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SUPPLEMENTAL AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE LAKES AT HIGHLAND GLEN, SECTION FIVE

After recording return to:

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

SUPPLEMENTAL AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE LAKES AT HIGHLAND GLEN, SECTION FIVE

STATE OF TEXAS §
§
COUNTY OF BRAZORIA §

This SUPPLEMENTAL AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE LAKES AT HIGHLAND GLEN, SECTION FIVE ("Supplemental Amendment") is made by Beazer Homes Texas, L.P. a Delaware limited partnership, MHI Partnership, Ltd., a Texas limited partnership and Newmark Homes, L.P., a Texas limited partnership, hereinafter referred to, collectively, as Declarant.

W I T N E S S E T H:

WHEREAS, Declarant filed that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE LAKES AT HIGHLAND GLEN, SECTION NINE (the "Declaration"), which is recorded under Clerk's File Number 2005038439 in the Real Property Records of Brazoria County, Texas; and

WHEREAS, reference is hereby made to the Declaration for all purposes, and any and all capitalized terms used herein shall have the meanings set forth in the Declaration, unless otherwise specified in this Supplemental Amendment; and

WHEREAS, pursuant to Article III of the Declaration, the Declarant reserves the exclusive and unilateral right to annex any property into the Lakes at Highland Glen, Section Nine.

NOW, THEREFORE, pursuant to the powers retained by Declarant as a Class B Member under the Declaration, the Declarant hereby annexes the real property as shown on the map or plat thereof recorded in Volume 24, Page 275 of the Plat Records of Brazoria County, Texas, ("Section Five") into the Lakes at Highland Glen, Section Nine. The additional property shall hereinafter carry with it all the rights, privileges and obligations granted to the property described in the Declaration, including but not limited to the right to be annexed, and is hereby annexed into the body of Property subject to the Declaration without approval of the Class "A" Membership.

Notwithstanding anything contained in the Declaration to the contrary, Owners of Lots within Section Five are advised that all Dwellings within Section Five must contain a minimum of two thousand six hundred (2,600) square feet of living area which shall not include porches, garages or non-air conditioned areas.

Owners of Lots within Section Five are advised that adjacent to the easterly perimeter of Section Five, outside the platted area, there exists a town ditch (the "Town Ditch") and a 180' wide easement, more particularly described in File Number 01-056375 in the Brazoria County Official Records (the "Town Ditch Easement") granted to the Brazoria Drainage District Number 4. Potentially dangerous conditions may currently exist in Town Ditch, such as, by way of illustration and not limitation, the following: holes, roots, stumps, insects, reptiles, and/or animals. Owners acknowledge that it is possible for some or all of these conditions to extend into Section Five.

Each Owner and occupant of any Lot in Section Five, and each tenant, guest and invitee of an Owner, as applicable, acknowledges and understands that the Association, its Board of Directors, and/or the Declarant, their successors and assigns, are not insurers and that each Owner and occupant of any Lot in Section Five and each tenant, guest and invitee of any Owner assumes all risks for loss or damage to persons. Each Owner on behalf of its tenant, guest and invitee of an Owner hereby agrees to indemnify and hold harmless the Association, its Board of Directors, and/or the Declarant, their successors and assigns, for all loss or damage to persons or property as a result of dangerous conditions, if any, in or emanating from the Town Ditch. Owners hereby agree to hold harmless the Declarant and the Association, and their successors and assigns and release them from any liability for the existence, placement, and/or maintenance of the Town Ditch and/or the Town Ditch Easement and agree to indemnify the parties released from any damages they may sustain. Owners further grant an easement to the Declarant and the Association for any incidental odor, noise and/or visibility of the Town Ditch or Town Ditch Easement, and/or traffic which may occur due to the existence the Town Ditch and/or the Town Ditch Easement. Owners hereby acknowledge that the Association, its directors, officers, managers, agents, or employees, the Declarant or any successor Declarant have made no representations or warranties nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to water level variances, the safety and/or any future change in use of the Town Ditch and/or the Town Ditch Easement.

Owners whose Lots abut Town Ditch shall take care and shall not permit any trash, fertilizers, chemicals, petroleum products, environmental hazards or any other foreign matters to infiltrate said Town Ditch Easement and/or Town Ditch. Any Owner permitting or causing such infiltration shall indemnify and hold harmless the Association for all costs of clean up and remediation necessary to restore the Town Ditch and Town Ditch Easement to its condition immediately prior to said infiltration.

Beazer Homes Texas, L.P. ("Beazer"), as the grantor of the Town Ditch Easement, retained the right to place a trail (the "Trail") within the Town Ditch Easement. Each Owner and occupant of any Lot in Section Five, and each tenant, guest and invitee of an Owner, as applicable, acknowledges and understands that the Association, its Board of Directors, and/or the Declarant, their successors and assigns, are not insurers and that each Owner and occupant of any Lot in Section Five and each tenant, guest and invitee of any Owner assumes all risks for loss or damage to persons, and further acknowledges that the Association, its Board of Directors, and/or the Declarant, their successors and assigns, have made no representations or warranties nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied as to the safety of the Trail, if as, and when such Trail is placed within the Town Ditch Easement. Each Owner and occupant of any Lot in Section Five and each Owner agrees on behalf of each tenant, guest and invitee of an Owner hereby agrees to indemnify and hold harmless the Association, its Board of Directors, Beazer, and/or the Declarant, their successors and assigns, for all loss or damage to persons who enter upon the Trail, if, as and when such Trail is placed within the Town Ditch Easement.

Owners further acknowledge that there may be incidental noise, lighting, odors, and/or foot traffic which may occur due to the existence and/or normal operation of the Trail, if, as, and when such Trail is placed within the Town Ditch Easement and Owners expressly grant to the Association, an easement for incidental noise, lighting, odors, parking and/or foot traffic which may occur due to the existence and/or normal operation of the Trail.

Owners of Lots within Section Five are advised that certain land within the northerly and northeasterly portion of Section Five, within the platted area, and adjacent to the easterly perimeter of Section Five, outside the platted area, lies within the limits of the Pearland Parkway Overlay (Ordinance 509-H/Chapter 30 Section 30.I) (the "Overlay"). Owners hereby agree to hold harmless the Declarant and the Association, and their successors and assigns and release them from any liability for the existence, placement, and/or maintenance of the Overlay and agree to indemnify the parties released from any damages they may sustain. Owners further grant an easement to the Declarant and the Association for any incidental odor, noise and/or visibility of the Overlay, and/or traffic which may occur due to the existence of the Overlay. Owners hereby acknowledge that the Association, its directors, officers, managers, agents, or employees, the Declarant or any successor Declarant have made no representations or warranties nor has any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to any future change in use of the Overlay.

Owners of Lots within Section Five are advised that no Dwelling or other structure shall be erected nearer to any street or property line than that allowed by the applicable plat or other recorded documents, provided that a minimum rear setback equal to the rear utility easement as shown on the applicable plat of Section Five shall be observed on all Lots; and, provided further that a minimum side setback equal to the greater of (i) five (5) feet or (ii) the side utility easement, as shown on the applicable plat of Section Five shall be observed on all Lots.

All capitalized terms are as defined in the Declaration.

If any provision of this Supplemental Amendment is found to be in conflict with the Declaration, as amended, this Supplemental Amendment shall control.

IN WITNESS WHEREOF, this Supplemental Amendment to the Declaration of Covenants, Conditions and Restrictions for The Lakes at Highland Glen, Section Five, is executed as of the 6th day of October, 2005.

[SIGNATURE PAGE FOLLOWS]

DECLARANT:

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

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

By: _____
Print Name: KURT S. WATZEK
Print Title: SR. DIV. PRES

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Kurt S. Watzek the Sr Div. President of BEAZER HOMES TEXAS HOLDINGS, INC., the general partner of BEAZER HOMES TEXAS, L.P. known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purposes and consideration therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

Given under my hand and seal of office, this 6th day of October, 2005.

KELLI MARIE HAACK
MY COMMISSION EXPIRES
SEPTEMBER 20, 2006

Kelli Marie Haack
Notary Public – State of Texas

DECLARANT:

MHI PARTNERSHIP, LTD., a Texas limited partnership,

By: McGuyer Homebuilders, Inc., its
general partner

By: _____
Print Name: MICHAEL K. LOVE
Print Title: PRESIDENT

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Michael K Love the President of McGuyer Homebuilders, Inc., the general partner of MHI PARTNERSHIP, LTD. known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purposes and consideration therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

Given under my hand and seal of office, this 10th day of August, 2005.

_____
Notary Public – State of Texas

JUDY D. JOHNSON
Notary Public
State of Texas
Comm. Expires 11-09-2005

DECLARANT:

NEWMARK HOMES, L.P., a Texas limited partnership

By: TOUSA Homes, Inc., a Florida corporation, its general partner

By: _____
Name: _____
Title By: Mike Moody, Division President
Houston Division
for TOUSA Homes Inc.

STATE OF Texas §
§
COUNTY OF Ft. Bend §

BEFORE ME, the undersigned authority, on this day personally appeared Mike Moody the Div. Pres. of TOUSA Homes, Inc., the general partner of Newmark Homes, L.P. known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purposes and consideration therein expressed and in the capacity therein and herein stated, and as the act and deed of said corporation.

Given under my hand and seal of office, this 27 day of July, 2005.

LISA LUMPKIN
MY COMMISSION EXPIRES
March 28, 2009

_____
Notary Public – State of _____

LIENHOLDER CONSENT AND SUBORDINATION

RFC Construction ~~Fund Corporation~~ Funding Corp, a Delaware Corporation, being the sole beneficiary of a mortgage lien and other liens, assignments and security interests encumbering all or a portion of the Property hereby consents to the terms and provisions of the Declaration and of this Supplemental Amendment, hereinafter referred to collectively as the "Declaration," to which this Lienholder Consent and Subordination is attached and acknowledges that the execution thereof does not constitute a default under the lien document or any other document executed in connection with or as security for the indebtedness above described, and subordinates the liens of the lien document and any other liens and/or security instruments securing said indebtedness to the rights and interests created under said Declaration, and acknowledges and agrees that a foreclosure of said liens and/or security interests shall not extinguish the rights, obligations and interests created under the Declaration. No warranties of title are hereby made by lienholder, lienholder's joinder herein being solely limited to such consent and subordination.

RFC CONSTRUCTION ~~FUND CORPORATION~~ Funding Corp

By: [signature]
Name: Terence E. Shifter
Title: Assistant Vice President

STATE OF Maryland §
§
COUNTY OF Montgomery §

BEFORE ME, the undersigned authority, on this day personally appeared Terence E Shifter, the AVP of RFC Construction ~~Fund Corporation~~ Funding Corp. known by me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in her/his representative capacity.

GIVEN UNDER MY HAND and seal of office, this 8 day of August, 2005.

Mary E Rozansky
Notary Public – State of

MARY E ROZANSKY
NOTARY PUBLIC FOR THE STATE OF MARYLAND
My Commission Expires February 1, 2006

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Pages 8
10/13/2005 2:21PM
Official Records of
BRAZORIA COUNTY
JOYCE HUDMAN
COUNTY CLERK
Fees $44.00