings.

3.6. Organizational Meetings.

The Board shall hold an organizational meeting within 10 days following each annual meeting of the membership, at such time and place as the Board shall fix.

3.7. Regular Meetings.

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

3.8. Special Meetings.

The President, Vice President, or any two directors may call a special meeting of the Board.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Residential Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or electronic communication at least 72 hours before the time set for the meeting.

(b) To the extent practicable, the Board shall give reasonable notice to the Members of the date, time, and place of Board meetings by announcing such information at a previous Board or membership meeting or posting notice in a location reasonably accessible to the Members and which the Board has designated for the posting of notices.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings; Remote Meetings.

(a) Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

(b) A meeting of the Board, or of any committee designated by the Board, may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, but only if (i) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and (ii) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant.

3.11. Quorum of Board; Voting.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Texas law, these By-Laws, or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the

original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting. Board members may not vote by proxy. Voting may be conducted at a meeting or by written consents without a meeting in accordance with Section 3.14.

3.12. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Residential Association's records.

3.13. Open Meetings; Executive Session.

(a) Subject to the provisions of subsection 3.13(b) and Section 3.14, all Board meetings shall be open to attendance by all Members or their representatives, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak. The Board shall make agendas for its meetings reasonably available for examination by all Members or their representatives prior to the meeting.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may restrict attendance to directors and such other persons as the Board may specifically invite and announce during the open portion of the Board meeting, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, and such other matters as the Texas Non-profit Corporation Law may specifically authorize.

3.14. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if a written consent setting forth the action so taken is signed by the number of directors that would be required to approve the same action at a Board meeting at which all of the directors were present and all such consents are hand delivered or mailed by certified mail, return receipt requested, to the Residential Association in care of the President within 60 days of the earliest dated consent. Such consent shall have the same force and effect as a vote at a meeting. The Board shall promptly notify all directors of any action so approved and the effective date of such action and provide each director with a copy of the signed written consent.

C. Powers and Duties.

3.15. Powers.

The Board shall have the power to administer the Residential Association's affairs, perform the Residential Association's responsibilities, and exercise the Residential Association's rights as set forth in the Governing Documents and as provided by law. The Board may do, or cause to be done on the Residential Association's behalf, all acts and things except those which the Governing Documents or Texas law require to be done and exercised exclusively by the Owners, Voting Delegates or the membership generally.

3.16. Duties.

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Residential Association's rights and responsibilities and, where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) opening bank accounts on the Residential Association's behalf and designating the signatories required;
- (f) depositing all funds received on the Residential Association's behalf in a bank depository which it shall approve and using such funds to operate the Residential Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (h) determining when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Residential Association; however, the Residential Association's obligation in this regard shall be conditioned in the manner provided in the Declaration and Section 3.18 below;
- (i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (j) paying the cost of all services rendered to the Residential Association;
- (k) keeping a detailed accounting of the Residential Association's receipts and expenditures;
- (l) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Residential Association as provided in Section 10.4; and
- (m) indemnifying the Residential Association's directors, officers, agents, and committee members, and any former director, officer or committee, to the extent such indemnity is required by Texas law, the Certificate of Formation, these By-Laws, or any contract or agreement entered into by the Residential Association.

3.17. Conflicts of Interest.

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Residential Association or any Residential Association contractor during his or her term

as director or within two years after the term expires. A director shall promptly disclose to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director.

Notwithstanding the above, directors appointed by the Declarant may be employed by or otherwise transact business with the Declarant or its affiliate, and the Declarant may transact business with the Residential Association or its contractors.

3.18. Mandatory Arbitration of Certain Claims.

The Residential Association shall submit any claim or dispute arising out of construction of the Common Area or the Area of Common Responsibility to mandatory, binding arbitration as provided in the Declaration.

Article 4

Transition from Declarant to Owner Control

4.1. Transition Process.

Transition is a process by which control of the Board gradually shifts from the Declarant to the Owners, as described in Section 3.3. The process concludes upon termination of the Declarant Control Period, when the Owner Members will elect the entire Board. At that time, the Owners, through their newly-elected Board, will take responsibility for fulfilling the Residential Association's responsibilities and exercising the Residential Association's authority under the Governing Documents without the direct guidance or involvement of the Declarant or Declarant-appointed directors.

4.2. Education and Communication.

In anticipation of termination of the Declarant Control Period, the Declarant Member shall communicate with the Owners regarding the transition process, the anticipated timeline for transition, what to expect during and after the transition, and opportunities for Owner participation. Such communication shall be in writing and through one or more "town hall" meetings at which Owners have the opportunity to ask and obtain answers to questions in order to gain a better understanding of the transition process.

4.3. Transition Committee.

The Declarant Member may, but shall not be required to, establish a Transition Committee comprised of 3 to 7 members, all of whom shall be Owners, to (i) involve the Owners in facilitating a smooth transition of control of the Board from directors appointed by the Declarant Member to directors elected by the Owner Members, and (ii) help prepare the Board and the Owners to assume responsibility for carrying on Residential Association operations once the Declarant and its representatives are no longer directly involved.

If a Transition Committee is appointed, the Board may, as a Common Expense, retain industry professionals, including association managers, attorneys, engineers, and accountants, as it deems necessary or appropriate to assist the Board in preparing for transition and to assist the Transition Committee in conducting its review.

Article 5 Officers

5.1. Officers.

The Residential Association's officers shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

5.2. Election and Term of Office.

The Board shall elect the Residential Association's officers at the first Board meeting following each annual meeting of the membership, to serve until their successors are elected.

5.3. Removal and Vacancies.

The Board may remove any officer whenever in its judgment the Residential Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

5.4. Powers and Duties.

The Residential Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Residential Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the Residential Association's budgets as provided for in the Declaration, and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

5.5. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Article 6 Committees

6.1. General.

In addition to the Transition Committee appointed pursuant to Article 4 and such committees as the Declarant or Board may appoint pursuant to the Declaration, the Board may appoint such other com-

mittees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

6.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 6.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Residential Association and shall conduct all hearings held pursuant to Article 9 of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

6.3. Service Area Committees.

The Owners within any Service Area which has no formal organizational structure or association may elect a Service Area Committee to determine the nature and extent of services, if any, which it desires to have the Residential Association provide to the Service Area, over and above those services which the Residential Association provides to all Units in Cinco Ranch Southwest. A Service Area Committee, if elected, shall consist of three Owners of Units in the Service Area; however, if approved by the vote of at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

Elections of Service Area Committees may be held by written ballot sent to all Owners of Units within the Service Area, or at a meeting of the Owners of Units within the Service Area, as the Board determines. The Board or any Owner of a Unit in the Service Area may nominate candidates for election to the Service Area Committee. That number of candidates equal to the number of positions to be filled receiving the most votes shall be elected. Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

Article 7

Standards of Conduct; Liability, and Indemnification

7.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall be insulated from liability as provided for directors of corporations under Texas law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to

which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Texas law.

7.2. Liability.

The Residential Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for any action taken or omitted in such capacities, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Residential Association's behalf (except to the extent that such officers or directors may also be Members).

7.3. Indemnification.

Subject to the limitations of Texas law, the Residential Association shall indemnify every present and former officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Residential Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Residential Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Texas law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Residential Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Residential Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in Texas law, the Board may authorize the Residential Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Residential Association.

7.5. Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Texas corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall be encouraged to complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audiotape, or in other format. The cost of such seminar shall be a Common Expense.

The Board may also provide, or provide for, Owner and resident education designed to foster a better understanding of Cinco Ranch Southwest's governance and operations, and leadership training classes designed to educate Voting Delegates and Owners as to the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

The Board may apply for and maintain, as a Common Expense, membership for the Residential Association, its officers and directors, in the Residential Associations Institute or any similar nonprofit organization that provides educational opportunities for Residential Association directors, officers and managers in operation and management of Residential Associations.

Article 8 Management and Accounting

8.1. Compensation of Directors and Officers.

The Residential Association shall not compensate directors and officers for acting as such unless Voting Delegates representing at least 67% of the total votes in the Residential Association approve such compensation at a Residential Association meeting. The Residential Association may reimburse any director or officer for expenses he or she incurs on the Residential Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Residential Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Residential Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Residential Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

8.2. Right of Declarant Member to Disapprove Actions.

So long as there is a Declarant Membership, the Declarant Member shall have a right to disapprove any action, policy, or program of the Residential Association, the Board and any committee which, in the Declarant Member's sole judgment, would tend to impair rights of the Declarant or Builders under the Declaration or these By-Laws, interfere with development or construction of any portion of Cinco Ranch Southwest, or diminish the level of services the Residential Association provides. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

(a) *Notice.* The Residential Association shall give the Declarant Member written notice of all meetings of the membership, the Board, and committees, and any actions proposed to be taken by any of them by written consent in lieu of a meeting. The Residential Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Declarant Member has registered with the Residential Association. Such notice shall comply, as to Board meetings, with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) *Opportunity to be Heard.* At any such meeting, the Residential Association shall give the Declarant Member the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant Member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

The Declarant Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Declarant Member may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Residential Association. The Declarant Member shall not use its right to disapprove to reduce the level of services the Residential Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

8.3. Managing Agent.

The Board may employ for the Residential Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Declarant or its affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Residential Association shall not be bound, either directly or indirectly, by any management contract executed during the Declarant Control Period unless such contract contains a right of termination

which may be exercised by the Residential Association, with or without cause and without penalty, at any time after termination of the Declarant Control Period upon not more than 90 days' written notice.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Residential Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Residential Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Residential Association.

8.4. Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) accounting and controls should conform to generally accepted accounting principles; and

(ii) the Residential Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Residential Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

8.5. Borrowing.

The Residential Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Voting Delegate approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-

month period, exceeds or would exceed 20% of the Residential Association's budgeted gross expenses for that fiscal year.

8.6. Right to Contract.

The Residential Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside Cinco Ranch Southwest.

8.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Residential Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

Article 9 Enforcement Procedures

The Residential Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration or Texas law, the Board shall comply with the following procedures prior to imposition of sanctions:

9.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice, by certified mail, return receipt requested, (a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Residential Association, as applicable; (b) describing the proposed sanction to be imposed; and (c) informing the alleged violator that he or she has 30 days after receipt of the notice to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article 6; and (d) informing the alleged violator that he or she may avoid the proposed sanction by curing the violation within a reasonable cure period stated in the notice, except that the Residential Association shall have no obligation to provide a cure period if the alleged violator has been given notice of a similar violation within the preceding six months. If the hearing is to be held before a Covenants Committee, the notice shall also state that the alleged violator has the right to appeal the decision of the Covenants Committee to the Board.

The alleged violator shall respond to the notice of the alleged violation in writing within such 30-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction, or the proposed sanction shall be imposed. If the alleged violator cures the alleged violation and notifies the Board in writing within such 30-day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by

the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

9.2. Hearing.

If a hearing is requested within the allotted 30-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session within 30 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 10 days and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Residential Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing. At the hearing, the alleged violator shall be afforded a reasonable opportunity to be heard and shall be entitled to make an audio recording of the hearing. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (*i.e.*, the Board's or Committee's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three days after the hearing.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed unless the violation is cured within the cure period stated in the notice.

9.3. Appeal.

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Residential Association's manager, President, or Secretary within 10 days after the hearing date.

Article 10 Miscellaneous

10.1. Fiscal Year.

The Residential Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

10.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Residential Association proceedings when not in conflict with Texas law or the Governing Documents.

10.3. Conflicts.

If there are conflicts among the provisions of Texas law, the Certificate of Formation, the Declaration, and these By-Laws, the provisions of Texas law, the Certificate of Formation, the Declaration, and the By-Laws (in that order) shall prevail.

10.4. Books and Records.

(a) **Turnover of Books and Records.** Within 60 days after termination of the Declarant Control Period, the Declarant shall deliver to the Residential Association all property, books and records of the Residential Association in the Declarant's possession.

(b) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place by appointment during normal business hours at the Residential Association's office or at such other place within Cinco Ranch Southwest as the Board shall designate.

(c) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records; and
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(d) **Inspection by Directors.** Every director shall have the absolute right during normal business hours to inspect all Residential Association books, records, and documents and the physical properties owned or controlled by the Residential Association. A director's right of inspection includes the right to make a copy of relevant documents at the Residential Association's expense.

10.5. Notices.

(a) **Form of Notice and Method of Delivery.** Except as otherwise provided in the Declaration or these By-Laws or by Texas law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

(b) **Delivery Address.** Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member or Voting Delegate, at the address, telephone facsimile number, or e-mail address which the Member or Voting Delegate has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Delegate;

(ii) if to the Residential Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Residential Association or its managing agent, or at such other address as the Residential Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Declarant, at the Declarant's principal address as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Residential Association pursuant to this Section.

(c) **Effective Date.** Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

10.6. Amendment.

(a) Until termination of the Declarant Control Period, the Board of Directors may unilaterally amend these By-Laws for any purpose.

(b) After the Declarant Control Period terminates, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing at least a majority of the total votes in the Residential Association, and the consent of the Declarant Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment adopted pursuant to this subsection (b) shall be prepared and signed by the President or Vice President and by the Secretary or Treasurer of the Residential Association certifying that the requisite approval was obtained.

(c) Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within one year of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Declarant Member without the written consent of Declarant, the Declarant Member, or the assignee of such right or privilege.

528107/CADocs/ ByLCinco Ranch Assn 11-082206-jps

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Cinco Ranch Residential Association II, Inc., a Texas non-profit corporation;

That the foregoing By-Laws constitute the original By-Laws of the Residential Association, as duly adopted by resolution of the Board of Directors thereof effective as of the 14th day of July, 2006.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Residential Association this 11th day of September, 2006.

[SEAL]

Cynthia A. Keefe
Secretary

EXHIBIT "E"

Design Guidelines

The attached Design Guidelines shall apply to all of the Residential Properties, except as otherwise noted, until such time as they are amended, modified, repealed or limited pursuant to Article 5 of the Declaration.

***ARCHITECTURAL DESIGN GUIDELINES
FOR THE
CINCO SOUTHWEST RESIDENTIAL
PROPERTY ASSOCIATION, INC.***

Overview

These guidelines have been established to assure uniform and fair application of the Declaration and are intended to provide all lot owners in Cinco Ranch Southwest with information about: the type, color, quality of materials which may be used in the construction of various kinds of improvements; the size and locations of such improvements; and information about the procedures used by the Reviewer in reviewing applications for proposed improvements.

The Reviewer reserves the authority to review and approve applications for buildings, additions, or improvements which are not explicitly described by these Guidelines and to consider additional guidelines in the review process whether published or not.

A. Application Procedure

1. **Submission:** All site or building construction, improvements, modification, alterations or additions thereto require approval in writing from the Reviewer prior to construction or placement. This covers new construction as well as, but not limited to, additions, fences, patios, storage buildings, play equipment, pools, and changes in house colors. All applications for approval to site or building construction, improvements, modification, alterations or additions thereto shall be submitted to the management company in writing by fully completing the application form currently in use. Each application must be accompanied by ONE SET of plans/specifications. The plans/specifications must be supported by the following information:

- a. Drawing(s) of the proposed addition/modification showing the top, front, side, and rear exterior views; overall dimensions (length, width, height) of the modification; and the layout and dimensions of supporting structures;
- b. A copy of a plot plan (showing location of easements, existing buildings and structures, the proposed location of the modification and applicable building set back lines);
- c. A description of all materials to be used. Specifically, before exterior colors are used, they must be approved, including but not limited to, brick, siding, roofing material, and paint;
- d. Color samples for all colors involved should be included, if possible. If providing color samples or photographs, please include 2-copies, if possible.

It is the owner's responsibility to determine all easements and setbacks that exist upon their property. No construction should occur within these easements or building set back lines. If approved construction is not commenced within six (6) months a new application will have to be submitted. All building permits must be in effect at the time of construction. As outlined in Article 5.3 (b) of the Declaration, the Reviewer has thirty (30) days from final submittal of plans and permits to approve the plans and authorize commencement of construction.

The Reviewer reserves the right to request any additional information deemed by it to be necessary to properly evaluate the application. In the event that additional information is requested and such information is not submitted by the applicant in a timely manner (so that the application may be approved or disapproved within thirty (30) days of its receipt), the application shall be denied. However, the applicant may thereafter submit a new application with the requested information to the Reviewer for its review.

The completed application form shall be submitted to the Cinco Ranch Southwest management company with plans and specifications as indicated.

Any questions pertaining to these standards may be directed to the Property Managers.

2. **Residential Plan Standards:** All plans and specifications shall be **drafted in a professional manner**. An architect or designer is not required, but recommended for easier interpretation and generally better design results. Plan standards are as follows:

- a. Site Plan(s): A site or plot plan to show the dimensions of the proposed construction or modification.
- b. Elevations: Draft at an architectural scale (1/4" = 1'0").
- c. Specifications: List all specifications relating to project design, structural framing, quality of exterior materials, colors, textures and shape.
- d. Basis of Approval: Approval of plans and specifications shall be based, among other things, on adequacy of site dimensions, structural design, conformity and harmony with external design and of location with neighboring structures and sites, and conformity to both the specific and general intent of the restrictions.

3. **Contractor / Owner Construction Requirements**: The property owner has contracted with their selected contractor to provide construction services. It is the property owner's responsibility to ensure the contractor is aware of and understands the requirements of these Guidelines. The owner and contractor acknowledge and accept the authority of the Association to require certain standards. The owner and contractor acknowledge and accept the authority of the Association to enforce adherence to these standards through fines or other legal action. The owner and contractor agree to abide by the following:

- a. The burning of construction material, debris and other scrap on the property is strictly prohibited.
- b. The work site shall be kept clean. The property owner and the contractor are responsible for all trash and debris being picked up and removed promptly. No dumping within Cinco Ranch is allowed.
- c. Contractors are responsible for keeping mud, dirt, etc. off of the roadway and meeting all E.P.A. requirements regarding movement of silt and other materials from construction site to drainage swales and/or adjacent properties. Contractors will be responsible for repair to any road, road right-of-way, shoulders or drainage swales damaged during the course of construction.
- d. Dumping or cleaning of cement trucks or dumping of construction material **is not allowed** within Cinco Ranch, common areas and right-of-way (*i.e.*, ditches, parks, and all easements).
- e. Design of roadside drainage swales must not be altered.
- f. Construction access is limited to Applicant's property. Any damage done to Association and/or neighboring property shall be restored to the original condition as determined by the Association and/or neighbor.
- g. No building materials or contractor's equipment shall be left on the street overnight.
- h. No construction signs are permitted.

4. **Compliance Inspection**: The Reviewer is **NOT** required to perform site inspections, however may elect to.

- a. Periodic Inspection: If performed the purpose will be to assurance compliance with setbacks, utility, drainage, and flowage easements and with compliance of all building requirements such as disposal of debris,

burning of debris and all other requirements made by the contractor/owner.

- b. Final Inspection: If performed, it will be to review the site after completion of modification(s). Included are, but not limited to, additions, pools, decking, walkways, painting, landscaping, and other items necessary to present an aesthetic condition on the lot. Final inspection shall not be relied upon by any person or entity as to the sufficiency, suitability, fitness, workmanship or quality of the design or construction of the improvements. Neither the Board of Directors, Review Committee, Association, Property Managers, nor any of their respective members, officers, directors, shareholders, employees or agents shall be liable because of the approval or non-approval of any modification.
- c. Non-compliance with approval: If for any reason a structure is deemed not to be in compliance with approved plans, the owner will be notified. The cessation of construction will be required until the item(s) in non-compliance are corrected. Other permits or approvals may be required from the City, County or other governmental entities. It is the responsibility of the owner to obtain all required City, County or other governmental approval.

5. Reviewer Decisions: Members of the Committee shall consider each application for compliance with the restrictive covenants of the Declaration and with these guidelines.

Decisions shall be conveyed, through the Property Manager's office, in writing, by regular mail to the applicant, subject to the 30-day provision of paragraph A.1 of these Guidelines, and shall include a statement of the conditions under which the application is approved, if any, or the primary reason(s) for disapproving the application.

B. General Guidelines

The Reviewer shall consider the following factors upon the review of each application for all site or building construction, improvements, modifications, alterations or additions thereto:

1. The quality of construction and materials, colors, exterior design (elevation), size (dimensions), and location must be harmonious with existing and other proposed structures and location with respect to topography and finished grade elevation, and must be in compliance with the provisions of the Declaration.
2. The location must not violate the building setback lines, utility or drainage easements as shown on the official recorded plat, nor obstruct drivers' vision at street intersections.

NOTE: Permission may be granted to place a building over, under, upon or across any utility easement. Consent to encroach upon any utility easement must be obtained in writing from the owner of the easement (*i.e.* utility companies). Permission may be granted to place an improvement upon or across a drainage easement subject to the condition that the improvement must not impede drainage of any property served by the drainage easement (*i.e.*, including adjacent lots). If deemed necessary, in its sole discretion, the Association may revoke consent to encroach upon any drainage

easement. Removal of improvements (if required by the owner of the easement or the Association) shall be solely the property owner's responsibility, cost and expense.

3. Improvements that are intended for other than single-family residential purposes are not permitted.

The Reviewer shall also consider the provisions of the Declaration and of applicable statutes, ordinances and building codes. However, approval of an application shall not be construed as a warranty or representation that the modification, addition or improvement, as proposed as built, complies with any or all applicable statutes, ordinances or building codes, or as a warranty or representation of the fitness, design or adequacy of the proposed construction.

C. Development Standards

1. **Exterior Painting:** No exterior surface of any residence, garage or other structures on any lot shall be painted a color different from the original approved color without prior approval. Color samples or "paint chips" of the proposed exterior color(s) must be included with each application. Only colors consistent with the Association standards (earthtones) will be approved. The following additional guidelines shall also apply:

- a. Harmonious Colors – The proposed colors must be harmonious with each other and with the colors of the exterior brick and roofing materials.
- b. Trim – Soffit, fascia boards, window and door trim and rain gutters must also be harmonious colors; however, the shades of trim color may be deeper than the principal color of the residence or garage.
- c. Gutters – When rain gutters are painted, their color must match the color of the fascia board trim. When "maintenance free" gutters are installed or replaced, their color must match (as closely as possible) the fascia board trim or previously approved existing gutters.

2. **Roofing Materials and Accessories:** If the replacement shingles are the same grade, type, quality and color as the existing approved shingles, no approval is required. If the replacement shingles vary from the originally approved shingles an application must be submitted.

- a. Material: The proposed shingles shall be of an acceptable type, quality and color that is harmonious with the residence. Shingles shall have a minimum 25-year warranty.
- b. Accessories: All roof ventilators shall be located to the rear of the ridgeline and/or gable of any structure and shall not extend above the highest point of the structure. Exceptions to the foregoing may be approved in cases where energy conservation and heating/cooling efficiency require ventilators that, because of a particular roof design, cannot be hidden from public view. All roofing additions and vents (if any) must be harmonious with the color of the roofing material.

3. **Driveways:** Driveway standards must be adhered to as recorded in the Cinco Ranch Southwest Residential Design Guidelines.

- a. Driveway Extensions: Driveway extensions will be reviewed on an as submitted basis. Under no circumstances will a driveway extension be granted for the sole purpose of providing additional automobile parking.
- b. Driveway Accents; Driveway accents will be reviewed on an as submitted basis. Under no circumstances will painted driveways be permitted.

4. **Outdoor Lighting:** Outdoor lighting shall be installed in such a way to minimize the amount of spill light on adjacent properties, homes or streets. All lights must be installed on the rear of the home or garage. The only exception are low voltage landscaping lights, lampposts or decorative fixtures of an understated design which complements the architectural style of the residence.

- a. Landscape Lighting: lights must be located at ground level in flowerbeds and must luminate white.
- b. Lamppost: Only one (1) lamppost may be approved for placement in the front yard, it must not be placed in the street right-of-way and must luminate white. Lamppost must not exceed seven (7) feet in height, including the globe(s) and any decorative components. Post must be constructed of metal in one of the following colors: black, bronze, white or earth tone. The lamppost must harmonize with the architecture of the residence and neighborhood.
- c. Fixtures: All fixtures must be Underwriter Laboratories (UL) approved and may be of the following type: Incandescent can not exceed 150-watts; Gas can not exceed the equivalent amount of light produced by a 100-watt incandescent fixture; High Pressure Sodium can not exceed 35-watts.

5. **Swimming Pools, Spas, Hot Tubs and Ground Level Decks:** Swimming pools, spas, hot tubs, decks, and other ancillary structures are restricted to the rear yard and must adhere to the following guidelines.

- a. Location: No portion of the pool structure may encroach the utility easement without written consent from the utility companies involved (see Page 10 of the Guidelines). Decking may encroach the easement with homeowner awareness that if a utility company should require access to that area, the homeowner is financially responsible for replacement of the deck located in the easement. Pool decks may extend beyond the established side setback lines so long as an adequate area (minimum 2 feet) remains between decking and side property lines to ensure proper drainage is maintained.
- b. Height: Pool decks or freestanding ground level wood decks must not exceed eighteen (18) inches in height. Swimming pool appurtenances, such as rock waterfalls and slides must not exceed six (6) feet in height. Above ground spas must not exceed four (4) feet in height and any decking surrounding the structure must not exceed that height.
- c. Fencing/Screening: All private swimming pools and spas shall be completely enclosed by a six (6) foot high wood yard fence, five (5) feet for yards with wrought iron, and a self-closing, self-latching gate. The gate must be constructed of the same material as the fence, per the Guidelines. Pool equipment must be immediately screened from the

street in the front by the rear yard fence (wood) or landscaping and from visible common areas by landscaping.

- d. **Construction Access:** Pool construction access routes are on either side of the house (within the lot property lines). Access routes must be stated on the application. If a homeowner wishes to use an alternative access route over Association property, it must be submitted with the reason for the variance and each request will be considered on a case by case basis. If any pool or space construction access route is granted to a homeowner and is over or through (1) a landscape area maintained by the Association; or (2) a sidewalk; then either the homeowner or pool contractor must submit a deposit check in an amount to be determined by the Association (\$1,000 minimum). The Association reserves the right to request a higher deposit amount depending on the access route and estimation of possible damage to landscaping and irrigation. The deposit will be returned based on the following conditions: (1) there is no damage the landscape area or sidewalk; or (2) any damage is repaired to the satisfaction of the Association. Sod replaced on Association property must be Bermuda, and the area must be returned to its' original condition. The Association may retain all or any portion, of the deposit according to the extent of the damage as determined by the Association. Nothing herein shall prevent the Association from seeking damages in excess of the deposit amount. Access through any Association brick wall is prohibited.
- e. **Maintenance:** All swimming pools and spas must be properly maintained year-round to comply with all County and State regulations. Pool backwash lines are to be tied into the sanitary sewer per the MUD district requirements. Proper area drainage must be maintained and pool run off/drainage must not affect neighboring properties. If area drains are routed to the street through the curb, the curb must be patched, replaced, and maintained in good condition. Pools must be inspected by ST Environmental or the appropriate MUD operator for the neighborhood.
- f. **Prohibited Structures:** Portable or permanent above ground swimming pools are strictly prohibited.
- g. **Required Submittal Information:** Along with the completed application, a copy of the lot survey by a professional land surveyor is required (the survey received at closing). The pool must be imaged onto the survey. In addition, the pool plan sketch/detail, the location of the pool equipment, the filter type, access route information, and contractor name/phone number must be included.

6. Rear Yard Recreational Equipment: For the purpose hereof, rear yard recreational equipment shall mean any type of children's play houses, play set, climbing structure, slides, raised play sets, swing set or trampoline.

- a. **Location:** Recreational equipment shall be located in the rear yard so they are screened from public and private view to the maximum extent possible by permanent structures (such as the house, garage or wood fences) or landscaping. All playhouses, play structures and swing sets must be a minimum of eight (8) feet from the side and rear property lines (fence).

When the rear or side property line of a lot is adjacent to a street, additional landscape screening may be required.

- b. **Size:** Playhouses, play structures and swing sets must not exceed one hundred thirty (130) square feet in size. The maximum allowable height for playground equipment is twelve (12) feet. Standing platforms shall not exceed six (6) feet above natural ground.
- c. **Materials:** Playhouses and play structures must be constructed of materials resistant to decay, such as pressure-treated yellow pine, redwood, cedar or painted treated wood, to be in harmony with the existing residence. Swing sets, trampolines, etc. may be constructed of metal. Tarp roofs, awnings, or covers must be in primary or earthtone solid colors. Safety netting on trampolines must be black, white or neutral in color.
- d. **Maintenance:** All playhouses, play structures, swing sets and trampolines, etc. shall be maintained in such a fashion as to not detract from the neighborhood, such as, but not limited to: for playhouses and play structures, replacement of torn or discolored tarps or covers; for swing sets, painting of any rusted or discolored parts, replacement of torn or detached safety nets on trampolines.

7. Front Yard Accessories: Front yard accessories shall be permitted under the following conditions:

- a. **Location:** Accessories must be an integral part of the landscaping and blend in with the existing shrubbery or trees. This includes the lot front of the fence line and any side yards on corner lots.
- b. **Size:** Yard accessories are not to exceed eighteen (18) inches in height. The exception is decorative landscape planters used for the display of flowers or other approved landscape material.
- c. **Materials:** Decorative accessories and landscape planters must be constructed of precast concrete, marble, painted cast aluminum, terra cotta, or other durable material. Wooden barrels, plastic, fiberglass, and other non-durable materials, are not acceptable materials for landscape planters or decorative accessories.
- d. **Maintenance:** All accessories shall be maintained in such a fashion as to not detract from the neighborhood. Landscape planters must be maintained with landscape materials at all times.
- e. **Prohibited Accessories:** Free standing flagpoles, bird baths, decorative fountains, and other items not meeting the established guidelines are not permitted within the visible front or side yards of residential lots.

8. Perimeter Lot Fencing: Fencing standards must be adhered to as recorded in the Cinco Ranch Southwest Residential Design Guidelines.

- a. **Fence Sealant, Paints or Stains;** In order to prevent inconsistent color matches with the fences throughout the community, the application of any sealant, paints or stains is prohibited on any lot fencing, except for breezeway fences (between house and garage) which must be submitted for approval and reviewed on an individual basis. By prohibiting the

application of any product, the fences maintain a harmonious and consistent appearance throughout the community.

- b. Prohibited Fencing: Vinyl, chain link and wire fencing shall not be permitted in areas visible to public view.

9. Outbuildings: Outbuildings (*i.e.*, tool or storage shed) are to have an exterior that architecturally compliments the exterior of the main dwelling. The roof of an outbuilding shall conform to the provisions relating to roofing materials set forth in these Guidelines. No used outbuildings may be moved onto the property.

- a. Location: Outbuildings shall be located in the rear yard so they are screened from public and private view to the maximum extent possible by permanent structures (such as the house, garage or wood fences). All outbuildings must be a minimum of five (5) feet from the side and rear property lines. When the rear or side lot lines of a lot is adjacent to a street, outbuildings must be located a minimum of eight (8) feet from the side and rear property lines. No outbuildings shall be approved for construction on easements, or may impede the drainage on the lot or cause water to flow to an adjacent lot.
- b. Size: Outbuildings shall not exceed eight (8) feet in height, measured from ground level to roof peak and must not exceed one hundred twenty (120) square feet of floor space.
- c. Material: The standard, type, quality and color of the materials used in the construction of an outbuilding must be harmonious with the standard, type, quality and color of the materials used in construction of the main residence. The roof must match the pitch of the roof on the home and be constructed of composition shingles closely matching the existing shingle color on the home. Prefabricated storage buildings may be approved provided the color blends with the house and the roof is shingled. Corrugated roofs for out-buildings shall not be permitted under any circumstances.

10. Patio Covers: Patio covers are considered to be additions to the rear of the residence that have no enclosure walls. No aluminum style patio covers will be permitted.

- a. Location: Patio covers must not encroach on any utility or drainage easement, nor shall it violate the building setback lines applicable to the residential dwelling on any lot. Patio covers must not interfere with drainage or cause water to flow onto any adjacent lot.
- b. Material: The standard, type, quality and color of the materials used in the construction of a patio cover must be harmonious with the standard, type, quality and color of the materials used in construction of the main residence (wood and or brick). The roof of all patio covers, other than arbor or open trellis type, must be covered with shingles meeting the roofing guidelines set forth herein. Corrugated roofs for patio covers shall not be permitted under any circumstances. All patio covers must be adequately supported and constructed of sturdy materials so that the patio cover has no visible sagging or warping.

- c. Dimensions: The top of the patio cover at its lowest point shall not be higher than nine (9) feet from ground level (typical first floor plate height). The patio cover roof shall provide an attractive slope away from the house, at an angle that does not exceed that of the roof of the residence. No patio cover shall protrude from the sides of the residence.

11. Patio Enclosures: A "patio enclosure" is any patio cover that has exterior walls (other than "sun rooms").

- a. Location: Patio enclosures must not encroach on any utility or drainage easement, nor shall it violate the building setback lines applicable to the residential dwelling on any lot. Patio enclosures must not interfere with drainage or cause water to flow onto any adjacent lot.
- b. Material: The standard, type, quality and color of the materials used in the construction of patio enclosures must be harmonious with the standard, type, quality and color of the materials used in construction of the main residence. The roof of all patio enclosures must be covered with shingles meeting the roofing guidelines set forth herein. Corrugated roofs for patio enclosures shall not be permitted under any circumstances. The exterior color of the walls, doors, windowsills, beams, frames or other visible supports must match the exterior color of the residence.

12. Sunrooms: A "sunroom" is defined as a patio enclosure constructed with glass walls and glass roofing.

- a. Location: Sunrooms must not encroach on any utility or drainage easement, nor shall it violate the building setback lines applicable to the residential dwelling on any lot. Sunrooms must not interfere with drainage or cause water to flow onto any adjacent lot.
- b. Material: Supporting structural members must be of a color and shade similar to and harmonious with the exterior of the residence. Glass must be tinted in a shade compatible with the exterior of the residence. No metallic or direct reflecting style shading/tinting of the glass will be permitted. Applicants may be required to submit actual samples of the glass with the proposed shading/tinting material applied for approval. The floor of all sunrooms must be of reinforced concrete slab construction with three (3) inch minimum thickness. No other flooring material will be permitted. Only safety glass will be permitted for the panes. No fiberglass, Plexiglas, plastic, acrylic, mesh or other materials will be permitted. Safety glass must be a minimum 3/16 inch thick if tempered glass or a minimum 1/4 inch thick if laminated glass. Maximum width of glass between support trusses will be 36 inches measured center-to-center. Support trusses (glazing bars) must be constructed of aluminum or aluminum alloys with electrostatically applied coloring/paint. No natural aluminum oxidation coloring will be permitted. No wood composite, steel, fiberglass or plastic trusses will be permitted.
- c. Prohibited Accessories: No sunroom shall have exposed air conditioning or heating duct work installed on the exterior thereof. Vents must be attached to the main residence. No ductwork shall be visible. Window coverings are not required, however only interior covering will be

permitted; there shall be no exterior coverings of the sun room glass permitted.

13. Gazebos: A "gazebo" shall be defined as a free standing, open framed structure whose purpose shall not be for any type of open storage.

- a. Location: Gazebos must be located on the rear yard and must be a minimum of five (5) feet from side and rear property lines. When the rear or side lot lines of a lot is adjacent to a street, outbuildings must be located a minimum of eight (8) feet from the side and rear property lines. Gazebos must not encroach on any utility or drainage easement and must not interfere with drainage or cause water to flow onto any adjacent lot. Any lights attached to the structure must be positioned so that light does not spill over onto adjacent lots.
- b. Material: Supporting structural members must be constructed of materials resistant to decay, such as pressure-treated yellow pine, redwood, cedar or treated wood painted a color and shade similar to and harmonious with the exterior of the residence. Roofs must match the material used on the main residence.
- c. Dimensions: The maximum height of a gazebo shall not exceed ten (10) feet measured from the natural ground. The roof must match the pitch of the roof on the home. The maximum height of the walking area shall be no greater than eighteen (18) inches measured from the natural ground. Diagonal measurement will be reviewed on an individual basis taking into consideration rear yard size and location to rear and side property lines.

14. Window and Door Awnings: Awnings that are visible from the street shall not be permitted. No metal awnings shall be permitted. The color and materials selected shall be harmonious with the residence and other improvements on the lot. Awnings are required to be cleaned periodically to avoid discoloration caused by mildew and shall be replaced/ repaired when torn or faded.

15. Basketball Goals: No application is required for portable basketball goals, however compliance with these guidelines must be adhered to. No garage mounted basketball goals will be permitted.

- a. Location: Permanent goals must be located a minimum of five (5) feet behind the house front elevation line. Portable goals must never be more than ten (10) feet in front of the most setback portion of the façade on houses with front loading or corner lot side loading garages. Houses with recessed garages may only place portable goals behind the front building setback line. Goals must never violate the side building lines or be permitted in the streets.
- b. Construction: Pole – the pole must be metal. Backboards – backboards must be standard size. Material must be plexiglass, graphite or fiberglass. The color must be white, clear or gray with the exception of the manufacture's outline markings. Nets are required on all rims, no chain type nets are allowed.
- c. Maintenance: All goal supports, backboards, rims and nets must be well maintained at all times.

16. **Skateboard Ramps:** Skateboard ramps are not permitted on public streets. When ramps are not in use they must be stored from public view.

17. **Additional Criteria:**

- a. No alteration or other improvement (i.e. landscaping, curb, obstacle, etc.) is permitted within the street ROW.
- b. All lots must have positive drainage, away from the house, and lots must drain to the drainage system provided to said lot.
- c. All approved modifications to a lot must be maintained to the standards of the Association as outlined in the deed restrictions.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dianne Wilson

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Dianne Wilson, Ph.D. COUNTY CLERK
FT BEND COUNTY TEXAS