

## ARTICLE VI MAINTENANCE ASSESSMENTS

Section 1. The Maintenance Fund. All funds collected as herinafter provided for the benefit of the Association from the regular and/or special maintenance charges, for capital improvements, shall constitute and be known as the "Maintenance Fund." The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance and acquisition of Common Areas, Reserves, the Storm Water Retention area, easements, and Private Streets. The responsibilities of the Association may include, by way of example, but without limitation, at its sole discretion, any and all of the following: maintaining, repairing or replacing parkways, streets, curbs, perimeter fences, esplanades, maintaining repair or replacing of the walkways, steps, entry gates, or fountain areas, landscaping, if any; maintaining rights-of-way, easements, esplanades and other public areas, if any; construction, installation, and operation of street lights; purchase and/or operating expenses of recreation areas, pools, playgrounds, clubhouses, tennis courts, jogging tracks, and parks, if any, collecting garbage, insecticide services; payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting the Properties to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employing policemen and watchmen; employing CPA's and property management firms, attorneys, porters, lifeguards, or any type of service deemed necessary or advisable by the Association, caring for vacant Lots and doing any other thing necessary or desirable in the opinion of the Association to keep the properties in the Subdivision neat and in good order, or to which is considered of general benefit to the Owners or occupants of the Properties. It is understood that the judgment of the Association in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

The Board of Directors shall also annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual base assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments.

Section 2. Creation of the Lien and Personal Obligation of Assessments. Each Lot in the Property is hereby subjected to the annual maintenance charges as set out in this Article, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) maintenance assessments or charges (2) special assessments for such assessments to be established and collected as hereinafter provided; and (3) any chargeback for costs, fees, expenses, attorney's or other charges incurred by the Association in connection with enforcement of these Declarations, the Association By-Laws, or Rules and Regulations. The maintenance assessments and special assessments and chargebacks, together with the interest, cost, late charges, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which such assessments are made. All such assessments as to a particular property, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessments fell due. The personal obligation for delinquent assessments shall not pass to his successor in title unless expressly assumed by them.

Section 3. Payment of Assessments. The maintenance assessments shall be paid by the Owner or Owners of each Lot in the Association in annual installments. The annual periods for which maintenance charges shall be levied shall be January 1 through December 31, with payment being due by January 1, of each year. The rate at which each Lot shall be assessed as to the maintenance assessment shall be determined annually, shall be billed in advance, shall be due and payable in advance and may be adjusted from year to year by the Board of Directors of the Association as the needs of the subdivision may, in the judgment of the Board of Directors of the Association, require; provided that such assessments shall be uniform for all residential lots. The Association assessments, annual and special herein above described, may be increased by majority vote of its members at a meeting duly called for that purpose.

## ARTICLE VI MAINTENANCE ASSESSMENTS

Section 4. Maximum Annual Assessment. Association Maintenance Fund: Until January 1, 1998 the maximum annual Association maintenance assessment shall be FIVE HUNDRED FIFTY DOLLARS (\$550.00) per Lot, per annum. From and after January 1, of the year immediately following 1998, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership. The Association may, at its discretion, accumulate and assess the increase in a later year(s). The maximum annual assessment may be increased above the ten percent (10%) increase described above only by approval of two-thirds (2/3) of each class of the Members in the Association present and voting in person or by proxy, at a meeting duly called for this purpose at which a quorum is present. **(Amended May 25, 2001)** Until January 1, 2001, the annual Association assessment shall be six hundred and sixty dollars (\$660.00) per Lot, per annum. From and after January 1, 2001, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum assessment for the previous year without a vote of the membership. The Association may, at its discretion, accumulate and assess the increase in a later year. The maximum annual assessment may be increased above the twenty percent (20%) increase described above only by approval of at least two-thirds (2/3) of each class of the members in the Association present and voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present. The Association's Board of Directors may fix the annual assessment at an amount not in excess of the maximum each year.

Section 5. Transfer Fees. The Association may charge a fee for transfer of ownership of a Lot. The fee shall be set by the Board of Directors but shall not exceed one third (1/3) of the Annual Assessment.

Section 6. Adopt a School Program. In addition to the annual assessments required to be paid by an Owner, each purchaser of a Lot upon acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association upon the transfer of title of a Lot to the purchaser: (a) upon first transfer of a Lot from a Builder to a purchaser, a fifty dollar (\$50.00) contribution by the Builder/seller and an additional fifty dollar (\$50.00) contribution by the purchaser; and (b) on subsequent transfers, the purchasers shall pay a contribution equal to one tenth (1/10) of the annual assessment for each Lot purchased. The transfer assessments received by the Association under this section shall be held in a separate account and shall be used by the Association to foster support for local school programs and activities or for such other similar purpose as the Board in its absolute discretion may approve. This fee is in addition to the transfer fee imposed by Section 4(a) above.

Section 7. Special Assessments. In addition to the annual assessments authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to the current year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, streets, curbs, storm sewers, recreational facilities, including fixtures and personal property related thereto, or for any other purpose approved by the membership, provided any such assessment shall have the approval of two-third 2/3 of the votes of those members of each class who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present.

Section 8. Notice and Quorum. Written notice of any membership meeting called for the purpose of increasing the cap or raising any annual or special assessment, shall be mailed (by U.S. first class mail) to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting, the presence of members or of proxies entitled to cast at least two thirds (2/3) of all the votes of each class of membership shall constitute a quorum. **(Amended July 2000)** At any such meeting, the presence of Members or of proxies entitled to cast at least ten percent (10%) of all the votes of the Members shall constitute a quorum.

Section 9. Rate of Assessment. All developed Lots in CANYON GATE AT CINCO RANCH shall commence to bear their applicable maintenance fund assessment simultaneously; Lots in CANYON GATE AT CINCO RANCH owned by LAND TEJAS DEVELOPMENT, LLC are not exempt from assessment. Lots which are occupied by residents shall be subject to the annual assessment determined by the Board of Directors in accordance with the provisions hereof. Developed Lots in CANYON GATE AT

## ARTICLE VI MAINTENANCE ASSESSMENTS

CINCO RANCH which are not occupied by a resident and which are owned by LAND TEJAS DEVELOPMENT, LLC shall be assessed at one-quarter (1/4) of the annual assessment. Developed Lots owned by a builder or building company for the business purpose of constructing a residential dwelling on the Lot for resale, shall be assessed at the rate of one-half (1/2) of the annual assessment above. The rate of assessment for an individual Lot, within a calendar year, can change as the character of ownership and the status of occupancy by a resident changes, and the applicable assessment for such Lot shall be prorated according to the rate required during each type of ownership.

Section 10. Bulk Services. In the event that the Association contracts for bulk communication or power services, such costs shall be billed directly to each Owner as a monthly or quarterly assessment, as the Association may elect. Such additional assessments shall be separately itemized and shall be collected in the same manner as regular assessments, except that assessments billed hereunder shall be due on the first (1<sup>st</sup>) day of the month or quarter when billed, shall be late if not paid by the tenth (10<sup>th</sup>) day of the month or quarter billed and shall be subject to twenty-five dollars (\$25.00) or five percent (5%) late charge, which shall not be considered interest, if not paid by the late date. The provisions of Article VI, Section 12, shall apply to nonpayment of these fees. These fees may be billed as flat rate per lot metered, or per service, or any combination thereof, as determined in the sole discretion of the Developer or the Association.

Section 11. Effect of Nonpayment of Assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of ten percent (10%) per annum. The Association may in addition charge a late charge for assessments paid more than fifteen (15) days after the due date. The Association may bring an action at law against the owner personally obligated to pay same, or foreclose the liens against the property. Interest, costs, late charges and attorney's fees incurred in any such collection action shall be added to the amount of such assessment or charge. An owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association and its agents, the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for enforcement of such liens, including, specifically, non-judicial foreclosure pursuant to Article 51.002 of the Texas Property Code (or any amendment or successor statute) and each such owner expressly grants to the Association a Power of Sale in connection with said lien. The Association shall have the right and power to appoint a Trustee(s) to act for and in behalf of the Association to enforce the lien. The lien provided for in this section shall be in favor of the Association for the benefit of all Lot owners. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provision of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Fort Bend County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provision of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Fort Bend County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and, third, the remaining balance, if any, shall be paid the Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder. The Association shall also have the right to maintain a deficiency suit in the event the sale proceeds are less than the amount of assessments, interest, late fees, attorney's fees, and costs incurred by or owed to the Association.

## ARTICLE VI MAINTENANCE ASSESSMENTS

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through the Board, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the right of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section to comply with the provisions of said Section 51.002 Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Fort Bend County, Texas, amend the provision hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No owner may waive or otherwise escape liability for the assessments provided herein by non use of the facilities or services provided by the Association or by abandonment of his Lot.

Section 12. Subordination of the Lien to Mortgages. To secure the payment of the Maintenance Fund all annual and special assessments established hereby and to be levied on individual residential Lots, there is hereby reserved in each Deed (whether specifically stated therein or not) a Vendor's Lien and a Contract Lien for the benefit of the Association, said liens to be enforceable as set forth in Article IV hereof by the Association on behalf of such beneficiary; provided, however, that each such lien shall be secondary, subordinate and inferior to all liens, present and future given, granted and created by or at the request of the Owner of any such Lot to secure the payment of monies advanced on account of the purchase price and/or the construction of improvements on any such Lot to the extent of any such maintenance fund charge or annual or special assessments accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien, and further provided that as a condition precedent to any proceeding by the Association to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, for the aforesaid purpose or purposes. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer.

Mortgagees are not required to collect assessments.

Failure to pay assessments does not constitute a default under an insured mortgage.

Section 13. Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein shall commence as to all developed Lots in CANYON GATE AT CINCO RANCH, on the date the first residence is transferred to a purchaser by a Builder. The annual assessment shall be adjusted according to the number of months remaining in the then current calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed (by U.S. first class) to every owner subject thereto. The payment dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.