

## ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Texas Property Code. The Association shall have all of the rights provided under Texas Property Code, Section 204 or any amended or successor statute.

Section 4. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations.
- (c) The right of the Association or the Developer to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members.
- (d) The right of the Association to collect and disburse those funds as set forth in Article IV.

Section 5. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

Section 6. Delegation of Use. Any Owner may delegate in accordance with the By-Laws of the CANYON GATE AT CINCO RANCH OWNERS ASSOCIATION, INC his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchaser who reside on the Property.

Section 7. Amendment. The covenants and restrictions of this declaration shall run with and bind the land, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. **(Amended May 25, 2001)** This Declaration may be amended during the first three (3) year period by an instrument signed by the Developer to modify and clarify any provision of this Declaration in any manner not in consistent with the residential character of the Property and/or purpose of this Declaration. **(Amended January 2000)** This Declaration may be amended during the first twenty (20) year period by an instrument signed by those Owners owning not less than seventy-five (75%) percent of the Lots within CANYON GATE AT CINCO RANCH, and thereafter by an instrument signed by those Owners owning not less than sixty-seven (67%) percent of the Lots within CANYON GATE AT CINCO RANCH. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the Official Public Records of Real Property of Fort Bend County, Texas.

Section 8. Dissolution. If the Association is dissolved, the assets shall be dedicated to a public body, or conveyed to a non-profit organization with similar purposes.

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Section 9. Common Area Mortgages or Conveyance. The common area cannot be mortgaged or conveyed without the consent of seventy-five percent (75%) of the Lot owners (excluding the developer).

If the ingress or egress to any residence is through the common area, any conveyance or encumbrance of such area shall be subject to the Lot owner's easement.

Section 10. Books and Records. The books, records and papers of the Association shall, during reasonable business hours, be subject to inspection by any member. The Articles of Incorporation, By-Laws of the Association, and Restrictive Covenants shall be available for inspection by any member at the principal office of the Association where copies may be purchased at a reasonable cost.

Section 11. Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objective of this Declaration shall govern.

Section 12. Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

Section 13. Lien holder. Lien holder joins herein solely for the purposes of subordinating the liens held by it of record upon the Properties to the covenants, conditions, and restrictions hereby imposed by LAND TEJAS DEVELOPMENT, LLC with, however, the stipulation that such subordination does not extend to any lien or charge imposed by or provided for in this Declaration.

Section 14. Additional Requirements. So long as required by the Federal Home Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) of the first Mortgagees or Members representing at least sixty-seven (67%) of the total Association vote entitled to be cast thereon consent, the Association shall not:

- (a) by act of omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly. (The granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection.);
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot. (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments annexed or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this declaration.);
- (c) by act or omission change, waive, or abandon any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area. (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);
- (d) fail to maintain insurance, as required by this Declaration; or
- (e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property, or to add to reserves.

First mortgagees may, jointly or singly, after thirty (30) days written notice to the Association, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 15. 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 Lot in

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the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common area.

Section 16. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 17. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 18. Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Texas law for any of the acts set out in this Article.

Section 19. 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 Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 20. ANNEXATION. ADDITIONAL RESIDENTIAL PROPERTY OR COMMERCIAL PROPERTY AND COMMON AREA MAY BE ANNEXED TO THE PROPERTIES OR INCORPORATED INTO THE ASSOCIATION WITH CONSENT OF THE ASSOCIATION OR BY DEVELOPER, WITHOUT APPROVAL BY THE MEMBERSHIP.