

HOLD TO
LAWYERS TITLE
CF# 02-2773 SR

WATER AND WASTEWATER DECLARATION

THE STATE OF TEXAS recorded Jan. 28, 2003, Harris County Clerk's File No.
COUNTY OF HARRIS KNOW ALL MEN BY THESE PRESENTS: W387712

THIS WATER AND WASTEWATER DECLARATION is made this 24th day of January 2003, by (Declarant) **CONTEMPORARY GARDEN HOMES, LTD., LLP**, a Texas limited partnership, by and through its sole general partner, **Contemporary Real Estate Group, Inc.**, a Texas corporation, as owner of Lots 1,2,3,4,5,12, and 13 in Jaguar Estates, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 335, Page 22 of the Harris County Map Records, and Lots 1,2, and 3 in Block 1 and Lots 1,2,3,4,5,6,7, and 8 in Block 2, all in Contemporary Southwest, an addition in Harris County, Texas according to the map or plat thereof recorded in Film Code 499050 of the Harris County Map Records.

WHEREAS, DECLARANT has developed single family residences on the aforementioned lots and desires to provide for the payment of periodic water charges from the City of Houston and for repair and maintenance of water distribution and wastewater collection and disposal lines.

THEREFORE, DECLARANT HEREBY DECLARES AS FOLLOWS:

ARTICLE 1: DEFINITIONS

- 1.1 "Assessment" shall mean and refer to any and all of the Assessments hereinafter defined:
 - (a) "Regular Assessment" shall mean and refer to a charge against each Owner and his Lot representing a portion of the cost to the Association to provide for water service.
 - (b) "Special Assessment" shall mean and refer to a charge against each owner and his Lot representing a portion of the cost to the Association for the unexpected repair or replacement of water distribution lines and wastewater collection and disposal lines.
- 1.2 "Association" shall mean and refer to **CONTEMPORARY SOUTHWEST WATER AND WASTEWATER ASSOCIATION, INC.**, a Texas non-profit corporation, its successors and assigns, which is to be formed by Declarant to enforce this Declaration.
- 1.3 "The Board" shall mean and refer to the appointed Board of Directors of the Association as defined herein, and their successors as appointed by Declarant or elected by the Members in accordance with the provisions hereof.
- 1.4 "By-Laws" shall mean the By-Laws of the Association.
- 1.5 "Common Area" shall mean the water distribution and wastewater collection and disposal lines.
- 1.6 "Lot" shall mean Lots 1,2,3,4,5,12, and 13 in Jaguar Estates and Lots 1,2, and 3 in Block 1, and Lots 1,2,3,4,5,6,7, and 8 in Block 2, all in Contemporary Southwest, or all as the context may require.

- 1.7 "Owner" shall mean any Person, including Declarant, who holds fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.
- 1.8 "Person" shall mean a natural person, a corporation, a partnership, or any other entity.

ARTICLE 2: GENERAL PLAN

- 2.1 **General Plan.** This Declaration is established to provide for payment of periodic water charges and ongoing maintenance and repair of water distribution and wastewater collection and disposal lines. Declarant for itself, its successors and assigns, hereby declares that the lots shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, easements, exceptions, equitable servitudes, and other provisions set forth in this declaration, for the duration thereof.
- 2.2 **Covenants Appurtenant.** The covenants, conditions, restrictions, limitations, reservations, easements, exceptions, and equitable servitudes, and other provisions set forth in this Declaration shall run with, and shall inure to the benefit of and shall be binding upon and inure to the benefit of all Persons having or acquiring any right, title or interest in all or any portion of the Lots and their respective heir, successors, executors, administrators, legal representatives and assigns.

ARTICLE 3: COMMON AREA

- 3.1 **Rights of Owners.** Every owner of a Lot shall have and own an undivided one-eighteenth (1/18) interest in and to the Common Area as Tenants in Common and such interest shall be appurtenant to and shall pass with title to each Lot. The interest created hereby is that of Tenants in Common and this Declaration shall not be deemed or construed to create a joint venture, partnership, or such other business arrangement. This Declaration shall not be construed as authority for either party to act for the other party in any agency or other capacity or to make commitments of any kind for the account of or on behalf of the other.
- 3.2 **Access Easement For Owners.** Each owner shall have a joint, unrestricted unobstructed, and non-exclusive private right-of-way access to the Common Area.
- 3.3 **Maintenance And Repair.** Each owner shall be responsible for, and share equally in cost and expense incurred in, the reasonable and proper maintenance, repair and replacement of the improvements located in the Common Area. The obligation of an Owner for maintaining, repairing, and/or replacing the improvements is contingent upon agreement between the Owners of the scope and type of work to be preformed and the costs or expenses incidental thereto.
- 3.4 **Utility Easements.** Declarant hereby grants to and for the use and benefit of Lots and the Common Area is hereby burdened with, an appurtenant easement for the purpose of placing, constructing, operating, repairing, maintaining, rebuilding, replacing, relocating, and removing a water, and wastewater, and storm sewer system for the distribution and transmission of water, and

wastewater, and storm water run-off of the Lots. The easement, rights, and privileges herein granted shall be perpetual.

- 3.5 **No Partition of Common Areas.** No owner shall have the right to partition or seek partition of the Common Area or any part thereof.

ARTICLE 4: ASSESSMENTS

- 4.1 **Creation of the Lien and Personal Obligation Assessments.** The Declaration and each Owner, for each Lot owned within the Development, shall be subject to an Assessment as hereinafter provided and, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay the Association such Assessments as may be fixed, established, and collected from time to time, as hereinafter provided, all of which shall be a charge against, and secured by a continuing lien upon, the Lot. The lien for the payment of Assessments shall be for the benefit of the Association and all owners although the Association shall have the exclusive right to payment, and shall be prior and superior to all other liens but shall be subject and subordinate to each of the following: (a) all liens for taxes or special assessments levied by the county and governments or any political subdivision or special district thereof and (b) all liens securing amounts due or to become due under any mortgage, vendor's lien or deed of trust filed for record prior to the date payment of any such Assessments become due and payable. Any foreclosure of any such prior or superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings to which the Association has been made a part, shall extinguish the lien securing an Assessment which become due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the lien securing an Assessment thereafter becoming due and payable, nor shall the personal obligations of the Owner be extinguished by any foreclosure. Each Assessment, together with interest and costs of collection as hereinafter provided, shall also be and remain the personal obligation of the Owner of such Lot at the time the Assessment becomes due and payable, notwithstanding any subsequent transfer of title of same. Such personal obligation shall not pass to such Owner's successors in title unless expressly assumed by them, but shall be secured by the continuing lien referred to above.

4.2 **Regular Assessments.**

- (a) The amount of Regular Assessments shall be determined by the Board of Directors of the Association pursuant to this Declaration, the Articles of Incorporation, and By-Laws of said Association after giving due consideration to the current water costs. The Regular Assessments shall be paid on a monthly basis.

4.3 **Special Assessments.** Each owner shall be liable to the

- Association by way of special assessment of unexpected repair or replacement of water distribution lines and wastewater collection and disposal lines.
- 4.4 Uniform Rate Assessment.** Both Regular and Special Assessments shall be uniform as between each Lot.
- 4.5 Date of Commencement of Regular Assessments and Fixing Thereof.** The Regular Assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot within the Development to an individual Owner; provided, however, that the Association, by a majority vote of its Board of Directors, may extend the commencement date of Regular Assessments to a time not later than two (2) months following the completion of all improvements within the Common Area if Declarant, by written agreement with the Association, agrees to maintain the Common Area until such extended date.
- 4.6 Certificate of Payment.** The Association shall, upon demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether the Assessments on a specified Lot have been paid and the amount of the delinquency, if any. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- 4.7 Duties of the Board of Directors.**
- (a) The Board shall fix the amount of Regular Assessment against each Lot for each year at least thirty (30) days in advance of such year and shall, at that time, prepare a roster of the Lots within the Development Tract and Regular Assessments applicable thereto which shall be kept in the Office of the Association and shall be open to inspection by any Owner during normal business hours.
- (b) Written notice of the Regular Assessments shall be sent to every Owner subject thereto at least fifteen (15) days in advance of each year.
- (c) The Board shall fix the amount of all Special Assessments at least thirty (30) days in advance of the date of such Assessments shall become due and shall give written notice to each owner subject thereto at least fifteen (15) days in advance of the date such Assessments shall become due.
- 4.8 Assessment of Lots Owned by Declarant.** Without exception, each Lot owned by Declarant shall be subject to assessment in the same manner as any other Lot owned by any individual Owner.

- 4.9 Nonuse and Abandonment.** No Owner may waive or otherwise escape personal liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.
- 4.10 Effect of Non-payment of Assessment.** If any assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the maximum non-usurious rate allowed by applicable state and/or federal laws, and if placed in the hands of an attorney for collection or if suit is brought thereon, or if same is collected through probate or other judicial proceedings, there shall be paid to the Association an additional reasonable amount, but not less than ten percent (10%) of the amount owing, as attorneys fees. The association, as a common expense of all Owners, may institute and maintain an action at law or in equity against any defaulting Owner to enforce collection and/or for foreclosure of the liens against his Lot. All such action may be instituted and brought in the name of the Association and may be maintained and prosecuted by the Association in a manner as an action to foreclose the liens of a mortgage or deed of trust on real property. The Declarant or Association shall have the right to publish monthly, a list of all Owners delinquent in payment of their respective Assessment charges and post the same throughout the Development or in any newsletter published for the benefit of the Association.
- 4.11 Collection and Enforcement.** Each owner, by his assertion of title or claim of ownership or by his acceptance of a deed to a tract whether or not it shall be recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of Assessments and/or for the enforcement and foreclosure of the lien securing same as well as any other action.
- 4.12 Due Date of Assessments.** Assessments, or increases in assessments which first became effective, as to a particular Lot, at any time after January 1, of a calendar year, shall be prorated on the basis of the number of days remaining from the date such Assessment, or increased rate of Assessment, first became effective, until the end of the then-current calendar year and shall be due and payable, in advance, on the date on which such Assessment, or increased Assessment, became effective. The Board shall furnish written notice of the amount of each Assessment to each Owner within a reasonable time after the determination or setting of such Assessment and shall, upon request, and for reasonable charge, furnish certificates signed by an officer of the Association setting forth whether the Assessments applicable to a particular Lot have been paid. A properly executed certificate of the Association evidencing that payment of any Assessment applicable to a Lot shall be binding upon the Association as of the date of its issuance.

ARTICLE 5: THE ASSOCIATION

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- 5.1 Organization.** The Declarant will promptly, after filing of this Declaration, cause the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas.
- 5.2 Purpose.** The purpose of the association shall in general be to collect the Assessments and to administer such funds, to provide for the maintenance, repair, preservation, upkeep and protection of the Common Area, and to exercise all the rights authorized, and perform all duties imposed by, and any and all other purposes as are in this Declaration, or the Articles of Incorporation or By-Laws of the Association.
- 5.3 Directors.** The initial Directors of the Association shall be three (3) in number, and they shall be selected by Declarant. Each initial Director shall serve until such Director's successor is elected and qualified; provided, however, that any Director may resign at any time and, until the "Equalization Date" (as hereinafter defined), Declarant shall have the right to remove any Director, at any time, with or without cause by a written document sent to the Board. Until the Equalization Date, any vacancy occurring in the Board of Directors shall be filled by Declarant. Within a reasonable time after the Equalization Date, the Directors shall call a meeting of members of the Association for the purpose of electing Directors, and, at such meeting, and thereafter, members of the Board of Directors shall be elected by a majority vote of the members of the association, and each Director shall serve for a term of three (3) years. Except to the extent that another vote is otherwise specifically prescribed, the Board shall manage the affairs of the association upon a majority vote of such Directors.
- 5.4 Members.** Each Owner, whether one or more persons or entities, of a Lot which is subject to the Assessments shall, upon and virtue of becoming such Owner, automatically become a member of the Association and shall remain a member thereof until his ownership ceases for any reason, at which time his membership in the association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, as such memberships appurtenant to and automatically follows and passes with the legal ownership of a Lot. Membership in the Association is expressly limited to the Owner of Lots, which are subject to the Assessments as above stated. Certificates of Memberships may be issued at the option of Declarant.
- 5.5 Voting Rights.** The association shall have two (2) classes of voting membership.

Class A. Class A members shall be all Owners of a Lot, with the exception of Declarant, and shall be entitled to one vote for each. When more than one person or entity holds or owns an interest in a Lot, all such persons or entities shall be members, and the vote for such Lot shall be

exercised as they may determine, but in no event shall more than one vote be cast with respect to any one Lot. There shall be no fractional votes.

Class B. The Class B member is Declarant, and Declarant shall be entitled to 2 votes for each Lot owned by it. The Class B membership shall cease and be converted to a Class A membership on the happening of any of the following events, whichever occurs first (such date being hereinafter called the Equalization Date”):

(a) When the total number of Lots owned by the Declarant is equal to 3; or

(b) When, in its discretion, Declarant so determines by written document executed by it and recorded among the real property records Harris County, Texas.

5.6 Suspension of Voting Rights. The Association shall have the right to suspend the voting right of any Owner and/or the right of any Owner to use the Common Area if:

- 1) Such Owner is in default in the payment of any Assessment or other amount of money due to the Association for a period of forty-five (45) days after the due date thereof; or
- 2) such Owner has failed to comply with any of the restrictions contained herein or the rules and regulations of the Association, for a period of fifteen (15) days after written notice thereof from Association; and
- 3) in the event of default in payment of Assessments, or failure to comply with the restrictions of this Declaration or rules and regulations of the Association, for an additional period not to exceed sixty (60) days from the date such default or violation is cured or rectified.

The Association's right to suspend voting rights shall not be exclusive, but shall be cumulative of, and in addition to, any and all other rights and remedies of the Association.

5.7 Management and Maintenance of Common Area. The Association shall maintain the Common Area, with funds provided by the Assessment described herein and shall have the exclusive right to the management and control of the Common Area and all improvements thereon and all personal property, fixtures, equipment or machinery thereon or used in connection therewith. Without limiting the generality of the foregoing, and by way of illustration and not of limitation:

(a) The Association shall have the right to construct, install, repair, and maintain the Common Area or any part thereof;

(b) The association shall have the right to take such steps as are reasonably necessary to protect the Common Area against foreclosure or forfeiture of any mortgage, lien or other encumbrance thereon;

(c) The association shall have the right to make, publish, and enforce reasonable rules and regulations governing the use and enjoyment of the Common Area or any part thereof, inclusive of rules and regulations of all waterways, all of which shall be binding upon, complied with and observed by each Owner. These rules and regulations may include provisions to govern and control the use of the Common Area by tenants, guests or invitees of the Owners;

(d) The Association shall have the right to assess and collect the assessments provided for herein;

(e) Each Owner shall be liable to the Association for any damages of any kind or character, to the Common Area or any personal property attached thereto, located thereon or used in connection therewith which may be caused by negligence of an Owner, or tenants, employees, agents, customers, guests, invitees, or licensees of such Owner. Each Owner does further, by acceptance of a deed to a Lot, release the Association and the Board, the Committee, and Declarant, and all or either of their officers, directors, shareholders, and members from any and all claims or causes of action for personal injuries, or property damages, occurring within or upon the Common Area or a portion of the Development, or caused by, or resulting from, any personal property, machinery, equipment or fixtures located thereon, attached thereto or used in connection therewith.

(f) In addition to the notices above stated, the Association reserves the right to publish in a list and in a form satisfactory to the Association, a list of all individuals or entities who (i) have not abided by the rules and regulations of the Association, or (ii) are delinquent in paying any assessments of the association. Each Owner consents to the mailing, publication, or disbursement of this information to assist the association in collecting such amounts or remedying such acts of non-compliance.


5.8 **Authority of Association.** The association shall be the custodian of, and shall have the sole right to administer, funds collected from Assessments, for such purposes, and in such manner, as the Board, in the exercise of their reasonable business judgment, may determine. No individual person, as an officer or director of the Association or of Declarant, or as a member of the Committee, shall be liable to any Owner, or any other person or entity as a result of the performance of his duties or the exercise of his discretion or judgment on behalf of, or in such individual's capacity as officer, director or member of the Association, Declarant or the Committee. The purpose for which Assessments may be expended, and the rights and privileges granted to the Association herein are permissive only, and shall not create nor imply any obligation or affirmative duty on the part of the Association or Declarant, or its officers or directors.

ARTICLE 6: MISCELLANEOUS PROVISIONS

- 6.1 Term of Declaration.** Unless amended as herein provided, all of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration shall be effective for a period of twenty-five (25) years from date of recording of this Declaration, and, thereafter, automatically shall be extended for successive periods of ten (10) years each unless terminated by all Owners. By written instrument, in recordable form, signed by all Owners.
- 6.2 Captions for Convenience.** The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.
- 6.3 Number and Gender.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter.
- 6.4 Restrictions Construed Together.** All of the provisions of this Declaration shall be construed liberally to promote and effectuate the fundamental concepts of the Declarations.
- 6.5 Severability.** Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision or provisions.
- 6.6 Governing Law.** This Declaration shall be governed and construed under the laws of the State of Texas.
- 6.7 Delay in Enforcement.** No delay in enforcing the provisions of this Declaration as to any breach or violation thereof shall impair, damage, or waive the right of any party entitled to enforce the same to obtain relief or recover for the continuation or repetition of such breach or violation similar thereof at any later time or times.

IN WITNESS WHEREOF, Declarant has executed this Declaration, as of the day and year first written above.

CONTEMPORARY GARDEN HOMES, LTD. LLP,
a Texas limited partnership, by and through its sole
general partner, Contemporary Real
Estate Group, Inc. a Texas Corporation



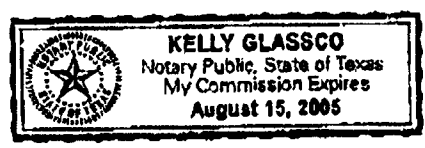
WILLIAM A. GRAY, PRESIDENT

"DECLARANT"

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared William A. Gray, President of Contemporary Real Estate Group, Inc., a Texas corporation, the sole general partner of Contemporary Garden Homes, Ltd., LLP, a Texas limited partnership known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 24 day of January, 2003.





Notary Public in and for Harris County, Texas

My Commission Expires: August 15, 2005