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06063 00029

**DECLARATION OF  
COVENANTS, CONDITIONS  
& RESTRICTIONS  
FOR  
AVONDALE**

**Allen, Collin County, Texas**

Declarant

D. R. Horton - Texas, Ltd.

06063 00030

**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
AVONDALE**

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**DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
AVONDALE**

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This Declaration of Covenants, Conditions & Restrictions for Avondale is made by D. R. Horton - Texas, Ltd., a Texas limited partnership ("**Declarant**"), on the date signed below. Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon.

Declarant desires to establish a general plan of development for the planned community to be known as Avondale. Declarant also desires to provide a reasonable and flexible procedure by which Declarant may expand the Property to include additional real property, and to maintain certain development rights that are essential for the successful completion and marketing of the Property.

Declarant further desires to provide for the preservation, administration, and maintenance of portions of Avondale, and to protect the value, desirability, and attractiveness of Avondale. As an integral part of the development plan, Declarant deems it advisable to create a property owners association to perform these functions and activities more fully described in this Declaration and the other Governing Documents described below.

Declarant **DECLARES** that the property described in Appendix A, and any additional property made subject to this Declaration by recording one or more amendments of or supplements to this Declaration, will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Declaration, including Declarant's representations and reservations in the attached Appendix D, which run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the property, their heirs, successors, and assigns, and inure to the benefit of each Owner of any part of the property.

**ARTICLE 1  
DEFINITIONS**

The following words and phrases, whether or not capitalized, have specified meanings when used in the Governing Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. "**Applicable Law**" means the statutes and public laws and ordinances in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document, and are not intended to apply to the Project if they cease to be applicable by operation of law, or if they are replaced or superceded by one or more other statutes or ordinances.

1.2. "**Architectural Reviewer**" means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Reviewer is

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Declarant, Declarant's designee, or Declarant's delegatee. Thereafter, the board-appointed Architectural Control Committee is the Architectural Reviewer.

1.3. "**Area of Common Responsibility**" means portions of the lots and improvements thereon that are maintained by the Association, as described in Section 6.4 below and as further described in the Maintenance Responsibility Chart attached hereto as Appendix B. On the date of this Declaration, only Townhome Lots have Areas of Common Responsibility.

1.4. "**Assessment**" means any charge levied against a lot or owner by the Association, pursuant to the Governing Documents or State law, including but not limited to Regular Assessments, Special Assessments, ACR Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 10 of this Declaration.

1.5. "**Association**" means the association of owners of all lots in the Property, initially organized as Avondale Owners Association, a Texas nonprofit corporation, and serving as the "property owners' association" defined in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration and the bylaws.

1.6. "**Board**" means the board of directors of the Association.

1.7. "**City**" means the City of Allen, Texas, in which the Property is located.

1.8. "**Common Area**" means portions of real property and improvements thereon that are owned and/or maintained by the Association, as described in Article 6 below.

1.9. "**Community Manual**" means the initial compilation of policies and rules pertaining to the use, operation, and maintenance of the Property. In the event of conflict between this Declaration and the Community Manual, this Declaration controls.

1.10. "**Declarant**" means D. R. Horton - Texas, Ltd., a Texas limited partnership, which is developing the Property, or the successors and assigns of D. R. Horton - Texas, Ltd., which acquire any portion of the Property for the purpose of development and which are designated a Successor Declarant by D. R. Horton - Texas, Ltd., or by any such successor and assign, in a recorded document.

1.11. "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association, pursuant to Appendix D of this Declaration.

1.12. "**Declaration**" means this document, as it may be amended from time to time.

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1.13. "**Development Period**" means the 12-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to Appendix D hereto, including rights relating to development, construction, and marketing of the Property. The Development Period is for a term of years and does not require that Declarant own land described in Appendix A. The Development Period is different from and longer than the Declarant Control Period. Declarant may terminate the Development Period at any time by recording a notice of termination.

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1.14. "**Governing Documents**" means, singly or collectively as the case may be, this Declaration, the Plat, the Bylaws, the Association's Articles of Incorporation, the Maintenance Responsibility Chart, the Community Manual, and the rules of the Association, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Governing Document is a part of that Governing Document.

1.15. "**Lot**" means a portion of the Property intended for independent ownership, on which there is or will be constructed a dwelling, as shown on the Plat. As shown on Appendix A, the Property has 2 types of lots -- Patio Home Lots and Townhome Lots. As a defined term, "lot" does not refer to common areas, even if platted and numbered as a lot. Where the context indicates or requires, "lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the lot.

1.16. "**Majority**" means more than half. A reference to "a majority of owners" in any Governing Document or applicable law means "owners of at least a majority of the lots," unless a different meaning is specified.

1.17. "**Member**" means a member of the Association, each member being an owner of a lot, unless the context indicates that member means a member of the board or a member of a committee of the Association. In the context of votes and decision-making, each lot has only one membership, although it may be shared by co-owners of a lot.

1.18. "**Owner**" means a holder of recorded fee simple title to a lot. Declarant is the initial owner of all lots. Contract sellers and mortgagees who acquire title to a lot through a deed in lieu of foreclosure or through judicial or nonjudicial foreclosure are owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not owners. Every owner is a member of the Association. A reference in any Governing Document or applicable law to a percentage or share of owners or members means owners of at least that percentage or share of the lots, unless a different meaning is specified. For example, "a majority of owners" means owners of at least a majority of the lots.

1.19. "**Patio Home**" means the improvements on a Patio Lot, as identified in Appendix A and further described in Article 4 below. All homes in Avondale are either Patio Homes or Townhomes.

1.20. "**Plat**" means all plats, singly and collectively, recorded in the Real Property Records of Collin County, Texas, and pertaining to the real property described in Appendix A of this Declaration, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the plat, as it may be amended from time to time. The initial plat of the Property was recorded on January 13, 2005, as Document No. 2005-0006097, in Plat Cabinet Q, Slide 121, Plat Records, Collin County, Texas.

1.21. "**Property**" means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Avondale. The Property is located on land described in Appendix A to this Declaration, and includes every lot and any common area thereon.

1.22. "**Resident**" means an occupant of a dwelling, regardless of whether the person owns the lot.

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1.23. "**Rules**" means rules and regulations of the Association adopted in accordance with the Governing Documents or applicable law. The initial Rules adopted by Declarant for the benefit of the Association are contained in the Community Manual.

1.24. "**Townhome**" means the attached single-family dwelling on each individually-owned townhome lot, as identified in Appendix A and further defined in Article 5 below. "**Townhome Building**" means the structure containing multiple townhomes. Generally, Avondale has 3 townhomes per townhome building. Although all components of a townhome building are owned by the respective lot owners, some components may be maintained by the Association as Areas of Common Responsibility. All homes in Avondale are either Patio Homes or Townhomes.

1.25. "**Underwriting Lender**" means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage Association (Fannie Mae), or U. S. Department of Veterans Affairs (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an owner's financing options nor as a representation that the Property is approved by any institution.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO DOCUMENTS**

2.1. **PROPERTY.** The real property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations in the attached Appendix D, which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each owner of the Property.

2.2. **ADDITIONAL PROPERTY.** Additional real property may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association on approval of owners representing at least two-thirds of the lots in the Property, or, during the Development Period, by Declarant as permitted in Appendix D. Annexation of additional property is accomplished by recording a declaration of annexation, including an amendment of Appendix A, in the Real Property Records of Collin County, Texas.

2.3. **CITY ORDINANCE.** Among the city ordinances to which the Property is subject is the ordinance by which the city approved development of the Property - Ordinance No. 2269-2-04, adopted by the City of Allen on February 24, 2004.

2.4. **ADJACENT LAND USE.** Declarant makes no representations of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what the plat shows as potential uses of adjoining land.

2.5. **RESTRICTIONS, EASEMENTS & PLAT DEDICATIONS.** In addition to the easements and restrictions contained in this Declaration, the Property is subject to all restrictions, easements, licenses, leases, and encumbrances of record, including any shown or referenced on the plat, each of which is incorporated herein by reference. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded restrictions, easements, licenses, leases, and encumbrances, and further agrees to maintain any easement that crosses his lot and for which the Association does not have express responsibility.

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2.6. STREETS WITHIN PROPERTY. Because streets, alleys, and cul de sacs within the Property (hereafter "**streets**") are capable of being converted from publicly dedicated to privately owned, and vice versa, this Section addresses both conditions. Private streets, if any, are part of the common area which is governed by the Association. Public streets are part of the common area only to the extent a governmental body, such as the city or county, authorizes or delegates to the Association.

2.6.1. Public Streets. As to public streets, the Association, acting through the board, is specifically authorized (1) to accept from a governmental body any delegation of street-related duties, and (2) to act as attorney in fact for the owners in executing instruments required by public ordinance or public law to impose, modify, or remove restrictions or traffic devices (such as speed bumps) on public streets in the Property.

2.6.2. Private Streets. **Only if and when the Property has private streets,** the Association, acting through the board, is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of any private streets in the Property - including but not limited to (1) designation of parking or no-parking areas, (2) limitations or prohibitions on curbside parking, (3) removal or prohibition of vehicles that violate applicable rules and regulations, (4) fines for violations of applicable rules and regulations, and (5) programs for controlling access through entrance gates, if any.

2.7. CONTRACT FOR POOL USE. Avondale is not being developed with a community swimming pool. One or more neighboring or nearby subdivisions may have a swimming pool with sufficient capacity to accommodate users from Avondale. By acquiring title to or an interest in an Avondale lot, each owner hereby authorizes the board of directors of the Association to negotiate and/or terminate pool use contracts with nearby subdivisions if the opportunity presents itself and if the board deems it to be in the best interests of the community of Avondale residents. If the contract is for universal use by Avondale residents, the cost of the contract may be added to the Association's annual budget. If the contract is based on actual users or uses, the Association may serve as a conduit for user fees which may be levied as individual assessments. This Section may not be construed to obligate the board to obtain or maintain a pool use contract.

### **ARTICLE 3**

#### **PROPERTY EASEMENTS AND RIGHTS**

3.1. GENERAL. In addition to other easements and rights established by the Governing Documents, the Property is subject to the easements and rights contained in this Article.

3.2. EASEMENT FOR ENTRY AND SCREENING FEATURES. The Association is hereby granted a perpetual easement (the "**Entry Feature Easement**") over (1) Lots 1, 21 & 28 of Block A, (2) Lot 20 of Block C, and (3) Lots 11 and 21 of Block E for the purposes stated in this Section, regardless of whether or how the plat shows the entry or screening feature. The purpose of the Entry Feature Easement is to provide for the existence, repair, improvement, and replacement of the Property's entry and screening features. In exercising this Entry Feature Easement, Declarant and the Association may construct, maintain, improve, and replace improvements reasonably related to the entry or screening of a residential subdivision, including: screening walls, fences and/or berms; planter beds, landscaping, and plant material; electrical and water meters and equipment, including light fixtures and sprinkler systems; and signage relating to the Property. The owners of the lots burdened with the Entry Feature Easement will have the continual use and enjoyment of their lots for any purpose that does not interfere with and prevent the Association's use of the Entry Feature Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the

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surface of a burdened lot as may be reasonably necessary for the Association to perform its contemplated work on the Entry Feature Easement. This easement is perpetual. The Entry Feature Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may assign this easement, or any portion thereof, to the city if the city agrees to accept the assignment. This Entry Feature Easement applies only to the original entry and screening features installed by Declarant and replacements thereof and improvements thereto by the Association.

**6 LOTS ARE SUBJECT TO EASEMENT FOR ENTRY & SCREENING**

- ▣ LOTS 1, 21 & 28, BLOCK A
- ▣ LOT 20, BLOCK C
- ▣ LOTS 11 & 21, BLOCK E

3.3. OWNER'S EASEMENT OF ENJOYMENT. Every owner is granted a right and easement of enjoyment over the common areas and to use of improvements therein, subject to other rights and easements contained in the Governing Documents. An owner who does not occupy a lot delegates this right of enjoyment to the residents of his lot. Notwithstanding the foregoing, if a portion of the common area, such as a recreational area, is designed for private use, the Association may temporarily reserve the use of such area for certain persons and purposes.

3.4. OWNER'S INGRESS/EGRESS EASEMENT. Every owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his lot.

3.5. OWNER'S RIGHT TO BUILD. That a residential lot remains vacant and unimproved for a period of years, even decades, does not diminish the right of the lot owner to construct improvements on the lot. Nor does a vacant lot enlarge the rights of owners of neighboring lots, who may have become so accustomed to the open space that they expect it to remain unimproved forever.

3.6. RIGHTS OF CITY. The city, including its agents and employees, has the right of immediate access to the common areas at all times if necessary for the welfare or protection of the public, to enforce city ordinances, or for the preservation of public property. If the Association fails to maintain the common areas to a standard acceptable to the city, the city may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the city's written demand (at least 90 days), the city may maintain the common areas at the expense of the Association after giving written notice of its intent to do so to an owner of every lot. To fund the city's cost of maintaining the common areas, the city may levy an assessment against every lot in the same manner as if the Association levied a special assessment against the lots.

3.7. ASSOCIATION'S ACCESS EASEMENT. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation all common areas and the owner's lot and all improvements thereon - including the dwelling and yards - for the below-described purposes.

3.7.1. Purposes. Subject to the limitations stated below, the Association may exercise this easement of access and entry for the following express purposes:

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- a. To inspect the property for compliance with maintenance and architectural standards.
  - b. To perform maintenance that is permitted or required of the Association by the Governing Documents or by applicable law.
  - c. To perform maintenance that is permitted or required of the owner by the Governing Documents or by applicable law, if the owner fails or refuses to perform such maintenance.
  - d. To enforce architectural standards.
  - e. To enforce use restrictions.
  - f. The exercise of self-help remedies permitted by the Governing Documents or by applicable law.
  - g. To enforce any other provision of the Governing Documents.
  - h. To respond to emergencies.
  - i. To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
  - j. To perform any and all functions or duties of the Association as permitted or required by the Governing Documents or by applicable law.
- 3.7.2. No Trespass. In exercising this easement on an owner's lot, the Association is not liable to the owner for trespass.

3.7.3. Limitations. If the exercise of this easement requires entry onto an owner's lot, including into an owner's fenced yard, the entry will be during reasonable hours and after notice to the owner. This Subsection does not apply to situations that - at time of entry - are deemed to be emergencies that may result in imminent damage to or loss of life or property.

3.8. UTILITY EASEMENT. The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

3.9. MINERAL RIGHTS. Some or all of the Property may be subject to a previous owner's acquisition, reservation, or conveyance of oil, gas, or mineral rights pursuant to one or more deeds or other instruments recorded in the Real Property Records of Collin County, Texas, including but not limited to rights to all oil, gas, or other minerals lying on, in, or under the Property and surface rights of ingress and egress. Because the instruments conveying or reserving mineral interests were recorded prior to this Declaration, those interests in the Property are superior and are not affected by any

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provision to the contrary in this Declaration. By accepting title to or interest in a lot, every owner acknowledges the existence of the mineral rights and/or reservations referenced in this Section and the attendant rights in favor of the owner or owners of the mineral interests.

**PLEASE CAREFULLY READ THE SECURITY SECTION**

3.10. **SECURITY.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each owner and resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each owner and resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each owner and resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

#### **ARTICLE 4 PATIO HOMES**

4.1. **GENERAL.** Most of the lots in Avondale are designed for patio homes that are similar in design to zero lot line developments. Typically the sidewall of one patio home serves as the courtyard or patio wall of the neighboring patio home. The below-defined Sidewall Lot and Patio Lot are paired for purposes of this Article. An interior lot may be paired on both sides - being a Sidewall Lot in relation to the neighboring lot on one side, and a Courtyard Lot in relation to the neighboring lot on the other side.

4.2. **DEFINITIONS.** As used in this Article and elsewhere in the Governing Documents, as applicable, the following terms are defined:

- a. **"Sidewall"** means the side of a house that is approximately parallel to and within 5 feet of the Shared Lot Line, as defined below. **"Sidewall Lot"** means the lot on which the Sidewall is located. **"Sidewall House"** means the Courtyard Home of which the Sidewall is a structural component.
- b. **"Courtyard Lot"** means the lot that shares the Shared Lot Line with the Sidewall Lot. **"Courtyard Home"** means the building on the Courtyard Lot. **"Courtyard"** means the fence enclosed side yard or courtyard that may use all or part of the Sidewall as a courtyard wall. **"Courtyard Fence"** means the sections of fencing on the Courtyard Lot and the Sidewall Easement Area that are more or less perpendicular to the Sidewall and which may tie to the Sidewall House, thereby enclosing the Courtyard for use by the owner of the Courtyard House.

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