

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR HENDERSON HILLSIDE**

After Recording, Return To:

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR HENDERSON HILLSIDE**

This Declaration of Covenants, Conditions and Restrictions for Henderson Hillside ("Townhome Declaration") is made on the date hereinafter set forth by Texas InTownHomes, LLC, a Texas limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Tarrant County, Texas platted as Field's Hillside Addition, according to the plat thereof, filed under Clerk's File No. D214089647 (the "Plat") in the Plat Records of Tarrant County, Texas (the "Subdivision" and/or "Henderson Hillside", which term shall include additional land as same may be annexed into the subdivision and made subject to this Townhome Declaration); and

WHEREAS, the Declarant desires to subject the Subdivision to the provisions of this Townhome Declaration to create and administer a residential community of single family Townhomes (defined below).

NOW, THEREFORE, Declarant hereby declares that the Subdivision, including the Townhome Lots and improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Townhome Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which shall run with the title to the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof. An integral part of the development plan for the Subdivision is the creation of Henderson Hillside Owners Association, Inc., to administer and enforce the governing documents of such association, the members of which shall be all of the Owners of Townhome Lots in the Subdivision.

**ARTICLE I. DEFINITIONS**

Unless the context shall prohibit, the following words used in this Townhome Declaration shall have the meanings set forth below:

- (a) "Association" means Henderson Hillside Owners Association, Inc., a nonprofit Texas corporation, its successors, replacements and/or assigns.
- (b) "Board" or "Board of Directors" means the Board of Directors of Henderson Hillside Owners Association, Inc.
- (c) "Bylaws" means the Bylaws of Henderson Hillside Owners Association, Inc.

- (d) "Common Area" means all real property owned in fee or held in easement, lease, or license by the Association for the common use and/or enjoyment of the Owners and shall include areas designated by the Declarant to be conveyed by deed or easement to the Association.
- (e) "Declarant" means Texas InTownHomes, LLC, a Texas limited liability company, its successors and/or assigns.
- (f) "Dedictory Instruments" means each document governing the establishment, maintenance and operation of the Subdivision, including but not limited to the Townhome Declaration, Bylaws, Certificate of Formation, and similar instruments governing the administration or operation of the Association, as well as any and all rules, guidelines and policies, and any supplements or amendments to such documents, enforceable by the Association.
- (g) "Development Period" means the period of time that Declarant reserves the right to facilitate the development, construction and marketing of the Subdivision or the right to direct the size, shape and composition of the Subdivision, which retained rights shall be vested in the Declarant until Declarant no longer owns any portion of the Subdivision or until Declarant assigns or relinquishes all of its retained rights.
- (h) "Occupant" means Owners, residents, tenants, lessees, guests, and invitees of any Townhome or Townhome Lot within the Subdivision for any period of time.
- (i) "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Townhome Lot, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.
- (j) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.
- (k) "Plat" means the plat of Field's Hillside Addition filed under Clerk's File No. D214089647 in the Plat Records of Tarrant County, Texas
- (l) "Subdivision" means the Henderson Hillside Subdivision located in Tarrant County, Texas. As of the date of this Townhome Declaration, the Subdivision is more particularly described in the Plat. The Subdivision may be supplemented as additional land is annexed into the Subdivision by the recording of an Annexation Agreement or Supplemental Amendment.
- (m) "Townhome" means a single family residential dwelling constructed on a Townhome Lot; which dwelling may have one (1) or two (2) internal party walls as referenced herein, with one or two immediately adjoining Townhomes. Unless otherwise indicated by context, "Townhome" shall include the Townhome Lot on which the Townhome is located.

(n) "Townhome Lots" means the following Lots:

Lots 3-R1-1 through 3-R1-11 in Block X, as shown on the Plat.

## ARTICLE II. GENERAL RESTRICTIONS, COVENANTS AND CONDITIONS

### SECTION 2.01 Residential Use

2.01.1 **General.** Townhomes shall be used exclusively for single-family residential purposes. The term "single-family" as used herein shall refer not only to the architectural design of the Townhome but also to the permitted number of inhabitants, which shall be limited to one (1) single family, as defined below. Single-family shall mean the use of and improvement to a Townhome Lot with no more than one building designed for and containing facilities for living, sleeping, cooking, and eating therein. In no case may a Townhome Lot contain more than one dwelling. No multi-family dwellings may be constructed on any Townhome Lot. No building, outbuilding or portion thereof shall be constructed for income property or such that Occupants would occupy less than the entire Townhome.

It is permitted for Owners to lease a Townhome, so long as Occupants are leasing all land and improvements comprising the Townhome. Leasing a Townhome for residential purposes shall not be considered a "business", provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease more than one Townhome at any time. This provision shall not preclude the Association or an institutional lender from leasing a Townhome upon taking title following foreclosure of its security interest in the Townhome or upon acceptance of a deed in lieu of foreclosure. "Leasing" for purposes of this Townhome Declaration, is defined as occupancy of a Townhome by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. No fraction or portion of any Townhome may be leased. All leases must be in writing and shall contain such terms as the Board may prescribe from time to time. All leases shall provide that they may be terminated in the event of a violation of the Townhome Declaration or the Dedicatory Instruments by an Occupant or Occupant's family, and the Board, in its sole discretion, may require termination by the Owner and eviction of the Occupant in such event. Leasing a Townhome shall not relieve the Owner of such Townhome from his/her obligation to comply with this Townhome Declaration or the Dedicatory Instruments.

2.01.2 **No Business, Professional, Commercial or Manufacturing Use.** No business, professional, commercial or manufacturing use may be made of any Townhome Lot or any improvement located thereon, even though such business, professional, commercial or manufacturing use be subordinate or incident to use of the premises as a residence, and regardless of whether or not done for profit or remuneration. Notwithstanding the foregoing, a single family residence may be used for maintenance of a personal professional library, keeping of personal or professional records or accounts, or handling personal business or professional telephone calls, or for maintenance of one home office, but if and only if such business activity (i) does not involve use of any part of the applicable Townhome Lot, or residence or other building or improvement thereon, by any Person other than the Owner or the Owner's tenant (but not both), no on-site employees are otherwise permitted, and the public is not invited, permitted

or allowed to enter the Townhome Lot to conduct any business thereon, (ii) is not detectable by sight, sound or smell from outside the Townhome, and there is no other external evidence thereof (including signs, advertising, or contacts in person at the Townhome with clients or customers), (iii) does not involve the storage of any equipment, materials or devices other than as consistent with operation of a small home office, and in all events which are not hazardous and do not constitute any type of threat to health or safety or other nuisance, (iv) complies with all applicable governmental ordinances (including zoning ordinances), and with any other governmental laws, rules, regulations and permitting or licensing requirements applicable to same, (v) is consistent with the residential character of the Subdivision as may be determined in the sole discretion of the Board, and (vi) and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as may be determined in the sole discretion of the Board.

The uses set out in this **Section 2.01.2** (i) through (vi) shall be referred to singularly or collectively as an "Incidental Business Use." At no time may an Incidental Business Use cause increased parking or traffic within the Subdivision. Any increased parking or traffic within the Subdivision as a result of an Incidental Business Use shall be deemed to be a violation of this Townhome Declaration. A day-care facility, home day-care facility, church, nursery, pre-school, beauty parlor, or barber shop or other similar facility is expressly prohibited.

The terms "business" and "trade" as used in this provision shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the manufacture or provision of goods for or to persons other than the Occupant's family, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does not generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Townhome shall not be considered a trade or business within the meaning of this Section. This Section does not apply to any activity conducted by the Declarant, or by a builder with approval of the Declarant, with respect to the development and sale of property within the Subdivision. Garage sales, attic sales, moving sales, or yard sales (or any similar vending of merchandise) conducted on any Townhome more than once per year shall be considered business activity and therefore prohibited. The Association may, but is not required to, adopt rules and regulations regarding such sales. Notwithstanding anything contained herein to the contrary, estate sales are expressly prohibited.

**2.01.3 Residential Use Only.** Without limitation of the foregoing, as used in this Townhome Declaration the term "residential use" shall be construed to prohibit the use of any Townhome for apartment houses or other type of dwelling designed for multi-family dwelling, or use for or operation of a boarding or rooming house or residence for transients, short-term leases (leases for a term of less than ninety (90) days), or the use of any permitted outbuilding as an apartment or residential living quarters.

**2.01.4 Single Family.** No Townhome may be occupied by more than one single family. By way of illustration, the following is an example of an approved single family:

**RESIDENT 1 AND RESIDENT 2 RESIDE IN TOWNHOME.**

Additional approved residents are:

- a) children of either or both residents;
- b) no more than a total of 2 parents of the residents;
- c) one unrelated person; and
- d) one household employee.

Without limitation of the foregoing, "single family" does not include temporary household groups such as persons living together while attending an educational program (such as college), lodgers or boarders, or any other similar temporary or transient living arrangement.

**2.01.5 Maximum Occupancy.** In addition to the limitations above set forth, in no event may a single family residence be occupied by more persons than the product of the total number of bona fide bedrooms contained in the single family residence multiplied by two. The number of bona fide bedrooms is based on the single family residence as originally constructed, plus any additional bedroom(s) which may thereafter be added which have been specifically approved by the Board as herein provided for such use, if any.

**2.01.6 Limitation.** It is not the intent of Section 2.01.4 to exclude from a Townhome Lot any individual who is authorized to so remain by any state or federal law. If it is found that this provision is in violation of any law, then this provision shall be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by law.

**SECTION 2.02 Pets, Animals and Livestock**

No animals, hogs, horses, livestock, reptiles, fish or poultry of any kind may be raised, bred, kept or maintained on any Townhome Lot at any time except "Permitted Pets" which are dogs, cats and other usual and customary household pets. Not more than two Permitted Pets are allowed per Townhome Lot, and no Permitted Pets may be raised, bred, kept or maintained for commercial purposes. Subject to Section 2.04, the foregoing limitation on the number of Permitted Pets does not apply to hamsters, small birds, fish or other similar usual and customary household animals, birds or fish which are continuously kept completely within a residence, nor shall it apply to require the removal of any litter born to a Permitted Pet prior to the time that the animals in such litter are three months old. Notwithstanding the foregoing, the following are hereby excluded as Permitted Pets and shall not be allowed within any residence, upon any Townhome Lot or at any other place within the Subdivision: (i) any dog whose breed is known for and on any occasion has exhibited its viciousness or ill temper, in particular, the American Staffordshire Terrier, known as a "Pit Bull Terrier", and (ii) any animal of any kind that has venom or poisonous or capture mechanisms, or if let loose would constitute vermin. All Permitted Pets must be kept on a leash or carried, and must otherwise be maintained under the control of their Owner when outside the Owner's residence or when not maintained in an enclosed yard from which the Permitted Pet cannot escape.

Notwithstanding anything contained herein to the contrary, if, in the sole discretion of the Board, any pet endangers the health, makes objectionable noise, or constitutes a nuisance or inconvenience to the Owners of Townhomes, it shall be removed upon request of the Board. If the owner fails to honor such request, the pet may be removed at the direction of the Board.

### **SECTION 2.03 Vehicles; Parking**

**2.03.1 Prohibited Vehicles; Covers Prohibited.** No boat, mobile home, trailer, boat or truck rigging, truck larger than a three-quarter ton pick-up, recreational vehicle, bus, unused vehicle, inoperable vehicle of any kind (including any vehicle requiring same which does not have both a current and valid license plate and current and valid state inspection sticker), no over-sized vehicle, and no unsightly vehicle or vehicle (including without limitation, any motor bikes, motorcycles, motor scooters, go-carts, golf-carts or other similar vehicles) which by reason of noise, fumes emitted, or by reason of manner of use or operation, constitute a nuisance, as may be determined by the Board, may be parked, stored or kept at any time at any location within the Subdivision, including without limitation upon any street or upon any other part of any Townhome Lot, unless such vehicle is stored completely within a garage. "Oversized vehicle" means any vehicle which exceeds in size six feet six inches (6'6") in height, seven feet six inches (7'6") in width, and/or twenty-one feet (21') in length. Use of vehicle covers of any kind (except for vehicles parked completely in a garage) is prohibited.

**2.03.2 Prohibited Parking - General.** No vehicle of any kind may be parked, stored or otherwise permitted to remain at any time (i) on grass or any other similar portion of any Townhome Lot or any other place within the Subdivision not intended customarily for use for parking of vehicles, or (ii) in a slanted or diagonal manner across any driveway or other designated parking space, or in any other manner other than as is customary for the type of parking space being used, or (iii) in such manner as to obstruct or impede sidewalk, driveway or street access or usage, or in such manner that any part of the vehicle extends into any part of any street or common drive. No Owner or resident is permitted to park or store any vehicle on the Townhome Lot of another Owner or resident.

**2.03.3 Street Parking or Obstruction Prohibited.** Except for temporary parking as hereafter provided, no vehicle of any type may be parked or stored at any time upon any street located within the Subdivision. No object, thing or device shall be placed, stored or maintained within or upon any street and no activities are permitted thereon which would impede or impair the intended use of any street solely for purposes of pedestrian and vehicular ingress and egress. Without limitation of the foregoing, no personal property, barbeque or other cooking equipment, or any recreational equipment shall be placed, maintained or stored within or upon any street nor shall any loitering, playing or gatherings be permitted therein or thereon.

**2.03.4 Temporary Parking.** Temporary parking upon the street is permitted by occupant vehicles, guests and invitees, and by pick-up or delivery services, but solely for purposes of loading and unloading of passengers and cargo, and subject to applicable ordinances and laws (such as prohibitions against parking in fire lanes, or in such manner as to block entry to or exit from the Subdivision). "Temporary" means only for so long a period of time as is

reasonably necessary to complete loading, unloading, pick-up or delivery, with such activity commenced promptly after the vehicle is parked and completed promptly after commencement.

**2.03.5 Responsibilities of Owners and Tenants.** Owners and their tenants must obtain full compliance with the provisions of this **Section 2.03** in its entirety by their respective related parties, and each is jointly and severally liable for all violations by their respective related parties.

**2.03.6 NOTICE OF LIMITED PARKING. EXCEPT FOR TEMPORARY PARKING AS ABOVE PROVIDED. PARKING OF VEHICLES WITHIN THE SUBDIVISION IS STRICTLY LIMITED TO PARKING WITHIN THE GARAGE OF THE APPLICABLE TOWNHOME LOT. PARKING ON AREA STREETS MAY ALSO BE LIMITED OR UNAVAILABLE. GARAGES MAY NOT BE OF SUFFICIENT SIZE TO PERMIT PARKING THEREIN OF THE SAME NUMBER OF LARGE VEHICLES AS THE CUSTOMARY DESCRIPTION OF THE GARAGE. FOR EXAMPLE, A "TWO-CAR GARAGE" MAY NOT BE OF SUFFICIENT SIZE TO PERMIT PARKING THEREIN OF TWO LARGE SEDANS, TWO "SUV'S" OR TWO OTHER LARGE VEHICLES. ANY LIMITATIONS AS TO AVAILABLE PARKING UPON ANY TOWNHOME LOT, OR ELSEWHERE WITHIN THE SUBDIVISION, OR WITHIN THE AREA, OR AS TO GARAGE SIZE, SHALL NOT CONSTITUTE A BASIS FOR NON-COMPLIANCE WITH ANY APPLICABLE RESTRICTIONS SET FORTH HEREIN, AND EACH OWNER OR OCCUPANT ASSUMES ALL RISKS REGARDING ANY AND ALL PARKING LIMITATIONS.**

#### **SECTION 2.04 Nuisance; Unsightly or Unkempt Conditions**

**2.04.1 General.** It is the continuing responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Townhome Lot. No Townhome Lot may be used, in whole or in part, for the storage of any property or thing that will cause such Townhome Lot to appear to be in an unclean or untidy condition, or that will be obnoxious to the eye. No hobbies or activities which will cause disorderly, unsightly, or unkempt conditions, including without limitation the assembly or disassembly of or repair work on motor vehicles or other mechanical devices, may be performed within the Subdivision. There may not be maintained any plants, animals, devices, thing, use or activities of any sort which in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the residents of the Subdivision.

**2.04.2 Nuisance or Annoyance.** No substance, thing, or material may be kept upon any Townhome Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive trade or activity may be carried on upon any Townhome Lot, nor may anything be done thereon tending to cause embarrassment, discomfort, annoyance, or a nuisance to any residents of the Subdivision or to any Person using any property adjacent to the Townhome Lot. No spirituous, vinous, malt, medicated bitters, alcohol, drugs or other intoxicants may be sold or offered for sale on any part of any Townhome Lot or any other

place within the Subdivision. No Townhome Lot or any part thereof may be used for any immoral or illegal purposes.

**2.04.3 Pollutants: Hazardous Materials.** Without limitation of any other provisions of this Section, no Owner or tenant, and related parties of either, shall dump grass clippings, leaves or other debris, detergents, petroleum products, fertilizers, or other pollutants or potentially hazardous or toxic substances, in any sewer system, water system, drainage ditch, stream, pond or lake within the Subdivision, or do anything or maintain or permit any condition in violation of applicable environmental, toxic or hazardous waste or similar laws, rules or regulations. Storage of gasoline, heating or other fuels, or of any hazardous or toxic materials upon any Townhome Lot is strictly prohibited (except that up to five gallons of fuel may be stored upon a Townhome Lot for emergency purposes and operation of lawn mowers and similar tools or equipment if properly kept and stored in a safe and non-hazardous manner). THE FOREGOING DOES NOT PLACE UPON DECLARANT OR ANY OF ITS RELATED PARTIES ANY OBLIGATION FOR ENFORCEMENT OF ANY APPLICABLE ENVIRONMENTAL TOXIC OR HAZARDOUS WASTE OR SIMILAR LAWS, RULES OR REGULATIONS.

**2.04.4 Sound Devices: Excessive Noise.** No exterior speaker, horn, whistle, bell or other sound device shall be located, placed or used upon any Townhome Lot or improvement thereon. No stereo, television, speaker, horn, whistle, bell or other sound device shall be operated, and no other sound emitting activity (such as practice of a band, excessively loud social gatherings and similar activities) shall be conducted within a residence, garage or other structure which is audible from inside of any closed adjacent or area residence or unreasonably audible outside the Townhome Lot lines of the Townhome Lot upon which the applicable residence, garage or other structure is located, or which is otherwise an annoyance or nuisance to any other residents.

## **SECTION 2.05 Type of Residence**

**2.05.1 Single Family Residence.** No building other than one single family residence not to exceed four stories which is to be occupied as a residence by one single family, an appurtenant garage and such outbuildings if and as may be approved in writing by the Board may be constructed, placed or permitted to remain on each Townhome Lot. Without limitation of the foregoing, the term "single family residence" shall be construed to prohibit garage apartments, apartment houses, and any other multi-family dwelling. The foregoing shall not be construed as in any manner prohibiting construction of one (1) Townhome upon each Townhome Lot in accordance with this Townhome Declaration.

**2.05.2 Garages and Garage Doors.** All single family residences must have an enclosed attached or detached minimum two car parking garage. Each such garage must contain a minimum of three hundred fifty (350) square feet of interior floor space. GARAGES MAY NOT BE OF SUFFICIENT SIZE TO PERMIT PARKING THEREIN OF TWO LARGE VEHICLES SUCH AS TWO SUV'S. ANY SUCH LACK OF PARKING SIZE SHALL NOT BE A BASIS FOR EXEMPTION FROM APPLICABLE PARKING RESTRICTIONS. The garage must be architecturally similar and compatible to the appurtenant residence, including as to roof line and appearance. Except for porte-cocheres, carports on Townhome Lots are prohibited. All garages must be enclosed with permanent walls and their fronts enclosed with standard type overhead

doors customarily used in the building industry which garage doors must be maintained in good working order at all times. ANY REPLACEMENT GARAGE DOOR MUST BE OF EQUAL OR BETTER QUALITY AND SUBSTANTIALLY THE SAME DESIGN AS THE GARAGE DOOR FOR THE GARAGE AS ORIGINALLY CONSTRUCTED, AND MUST BE PAINTED TO MATCH THE COLOR SCHEME OF THE RESIDENCE AS ORIGINALLY CONSTRUCTED OR A SUBSEQUENT COLOR SCHEME WHICH HAS BEEN APPROVED IN WRITING BY THE BOARD. Except for interior modifications of a garage wholly consistent with its use as a garage and which do not alter the use or exterior appearance of the garage as originally constructed, no modification of the interior or exterior of any garage as originally constructed is permitted. GARAGE DOORS MUST BE KEPT CLOSED AT ALL TIMES EXCEPT FOR ENTRY AND EXIT OF VEHICLES OR DURING BRIEF PERIODS WHEN THE GARAGE IS BEING ACTIVELY USED FOR CUSTOMARY PURPOSES.

**2.05.3 Prohibited Homes and Structures.** No tent, shack, mobile home, or other structure of a temporary nature shall be placed upon any Townhome Lot or elsewhere in the Subdivision. Manufactured homes, industrialized homes, industrialized buildings and any other type of residence, including any garage, which is constructed or assembled other than primarily on site are not permitted on any Townhome Lot. No residence, building or structure may be moved from another location to any Townhome Lot without prior written approval of the Board as provided in **Section 3.01**. The foregoing prohibition does not apply to restrict the construction or installation of a single utility or similar outbuilding to be permanently located on a Townhome Lot, provided it receives the prior written approval of the Board as provided in **Section 3.01**.

## **SECTION 2.06 Drainage Easements and Devices**

During the Development Period, the Declarant (and any builder so authorized by Declarant) is hereby specifically authorized to excavate as necessary for and to establish, construct and maintain drainage swales, erosion control systems and such other things and devices (herein referred to as "Drainage Devices") upon, over, across or under any part of the Subdivision, including any Townhome Lot, as Declarant deems appropriate to properly maintain and control water drainage and erosion. All Drainage Devices shall remain unobstructed, and shall be properly maintained by and at the sole cost of the Owner of each Townhome Lot to which same pertains or, when any Drainage Device serves more than one Townhome Lot (such as in the case of guttering on residences connected to a common line), then maintenance and the costs thereof shall be shared pro rata by all of the Owners to which same pertains. Each Owner must refrain from permitting any construction, grading and any other work, act or activity upon such Owner's Townhome Lot which would obstruct, alter, divert, impede or impair the proper functioning of any Drainage Device. In addition, each Owner must perform such work, act or activities and install and maintain such Drainage Devices (i) as is reasonably necessary to prevent, so far as practical, drainage from the Owner's Townhome Lot to any other Townhome Lot, other than drainage along established swales and along drainage patterns as established during initial construction, and (ii) as needed to maintain, so far as practical, positive drainage away from the foundation of the residence located upon the Owner's Townhome Lot. Without limitation of the foregoing, no Owner may place or permit placement of any flower bed or other landscaping, or any other structure or thing along or near any Townhome Lot line which would

obstruct, alter, divert, impede, or impair drainage along any Townhome Lot line within any swale or otherwise within drainage patterns as established during initial construction.

#### **SECTION 2.07 Townhome Lot Re-subdivision or Combination**

Unless approved by Declarant in writing, no Townhome Lot as originally conveyed by Declarant to any Person, including a builder, may thereafter be subdivided or combined with any Townhome Lot, or the boundaries thereof otherwise changed.

#### **SECTION 2.08 Disposal of Trash**

No trash, rubbish, garbage, manure, debris or offensive material of any kind shall be kept or allowed to remain on any Townhome Lot, nor shall any Townhome Lot be used or maintained as a dumping ground for such materials. No incinerator may be maintained on any portion of the Subdivision. All trash and similar matter to be disposed of shall be placed in cans or similar receptacles with tight fitting lids or plastic bags tied or otherwise tightly secured, and shall be placed in an area adequately screened by planting or fencing from public view or within a garage except when placed for regular pickup as herein provided. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition, and shall comply with all applicable federal, state, county, municipal or other governmental laws and regulations. All such prohibited matter shall be removed from the Townhome Lot at regular intervals if not removed or removable by a regular garbage and sanitation service. Trash and garbage for pickup by a regular service shall be placed in such area or areas as the Board may from time to time direct, or as the applicable garbage and sanitation service or provider (e.g. public or a private garbage collection company) may require, and if so required by a garbage and sanitation service or provider, trash may be placed for pick-up by an Owner of one Townhome Lot upon another Townhome Lot; provided, trash and garbage shall not be placed for pickup earlier than eight (8) hours prior to a scheduled pickup day and all receptacles therefor and any remaining trash and garbage shall be removed from the pickup site by midnight of the pickup day.

#### **SECTION 2.09 Signs**

As used in this Section, "sign" means and includes any billboards, posters, banners, (subject to applicable provisions hereafter set forth), pennants, displays, symbols, advertising devices of any kind, and any other type of sign of any kind, including without limitation business, professional, promotional or institutional signs. No sign of any kind is permitted on any Townhome Lot, or upon any residence, or within any residence if visible from the exterior of the residence, or within the Subdivision except as may be approved in writing by the Board in accordance with **Section 3.01**; provided that each Owner is permitted to place upon (and only upon) such Owner's Townhome Lot:

- (a) For Sale/Lease Signs. one (1) professionally prepared and printed sign not exceeding 2'x3' in area, advertising the particular Townhome Lot on which the sign is located for sale or for lease, but only during the periods of time when the Townhome Lot is in fact for sale or lease.

- (b) Security Signs/Stickers. Signs or stickers provided to an Owner by a commercial security or alarm company providing service to the Townhome shall be permitted so long as the sign is not more than 8" x 8" or the sticker is no more than 4" x 4". There shall be no more than one sign and no more than six (6) stickers located on the windows or doors. Stickers shall also be permitted upon windows and doors for a "Child Find" program or a similar program sponsored by a local police and/or local fire department.
- (c) School Spirit Signs. Signs containing information about one or more students residing in the Townhome and the school they attend shall be permitted so long as the sign is not more than 36" x 36" and is fastened only to a stake in the ground or other method approved by the Board. There may be no more than one sign for each student residing in the Townhome.
- (d) Political Signs. Signs as permitted by but subject to all limitations set forth in Section 202.009 of the Texas Property Code.

All signs and emblems within the Subdivision may be subject to guidelines promulgated by the Board.

## **SECTION 2.10 Oil and Mining Operation**

No gas or oil drilling, gas or oil development operations, oil refining, quarry or mining operations of any kind shall be permitted upon the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Subdivision.

## **SECTION 2.11 Townhome Lot Fences, Walls and Hedges**

2.11.1 **Definitions.** As used in this Section (i) "Lot Fencing" means any and all fences and freestanding fence type walls, gateposts, Hedges and planters, whenever and wherever located on any Townhome Lot, excluding, however, any perimeter fencing which is included in the subdivision facilities, and (ii) "Hedges" means a row of bushes, shrubs and similar plants which, at natural maturity, will exceed three feet (3') in height and have sufficiently dense foliage as to present a visual and physical barrier substantially similar to a fence.

2.11.2 **Approval Required.** Except as installed by or with the approval of Declarant, no Lot Fencing may be constructed, placed or maintained on any Townhome Lot without prior written approval of the Board obtained in accordance with **Section 3.01**.

2.11.3 **General Requirements.** Except as hereafter provided regarding perimeter fencing, and except as installed by or with the approval of Declarant or unless otherwise approved in writing by the Board obtained in accordance with **Section 3.01**, all Lot Fencing must comply with the following:

- (a) No Lot Fencing may be more than six feet (6') in height.

(b) All Lot Fencing (other than Hedges) must be constructed of redwood or cedar vertical pickets with treated pine (or equivalent) post and supports, or ornamental wrought iron, brick or masonry, or combinations thereof, or composite materials which substantially simulate the appearance of the foregoing, as approved by the Board obtained in accordance with **Section 3.01**.

(c) NO CHAIN LINK TYPE FENCING OF ANY TYPE IS PERMITTED ON ANY TOWNHOME LOT.

**2.11.4 Ownership and Maintenance.** Ownership of all Lot Fencing passes with title to the Townhome Lot. All Lot Fencing must be continuously maintained in a structurally sound condition, in a neat and attractive condition, in good repair and otherwise as required to obtain and maintain prevailing community standards. The foregoing shall include, without limitation, such maintenance, repair or replacement as is required to prevent listing or leaning, repair of all damaged or broken pickets and other members, and all holes and cracks, and repair or replacement as required to prevent rot or decay, and any other visible signs of dilapidation or deterioration. Lot Fencing which has been defaced with graffiti or other markings shall be restored to its prior condition within 72 hours of such defacement or markings. PAINTING OR STAINING OF WOODEN FENCES IS PROHIBITED UNLESS APPROVED IN WRITING BY THE BOARD OBTAINED IN ACCORDANCE WITH SECTION 3.01. All maintenance, repair or replacement of Lot Fencing which separates adjoining Townhome Lots, or which is otherwise shared in common by two or more adjoining Townhome Lots, is the joint responsibility of, and the costs thereof shall be shared equally by, the adjoining Owners. Otherwise, all such maintenance, repair or replacement shall be the responsibility of, and at the sole cost of, the Owner upon whose Townhome Lot the Lot Fencing is located. ONCE INSTALLED, THE LOCATION, STYLE, FINISH, APPEARANCE AND ALL OTHER FEATURES OF LOT FENCING MAY NOT BE MODIFIED OR CHANGED WITHOUT PRIOR WRITTEN APPROVAL OF THE BOARD OBTAINED IN ACCORDANCE WITH SECTION 3.01.

#### **SECTION 2.12 Generators**

The size, number, placement, and other characteristics of standby electric generators within the Subdivision shall be subject to any applicable guidelines, rules or policies adopted by the Board.

#### **SECTION 2.13 Basketball Goals and Backboards**

No basketball goal, net and/or backboard may be kept, placed or mounted upon any Lot or kept, placed, attached or mounted to any fence or Dwelling without prior written approval by the Board. All basketball goals and/or backboards are subject to guidelines as to type, location, and hours of use. All basketball goals and/or backboards shall at all times be maintained and kept in good condition. If any basketball goal, net and/or backboard is placed within the Subdivision in violation of the Dedicatory Instruments, the Association or its agents shall be

authorized to exercise its Self Help remedy, as set forth in this Townhome Declaration, to bring the Owner's Townhome Lot into compliance with this provision.

#### **SECTION 2.14 Exterior Seasonal Decorations**

The display of exterior seasonal decorations, by way of illustration but not limited to lights, banners, flags, wreaths, shall be subject to reasonable rules and regulations, if any, promulgated by the Board. Such rules may address the appearance and length of time of such display. Such display shall be maintained and kept in good condition at all times. If any exterior seasonal decorations are placed, or remain, within the Subdivision in violation of the Dedicatory Instruments, the Board or its agents shall be authorized to exercise its Self Help remedy, to bring the Owner's Lot into compliance with this provision.

#### **SECTION 2.15 Flags and Flagpoles**

The size, number, and placement of flagpoles, and the display of flags within the Subdivision, shall be subject to any applicable guidelines, rules or policies adopted by the Board.

The Declarant, by promulgating this Section, is not attempting to violate any local, state or federal law. This Section shall be interpreted to be as restrictive as possible while not violating any laws of the State of Texas and/or the United States of America.

#### **SECTION 2.16 Screening**

No Owner or Occupant of any portion of the Subdivision shall permit the keeping of articles, goods, materials, utility boxes, refuse, trash, storage tanks, or like equipment within the Subdivision which may be considered a nuisance or hazard in the sole discretion of the Board. Air conditioners, utility boxes, garbage containers, antennas to the extent reasonably possible and pursuant to the terms set forth herein, or like equipment, shall not be kept in public view and must be placed in a location first approved in writing by the Board. Such screen shall be of a height at least equal to that of the materials or equipment being stored, but in no event shall such screen be more than six feet (6') in height. Added screening must also be provided to shield such stored materials and equipment from grade view from adjacent Townhomes or Common Area. Utility boxes must be screened so that they are not visible from the street and as may be set out in guidelines. A combination of trees, Hedges, shrubs or fences should be used as screening material, as same may be set out in the guidelines. All screening designs, locations, and materials are subject to prior written Board approval. Any such screening installed must be maintained in a clean and neat manner at all times, and may not detract from the appearance of the Subdivision.

#### **SECTION 2.17 Antennas and Satellite Dish Systems**

**2.17.1 General Rule.** No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Subdivision, including any Townhome Lot, which is visible from any street, Common Area or other Townhome Lot unless it is impossible to

receive signals from another location. In that event the receiving device may be placed in a visible location as approved by the Board. The Board may require as much screening as possible while not substantially interfering with reception. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the property. This Section does not constitute an attempt to violate the Telecommunications Act of 1996 (the "1996 Act"), as same may be amended from time to time. This Section shall be interpreted to be as restrictive as possible while not violating the 1996 Act.

In the event that it is impossible to receive a signal from a non-visible location, the installation of antennas shall be subject to rules and regulations which may be promulgated by the Board setting out preferred alternate locations for antennas.

Declarant and the Association shall have the right, without the obligation, to erect an aerial, satellite dish, or other apparatus (of any size) for a master antenna, cable, or other communication system for the benefit of all or any portion of the Subdivision, should any master system or systems require such exterior apparatus.

**2.17.2 Prohibited Antenna.** In no event shall any antenna, "dish" or other device be used for transmitting electronic signals of any kind except as to fixed wireless signal transmission as above provided. Antenna and similar devices of any type used for citizen band ("CB") radio, amateur ("HAM") radio, AM/FM radio, or Digital Audio Radio Service ("DARS"), are prohibited and shall not be erected, placed or permitted to remain on any Townhome Lot, on any improvement located on any Townhome Lot, or elsewhere in the Subdivision. Without limitation as to the authority of the Board to grant variances as provided herein, the Board is specifically authorized to (but shall not in any event be required to) grant variances as to prohibited antenna, and the Board may condition granting of any such variance upon placement of the applicable antenna in the attic of a residence.

## **SECTION 2.18 Window and Door Glass Covers**

Glass in windows, doors and other similar openings must be maintained as installed during original construction except as otherwise approved by the Board as provided in **Section 3.01**. Glass film and similar tinting, and aluminum foil and similar reflective materials, are in all events prohibited for use as a cover for any window or door; provided, factory tinted glass may be approved by the Board as provided in **Section 3.01**. Only blinds, curtains or drapes with backing material which is white, light beige, cream, light tan or light gray, and blinds or mini-blinds of the same color, are permitted, unless otherwise approved by the Board as provided in **Section 3.01**. No other window treatment color may be visible from the exterior of any residence or other improvement. Temporary or disposable coverings, including sheets, newspapers, shower curtains, fabric not sewn into finished curtains or draperies, other paper, plastic, cardboard, or other materials not expressly made or commonly used by the general public for permanent window coverings, are expressly prohibited.

**SECTION 2.19 Window Air Conditioning Units**

No window or wall type air conditioners shall be permitted to be used, placed or maintained on or in any building on the Townhome Lots. All livings areas within a Townhome, including any room additions, must be centrally air-conditioned, unless otherwise approved by the Board.

**ARTICLE III. ARCHITECTURAL CONTROL****SECTION 3.01 Architectural Control; Variances**

3.01.1 Approval. No building, structure or other improvement may be commenced, placed, constructed, reconstructed, erected or allowed to remain on, below or above the surface of any Townhome Lot, and no modification, alteration or addition (including without limitation any exterior alterations or changes as to type of materials, color, roofs, fences or exterior doors or windows) may be made as to any building, structure or other improvement, unless and until the construction plans, detailed specifications and surveyor original plot plans showing the location of the building, structure or other improvements have been submitted to and approved in writing by the Board as to (i) compliance with this Townhome Declaration, and (ii) harmony and compatibility with surrounding aesthetics, appearances and patterns of maintenance and use, harmony and compatibility with surrounding buildings, structures and other improvements, and harmony and compatibility with surrounding grades, topography, finished ground elevations, locations, colors, finishes, styles, workmanship, type and quality of materials and designs.

3.01.2 Variances. The Board, or its duly authorized representative, may authorize variances from compliance with any of the architectural provisions of the Dedicatory Instruments, unless specifically prohibited, including restrictions upon height, size, placement of structures, or similar restrictions, when circumstances such as topography, natural obstruction, hardship, aesthetic, or environmental considerations may require. Such variances must be evidenced in writing, must be approved by at least a majority of the Board, and shall become effective upon execution. The variance must be signed by a member of the Board and recorded in the real property records of Tarrant County, Texas. If such variances are granted, no violation of the covenants, conditions, or restrictions contained in the Dedicatory Instruments shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of the Dedicatory Instruments for any purpose except as to the particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all applicable governmental laws and regulations.

No granting of a variance shall be relied on by any Member or Owner, or any other person or entity (whether privy or party to the subject variance or not), as a precedent in requesting or assuming variance as to any other matter of potential or actual enforcement of any provision of the Dedicatory Instruments. Action of the Board in granting or denying a variance is a decision based expressly on one unique set of circumstances and need not be duplicated for any other request by any party or the same party for any reason whatsoever.

Notwithstanding anything contained herein to the contrary, during the Development Period, the Declarant shall have the unilateral right to grant a variance of any of the covenants, conditions and restrictions contained herein so long as the variance is in keeping with the aesthetics of the Subdivision.

#### **ARTICLE IV. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

##### **Section 4.01 Membership**

The sole criteria to become a member of the Association is to hold title to a Townhome Lot. This is not to imply that any holder of a mere security interest (such as a mortgagee, or holder of any other lien against property) would be a member, unless that holder of the security interest foreclosed and thereby became the Owner of the Townhome Lot(s). Membership is appurtenant to and runs with the land. Membership is not severable as an individual right and cannot be separately conveyed to any party or entity.

All duties and obligations set forth in this Townhome Declaration are the responsibility of each member. No waiver of use of rights of enjoyment created by this Townhome Declaration shall relieve members or their successors or assigns of such duties or obligations. Mandatory membership in the Association shall begin with the execution of this Townhome Declaration and pass with title to each Townhome Lot (regardless of any method of conveyance) to any subsequent grantee, successor, or assignee of members.

##### **Section 4.02 Voting Rights**

Multiple Owners of any single Townhome Lot must vote in agreement (under any method they devise among themselves), but in no case shall such multiple Owners cast portions of votes. The vote (or votes, in the case of Class B members) attributable to any single Townhome Lot must be voted in the same manner (i.e. all Owners of the Townhome Lot for, or all Owners of the Townhome Lot against, a particular issue) but in no event can there be more than one Class A vote cast per Townhome Lot.

The Association shall have two classes of membership, Class A and Class B, as follows:

1. Class A Membership

Class A members shall be all members with the exception of Class B members, if any. Each Class A member's voting rights shall be based on the number of Townhome Lots owned and shall be determined as follows:

One (1) vote shall be granted to Class A members for each Townhome Lot owned.

2. Class B Membership

Class B members shall include the Declarant and such Owners as the Declarant may, in its sole discretion, confer Class B membership status upon. Declarant shall be entitled to

three (3) times the total number of votes allocated to Class A Members. The Declarant's Class B Membership shall terminate upon the earliest to occur of the following:

- a. When Declarant no longer owns any real property within the Subdivision;  
or
- b. Such time as Declarant, in its sole discretion, so determines, provided however, that Declarant may assign its rights in whole or in part, permanent or temporary, at any time.

**Section 4.03 Right to Appoint/Elect Board of Directors**

Declarant shall retain the authority to appoint all members of the Board until not later than the tenth (10th) anniversary of the date this Townhome Declaration was recorded in the real property records of Tarrant County, Texas, by which time one-third (1/3) of the Board members (who must be members of the Association) must be elected by the Owners other than the Declarant, as set forth in the Bylaws. After such anniversary, Declarant shall retain the authority to appoint the remaining two-thirds (2/3) of the members of the Board until such time as Declarant no longer owns any portion of the property in the Subdivision. The Declarant may assign to the Association its authority to appoint some or all (as applicable) members of the Board, with such assignment evidenced by an instrument recorded in the real property records of Tarrant County, Texas.

Upon termination of Declarant's authority to appoint two-thirds (2/3) of the members of the Board, any remaining Class B members shall be converted to Class A members and elections shall be held to elect the members of the Board (who must be members of the Association) pursuant to the provisions of the Certificate of Formation and the Bylaws of the Association. In the event Class B membership terminates pursuant to the above provisions, and thereafter additional property is annexed into the jurisdiction of the Association, which results in the Declarant owning property in the Subdivision, only Declarant's Class B membership shall be restored (no other previously designated Class B membership shall be restored), until it again terminates as specified hereinabove. Notwithstanding anything contained herein to the contrary, the Declarant may assign, temporarily or permanently, all or a portion of its rights as Declarant to any person(s).

**Section 4.04 Voting Procedures**

Class A and Class B members shall exercise their votes as set out in the Bylaws.

**ARTICLE V. DEED RESTRICTION ENFORCEMENT**

**Section 5.01 Authority to Enforce**

The Board has the authority, without the obligation, to promulgate, amend, cancel, limit, create exceptions to, and enforce reasonable rules, policies, and guidelines, including but not limited to rules and policies concerning the administration of the Subdivision, the enforcement of the Dedicatory Instruments, the use and enjoyment of the Subdivision, limitations on the use of

the Common Area, establishing and setting the amount of fines for violations of the Dedicatory Instruments and all fees and costs generated in the enforcement of the Dedicatory Instruments. Such rules, policies, and guidelines shall be binding upon all Owners and Occupants. The rights and remedies contained in this Article are cumulative and supplement all other rights of enforcement under applicable law.

### **Section 5.02 Attorney's Fees and Fines**

In addition to all other remedies that may be available, after giving notice and an opportunity to be heard as may be required by §209 of the Texas Property Code, as same may be amended, the Association has the right to collect attorney's fees and/or fines as set by the Board from any Owner or Occupant that is in violation of the Dedicatory Instruments. Said attorneys fees and fines shall be added to the violating Owner or Occupant's assessment account and shall be secured by the continuing lien on the Townhome Lot. Additionally, the Association shall be entitled to the recovery of its reasonable and necessary attorney's fees and costs should it prevail in any litigation brought by or against it.

### **Section 5.03 Remedies**

Every Owner and Occupant shall comply with all provisions of the Dedicatory Instruments. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association. In addition, the Board has the authority, but not the obligation, to enforce the covenants, conditions and restrictions contained in the Dedicatory Instruments, and to regulate the use, maintenance, repair replacement, modification, and appearance of the Subdivision, and may avail itself of any and all remedies provided in the Dedicatory Instruments and local, state and Federal law. Notwithstanding anything contained herein to the contrary, the Board shall have no duty, legal or otherwise, to institute legal or other proceedings on behalf of or in the name of an Owner.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iii) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any Dedicatory Instrument.

#### **Section 5.04 Enforcement by Owners**

Each Owner is empowered to enforce the covenants, conditions and restrictions contained in the Dedicatory Instruments; provided, however, no Owner shall have the right to enforce the lien rights retained in the Dedicatory Instruments in favor of the Association and/or other rights, regarding assessments, fines, or other charges retained by the Association.

#### **Section 5.05 Self Help**

“Self Help” shall mean the authority, but not the obligation, of the Association, upon approval of not less than a majority of the Board members, to enter upon a Townhome Lot and cause to be performed any of the Owner’s maintenance and repair obligations, or acts required by that Owner to bring his/her Townhome Lot into compliance with the Dedicatory Instruments, if said Owner fails to perform same after written demand from the Board. In exercising its Self Help remedy, the Association shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such exercise of Self Help, nor in any way shall the Association or its agent be liable for any accounting or other claim for such action.

The Association shall have the right, but not the obligation, to enter into any Townhome Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with the Dedicatory Instruments, which right may be exercised by the Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in the case of emergency situations, and as otherwise specified herein, the Association shall give the violating Owner notice as may be required by law, of its intent to exercise Self Help.

Subject to any notice that may be required by law, 110% of any costs incurred by the Association in the exercise of its Self Help remedy shall be the personal obligation of the Owner of the Townhome Lot at the time when the Self Help costs were incurred. Subject to any notice that may be required by law, 110% of the costs incurred by the Association in exercising its Self Help remedy, which costs may include by way of illustration and not limitation, the actual costs incurred by the Association and an administrative fee set by the Board, may be charged to the subject Owner’s assessment account and shall be secured and supported by the continuing lien created herein.

### **ARTICLE VI. COMMON AREA**

The Board, subject to the rights of the Members set forth in this Townhome Declaration and any amendments or Supplemental Amendments thereto, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon and shall keep it in good, clean, attractive and sanitary condition. No Member may appropriate any portion of the Common Area or any improvement thereon for his or her own exclusive use. Any Member or his or her guests, family or invitees that cause damage to the Common Area shall be financially responsible for said damage. The cost of repair, if not timely paid by the Member (subject to any notice that may be required by law), shall be assessed against the Member’s Townhome Lot and secured by the continuing lien set forth in this Townhome Declaration.

The Declarant, and its designees, may transfer or convey at any time to the Association interests in real or personal property within or for the benefit of the Subdivision, and the Association is hereby obligated to accept such transfers and conveyances, even if such transfer or conveyance occurs after the termination of the Development Period. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Real property transferred to the Association by the Declarant, or its designees, may be transferred via a deed without warranty; provided, however, the property shall be transferred free and clear of all liens and mortgages at the time of such transfer. Upon the Declarant's written request, the Association shall reconvey to the Declarant any unimproved real property that the Declarant originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

Owners hereby covenant (i) not to possess any Common Area in any manner adverse to the Association, (ii) not to claim or assert any interest or title in any Common Area. Owners hereby waive their right to adversely possess any Common Area, and hereby acknowledge and agree that any claim of adverse possession by an Owner of any Common Area shall be void.

## **ARTICLE VII. MAINTENANCE**

### **Section 7.01 Owners' Maintenance Obligations**

Each Owner shall maintain and keep in good repair his or her Townhome and all structures, parking areas and other improvements, including driveway and its apron portion forward of the building line comprising the Townhome Lot. All structures and other improvements designed to be painted must be kept painted and the paint may not be allowed to become faded, cracked, flaked or damaged in any manner. Grass, vegetation and weeds within the fenced portions on each Townhome Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. Additional maintenance obligations of Owners shall include, but are not limited to, the following:

**7.01.1 Utilities.** The Owner of each Townhome must maintain in proper working order, and on a continuing basis, all sanitary sewer lines and facilities, water pipelines, Townhome water meters and related water lines and facilities, electrical and gas lines, meters and facilities, telephone and any other telecommunication lines, devices or facilities, and all other facilities, utilities and services which exclusively service each Townhome, regardless of the location thereof. Utilities which service more than one Townhome must be maintained, repaired and replaced by all of the Owners of the multiple Townhomes served, pro rata, or as may be determined by the Board.

#### **7.01.2 Party Walls, Roofs, Foundations**

##### **(a) General Rules of Law to Apply**

Each wall built as a part of the original construction of a Townhome which shall serve and separate any two (2) adjoining Townhomes shall constitute a party wall and, to the

extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance

The cost of reasonable maintenance, repair and replacement of all or any portion of a party wall shall be shared by the Owners served by the party wall in equal proportions.

(c) Damage and Destruction

If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner served by the party wall may restore it, and the other Owner or Owners served by the party wall shall thereafter contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing

Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and any damage caused to a Townhome caused by such exposure.

(e) Right to Contribution Runs with Land

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Townhome Lot and shall pass to such Owner's successors, heirs or assigns.

(f) Foundations and Roofs

The cost of reasonable repair and maintenance of the foundation and roof for each Townhome shall be shared by the Owners served by such foundation and roof, in equal proportions. The foundations and roofs for each Townhome will be dealt with in the same fashion as party walls, as set forth in this Section. The "roofs" as used herein shall be deemed to constitute only the exterior surfaces of the roof constituting the roofing shingles, the underlay beneath the shingles, the decking materials, the flashing and any guttering attached to the roofing eaves. The responsibility to maintain, repair, or replace any insulation, trusses, beams or any portion of the structure supporting the roof for a particular Townhome shall be the responsibility of the Owner of the respective Townhome requiring maintenance, repair or replacement of such items.

**7.01.3 Shared Side Townhome Lot Line Easement.** Owners of adjoining Townhomes sharing a common side Townhome Lot line shall have a reciprocal right of ingress to and egress from the adjoining Townhome Lot upon which the adjoining Townhome is located. The foregoing right of each Townhome Lot Owner shall be limited to only areas that are five (5') feet in width upon each adjoining Townhome Lot, running parallel to and contiguous with the entire shared side Townhome Lot line, and shall be further limited to the purposes of construction of the Townhome, maintenance, repair and upkeep as is reasonably necessary for said Owner's Townhome, and for emergency ingress and egress in the event of an emergency. Said five (5') foot strip shall also be used for eaves overhang, eaves drip, and land drain for any and all rain water flowing naturally from the eaves of said Owner's Townhome onto the adjacent strip of land.

Conditions and use of the shared side Townhome Lot line easement, hereinafter the "Easement", are hereby declared and established by and between the Owners of adjoining Townhomes having shared side Townhome Lot lines, which shall be covenants running with the land and binding on both of the above-mentioned Owners and all of their respective heirs, successors, and assigns forever, to-wit:

- (i) The Townhome Lot Owner using the Easement must replace or return to its prior existing condition, any fencing, landscaping or other items on the adjoining Townhome Lot that s/he may disturb during construction, repair or maintenance, save and except as set out below in **subsection (ii)**.
- (ii) The Townhome Lot Owner using this Easement must leave the Easement clean and unobstructed, unless the Easement is actively being utilized and any items removed must be replaced.
- (iii) The Townhome Lot Owner using the Easement must notify the adjoining Townhome Lot Owner of his intent to do any construction, repair or maintenance within the Easement at least forty-eight (48) hours prior to starting any work. The hours that such Easement may be utilized shall be between 8:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. through 6:00 p.m. on Saturday, and noon through 6:00 p.m. on Sunday.

Notwithstanding the above, in the case of an emergency, and to prevent imminent damage to the Townhome or occupants, a Townhome Owner may enter the Easement at whatever time necessary and without prior notice to the Owner of the adjoining Townhome Lot to do necessary repairs or escape any injury to the occupants and/or the occupants' invitees and licensees.

- (iv) Owners of adjoining Townhomes that have a shared side Townhome Lot line shall have the right of surface drainage over, along and upon the Easement area. Neither Owner shall use the Easement area in such a manner as will interfere with such drainage.
- (v) No structure shall be constructed or placed upon the Easement area by either Townhome Owner, except the Townhomes and the roof overhang and guttering as provided for above, and any fencing as may set forth in guidelines or approved plans,

which allows proper surface drainage. Access to the Easement must be preserved by and for each Owner of the adjoining Townhomes with the shared side Townhome Lot line.

Owners of adjoining Townhomes that have a shared side Townhome Lot line shall have and are hereby granted, a five foot (5') underground easement, extending five feet (5') into each respective side building setback line of the adjoining Townhome Lot with said easement being contiguous to the shared side Townhome Lot Line, hereinafter the "Bell Bottom Easement". Said underground Bell Bottom Easement shall be used solely for the installation, construction and maintenance of underground bell bottoms in conjunction with the installation or repair of residential foundations.

Notwithstanding anything contained herein to the contrary, restrictions regarding emergency escape and rescue openings in Section R310 of the International Residential Code shall control.

**7.01.4 Disturbance of the Common Area.** In the event the performance by an Owner of any maintenance responsibility requires that any portion of the Common Area be modified, removed or disturbed, then such Owner must first obtain the written consent of the Board as to same. All such work must be performed, at the option of the Association, either under the supervision of the Association, or by the Association at the reasonable expense of the Owner. If the Association performs the work at the expense of the Owner, the Board may require a security deposit or advance payment of all of the estimated expenses which the Owner must pay upon demand. Such indebtedness will be added to and become a part of the Assessment to which such Owner and the Owner's Townhome Lot are subject, and is secured by the continuing lien hereby established against such Owner's Townhome Lot.

## **Section 7.02 Association's Maintenance Obligations**

**7.02.1 General.** The Association will maintain, repair and replace the Common Area and keep same in good repair. This maintenance includes, without limitation, maintenance, repair, and replacement of all landscaping and improvements situated on the Common Area.

### **7.02.2 Townhome Lot Landscaping.**

(a) The Association will mow, trim, edge and otherwise generally maintain all lawn and landscape areas within the unfenced portions of Townhome Lots. Each Owner must provide proper access for all such maintenance by the Association as provided for herein. Any Owner who does not provide such access must promptly and properly perform the maintenance (and all other maintenance required by this Townhome Declaration), at such Owner's sole cost and expense and in accordance with all applicable directives of the Board and all other applicable dedicatory instruments. Maintenance by the Association will include general fertilization, and insect and disease control, but will not include any type of treatment or control as to termites, carpenter bees or any similar type of wood infestation or other infestations not specific to ordinary landscape maintenance (such as, for example but without limitation, wasp or bee hives, mice, rats, squirrels or any other type of rodent, vermin or pests). Such maintenance shall also not include any exotic landscaping installed by any Owner (whether or not approved), or any flower beds or similarly landscaped areas or any trees or shrubbery, all of which must be

maintained by the Owner of each Townhome Lot, or any other maintenance substantially greater than as generally provided throughout the Subdivision.

(b) Except as provided in subsection (d) below, the obligations of the Association pursuant to this Section are limited to general and routine maintenance of lawn and landscape areas as above provided. Specifically, but without limitation of the foregoing, replacement of any lawn or landscaping, irrigation system and any other improvements upon each Townhome Lot due to disease, freezing, hail, hurricane or any other storm, or due to any other weather conditions, or which may be caused or necessitated by any other cause or condition is the sole responsibility of the Owner of each Townhome Lot.

(c) The Board has full authority, without joinder or consent of any Owner or any other Person, to expand, modify, replace, remove or in any other manner change any and all landscaping maintained by the Association, including any such landscaping located upon any Townhome Lot. It is expressly stipulated and agreed that the Association does not represent, guarantee or warrant the viability, type, quality, quantity or continued existence of any landscaping within or in the vicinity of the Subdivision, including any landscaping located upon any Townhome Lot, and no Owner or other person shall ever have any claim whatsoever against the Association or any of its related parties regarding, directly or indirectly, any landscaping.

(d) The Association may replace any lawn or landscape area which is located upon a Townhome Lot and which is maintained by the Association, but all costs thereof shall be specifically assessed to the applicable Owner. The Association may also maintain, repair and/or replace such other lawn and landscape areas in such manner and to the extent as from time to time approved by the Board, and may specifically assess all costs thereof to the applicable Owner or Owners. Without limitation of any other provisions hereof, no landscaping shall be removed from or added to, and nothing else shall be done within any area maintained by the Association which may increase the Association's cost of maintenance without the prior written approval of the Board. Whether or not approved, the Board may specifically assess any such added cost of maintenance to the responsible Owner(s).

**7.02.3 Easement Granted to Association.** The Association is hereby granted a perpetual non-exclusive easement to the extent necessary for the right to enter upon a Townhome Lot in order to perform its obligations, or exercise its rights, created hereunder. Said easement shall be over, across, under, and upon the Townhome Lots.

### **Section 7.03 Liability, Cost and Approval**

Neither the Association, nor its directors, agents, contractors, or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of its obligations of maintenance, repair, or replacement, or other work authorized in the Dedicatory Instruments.

## ARTICLE VIII. ASSESSMENTS

### Section 8.01 Creation of the Lien and Personal Obligation of Assessments

The Owners of any Townhome Lot, by virtue of ownership of a Townhome Lot, covenant and agree to pay to the Association all applicable assessments and any fines, penalties, interest and costs as more particularly set forth in this Townhome Declaration and any other Dedicatory Instrument, including but not limited to the following:

1. Annual Assessments
2. Special Assessments

The Annual Assessment, Special Assessment, , any other assessment or charge set forth in this Townhome Declaration or a Dedicatory Instrument (collectively the "Assessment"), together with attorney's fees, late fees, interest and costs shall be a charge and continuing lien upon the Townhome Lot against which each such Assessment is made. Each such Assessment, together with attorney's fees, late fees, interest and costs, shall also be the personal obligation of the person or entity who was the Owner of the Townhome Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by them. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or the Board under this Townhome Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association. The obligation to pay Assessments is a separate covenant on the part of each Owner of a Townhome Lot.

### Section 8.02 Purpose of Assessments

Assessments levied by the Association shall be used for any legal purposes related to fulfilling the Association's maintenance obligations created herein including administrative fees related thereto, purchasing insurance to the extent determined to be necessary or advisable in the sole discretion of the Board, and for other purposes deemed necessary or desirable by the Board in connection with the administration, management, control or operation of the Subdivision.

### Section 8.03 Annual Assessment

Each Townhome Lot shall be subject to the Annual Assessment, as follows:

1. Creation

Payment of the Annual Assessment shall be the obligation of each Owner and the Declarant and shall constitute a lien on the Townhome Lot(s), binding and enforceable as provided in this Townhome Declaration.

2. Rate

The initial Annual Assessment established by the Association shall not exceed One Hundred Fifty and No/100 Dollars (\$150.00) per Townhome Lot. The Board shall have the right to require Annual Assessments be paid semi-annually, quarterly or monthly, in advance (rather than annually). Notwithstanding anything contained herein to the contrary, any Townhome Lot being used by the Declarant as a model townhome or sales office shall not be subject to any Assessment created herein. Upon conveyance of such model townhome or sales office Townhome Lot to a purchaser, said Townhome Lot shall thereafter be subject to all Assessments, obligations, and charges provided for in this Townhome Declaration and as secured by the lien created herein. Declarant shall elect annually in writing to either subsidize the approved budget for the subsequent year by paying the difference between the actual operating expenses for the year less the total amount due by Class A Members, or elect to pay assessments at the rate of fifty percent (50%) of the amount assessed other Class A Members for each Townhome Lot owned. Declarant is required to provide written notice to the Board each year by October 1<sup>st</sup> of the elected option. Failure to provide such notice will result in Declarant being billed in the manner of the last option taken by Declarant. If no option has ever been taken by Declarant, then Declarant shall be billed the difference between the actual operating expenses for the year less the total amount due by Class A Members.

3. Commencement

For purposes of calculation, the initial Annual Assessment for a Townhome Lot shall commence on the date of closing. Annual Assessments shall be due in advance on January 1<sup>st</sup> for the coming year and shall be delinquent if not paid in full as of January 31<sup>st</sup> of each year. If billed monthly, quarterly or semi-annually, Annual Assessments shall be due on the date set forth by the Board, and shall be delinquent if not paid in full by the 10<sup>th</sup> day after such due date.

4. Proration

An Owner's initial Annual Assessment shall be made for the balance of the calendar year as determined on a pro-rata basis and shall become due and payable on the commencement date described above. The Annual Assessment for any year after the first year shall be due and payable on the first day of January, unless an alternative due date is set by the Board. Any Owner who purchases a Townhome Lot after the first day of January in any year shall be personally responsible for a pro-rated assessment amount for that year.

5. Levying of the Assessment

The Annual Assessment shall be levied at the sole discretion of the Board. The Board shall determine the sufficiency or insufficiency of the then-current Annual Assessment to reasonably meet the Association's expenses for the obligations created herein and may, at its sole discretion and without a vote by the members, increase the Annual Assessment in an amount up to ten percent (10%) annually. The Annual Assessment may only be

increased by more than ten percent (10%) annually if such increase is approved by members who represent a majority of the votes in the Association present, in person or by proxy, at a meeting called for said purpose at which a quorum is present in person or by proxy. The Annual Assessment may not be adjusted more than once in a calendar year nor may any increase be construed to take effect retroactively, unless otherwise approved by members representing a majority of the votes subject to such Assessments present, in person or by proxy, at a meeting called for said purpose at which a quorum is present in person or by proxy.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price and method of payment differentials. The Board may require advance payment of Assessments at closing of the transfer of title to a Townhome Lot, and impose special requirements for Owners with a history of delinquent payment.

#### **Section 8.04 Special Assessments**

In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of performing the Association's obligations created herein, in excess of amounts budgeted therefore, including but not limited to unusual, infrequent expense for the obligations of the Association created herein, provided that any such Special Assessment shall have the approval of both a majority of the Class A votes and a majority of the Class B members present at a meeting duly called for this purpose at which a quorum is present. Such Special Assessment will be due and payable as set forth in the resolution authorizing such Special Assessment and shall be levied only against those Owners subject to the Annual Assessment as set forth in **Section 8.03** hereof and shall be prorated in accordance therewith. The Association, if it so chooses, may levy a Special Assessment against only those members benefited by or using the Special Assessment. Special Assessments shall be due upon presentment of an invoice, or copy thereof, for the same to the last-known address of the Owner.

#### **Section 8.05 Collection and Remedies for Assessments**

1. The Assessments provided for in this Townhome Declaration, together with attorneys' fees, interest, late fees and costs as necessary for collection, shall be a charge on and a continuing lien upon the land against which each such Assessment is made. Each such Assessment, together with attorney's fees, interest, late fees, and costs, shall also be the personal obligation of the Owner of the land at the time the Assessment became due. This personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by them.

2. Any Assessment not paid by the due date set by the Board shall bear interest from the due date at the lesser of (i) eighteen percent (18%) or (ii) the maximum non-usurious rate of interest. No Owner may waive or otherwise escape liability for the Assessments provided for in this Townhome Declaration by reason of non-use or abandonment.

3. In order to secure the payment of the Assessments hereby levied, an Assessment lien is hereby reserved in each deed from the Declarant to the Owner of each Townhome Lot, which lien may be foreclosed upon pursuant to the laws of the State of Texas. Each Owner grants a power of sale to the Association to sell such property upon default in payment by any amount owed. Alternatively, the Association may judicially foreclose the lien or maintain an action at law to collect the amount owed.

4. The President of the Association, or his or her designee, is hereby appointed Trustee to exercise the Association's power of sale. Trustee shall not incur any personal liability hereunder except for his or her own willful misconduct.

5. Although no further action is required to create or perfect the lien, the Association may as further evidence, give notice of the lien, by executing and recording a document setting forth notice that delinquent sums are due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien.

6. The Association shall also give notice and an opportunity to cure the delinquency to any holder of a lien that is inferior or subordinate to the Association's lien, for so long as such notice is required by Section 209.0091 of the Texas Property Code, or its successor statute.

7. In the event the Association has determined to foreclose its lien provided herein, and to exercise the power of sale hereby granted, such foreclosure shall be accomplished pursuant to the requirements of Sections 209.0091 and 209.0092 of the Texas Property Code by first obtaining a court order in an application for expedited foreclosure under the rules adopted by the Supreme Court of Texas. Notwithstanding anything contained herein to the contrary, in the event that the laws of the State of Texas that require a court order in an application for expedited foreclosure as relates to foreclosure of the Assessment lien are changed or are no longer in effect, the Association may foreclose its lien under any remedy provided by the then-current laws of the State of Texas, including but not limited to non-judicial foreclosure.

8. At any foreclosure proceeding, any person or entity, including but not limited to the Declarant, Association or any Owner, shall have the right to bid for such Townhome Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period such foreclosed property is owned by the Association following foreclosure, (i) no right to vote shall be exercised on its behalf; and, (ii) no Assessment shall be levied on it. Out of the proceeds of such sale, there shall be paid all expenses incurred by the Association in connection with such default, including attorneys' fees and trustee's fees; second, from such proceeds there shall be paid to the Association an amount equal to the amount of Assessments in default inclusive of interest, late charges and attorneys' fees; and, third, the remaining balance, if any, shall be paid to such Owner. Following any such foreclosure, each occupant of any such Townhome Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant-at-sufferance and may be removed from possession by any lawful means.

### **Section 8.06 Subordination of the Lien to Purchase Money Mortgages**

The lien for Assessments, including interest, late charges, costs and attorney's fees, provided for herein shall be subordinate to the lien of any purchase money mortgage on any Townhome Lot. The lien for Assessments, including interest, late charges, costs and attorney's fees, provided for herein shall be also be subordinate to Declarant's construction deed of trust. The sale or transfer of any Townhome Lot shall not affect the Assessment lien. The sale or transfer shall not relieve such Townhome Lot from lien rights for any Assessments thereafter becoming due. Where the mortgagee holding a purchase money mortgage of record or other purchaser of a Townhome Lot obtains title pursuant to foreclosure of the mortgage, it shall not be liable for the share of the Assessments or other charges by the Association chargeable to such Townhome Lot that became due prior to such acquisition of title. However, from the date of foreclosure forward, such Assessments shall again accrue and be payable to the Association.

### **Section 8.07 Notice of Delinquency**

When the Association or its agent or designee gives a written notice of the Assessment to any Owner who has not paid an Assessment that is due under this Townhome Declaration, such notice will be mailed to the Owner's last known address. The address of the Townhome Lot shall be presumed to be the address for proper notice unless written notice of another address has been provided by the Owner to the Association.

## **ARTICLE IX. INSURANCE AND CASUALTY LOSSES**

### **Section 9.01 Insurance**

The Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements that it has the obligation to maintain, repair or replace. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

### **Section 9.02 Casualty Losses**

It shall be the Owner's obligation to have repaired or reconstructed any damage or destruction to their Townhome, Townhome Lot, and all improvements thereon. If a Townhome, landscaping, outbuilding or any other improvement located on a Townhome Lot is damaged by fire, storm, or any other casualty, the Owner shall bring the affected Townhome Lot and all improvements thereon, as applicable, into compliance with the dedicatory instruments within six (6) months of the date of the casualty, pursuant to the architectural requirements and approval process set forth in the dedicatory instruments. Regarding Townhomes that are totally destroyed due to casualty, the Owner(s) of such Townhomes must have the Townhomes or damaged portions of the Townhomes razed within ninety (90) days of the date of the casualty, and replaced within twelve (12) months of the date of the casualty, subject to Board prior written approval. Owner responsibilities and apportionment of costs related to repair or reconstruction

of party walls, foundations and roofs shall be dealt with in accordance with the provisions set forth in this Townhome Declaration.

## **ARTICLE X. MODIFICATION AND TERMINATION OF COVENANTS**

### **Section 10.01 Declarant**

In addition to specific amendment rights granted elsewhere in this Townhome Declaration, until termination of the Development Period, the Declarant may unilaterally amend this Townhome Declaration for any purpose; provided, however, any such amendment shall not adversely affect the title to any Townhome Lots unless the Owner shall consent thereto in writing.

After the expiration of the Development Period, the Declarant may unilaterally amend this Townhome Declaration at any time without the joinder or consent of any Owners, entity, Lender or other person to amend this Townhome Declaration if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on Townhome Lots, (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Townhome Lots; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on Townhome Lots; or (e) for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein; provided, however, any such amendment shall not adversely affect the title to any Townhome Lots unless the Owner shall consent thereto in writing.

Any amendment to the Townhome Declaration made by Declarant shall be recorded in the Real Property Records of Tarrant County, Texas, whereupon to the extent of any conflict with this Townhome Declaration and any amendment thereto, the more restrictive provision shall control.

### **Section 10.02 Owners**

During the Development Period, this Townhome Declaration may be amended, modified or terminated by the written consent of Declarant and the approval of Owners of a majority of the Townhome Lots. After the termination of the Development Period, approval by the Owners of a majority of the Townhome Lots shall be required to amend, modify or terminate this Townhome Declaration; provided however, any such amendment must be approved in writing by the Association.

Upon approval of the Owners, as set out above of said amended declaration (as evidenced by the President's or Vice-President's signature) the amended declaration shall be recorded in the Real Property Records of Tarrant County, Texas, whereupon to the extent of any conflict with this Townhome Declaration and any amendment thereto, the more restrictive provision shall

control. For purposes of this Section, the approval of multiple Owners of a Townhome Lot may be reflected by the signature of any one Owner of such Townhome Lot.

Notwithstanding anything contained herein to the contrary, the Association shall be entitled to use any combination of the following methods to obtain approval of the Owners for an amendment to the Townhome Declaration:

1. by written ballot, or electronic ballot as same may be established by the Board, that states the substance of the amendment and specifies the date by which a written or electronic ballot must be received to be counted;
2. at a meeting of the Members of the Association, if written notice of the meeting stating the purpose of the meeting is delivered to the Owners of the Townhome Lots; such notice may be hand-delivered to the Owners, sent via regular mail to the Owner's last known mailing address, as reflected in the Association's records, or via email to the Owner's email address as reflected in the Association's records;
3. by door-to-door circulation of a petition by the Association or a person authorized by the Association; and/or
4. by any other method permitted under this Townhome Declaration or applicable law. Any limitation of amendment to the Townhome Declaration related to said Property shall not limit the rights of the Declarant pertaining to the Townhome Declaration as otherwise herein reserved. Particularly reserved to the Declarant, is the right and privilege of Declarant to designate the use and architectural restrictions applicable to any portion of the properties, as provided in this Townhome Declaration, and such designation, or subsequent change of designation, shall not be deemed to adversely affect any substantive right of any existing Owner.

**ARTICLE XI.           LIMITATION OF LIABILITY**

**NEITHER DECLARANT, THE ASSOCIATION, THE BOARD, NOR ANY OF THE RESPECTIVE OFFICERS, AGENTS, MANAGERS, PARTNERS, DIRECTORS, SUCCESSORS OR ASSIGNS OF THE ABOVE, SHALL BE LIABLE IN DAMAGES OR OTHERWISE TO ANYONE WHO SUBMITS MATTERS FOR APPROVAL TO ANY OF THE ABOVE-MENTIONED PARTIES, OR TO ANY OWNER AFFECTED BY THIS DECLARATION BY REASON OF MISTAKE OF JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL, DISAPPROVAL, OR FAILURE TO APPROVE OR DISAPPROVE ANY MATTERS REQUIRING APPROVAL HEREUNDER. APPROVAL BY THE BOARD, OR THE ASSOCIATION, OR ANY OF THEIR RESPECTIVE OFFICERS, PARTNERS, DIRECTORS, AGENTS, MANAGERS, SUCCESSORS OR ASSIGNS, IS NOT INTENDED AS ANY KIND OF WARRANTY OR GUARANTEE AS TO THE INTEGRITY OR WORKABILITY OF THE PLANS NOR THE CONTRACTORS USED.**

## ARTICLE XII. GENERAL PROVISIONS

### Section 12.01 Severability

The invalidity of any one or more of the provisions of this Townhome Declaration shall not affect the validity of the other provisions thereof.

### Section 12.02 Compliance with Laws

At all times, each Owner shall comply with all applicable federal, state, county, and municipal laws, ordinances, rules, and regulations with respect to the use, occupancy, and condition of the Townhome Lot and the improvements thereon. If any provision contained in this Townhome Declaration or any supplemental declaration or amendment is found to violate any law, then the provision shall be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by law.

### Section 12.03 Governing Law

The provisions in the Dedicatory Instruments shall be governed by and enforced in accordance with the laws of the State of Texas, and mandatory venue shall be in Tarrant County, Texas. Any and all obligations performable hereunder are to be performed in Tarrant County, Texas.

### Section 12.04 Fines for Violations

The Association may assess fines for violations of the Dedicatory Instruments or governing documents (as those terms are defined in the Texas Property Code, or any successor statute thereof), other than non-payment or delinquency in assessments, in amounts to be set by the Board, which fines shall be secured by the continuing Assessment lien set out in this Townhome Declaration.

### Section 12.05 Notices

Any notice required to be sent to any Owner under the provisions of this Townhome Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

### Section 12.06 Security

NEITHER THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, NOR THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN HENDERSON HILLSIDE. NEITHER SHALL THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR SUCCESSOR DECLARANT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND

OCCUPANTS OF ANY TOWNHOME LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY TOWNHOME LOT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, DECLARANT OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY TOWNHOME, OR OWNER OR USER OF AN IMPROVEMENT, AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO TOWNHOMES AND IMPROVEMENTS AND TO THE CONTENTS OF TOWNHOMES AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, 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, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN HENDERSON HILLSIDE.

#### **Section 12.07 Occupants Bound**

All provisions of the dedicatory instruments (as same is defined in the Texas Property Code) applicable to the Townhome Lots and Owners, shall also apply to all Occupants. Every Owner shall cause all Occupants to comply with the foregoing, and every Owner shall be responsible for all violations, losses, or damage caused by an Occupant, notwithstanding the fact that such Occupant is jointly and severally liable and may be sanctioned for any violation. In addition to all other remedies available to the Association in the event of a violation by an Occupant, the Association may require that the Occupant be removed from and not be allowed to return to Henderson Hillside and/or that any lease, agreement or permission given allowing the Occupant to be present be terminated.

#### **Section 12.08 Books and Records**

The books, records and papers of the Association shall, upon written request and by appointment, during normal business hours, be subject to inspection by any Member, pursuant to a Records Production and Copying Policy adopted by the Association.

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LIENHOLDER CONSENT AND SUBORDINATION

Wells Fargo Bank, a N A ~~state banking corporation~~, being the sole beneficiary of a mortgage lien and other liens, assignments and security interests encumbering all or a portion of the Subdivision hereby consents to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions for Henderson Hillside, 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 the Townhome 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 said Townhome Declaration. No warranties of title are hereby made by lienholder, lienholder's joinder herein being solely limited to such consent and subordination.

By: Kim Renee Funches  
Print Name: KIM Renee funches  
Print Title: Senior Vice President

STATE OF Texas §  
COUNTY OF Dallas §

BEFORE ME, the undersigned authority, on this day personally appeared Kim Renee Funches V.P. of Wells Fargo Bank, N.A., known by me to be the person whose name is subscribed to this instrument, and acknowledged to me that s/he executed the same for the purposes herein expressed and in his/her representative capacity.

GIVEN under my hand and seal of office, this 1<sup>st</sup> day of March, 2016.

Valerie Amolo  
Notary Public – State of Texas



