

**AFTER RECORDING RETURN TO:**

**Judd A. Austin, Jr., Esq.**

**20130815001157950 08/15/2013 02:00:51 PM AM 1/9**

**Henry Oddo Austin & Fletcher, P.C.**

**1700 Pacific Avenue**

**Suite 2700**

**Dallas, Texas 75201**

**FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR INDEPENDENCE ESTATES AND FOR THE COMMUNITY  
ASSOCIATION OF INDEPENDENCE ESTATES, INC.**

**STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §**

**KNOW ALL MEN BY THESE PRESENTS:**

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR INDEPENDENCE ESTATES AND FOR THE COMMUNITY ASSOCIATION OF INDEPENDENCE ESTATES (the "First Amendment") is made as of the date set forth below by First Texas Homes, Inc. ("Declarant")

**INTRODUCTORY PROVISIONS**

**WHEREAS**, the Declaration of Covenants, Conditions and Restrictions for Independence Estates and for the Independence Estates, Inc., was filed on August 17, 2012, and recorded as Instrument No. 2012-0817-001020270 in the Official Public Records of Collin County, Texas (the "Declaration"); and

**WHEREAS** the Declaration affects certain tracts or parcels of real property in the City of Frisco, Collin County, Texas, more particularly described on Exhibit A attached hereto and incorporated herein by reference for all purposes (the "Property"); and

**WHEREAS**, pursuant to Article IX, Section 9.13 of the Declaration, the Declarant reserves the right to amend the Declaration, without the consent or joinder of any party, so long as the Class B Membership status continue to remain in effect.

**WHEREAS**, the following amendments to the Declaration, as hereinafter set forth, are made by the Declarant while it retains Class B Membership status.

**NOW, THEREFORE**, the Declaration is hereby amended as follows:

(a) A new Section 5.02A is added to Article V of the Declaration to read, in its entirety, as follows:

**Section 5.02A. Reserve Fund.**

*A portion of the Annual Assessment will be used to establish and maintain a reserve fund, based on a reserve study, for the purpose of maintaining and, if directed by the City, removing any portion of the Common Areas.*

(b) Subsection (a) of Section 5.03 of Article V of the Declaration is amended to read, in its entirety, as follows:

**Section 5.03. Basis and Amount of Annual Assessments.**

*(a) The initial Annual Assessment for each Lot shall be established by the Board of Directors including a cost projection for the maintenance of the Common Areas based on eventual build-out of the Property. The initial Annual Assessment will not be based on calculations which include funds from the Declarant which will be unavailable upon the termination of the Class B Membership. Once the initial Annual Assessment has been established as provided above, the Board of Directors of the Association shall establish the Annual Assessment for each Lot provided that the Annual Assessment may not be increased more than twenty percent (20%) above the Annual Assessment for the previous year unless approved by the Members of the Association as provided in Section 4.05 of Article IV. The amount of the Annual Assessment will be disclosed to all Owners at the time of purchase of a Lot.*

(c) Section 9.03 of Article IX of the Declaration is amended to read, in its entirety, as follows:

**Section 9.03 Lot Landscape and Maintenance.**

*The Owner and occupant of each Lot shall establish grass front and sideyards, shall maintain the yards in a sanitary and attractive manner and shall edge the street curbs that run along the property line. The terms and conditions of this Declaration shall be deemed subordinate to the landscaping provisions of the City's Subdivision Ordinance, and shall not serve to penalize or restrict water conserving landscapes or require landscape materials that do not comply with the City's Subdivision Ordinance. Grass, weeds and vegetation on each Lot must be kept mowed at regular intervals so as to maintain the Lot in a neat and attractive manner. No vegetables shall be grown in any yard that faces a street. No Owner or occupant shall permit weeds or grass to grow to a height of greater than six inches (6") upon the Owner's Lot. No foundation planting, shrub or other vegetation near the house shall be allowed to grow above the bottom of any window. Upon an Owner's failure or the occupant's failure to maintain his or her Lot after the Association has sent the Owner a five (5) day written notice requesting the performance of such maintenance, the Declarant, the Declarant's assigns, the Association or its agents may, at their respective option, have the grass, weeds and vegetation cut on such Lot as often as is necessary, in their respective judgment, to bring the Lot to the standards required by the Declaration or any Architectural Standards Bulletin. The Declarant, the Association and its agents shall have the right to enter upon such Lot, and is hereby granted permission by the Owners(s) of such Lot, to perform the necessary maintenance work without liability for trespass, wrongful entry or any liability whatsoever to such Owner or occupant of such Lot or any person claiming by or through either of them. The Owner of such Lot shall be obligated, when presented with an itemized statement, to reimburse the Declarant or the Association for the cost of such work. The Declarant's or the Association's cost to perform such work shall be added to the Owner's assessment account as an Individual Special Assessment and shall be secured by the Assessment Lien provided for in Article V hereof.*

(d) **Section 9.09 of Article IX of the Declaration is amended to read, in its entirety, as follows:**

**Section 9.09    Enforcement.**

*Enforcement of these covenants and restrictions shall be by a proceeding initiated by a person or persons owning any Lot in the Property, or by the Association, when directed by the Board, against any person or persons violating or attempting to violate any covenant or restriction contained herein, either to restrain or enjoin violation or to recover damages for the violation or both or to enforce any lien created by this instrument. The Association, and each of its Board members, shall have an election and right, but not an obligation or duty, to enforce these covenants and restrictions by a proceeding or proceedings at law or in equity. The City shall have no obligation or responsibility whatsoever to enforce this Declaration. Failure by the Association or any party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Further, and with respect to any litigation brought against the Board, the Committee or any of its members or representatives arising out of any action, failure to act, or performance or non-performance of duties imposed hereby, such members or representatives so sued shall be entitled to recover their reasonable attorneys' fees from the person or entity bringing such action against it or them, unless the Board, the Committee or its members or representatives shall specifically be adjudicated liable to such claimant.*

(e) **Section 9.13 of Article IX of the Declaration is amended to read, in its entirety, as follows:**

**Section 9.13    Amendment.**

*Regardless of Section 9.06 of this Article, this Declaration may be amended and/or changed in part as follows:*

(a) *By Declarant until the Class B Membership ceases to exist; or*

- (b) *Upon the express written consent of at least 67% of the Owners of Lots subject to this Declaration but only after the Class B Membership has been terminated as provided herein.*

*Notwithstanding anything provision contained herein to the contrary, no amendment to any provision of this Declaration dealing with the maintenance of the Common Areas, or related to the reserve fund, may occur without prior written approval from the City. Any and all amendments shall be recorded in the Office of the County Clerk of Collin County, Texas.*

- (f) **A new Section 9.15 is added to Article IX of the Declaration to read, in its entirety, as follows:**

**Section 9.15. Release in Favor of the City of Frisco.**

*On behalf of the Association, the Owners, the Declarant, and each of their heirs, representatives, executors, administrators, devisees, personal representatives, successors or assigns, as the case may be, the City is hereby released from, and under no circumstances shall have any liability for, the maintenance of the Common Areas, the condition of the Common Areas, or any damages, injuries (including death), or other liability whatsoever resulting from the Common Areas.*

- (g) **A new Section 9.16 is added to Article IX of the Declaration to read, in its entirety, as follows:**

**Section 9.16. Rights of the City of Frisco.**

*With respect to any violation by the Association of Section 8.11 of the City's Subdivision Ordinance, as amended, the following rights and duties are afforded the City:*

- (a) *The City will notify the Association in writing of any violation of Section 8.11 of the City's Subdivision Ordinance and allow the Association a reasonable opportunity (no less than fourteen days) to cure the violation.*

- (b) *In the event the Association fails to bring the Property into compliance with Section 8.11 of the City's Subdivision Ordinance within the time-period prescribed by the City, the City has the option of revoking the specific approval of the Association or pursue the remedies provided in subsections (c) and (d) below.*
- (c) *The City is vested with all lien, assessment, and enforcement rights granted in this Declaration to the Association, and shall have the ability to enforce the liens, and assessments, and avail itself of any other enforcement actions available to the City pursuant to State law and/or City regulations.*
- (d) *Should the Association fail to carry out its duties as specified in Section 8.11 of the City's Subdivision Ordinance, the City shall have the right and ability, after due notice to the Association, to perform the duties required by Section 8.11 of the City's Subdivision Ordinance or any other City Ordinance, regulation or agreement with the City in order to bring the Association into compliance therewith. The City shall have the right and ability, after due notice to the Association, to assess the Association for the full amount owed and/or assess the Owners on a pro rata basis for all costs incurred by the City in performing said duties if the Association fails to do so. Said assessment shall constitute a lien, in favor of the City, upon the property for which the assessment is made.*

The terms and provisions of the Declaration, except as modified herein, are hereby declared to be in full force and effect with respect to the Property. The Property shall continue to be held, occupied, sold and conveyed subject to the terms and conditions of the Declaration and now this First Amendment, and are binding on all parties having any right, title or interest in and to the Property or any part thereof, including their heirs, representatives, successors, transferees and assigns, and shall inure to the benefit of each Owner thereof.

IN WITNESS WHEREOF, this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Independence Estates and for the Independence Estates, Inc. is made by First Texas Homes, Inc., as Declarant on this 8<sup>th</sup> day of August, 2013.

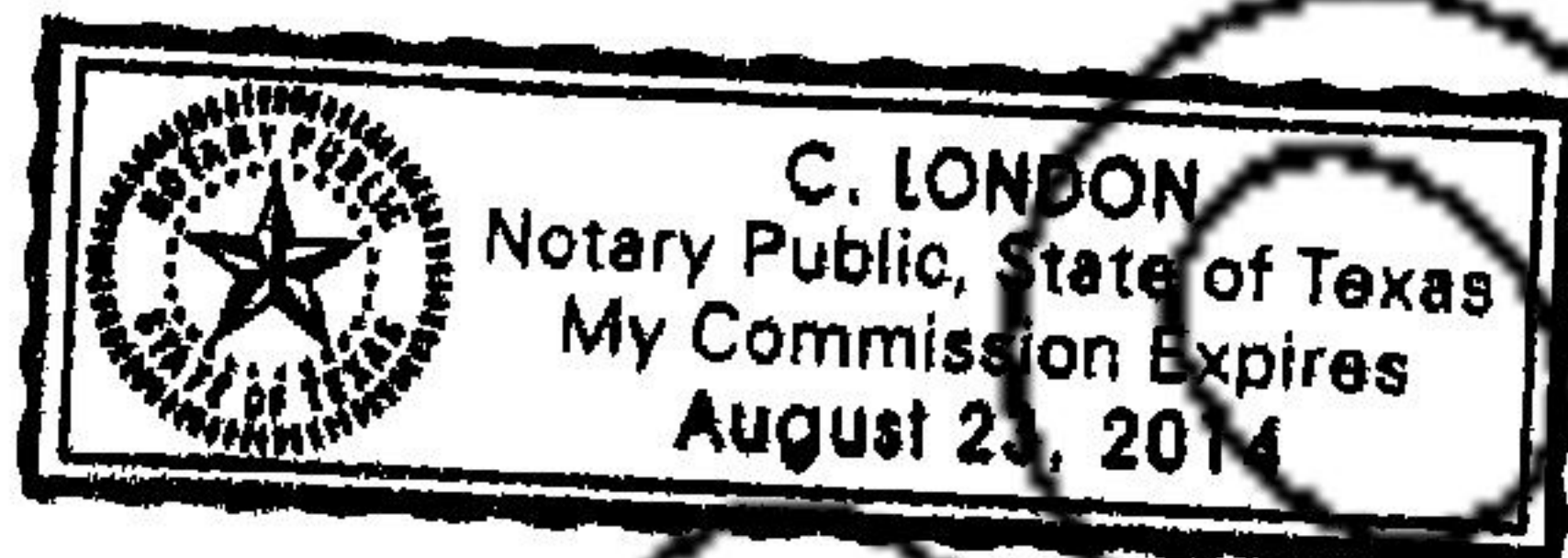
DECLARANT:

FIRST TEXAS HOMES, INC.

By: [Signature]  
Keith Hardesty,  
DFW Division President

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on this 8 day of August, 2013, by Keith Hardesty, DFW Division President of First Texas Homes, Inc.



[Signature]  
Notary Public, State of Texas

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

WHEREAS, FIRST TEXAS HOMES, INC. is the owner of a parcel of land located in the City of Frisco, Collin County, Texas, a part of the Andrew S. Young Survey, Abstract No. 1037, and being all of a called 19.127 acre tract of land described in a special warranty deed to First Texas Homes, Inc. as recorded in Document Number 20120209000149590, Collin County Deed Records, and being all of a called 5.000 acre tract of land described in a special warranty deed to First Texas Homes, Inc. as recorded in Document Number 20120508000536660, Collin County Deed Records, and being further described as follows:

BEGINNING at a one-half inch iron set at the southwest corner of said 19.127 acre tract of land, said point being in the east right-of-way line of Independence Parkway (a variable width right-of-way), said point being in the north line of Datta Yoga Center Addition, an addition to the City of Frisco as recorded in Volume 2009, Page 334, Collin County Deed Records;

THENCE North 00 degrees 42 minutes 21 seconds West, 660.00 feet along the east right-of-way line of Independence Parkway to a one-half inch iron rod found at the northwest corner of said 19.127 acre tract of land;

THENCE North 89 degrees 15 minutes 03 seconds East, 601.65 feet along the north line of said 19.127 acre tract of land to a one-half inch iron rod found at the southwest corner of said 5.000 acre tract of land;

THENCE North 00 degrees 44 minutes 57 seconds West, 330.00 feet to a one-half inch iron rod found at the northwest corner of said 5.000 acre tract of land, said point being in the south line of Lot 11, Block M, Eagle's Nest at Westridge, Phase 4, an addition to the City of McKinney as recorded in Cabinet P, Page 682, Collin County Map Records;

THENCE North 89 degrees 15 minutes 03 seconds East, 659.84 feet along the south line of said Eagle's Nest at Westridge, Phase 4 Addition to a one-half inch iron rod found at the northeast corner of said 5.000 acre tract of land, said point being the northwest corner of Lot 23, Block G, Stonelake Estates, Phase II, an addition to the City of Frisco as recorded in Volume 2008, Page 235, Collin County Map Records;

THENCE South 00 degrees 48 minutes 18 seconds East, 990.00 feet along the west line of said Stonelake Estates, Phase II Addition to a one-half inch iron rod found at the southeast corner of said 19.127 acre tract of land, said point being in the west line of Lot 10, Block G of said Stonelake Estates West Phase II Addition, said point being the northeast corner of said Datta Yoga Center Addition;

THENCE South 89 degrees 15 minutes 03 seconds West, 1262.95 feet along the north line of said Datta Yoga Center Addition to the POINT OF BEGINNING and containing 1,050,972 square feet or 24.127 acres of land.

Unofficial



Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
08/15/2013 02:00:51 PM  
\$48.00 DFOSTER  
20130815001157950

*Stacey Kemp*