

## AGREEMENT REGARDING FENCE REPAIRS

This Agreement Regarding Fence Repairs ("**Agreement**") is entered into by Fieldstone Community Association, Inc., a Texas non-profit corporation ("**Association**") and \_\_\_\_\_ ("**Owner**"), to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Effective Date**").

### WITNESSETH:

WHEREAS, Fieldstone, a residential subdivision in Fort Bend County, Texas ("**Fieldstone**"), is encumbered by that Declaration of Covenants, Conditions and Restrictions for Fieldstone, recorded in the Official Public Records of Real Property of Fort Bend County, Texas, as amended ("**Declaration**"); and

WHEREAS, Owner is the owner of a Lot in Fieldstone (the "**Owner's Lot**"); and

WHEREAS, Section 23 of the Declaration, entitled Fences, provides that the Owner of each Lot shall be responsible for the proper maintenance of all fences on the Owner's Lot unless the Association assumes such obligation; and

WHEREAS, Section 24 of the Declaration, entitled Owner's Maintenance, provides in part that unless expressly assumed by the Association, an Owner's maintenance obligation shall include, but not be limited to, the maintenance of all visible exterior surfaces of all buildings and other improvements, including fences; and

WHEREAS, to ensure a uniform appearance and consistency of materials used for fences that comprise the perimeter boundary of Fieldstone, specifically, those fences that exist along the rear property line of certain Lots in Fieldstone that are adjacent to S. Mason Road and W. Belfort Street (the "**Perimeter Fence**"), the Association will assume responsibility for fifty percent (50%) of the cost to repair such Perimeter Fence; and

WHEREAS, pursuant to the Declaration, Owner shall also be responsible for fifty percent (50%) of the cost to repair such Perimeter Fence;

WHEREAS, the Association and Owner desire to enter this Agreement with regard to the repair of the Perimeter Fence that exists on or adjacent to Owner's Lot.

NOW, THEREFORE, in consideration of the mutual benefits and obligations herein exchanged by the Association and Owner, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Association and Owner hereby agree as follows:

1. Cost Sharing. Association and Owner agree to equally share in the cost to repair the Perimeter Fence that exists on or adjacent to Owner's Lot.

2. Process. Upon notice that a section of the Perimeter Fence is in disrepair, the Association or its representative will inspect the Perimeter Fence to determine the scope of repairs needed. The inspection, repair, and related actions are collectively referred to herein as the "Work." The Association will determine the scope and cost of the Work and provide an invoice to Owner for fifty percent (50%) of the total cost of same (the "Owner's Share").

3. Contractors and Materials. The Association shall have sole authority to select and retain contractors, sub-contractors, and other consultants it deems necessary and appropriate to complete the Work. Further, the Association shall have the sole authority to determine all materials used for any aspect of the Work.

4. Owner's Payment Options. Owner shall have two payment options related to the Owner's Share. One of the following options must be elected by the Owner within thirty (30) days of the date of the invoice from the Association:

(a) Option 1: Payment in Full. Owner shall submit payment in full of the Owner's Share within thirty (30) days of the date of the invoice. After payment in full is received by the Association, it will engage contractors as necessary to complete the Work.

(b) Option 2: Payment in Installments. Owner shall submit payment of fifty percent (50%) of the Owner's Share within thirty (30) days of the date of the invoice (the "Down Payment"). After the Down Payment is received by the Association, it will engage contractors as necessary to complete the Work. The balance due of the Owner's Share will be added to the Owner's Assessment account as a Specific Assessment pursuant to Article III, Section 2(c) of the Declaration and shall be secured by the lien described in Article III, Section 6 of the Declaration. The balance due of the Owner's Share will be payable in three (3) equal installments, each of which shall be due at the same time as the Residential Assessment for the following three (3) years.

5. Failure to Pay. If an Owner fails to submit payment within thirty (30) days of the date of the invoice as provided in Section 4, above, the Association may opt to complete the Work and add the Owner's Share to the Owner's Assessment account as a Specific Assessment pursuant to Article III, Section 2(c) of the Declaration. The Owner's Share will be secured by the lien described in Article III, Section 6 of the Declaration. Alternately, the Association may opt to deem the condition of the Perimeter Fence to be a violation of the Declaration. Provided that notice is

given as required by law, the Association may pursue its customary deed restriction enforcement process against Owner, which may include but is not limited to filing a lawsuit seeking injunctive relief, civil damages, and attorney's fees and costs allowed by law.

6. Access Easement. Owner hereby grants to the Association a temporary access easement over, upon, under, and through Owner's Lot for the purpose of completing all aspects of the Work. Such Access Easement shall be effective from the Effective Date of this Agreement through completion of the Work.

7. Restoration. The Association will take reasonable care not to affect an Owner's landscaping or other improvements when undertaking the Work; however, if it is necessary to remove or cut landscaping, or remove improvements in order to complete the Work, the Association shall not be responsible for any costs or damages related to restoration or replacement of such landscaping or improvements.

8. Notice of Entry. The Association will provide advance written notice to Owner, advising of the dates of the Work (the "Work Dates"). Prior to the Work Dates, Owner shall remove all improvements, miscellaneous items, and/or landscaping that may interfere with the Association's ability to complete the Work. Owner acknowledges that the Owner's yard may not be fully enclosed during the Work. Accordingly, Owner shall remove all pets from the Owner's yard in advance of the Work Dates and secure such pets elsewhere until the Work has been completed and the yard is fully enclosed.

9. Release. OWNER, HIS/HER HEIRS, SUCCESSORS, AND ASSIGNS DOES HEREBY RELEASE AND HOLD HARMLESS THE ASSOCIATION, ITS MANAGERS, DIRECTORS, OFFICERS, AGENTS, SUCCESSORS AND ASSIGNS FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION, WHICH CLAIMS OR CAUSES OF ACTION ARE KNOWN OR UNKNOWN, NOW EXISTING OR THAT MIGHT ARISE HEREAFTER, WHICH IN ANY WAY RELATE TO: (I) DAMAGE TO OWNER'S LANDSCAPING IN THE AREA OF THE PERIMETER FENCE, (II) DAMAGE TO IMPROVEMENTS ON THE OWNER'S LOT IN THE AREA OF THE PERIMETER FENCE, AND (III) OWNER'S LOT NOT BEING FULLY ENCLOSED DURING THE WORK.

10. No Third Party Rights or Remedies. This Agreement is made for the exclusive benefit of the Association and Owner and not for any third parties; nothing in this Agreement, express or implied, is intended to or may be construed to confer any benefit upon any person or entity, other than the Association and Owner.

11. Dispute Resolution. In the event of a conflict related to the terms or requirements of this Agreement, the Association and Owner agree to consult and negotiate with each other in

good faith, and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties prior to seeking legal recourse.

12. Notice. The addresses for notice for the respective parties pursuant to this Agreement shall be as stated below each respective party's signature.

**FIELDSTONE COMMUNITY ASSOCIATION, INC.,  
a Texas non-profit corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Address for Notice to Association:**

c/o Crest Management Company  
17171 Park Row, Suite 310  
Houston, Texas 77084

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of Fieldstone  
Community Association, Inc., a Texas non-profit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**OWNER**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Property Address: \_\_\_\_\_

**Address for Notice to Owner if different than  
Property Address:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_, as authorized representative for all  
owners of the property identified above.

\_\_\_\_\_  
Notary Public in and for the State of Texas