

AMENDED ANNEXATION
OF
ROCK CREEK, SECTION FIVE (5)

AMEND
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STATE OF TEXAS §
 §
COUNTY OF HARRIS §

WHEREAS, R Creek, L.P., as Declarant, caused that certain instrument entitled "Declaration of Covenants, Conditions and Restrictions for Rock Creek" (the "Declaration") to be recorded in the Official Public Records of Real Property of Harris County, Texas on January 21, 2000 under Clerk's File No. U187543, which Declaration imposes various covenants, conditions, and restrictions upon the following real property:

All of Rock Creek, Section One (1), a subdivision in Harris County, Texas according to the map or plat thereof recorded under Film Code No. 435082 of the Map Records of Harris County, Texas

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; and

WHEREAS, the Declaration was amended by instrument entitled "First Amendment to Declaration of Covenants, Conditions and Restrictions for Rock Creek" and recorded in the Official Public Records of Real Property of Harris County, Texas on April 25, 2000 under Clerk's File No. U350986; and

WHEREAS, the Declaration was further amended by instrument entitled "Second Amendment to Declaration of Covenants, Conditions, and Restrictions for Rock Creek" and recorded in the Official Public Records of Real Property of Harris County, Texas on November 10, 2000 under Clerk's File No. U728355; and

WHEREAS, the Declaration, as amended, provides that additional land may be annexed and subjected to the provisions of the Declaration by Declarant, without the consent of the Lot Owners, within twenty (20) years of the date that the Declaration is recorded by filing for record an annexation instrument in the Official Public Records of Real Property of Harris County, Texas; and

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WHEREAS, additional land was previously annexed and subjected to the provisions of the Declaration by that certain instrument entitled "Annexation of Rock Creek, Section Two (2)", recorded in the Official Public Records of Real Property of Harris County, Texas on September 20, 2001 under Clerk's File No. V313660; and

WHEREAS, additional land was previously annexed and subjected to the provisions of the Declaration by that certain instrument entitled "Annexation of Rock Creek, Section Three (3)," recorded in the Official Public Records of Real Property of Harris County, Texas on May 30, 2002 under Clerk's File No. V775760; and

WHEREAS, additional land was previously annexed and subjected to the provisions of the Declaration by that certain instrument entitled "Annexation of Rock Creek, Section Five (5)" recorded in the Official Public Records of Real Property of Harris County, Texas on December 3, 2002 under Clerk's File No. W260891; and

WHEREAS, Declarant desires to amend the "Annexation of Rock Creek, Section Five (5)" in its entirety to correct provisions relating to the location of improvements on lots and fences;

NOW, THEREFORE, Declarant hereby amends the "Annexation of Rock Creek, Section Five (5)" recorded in the Official Public Records of Real Property of Harris County, Texas on December 3, 2002 under Clerk's File No. W260891 in its entirety and replaces that document with this document. Further, Declarant hereby annexes the following additional land (the "Additional Land") and subjects the Additional Land to the provisions of the Declaration and the jurisdiction of Rock Creek Community Association, Inc. (the "Association"):

All of Rock Creek, Section Five (5), a subdivision in Harris County, Texas according to the map or plat thereof recorded under Film Code No. 523197 of the Map Records of Harris County, Texas.

By virtue of this document, the Additional Land is subject to all of the covenants, conditions and restrictions set forth in the Declaration and all amendments thereto. All provisions of the Declaration, as amended, shall apply to the Additional Land with the same force and effect as if the Additional Land was originally included in the property subject to the Declaration, including the

provisions relating to the payment of annual maintenance charges and assessments to the Association. The Additional Land shall be developed, improved, sold, used and enjoyed in accordance with and subject to the provisions of the Declaration, as previously or hereafter amended; the Builder Guidelines for Rock Creek recorded in the Official Public Records of Real Property of Harris County, Texas on January 25, 2000 under Clerk's File No. U192989 and amended by instrument recorded on December 8, 2000 under Clerk's File No. U773895; and the Architectural Guidelines for Rock Creek recorded in the Official Public Records of Real Property of Harris County, Texas on February 8, 2000 under Clerk's File No. U216691 and amended by instruments recorded on August 11, 2000 under Clerk's File No. U561483, on December 8, 2000 under Clerk's File No. U773896, and on September 20, 2001 under Clerk's File No. V313659. All provisions of the Declaration, as amended, shall run with the Additional Land and be binding on all parties who may now or hereafter have or claim any right, title or interest in the Additional Land or any part thereof, and on the heirs, executors, administrators, successors and assigns of such parties, regardless of the source of or the manner in which any such right, title or interest is or may be acquired.

However, notwithstanding anything in the Declaration, the Builder Guidelines, or the Architectural Guidelines to the contrary, the following provisions shall be applicable to the Additional Land:

1. **PRIVATE STREET:** Within Rock Creek, Section Five (5), is a private street named or to be named "Rock Creek Villa Drive" which has been or will hereafter be conveyed by Declarant to the Association. For purposes hereof, Rock Creek Villa Drive is hereafter referred to as the "Private Street."

2. **MAINTENANCE AND REPAIR OF PRIVATE STREET:** The future maintenance and repair of the Private Street shall be the responsibility of the Association and the Association, acting through the Board of Directors, is hereby vested with the authority to determine (a) whether the Private Street is in need of maintenance and/or repair and (b) the scope and manner of effecting any maintenance and/or repair work deemed to be necessary. However, when determining either whether the Private Street is in need of maintenance and/or repair or the scope and manner of effecting any maintenance and/or repair work deemed to be necessary, the Board of Directors is obligated to act reasonably and in good faith to the end that the Private Street is maintained to

substantially the same standard that it exists at the time of original construction. Notwithstanding the fact that the Association is responsible for maintaining and/or repairing the Private Street, the cost of maintaining and/or repairing the Private Street shall be borne by the Owners of the Lots in Rock Creek, Section Five (5), as herein provided. Upon the first sale of a Lot in Rock Creek, Section Five (5), subsequent to the completion of a Residential Dwelling thereon, the purchaser of the Lot shall pay to the Association the sum of \$750.00 (such sum being referred to herein as the "Road Fund Assessment"). The Road Fund Assessment shall be due and payable on or before ten (10) days after the date the deed conveying a Lot to the purchaser is recorded or, if a contract for deed or similar instrument, the date the contract for deed is executed. Payment of the Road Fund Assessment shall be in default if the Road Fund Assessment is not paid on or before the due date for such payment. A Road Fund Assessment in default shall bear interest at the rate of eighteen percent (18%) per annum from the due date until paid. All Road Fund Assessments collected by the Association shall be deposited into a separate account (the "Road Fund Account") established and maintained by the Association to be used exclusively for maintaining and/or repairing the Private Street and for no other purpose. No Road Fund Assessment paid by an Owner shall be refunded to the Owner by the Association; provided that, if the Private Street ever becomes a public street to be maintained and/or repaired by the governmental entity to which it is dedicated, the Road Fund Account shall be closed and the funds remaining in the Road Fund Account after paying all costs associated with the maintenance and/or repair of the Private Street as of that date and any expenses associated with the dedication of the street, shall be equally disbursed to the then Owners of the Lots in Rock Creek, Section Five (5). The Association may enforce payment of the Road Fund Assessment in the same manner which the Association may enforce payment of annual and special assessments pursuant to Article V of the Declaration.

In addition to the Road Fund Assessment, the sum of \$150.00 shall be added to the Neighborhood Assessment payable to the Association by the Owners of Lots in Rock Creek, Section Five (5), each year, which sum shall be allocated for the future maintenance and repair of the Private Street and deposited into the Road Fund Account. This sum may be increased in any given year by an amount not exceeding five percent (5%) above the amount charged in the prior

year. If the Road Fund Account is, at any time, insufficient to pay for costs incurred or to be incurred to perform necessary maintenance and/or repair work, the Association may levy a Special Neighborhood Assessment for the purpose of paying the costs associated with the necessary maintenance and/or repair work. For purposes hereof, "maintenance and/or repair work" means maintaining, repairing, replacing and/or reconstructing the Private Street, including the curbs adjacent to the paved roadway.

3. **NEIGHBORHOOD ASSESSMENT.** In addition to annual assessments, special assessments, and reserve assessments as provided in Article V of the Declaration, the Association shall have the authority to levy and collect a Neighborhood Assessment with respect to each Lot in Rock Creek, Section Five (5). A Neighborhood Assessment is a separate assessment levied equally against all Lots in Rock Creek, Section Five (5). The purpose of the Neighborhood Assessment is to provide funds to the Association to pay expenses incurred to provide special services for the exclusive benefit of the residents of Lots in Rock Creek, Section Five (5). The special services to be provided to the residents of Lots in Rock Creek, Section Five (5), include (a) the maintenance, repair and/or replacement of the access gate system, (b) the maintenance of Restricted Reserve "B" (as shown on the plat), including any landscaping and irrigation system thereon, and (c) the maintenance of the island(s) within the cul-de-sac portions of the Private Street. As provided in paragraph 2 of this Annexation document, a portion of the Neighborhood Assessment shall also be used to make an annual contribution to the Road Fund Account. The Neighborhood Assessment may be levied by the Association for other special services provided to the residents of Lots in Rock Creek, Section Five (5); provided that, no Neighborhood Assessment shall be levied for any other special services or purposes than those specified above unless (a) a written request for services not regularly provided by the Association is submitted to the Board of Directors, (b) the Board of Directors agrees, on behalf of the Association, to provide the requested special services, subject to the approval of a Neighborhood Assessment to cover the cost of the services, (c) a meeting is called among the Owners of the Lots in Rock Creek, Section Five (5), (d) all Owners in Rock Creek, Section Five (5), are notified in writing not less than ten (10) days or more than thirty (30) days before the meeting that a meeting will be held to discuss and vote upon the proposal to obtain the

special services and to approve a Neighborhood Assessment for that purpose, and (e) the special services and the Neighborhood Assessment are approved by Owners representing not less than eight (8) Lots in Rock Creek, Section Five (5). Neighborhood Assessments shall be due, in advance, on January 1st of each year in which the special services are to be provided. If special services provided to the residents of Lots in Rock Creek, Section Five (5), commence after the first day of a calendar year, the Neighborhood Assessment for that year shall be due on the date specified by the Board of Directors. The Board of Directors shall have the authority to set the rate of the Neighborhood Assessment each year based upon the anticipated cost to provide the special services specified above, to make the required annual contribution to the Road Fund Account, and to provide any other special services approved by the Association and the requisite number of Owners of Lots in Rock Creek, Section Five (5), as provided herein. When adjusting the amount of the Neighborhood Assessment from year to year, the Board of Directors shall consider any surplus or deficit in the budget from the prior year, it being the intent that the Neighborhood Assessment shall be set at a rate to cover the costs for which the Neighborhood Assessment is levied, not to build any cash reserves. Payment of Neighborhood Assessments shall be secured by the continuing lien provided in Article V of the Declaration. A Neighborhood Assessment shall also be the personal obligation of the Owner(s) of the Lot at the time the Neighborhood Assessment became due. A Neighborhood Assessment shall be subject to the same provisions relating to non-payment that are applicable to annual and special assessments pursuant to Article V of the Declaration. Notwithstanding any provision herein to the contrary, the Board of Directors of the Association shall have the authority to discontinue any special services which were previously requested and approved as the Board deems, in its reasonable, good faith judgment, to be necessary or appropriate. If the Owner of any Lot in Rock Creek, Section Five (5), proposes to discontinue any special services previously requested and approved, a petition signed by Owners representing not less than five (5) Lots in Rock Creek, Section Five (5), must be submitted to the Board of Directors. A meeting of the Owners of Lots in Rock Creek, Section Five (5), shall be called in the manner set forth above. The special services shall be discontinued if the proposal is approved by Owners representing not less than eight (8) Lots in Rock Creek, Section Five (5). When special services are

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discontinued, either as the result of a decision of the Board of Directors or a vote of the Lot Owners, the portion of the total Neighborhood Assessment relating to those special services shall likewise be discontinued. Once discontinued, special services may not be renewed unless approved in the manner set forth herein. For the purpose of any vote under this paragraph, the approval of multiple Owners of a Lot in Rock Creek, Section Five (5), may be reflected by the vote of one (1) of the Owners.

4. **MINIMUM ALLOWABLE AREA OF INTERIOR LIVING SPACE:** For Lots in Rock Creek, Section Five (5), the minimum allowable area of interior living space in a Residential Dwelling shall be two thousand seven hundred (2,700) square feet. For purposes hereof, "interior living space" excludes steps, porches, exterior balconies and garages.

5. **GARAGES:** Each Residential Dwelling shall have an attached garage for not less than two (2) nor more than three (3) vehicles.

6. **LOCATION OF IMPROVEMENTS:** The location of each Residential Dwelling or other Improvement on a Lot in Rock Creek, Section Five (5), must be approved in writing by the Architectural Review Committee prior to the commencement of construction. No Residential Dwelling shall be located on a Lot in Rock Creek, Section Five (5), nearer than ten (10) feet from the front property line or nearer than fourteen (14) feet from the rear property line; provided that, if a Residential Dwelling on a Lot has a front loading garage, the front plane of the garage must be no nearer than twenty (20) feet from the front property line. With regard to certain Lots in Rock Creek, Section Five (5), the Residential Dwelling shall be constructed so that one (1) outside wall abuts the side property line designated as the "zero setback line" for that Lot. The Lots in question and the zero setback line applicable to each Lot are:

<u>LOT</u>	<u>ZERO SETBACK LINE</u>
1	East side property line
2	East side property line
3	East side property line
4	East side property line
5	East side property line
6	West side property line
7	West side property line

8	West side property line
9	West side property line
10	West side property line
11	South side property line
12	South side property line
13	East side property line
14	East side property line

The Residential Dwelling and garage on a Lot in Rock Creek, Section Five (5), shall be not less than seven (7) feet from the Residential Dwelling and garage on a contiguous Lot, measured from the nearest point of the walls of the Residential Dwellings and garages on the contiguous Lots. For purposes of spacing between the Residential Dwellings and garages on contiguous Lots, eaves and steps shall not be considered. No transparent windows or doors or other openings shall be placed in the wall of the Residential Dwelling that abuts the side property line that is designated as the zero setback line. The Owner of any adjacent Lot shall not attach anything to the wall of the Residential Dwelling that abuts the zero setback line or use the wall as playing surface for any sport or recreational activity. No Owner of an adjacent Lot shall in any manner alter the wall of the Residential Dwelling that abuts the zero setback line. The Owner of each Lot which has a zero setback line is hereby declared to have an easement over the adjacent Lot for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the Residential Dwelling. In addition, each Lot which has a zero setback line is hereby declared to have an easement over the adjoining Lot for overhanging roofs and eaves, which easement shall pass with each conveyance of the Lot. All Lots in Rock Creek, Section Five (5), which are adjacent to a Lot which has a zero setback line are subject to an easement five (5) feet in width along the side lot line of the zero setback line of the adjacent Lot for the benefit of the Owner of the adjacent Lot. Such easement shall exist for the purposes of maintaining, painting, repairing and/or reconstructing that portion of the Residential Dwelling or garage that abuts the zero setback line and any fence on such side property line. Provided that, as a condition to the exercise of the right of access, the Owner benefited by the easement shall indemnify and hold harmless the Owner of the Lot subject to the easement from damage to shrubs, plants, flowers, trees, lawn sprinklers and similar items resulting from the exercise of the right of access. Further, except in the case of an emergency, the Owner benefited by the easement shall notify the Owner of the Lot

subject to the easement not less than forty-eight (48) hours prior to exercising the right of access.

7. **FENCES:** With the exception of a fence or wall enclosing the courtyard area of a Lot and the alternate type of fence that may be constructed along the rear property line of Lot 11, 12 or 13, the only type of fence that is permitted on a Lot in Rock Creek, Section Five (5), is an unadorned black wrought iron fence. Each wrought iron fence shall be not more than six (6) feet in height and shall have pickets at a four (4) inch on center interval spacing. A six (6) foot unadorned black wrought iron fence or a six (6) foot stained solid wood fence is permitted along the rear property line of Lot 11, 12 and 13. A fence (as provided herein) must be erected along the rear property line of a Lot by the Builder prior to substantial completion of the Residential Dwelling on that Lot. A fence or wall enclosing the courtyard area of a Lot may be unadorned black wrought iron, brick or other material that is compatible with the exterior of the Residential Dwelling. No fence or wall enclosing the courtyard area shall exceed six (6) feet in height. All fences and walls must be approved in writing by the Architectural Review Committee prior to construction. The maintenance and/or repair of any fence on the property line between Lots shall be the joint responsibility of the adjacent Lot Owners.

8. **TREES:** Not less than one (1) hardwood tree with a caliper of not less than four (4) inches is required in the front yard of each Lot in Rock Creek, Section Five (5). If a hardwood tree does not exist at the time the Residential Dwelling on a Lot is substantially completed, the Builder is required to plant a hardwood tree in the front yard of the Lot within thirty (30) days of the date of substantial completion of the Residential Dwelling. The type and location of the tree to be planted in the front yard of a Lot must be approved in writing by the Architectural Review Committee prior to installation. If there is only one (1) hardwood tree in the front yard of a Lot and the tree dies, becomes diseased or is removed for any reason, the Owner of the Lot is required to replace the tree with a hardwood tree approved by the Architectural Review Committee within forty-five (45) days of the date that the original tree was removed or the date that the Architectural Review Committee determines that the original tree is dead or so diseased that it cannot be salvaged. The Architectural Review Committee shall have the authority to extend the period for installing a replacement tree if the forty-five (45) day period is during a time of year that is not optimal for planting new trees.

9. **PARKING:** No Owner, lessee, or occupant of a Lot, including persons who reside with an Owner, lessee or occupant of the Lot, shall park any vehicle in the Private Street for any length of time. The guest of an Owner, lessee or occupant of a Lot, or the operator of a service vehicle who provides some service to the Owner, lessee or occupant of a Lot, may park his vehicle in the permitted area of the Private Street for a period not to exceed twenty-four (24) consecutive hours. The "permitted area of the Private Street" is limited to the north side of the Private Street (adjacent to the Lots) between the access gate and the west property line of Lot 8. Under no circumstances is vehicle parking permitted in the west cul-de-sac, along the south side of the Private Street, or in a manner that impedes or obstructs ingress or egress through the access gate or ingress to or egress from a Lot via the driveway. The Association shall have the right to cause any vehicle parked on the Private Street in violation of this paragraph to be towed as provided in the Texas Transportation Code.

10. **MAILBOXES:** One (1) mailbox that serves two (2) adjacent Lots shall be constructed on the common property line (straddling both Lots) at the curb. The Lots that will share a mailbox are designated as follows:

- Lots 1 and 2
- Lots 3 and 4
- Lots 5 and 6
- Lots 7 and 8
- Lots 9 and 10
- Lots 11 and 12
- Lots 13 and 14

It shall be the joint responsibility of the Owners of the two (2) Lots that share a mailbox to maintain, repair and/or replace the mailbox.

In the event of a conflict between the provisions of this Annexation document and the provisions of the Declaration, the Builder Guidelines and/or the Architectural Guidelines, the provisions of this Annexation document shall prevail.

Executed on the date set forth below to become effective upon recording in the Official Public Records of Real Property of Harris County, Texas.

R Creek, L.P., a Texas limited partnership,
By: Caldwell Watson Management Company,
L.L.C., its General Partner

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Date: 2/27/03

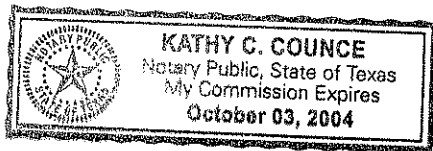
By: [Signature]
Fred F. Caldwell, Authorized Agent

STATE OF TEXAS §
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COUNTY OF HARRIS §

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HARRIS COUNTY CLERK
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BEFORE ME, a notary public, on this day personally appeared Fred F. Caldwell, authorized agent of Caldwell Watson Management Company, L.L.C., General Partner of R Creek, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that he executed this document for the purposes and in the capacity herein expressed.

Given under my hand and seal of office this 27 day of February, 2003.



[Signature: Kathy C. Counce]
Notary Public in and for the State of Texas

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW THE STATE OF TEXAS COUNTY OF HARRIS I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

Return to:

Butler & Hailey, P.C.
1616 S. Voss, Suite 500
Houston, Texas 77057

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[Signature: Beverly B. Kayman]
COUNTY CLERK
HARRIS COUNTY, TEXAS

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