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**SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
SIENNA TOWNHOMES**

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**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS  
FOR  
SIENNA TOWNHOMES**

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SIENNA TOWNHOMES (the "**Townhome Declaration**") is made on the date hereinafter set forth by CHESMAR HOMES, LLC, a Texas limited liability company, (hereinafter sometimes called "**Declarant**" or "**Townhome Declarant**");

WITNESSETH:

WHEREAS, Townhome Declarant is the owner of the real property described in Article II, Section 1, of this Townhome Declaration; and

WHEREAS, the real property described in detail on Exhibit "A" attached hereto (the "**Townhome Property**") is also subject to the Sienna Plantation Amended and Restated Master Covenant, which is recorded under Clerk's File No. 2019035843 in the Official Public Records of Fort Bend County, Texas, as same has or may be amended from time to time (collectively referred to herein as the "**Master Sienna Covenants**"); and

WHEREAS, the real property described in detail on Exhibit "A" attached hereto is also subject to that certain Sienna Plantation Amended and Restated Development Area Declaration [Residential], which is recorded under Clerk's File No. 2019036022 in the Official Public Records of Fort Bend County, Texas, as same has or may be amended from time to time (the "**Development Area Declaration**");

WHEREAS, the real property described in detail on Exhibit "A" attached hereto is also subject to all applicable governing Documents, (as defined in the Master Sienna Covenants);

WHEREAS, Townhome Declarant desires to subject the real property described in Article II, Section 1, hereof to the provisions of this Townhome Declaration to create a residential community of attached single family housing; and

WHEREAS, Townhome Declarant reserves the option, subject to the provisions hereinafter, to subject one or more additional parcels of real property to the provisions of this Townhome Declaration, which additional parcels would also be developed as communities of attached single family residential housing, by annexing such parcels into the Townhome Association and subject to the terms of this Townhome Declaration, subsequent to the date hereof; and

WHEREAS, TOLL-GTIS PROPERTY OWNER, LLC is the "Declarant" under the Master Sienna Covenants and Development Area Declaration (the "**Master Declarant**") and as such hereby joins in this Townhome Declaration to subject all of such real property described on Exhibit "A" to the provisions of this Townhome Declaration.

NOW, THEREFORE, Townhome Declarant hereby declares, and joined by Master Declarant, that the real property described in Article II, Section 1, of this Townhome Declaration, including the improvements constructed or to be constructed thereon, and any other real property annexed herein (subject to the annexation provision set forth in this Townhome Declaration) subsequent to the date hereof 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 are for the purpose of protecting the value and desirability of, and 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 Community is the creation of the Townhome Association, an association comprised of all Owners in the Community to administer and enforce the governing documents of such Townhome Association (all such capitalized terms are defined hereinafter).

ARTICLE I.  
Definitions

Unless the context shall prohibit, certain words used in this Townhome Declaration shall have the definitional meaning set forth below:

(a) "**Community**" shall mean and refer to that certain real property and interests therein described in Exhibit "A", attached hereto, commonly known as the Sienna Townhomes, and any and all real property and interests therein added to the Community subsequent to the date hereof by annexation pursuant to Article XI. If other real property is annexed and added to the Community, such other real property may have a different "marketing name" than Sienna Townhomes, but notwithstanding any marketing name, all such real property shall be a part of the Community.

(b) "**Community-Wide Standard**" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Townhome Board of the Townhome Association.

(c) "**Majority**" means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

(d) "**Master Development Period**" shall mean and refer to the "Development Period" set forth in the Master Sienna Covenants, as the same may be amended from time to time.

(e) "**Master Sienna Association**" shall mean and refer to the Sienna Plantation Community Association, Inc., including its successors, assigns or replacements, which is the community association created pursuant to the Master Sienna Covenants and which has jurisdiction over the Community.

(f) "**Master Sienna Board**" shall mean the Board of Directors of the Master Sienna Association.

(g) "**Master Sienna Covenants**" shall mean and refer to the Sienna Plantation Amended and Restated Master Covenant, which is recorded under Clerk's File No. 2019035843 in the Official Public Records of Fort Bend County, Texas, as same has or may be amended from time to time (collectively referred to herein as the "Master Sienna Covenants"), which Master Sienna Covenants encumber the Community.

(h) "**Mortgage**" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(i) "**Mortgagee**" shall mean the holder of a Mortgage.

(j) "**Person**" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(k) "**Sienna Plantation Reviewer**" shall have the meaning set forth in the Master Sienna Covenants.

(l) "**Townhome Rules**" means such rules and regulations, use restrictions and architectural guidelines promulgated from time to time by the Townhome Declarant, the Townhome Board, Master Declarant and/or the Master Sienna Board, which are applicable to the Townhomes and Common Property.

(m) "**Townhome**" means and refers to the improvements constituting a single family residential dwelling constructed on a fee-simple Townhome Lot; such dwelling shall have one (1) or two (2) internal party walls as referenced herein in Article V, Section 3, with one or two immediately adjoining Townhomes. Unless otherwise indicated by context, "Townhome" shall include the Townhome Lot the Townhome is located on. Each Townhome shall be constructed in accordance with all building design guidelines promulgated hereunder or under the Master Sienna Covenants and governing Documents; provided, however, in the event of a conflict between building design guidelines promulgated hereunder or under the governing Documents (as defined by the Master Sienna Covenants) as to initial construction, the building design guidelines promulgated in the governing Documents shall control.

(n) "**Townhome Association**" shall mean and refer to the Sienna Townhome Association, Inc., a nonprofit Texas corporation, its successors and assigns.

(o) "**Townhome Board**" shall mean and refer to the Board of Directors of the Townhome Association.

(p) "**Townhome By-Laws**" shall refer to the By-Laws of the Townhome Association.

(q) **"Townhome Declarant"** shall mean and refer to Chesmar Homes, LLC, a Texas limited liability company, and the successors-in-title and assigns of Chesmar Homes, LLC, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "A", attached hereto (or subsequently annexed herein and made a part hereof), and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former "Declarant" in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A", attached hereto, (and subsequently annexed hereto and made a part hereof) which is hereafter subjected to this Townhome Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time. Notwithstanding anything contained in this Townhome Declaration to contrary, any assignment of the rights of Townhome Declarant contemplated herein must first be approved in advance and in writing by the Master Declarant.

(r) **"Townhome Lot"** means a parcel of real property in the Community as defined by the recorded plat and/or any replat, which plat has been or will be recorded in the Map Records of Fort Bend County, Texas, and which Townhome Lots are contained within the Community described in detail on the attached Exhibit "A" and are encumbered by this Townhome Declaration and the Master Sienna Covenants. Each such Townhome Lot will be subject to the rights and duties of membership in the Townhome Association and the Master Sienna Association. There shall be an annual assessment due for each Townhome Lot owned as defined by the then plat of record as such annual assessment is set forth herein, as well as assessments and fees due under the Master Sienna Covenants. All references to a Townhome Lot herein or in the Master Sienna Covenants shall also be deemed to include references to the Townhome (as defined below) constructed on the Townhome Lot unless otherwise specified in the reference. It is planned that there may initially be ninety-four (94) Townhome Lots that are created and made subject to this Townhome Declaration, subject to additional Townhome Lots added by annexation.

(s) **"Owner"** shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Townhome Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

## ARTICLE II.

### Property Subject to This Townhome Declaration

Property Hereby Subjected to This Townhome Declaration. The real property which is, by the recording of this Townhome Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Townhome Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Townhome Declaration, the Master Sienna Covenants and all applicable

governing Documents (as defined in the Master Sienna Covenants) is the real property described in Exhibit "A", attached hereto and by reference made a part hereof, and any additional real property annexed into the Townhome Association and made subject to the terms of this Townhome Declaration.

### ARTICLE III.

#### Townhome Association Membership and Voting Rights

Section 1. Membership. The Townhome Declarant, and every person who is the record owner of a fee or undivided fee interest in any Townhome Lot that is subject to this Townhome Declaration shall be deemed to have a membership in the Townhome Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Townhome or Townhome Lot. In the event of multiple Owners of a Townhome or Townhome Lot, votes and rights of use and enjoyment shall be as provided in this Townhome Declaration and in the Townhome By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Townhome or Townhome Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member but in no event shall more than one (1) vote be cast for each Townhome or Townhome Lot owned, except that a director may hold more than one office as long as the offices of president and secretary are held by different persons. No member shall be entitled to exercise any right or privilege of membership, other than voting or running for election to the Townhome Board, if such member is delinquent with respect to any assessments due hereunder, unless such suspension of any right or privilege is prohibited by law.

Section 2. Voting. The Townhome Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" members shall be all Owners, with the exception of the Townhome Declarant. Class "A" members shall be entitled to one (1) vote for each Townhome or Townhome Lot owned, regardless of where such Townhome or Townhome Lot is located. When more than one Person holds an ownership interest in any Townhome or Townhome Lot, the vote for such Townhome or Townhome Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Townhome's or Townhome Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

(b) Class "B". The Class "B" member shall be the Townhome Declarant. The Class "B" member shall be entitled to five (5) votes for each Townhome or Townhome Lot owned by Declarant during the period of time that the Class "B" membership exists, which shall be deemed to be a "Development Period" as that term is used in the Texas Property Code. The Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following:



- (i) when 100% of the Townhomes or Townhome Lots have been sold to and occupied by Class "A" members;
- (ii) October 1, 2039; or
- (iii) when, in its discretion, the Townhome Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class "B" member shall be deemed to be a Class "A" member entitled to one (1) vote for each Townhome or Townhome Lot it owns.

Notwithstanding anything to the contrary above, on or before the 120<sup>th</sup> day after 75% of the Townhomes that may be made subject to this Townhome Declaration are conveyed to Owners that are not Townhome Declarant or a builder in the business of constructing and selling completed townhomes, at least one-third of the members of the Townhome Board must be elected by Owners other than Townhome Declarant.

(c) At such time that additional property is annexed into the Townhome Association, the Class B Membership of the Townhome Declarant, shall, if it had previously ceased due to one of the conditions listed above in (i), (ii) or (iii) be reinstated and shall apply to all Townhome Lots owned by Townhome Declarant in the newly annexed portion of the Community, as well as to all Townhome Lots owned by Townhome Declarant in all other areas of the Community. Such reinstatement is subject to further cessation in accordance with the limitation set forth in the preceding paragraphs (i), (ii) and (iii) of this Article, whichever occurs first. However, upon reinstatement due to annexation of additional property into the Community, the period of time set forth in the preceding paragraph (ii) of this Article shall be extended to the extent necessary such that in all circumstances it extends for a period no shorter than ten (10) years from the date of each such recorded annexation (i.e. Supplemental Declaration).

Section 3. Management. The Townhome Association shall be incorporated as a nonprofit corporation. The Townhome Association shall be managed by the Townhome Board pursuant to the procedures set forth in the Townhome Certificate of Formation and By-laws of the Townhome Association, subject to this Townhome Declaration.

Section 4. Duties and Powers of the Townhome Board. Through the Townhome Board, the Townhome Association shall have the following powers and duties:

(a) To adopt Townhome Rules and other regulations to implement this Townhome Declaration and the Townhome By-Laws, so long as such rules and regulations are consistent with the rights and duties established by this Townhome Declaration and in no event conflict with the Master Sienna Covenants, Development Area Declaration or rules adopted by the Master Sienna Association.

(b) To enforce this Townhome Declaration, the Townhome By-Laws, its Townhome Rules and other regulations.

(c) Unless otherwise prohibited by law, to declare the office of a member of the Townhome Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Townhome Board without good cause, as set forth in the Townhome By-Laws.

(d) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

(e) Delegate responsibility to, and contract with, a manager or a management company, for collection of the assessments and enforcement of this Townhome Declaration, the Townhome By-Laws and the Townhome Rules of the Townhome Association.

(f) Delegate responsibility to, and contract with, a manager or a management company for the operation, management and maintenance of the Common Property and the Townhome Association from time to time, if the Townhome Board so elects.

(g) Delegate responsibility to, and contract with, a manager or a management company for whatever maintenance and other obligations, if any, that the Townhome Association from time to time undertakes.

(h) To enter into such contracts and agreements concerning the Townhome Property as the Townhome Board deems reasonably necessary or appropriate to maintain and operate the Townhome Property in accordance with the Townhome Declaration, and to assume any contracts and agreements concerning the Townhome Property entered into by the Townhome Declarant, including without limitation, the right to enter into agreements with adjoining or nearby landowners or governmental entities on matters of maintenance, trash pick-up, repair, administration, security, traffic, streets or other matters of mutual interest.

(i) To take any and all actions, and to cause to be taken any and all actions which are the responsibility of the Townhome Association and the Townhome Board pursuant to this Townhome Declaration and the Townhome By-Laws, including but not limited to duties relating to electing Directors, creating budgets, delegating power, establishing and collecting assessments, the enforcement of all of the obligations of the Owners, to receive complaints and make determinations about violations of this Townhome Declaration, the Townhome By-Laws, the Townhome Rules and regulations, the holding of annual and special meetings, the management and maintenance of Common Property, the performance of all maintenance obligations of the Townhome Association hereunder and the payment of all costs and expenses to be paid by the Townhome Association hereunder.

(j) To suspend the exercise of any right or privilege of membership (other than voting or running for election to the Townhome Board) if the Owner is delinquent in the payment of any assessment or in violation of any provision of the Townhome Declaration.

(k) Notwithstanding anything to the contrary above, the Townhome Association shall not have the authority or power to institute, defend, intervene in, settle or

compromise any legal action on behalf of any or all of the Owners which is based on any alleged defect in any Townhome or the Common Property. All Owners acknowledge and agree that the Townhome Association shall not be entitled to institute, defend, intervene in, settle or compromise any legal action on behalf of any or all of the Owners which is based on any alleged defect in any Townhome or the Common Property, or any damages allegedly sustained by any Owner by reason thereof, but rather, all such actions shall be instituted, intervened in, settled or compromised by the Person(s) owning such Townhome or served by such Common Property or allegedly sustaining such damage. Notwithstanding anything to the contrary in Article XII, Section 4 hereof, any proposed amendment to this Article III, Section 4 (k) shall be adopted only upon an affirmative vote of Members holding 100% of the total votes of the Townhome Association and the affirmative vote of the Townhome Declarant during the Master Development Period.

Section 5. Litigation. Except as provided below, the Townhome Association shall not commence any judicial or administrative proceeding without the approval of 67% of the total eligible Townhome Association votes. This Section shall not apply, however, to (a) actions brought by the Townhome Association to enforce the provisions of this Townhome Declaration and/or the Townhome Rules (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article IV; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Townhome Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XII, Section 17, if applicable. This provision does not apply to any judicial or administrative proceeding that may be brought by the Master Sienna Association.

#### ARTICLE IV. Assessments

Section 1. Purpose of Assessments. The assessments provided for herein shall be used for the general purpose of promoting the recreation, common benefit, and enjoyment of all of the Owners and occupants of Townhomes, including but not limited to the maintenance of real and personal property, management fees and other operating expenses of the Townhome Association, all as may be more specifically authorized from time to time by the Townhome Board. The judgment of the Townhome Board as to expenditures of assessments shall be final and conclusive so long as its judgment is exercised in good faith.

Owners are hereby advised that assessments and certain fees on each Townhome Lot are due to the Master Sienna Association pursuant to the Master Sienna Covenants, which assessments and fees are distinct from, and are in addition to, the assessments levied hereunder. The Master Sienna Association shall collect the assessments and fees pursuant to the Master Sienna Covenants.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Townhome or Townhome Lot, by acceptance of a deed therefore, whether or not it shall

be so expressed in such deed, covenants and agrees to pay to the Townhome Association: (a) annual assessments or charges or fees assessed against said Townhome or Townhome Lot; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Townhome or Townhome Lot which are established pursuant to the terms of this Townhome Declaration, including, but not limited to, reimbursement assessments and reasonable fines as may be imposed in accordance with the terms of this Townhome Declaration. All such assessments, charges, fees, together with late charges, fines, interest, not to exceed the maximum legal rate, costs and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing vendor's lien upon the Townhome or Townhome Lot against which each assessment is made for the benefit of Declarant and/or the Townhome Association and the owner of each Townhome or Townhome Lot hereby covenants and agrees to grant and does hereby grant to an officer of the Townhome Association as Trustee for the Townhome Declarant and/or the Townhome Association, the continuing vendor's lien and power of sale on each Townhome or Townhome Lot to secure all such sums set forth herein. Declarant and/or the Townhome Association, shall have the right to appoint one or more successor or substitute trustees to act instead of the Trustee named herein without other formality than the recordation in the Official Public Records Real Property of Fort Bend County, Texas of a written designation of such trustee. Such substitute or successor trustee shall have all authority hereby conferred on the Trustee herein named. Each such assessment, charge and/or fee, together with late charges, fines, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Townhome or Townhome Lot at the time the assessment, charge or fee fell due. Each Owner shall be personally liable for each assessment coming due while he or she is the Owner of a Townhome or Townhome Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

Assessments shall be paid at a uniform rate per Townhome or Townhome Lot, regardless of where such Townhome or Townhome Lot is located, in such manner and on such dates as may be fixed by the Townhome Board, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessments which are delinquent. Unless otherwise provided by the Townhome Board, the assessments shall be paid in monthly installments.

Common Property shall be exempt from assessments.

Section 3. Computation. It shall be the duty of the Townhome Board to prepare a budget covering the estimated costs of operating the Townhome Association during the coming year which may provide for an increase over the previous year's budget and which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. Such budget may also take into account annexations which the Townhome Board reasonably believes may occur in the coming year, if any. The Townhome Board shall cause the budget and the assessments to be levied against each Townhome or Townhome Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. Notwithstanding the foregoing, however, in the event the Townhome Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall

have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4A. Special Assessments. Capitalization Fee. In addition to the other assessments authorized herein, the Townhome Association may levy special assessments in any year for the purpose of defraying in whole or part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement or such other addition to the Common Property, and/or for the operation of the Common Property. So long as the total amount of special assessments allocable to each Townhome or Townhome Lot does not exceed one-fourth of the annual assessment in any one fiscal year, the Townhome Board may impose the special assessment without the prior approval or consent of the membership. Any special assessment which would cause the amount of special assessments allocable to any Townhome or Townhome Lot to exceed this limitation shall be effective only if approved by two-thirds (2/3) of the Class "A" members present in person or by proxy at a meeting of the members called for this purpose. Special assessments shall be paid as determined by the Townhome Board, and the Townhome Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. In addition, a proper purpose of a special assessment hereunder shall be any other purpose which is determined by the Townhome Board to be in the best interests of the Townhome Association. Special assessments are also authorized and shall be appropriate after a "named storm", such as a tropical depression or hurricane, and/or tornado or windstorm event or flooding related to such a named storm. In the event of damage from or related to a named storm, tornado, windstorm event and/or flooding, the insurance coverage of the Townhome Association may not be sufficient to cover all of the damage(s); such deficiency to include, but not necessarily be limited to, the amount of the deductible(s) on such coverage. In such event the Townhome Association shall be authorized to levy a special assessment against all of the Townhomes or Townhome Lots for the amounts needed, which shall be levied against all Townhomes or Townhome Lots equally, regardless of where in the Community the damages shall be located. Special assessments are also authorized and shall be appropriate to pay any invoice from the Master Sienna Association, if the Master Sienna Association determines that the Townhome Association has failed to perform its obligations under this Townhome Declaration, the Master Sienna Association has given written notice to the Townhome Association of such failure and the failure has not been cured within thirty (30) days (or longer if a longer cure period is needed to perform the obligation), and the Master Sienna Association has performed the obligations that the Townhome Association has failed to perform. In such instance, the Master Sienna Association shall be entitled to bill the Townhome Association for its cost in performing such obligations. Special assessments for a "named storm" and/or to pay an invoice from the Master Sienna Association as set forth above shall not need the approval of the Class A members to exceed the limitation above.

Each Owner of a Townhome other than Declarant (whether one or more Persons and regardless of whether such Owner holds the fee interest singly or jointly), at the time it purchases a Townhome from the previous owner (i.e. at every sale beginning with the first Owner to purchase a Townhome from Declarant), shall be obligated to pay a capitalization fee in the amount of 1/2 of the then annual assessment rate, which funds shall be deposited all into reserves of the Townhome Association and used for reserve purposes, as the Townhome Board shall determine in its sole discretion. This amount may be changed prospectively by Board action, but

not retroactively, if the Townhome Board determines it to be in the best interest of the Townhome Association.

Section 4B. Reimbursement Assessments. The Townhome Board, subject to the provisions hereof, may levy a reimbursement assessment against any Owner (or Townhome or Townhome Lot) if the failure of the Owner (or Townhome or Townhome Lot), or of the Owner's family, guests or tenants to comply with this Townhome Declaration, the Townhome By-laws, or any Townhome Rules applicable to such Owner and/or Townhome or Townhome Lot shall have resulted in the expenditure of funds or the determination that funds will be expended by the Townhome Association to cause such compliance. The amount of such reimbursement assessment shall be due and payable to the Townhome Association ten (10) days after notice to the Owner (or Townhome or Townhome Lot) of the decision of the Townhome Board that such reimbursement assessment is owing. Any fines assessed for non-compliance will also be deemed to be reimbursement assessments, to be collected as such.

Section 5. Lien for Assessments. All sums assessed against any Townhome or Townhome Lot pursuant to this Townhome Declaration, together with late charges, fines, interest, costs and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a continuing vendor's lien on such Townhome or Townhome Lot in favor of the Townhome Association. Such continuing vendor's lien shall be superior to all other liens and encumbrances on such Townhome or Townhome Lot, except for (a) liens of ad valorem taxes; (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Official Public Records of Real Property of Fort Bend County, Texas, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument; or (c) liens for assessments, fees and charges pursuant to the Master Sienna Covenants and governing Townhome Documents.

All other persons acquiring liens or encumbrances on any Townhome or Townhome Lot after this Townhome Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Townhome Association. Any assessments which are not paid when due shall be delinquent. Any assessment, charge or fee delinquent for a period of more than ten (10) days may, at the Townhome Board's sole discretion, incur a late charge in the amount of \$25.00, which amount may be amended as the Townhome Board may from time to time determine. The Townhome Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment, charge and/or fee is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest (not to exceed the lesser of eighteen percent (18%) per annum or the maximum legal rate) shall accrue on the principal amount due, from the date first due and payable and all costs of collection including but not limited to reasonable attorney's fees. In the event that the assessment, charge and/or fee remains unpaid after sixty (60) days, the Townhome Association may, as the Townhome Board shall determine, institute suit to collect such amount

and/or take action to foreclose its lien, either by action for judicial foreclosure in the manner prescribed by law or by sale of real property under contract lien pursuant to Section 51.002 of the Texas Property Code by directing the Trustee to foreclose the lien by public sale conducted in accordance with the notice, posting and other requirements of Section 51.002 of the Texas Property Code (and any successor statute) after compliance with any and all prerequisites required by law, including but not limited to those in Sections 209.0091 and 209.0092 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Townhome Association a power of sale in connection therewith. In the event that the Townhome Association has determined to non-judicially foreclose its lien pursuant to Section 51.002 of the Texas Property Code (and any successor statute) the lien provided herein and to exercise the power of sale hereby granted the Townhome Association shall comply with all notice and procedural requirements of Sections 209.0091 and 209.0092 of the Texas Property Code (and any successor statute) and the Townhome Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Townhome Association. If required by law, the Townhome Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Fort Bend County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Townhome Association in connection with such default, including reasonable attorney's fees and reasonable trustee's fees; second from such proceeds there shall be paid late charges, fines and interest (in that order); third from such proceeds there shall be paid to the Townhome Association an amount equal to the amount in default; fourth, from such proceeds there shall be paid any lienholders which hold liens against the Townhome or Townhome Lot which are inferior to the Townhome Association's lien; and fifth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Townhome or 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 and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

It is the intent of the provisions of this Article IV, Section 6 to comply with the provisions of Section 51.002 of the Texas Property Code and all other Sections of the Texas Property Code relating to non-judicial sales by power of sale by an owner's association, and, in the event of the amendment of said Section 51.002 of the Texas Property Code or any other Section of the Texas Property Code related to non-judicial foreclosures by an owner's association hereafter, the President or Vice President of the Townhome Association, acting without joinder of any Owner or Mortgagee or other person may, by amendment to this Townhome Declaration filed in the Real Property Records of Fort Bend County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code and all other Sections of the Texas Property Code.

Each Owner, by acceptance of a deed to a Townhome or Townhome Lot or as a party to any other type of a conveyance of a Townhome or Townhome Lot, vests in the Townhome Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner

as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Townhome Association and shall be for the benefit of all other Owners. The Townhome Association, acting on behalf of the Owners, shall have the power to bid on the Townhome or Townhome Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Townhome or Townhome Lot.

If required by law, all payments shall be applied in the following order of priority: 1) any delinquent assessments, 2) any current assessments, 3) any attorney's fees or third party collection costs incurred by the Townhome Association associated solely with assessments or any other charge that could provide the basis for foreclosure, 4) any attorney's fees incurred by the Townhome Association that are not subject to 3) above, any fines assessed by the Townhome Association; and 5) any other amounts owed to the Townhome Association. If the order of priority stated above is not required by law, all payments shall be applied in such order and in such manner as directed by the Townhome Board, in its sole discretion, and absent direction from the Townhome Board, payments shall be applied first to costs and attorney's fees, then to late charges, to fines, then interest and then to delinquent assessments, unless required by law to be applied in a different fashion. In addition to all other remedies of the Townhome Association set forth herein, in the event any member is delinquent in the payment of any assessments due pursuant to this Townhome Declaration, or shall otherwise be in default hereunder, then such member shall not be entitled to exercise the rights and privileges of membership, other than any right or privilege which may not be suspended by law, and the Townhome Association shall have the right to suspend the right of such member (and his or her guests or tenant(s) or other occupants of a Townhome or Townhome Lot) from using the Common Property, until such delinquency is cured. The election by the Townhome Association to exercise any of its remedies herein permitted shall not be construed to constitute an election to waive the right to exercise any other remedy available. The Townhome Association is hereby authorized by all Owners to use any and all of such remedies as often as may be required to collect payment of all sums secured by the lien hereunder.

Section 7. Date of Commencement of Annual Assessments. The annual assessments procedure provided for herein shall commence on the first day of the month following the conveyance of the first Townhome or Townhome Lot by the Townhome Declarant to a Class "A" member and shall be due and payable in a manner and on a schedule as the Townhome Board may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any specific Townhome or Townhome Lot becomes subject to assessment hereunder shall be the date on which the Townhome or Townhome Lot is conveyed by Declarant to a Class "A" member.

Section 8. Declarant Obligations.

(a) So long as the Townhome Declarant owns any Townhomes or Townhome Lots, even though Townhomes or Townhome Lots owned by Declarant are not subject to annual assessments, the Townhome Declarant shall have three (3) options with respect to funding the Townhome Association, which may be exercised singly or in combination: (1) the Townhome



Declarant may annually elect either to pay annual assessments on the Townhomes or Townhome Lots it owns or (2) the Townhome Declarant may elect to pay to the Townhome Association the difference between the amount of assessments and other income collected on all other Townhomes or Townhome Lots subject to assessment and the amount of expenditures required to operate the Townhome Association during the fiscal year, or (3) Declarant may require the Townhome Board (whether the Townhome Board is the same as Declarant, his agents, servants, or employees and without being liable for any claim made by any member of the Townhome Association that the Townhome Board's fiduciary duty to the other members of the Townhome Association has been breached due to a conflict of interest) to execute promissory notes and/or other instruments evidencing any debt the Townhome Association owes the Townhome Declarant for monies expended by the Townhome Declarant or loaned to the Townhome Association by Declarant for and on behalf of the Townhome Association for obligations of the Townhome Association; provided, however, such promissory notes shall not be secured by a lien on any of the Common Property conveyed by Declarant to the Townhome Association.

The Townhome Declarant shall be given preliminary budget numbers for the next fiscal year no later than October 30th of each year, so that it may evaluate its decisions under this paragraph. Upon Declarant's sale of all Townhomes or Townhome Lots owned by it, Declarant shall have no further obligation to pay assessments to, or fund any deficits of, or make any contributions to, the Townhome Association.

The Townhome Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the common expenses.

So long as the Townhome Declarant owns any Townhomes or Townhome Lots, the Townhome Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting assessment rate for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant above); provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the common expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Townhome Declarant to continue payment of such subsidy in future years.

(b) Notwithstanding anything to the contrary herein, the Townhome Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money, (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Townhome Declarant and the Townhome Association agree as to the value of any contribution, the value shall be as agreed. If the Townhome Association and the Townhome Declarant cannot agree as to the value of any contribution, the Townhome Declarant shall supply the Townhome Association with a detailed explanation of the service performed and material furnished, and the Townhome Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Townhome Declarant who are in the business of providing such services and materials. If the Townhome Association and the Townhome

Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

(c) The Master Declarant shall not be obligated to pay any type of assessment set forth in this Townhome Declaration, including, but not limited to, annual assessments, special assessments, specific assessments and capitalization fees, nor shall it have any obligation to subsidize the costs or expenses of the Townhome Association.

Section 9. Assessment Certificate and Transfer Fee. Upon written request by an Owner, the Townhome Association shall within a reasonable period of time, issue to an Owner a written certificate stating that all assessments (including interest and costs), have been paid with respect to any specified Townhome or Townhome Lot, and if all assessments and charges have not been paid, setting forth the amount of such assessments and charges (including interest and costs, if any) due and payable as of the date of the certificate. The Townhome Association and/or its managing agent may make a reasonable charge for the issuance of such certificate; however, there shall be no charge to the Townhome Declarant for any such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Townhome Association and any bona fide purchaser or lender on the Townhome or Townhome Lot specified in such certificate. The Townhome Association and/or its managing agent shall have the right to charge any Owner selling or otherwise transferring title to a Townhome or Townhome Lot, a fee which is reasonable compensation, in the opinion of the Townhome Board, for the costs incurred by the Townhome Association and/or its managing agent in changing its records to reflect the transfer of ownership; however, there shall be no charge to the Townhome Declarant when the Townhome Declarant sells a Townhome or Townhome Lot.

## ARTICLE V. Maintenance

### Section 1. Association's Responsibility.

(a) Sidewalks. Public Parking. All Townhome Lots on which the Townhomes are located shall have sidewalks and such sidewalks shall include handicap ramps as required. It is further required that that sidewalks and ramps must conform to all Fort Bend County codes and/or City of Missouri City specifications. The installation of sidewalks shall be the responsibility of the Townhome Declarant but after initial installation the Townhome Association shall maintain the sidewalks. If allowed by the City of Missouri City, any parking spaces for the general public will be maintained by the Townhome Association.

(b) Maintenance on Townhomes. The Townhome Association shall maintain, repair and replace the roofs and the exterior building surfaces of the Townhomes so as to maintain, within the budgetary constraints of the Townhome Association, uniformity of appearance as to all the Townhomes. The scope of such maintenance, repair and replacement obligations shall always be subject to the budgetary constraints of the Townhome Association and shall generally be as follows:

(i) *Roofing and Roof systems:* repair, maintenance, and/or replacement of the roofs within the reasonable discretion of the Townhome Association, acting by and through its Townhome Board. 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 Townhome Association shall not have any responsibility to maintain, repair, or replace any trusses, beams or any portion of the structure supporting the roof. If any of such items which are the responsibility of the Owner require repair or replacement, and the Owners(s) of the Townhome fails or refuses to repair or replace same, the Townhome Association shall have the right, but not the obligation to do so and 110% of the cost of such repair and/or replacement plus an administrative fee of \$50.00 shall be billed against the respective Townhome(s) for which work is performed, such bill to be due upon receipt and if not timely paid, such bill shall be assessed as a reimbursement assessment against such Townhome(s), which reimbursement assessment shall be secured by a lien against such Townhome(s) as herein provided. The Townhome Association, its Townhome Board, officers or agents shall not be responsible or liable to any Owner (or the Owner’s tenant or other occupant) for any damage to the interior of the Townhomes or contents thereof (including the attic space) resulting from roof leaks or water penetration unless same has resulted from the willful acts or gross negligence of the Townhome Association. In no event shall the Townhome Association be liable for repair or replacement of any consequential or incidental damage to the interior of the Townhome(s) which may result, whether foreseen or unforeseen, from the Townhome Association’s repairs and/or activities.

(ii) *Exterior building surfaces:* repair, maintenance and/or replacement of the exterior building surfaces within the reasonable discretion of the Townhome Association, acting by and through its Townhome Board. Exterior building surfaces shall be deemed to be the building components which constitute the most outward portion of the building exterior, whether wood or Hardiplank (or similar material), exterior siding, brick, stucco, and related exterior trim, including the painting (if applicable) of the foregoing materials. The Townhome Association shall not have any responsibility to maintain, repair, or replace any portion of the structure of the respective Townhomes (including studs within the walls), foundations and the like, or any insulation materials whatsoever. If any of such items which are the responsibility of the Owner require repair or replacement, and the Owners(s) of the Townhome fails or refuses to repair or replace same, the Townhome Association shall have the right, but not the obligation to do so and 110% of the cost of such repair and/or replacement shall be billed against the respective Townhome(s) for which such work is performed, such bill to be due upon receipt and if not timely paid, such bill shall be assessed as a reimbursement assessment against such Townhome(s), which reimbursement assessment shall be secured by a lien against such Townhome(s) as herein provided. The Townhome Association, its Townhome Board, officers or agents shall not be responsible or liable to any Owner (or the Owner’s tenant or other occupant) for any damage to the interior of the Townhome or contents thereof resulting from any water leaks or penetration unless same has resulted from the willful acts or gross negligence of the Townhome Association. In no event shall the Townhome Association be liable for repair or replacement of any consequential or incidental damage to the interior of the Townhome which may result, whether foreseen or unforeseen, from the Townhome Association’s repairs and/or activities.

(iii) *Exterior Doors, Garage Doors, Windows and Fixture:* The Townhome Association shall have the obligation to paint the exteriors of the exterior doors and garage doors and exterior window trim in connection with the repainting of the exteriors of the Townhomes. Provided, however, that the Owners shall always be responsible to replace or repair the exterior doors, garage doors, and windows (and all related hardware or fixtures relating thereto) at the Owner's sole cost and expense. If, during the performance of its maintenance or repair responsibilities, it becomes apparent to the Townhome Association that a specific door, window or garage door is in need of repair or replacement, the Owner shall be so notified and shall be required to repair or replace same in a timely fashion so as to allow the Townhome Association the ability to complete its exterior maintenance responsibilities and painting. If such Owner fails or refuses to repair or replace same, the Townhome Association shall have the right, but not the obligation to do so and 110% of the cost of such repair and/or replacement shall be billed against the respective Townhome for which work is performed, such bill to be due upon receipt and if not timely paid, such bill shall be assessed as a reimbursement assessment against such Townhome, which reimbursement assessment shall be secured by a lien against such Townhome as herein provided.

(c) Other Possible Association Responsibilities. The Townhome Association also has the right (but not the obligation) to perform other maintenance items for the Townhomes.

The Townhome Board of the Townhome Association may, at some future date, decide to perform other maintenance items for the Townhomes and/or the Townhome Lots which could result in an increase in annual assessments. By means of illustration and not limitation, the Townhome Association shall have the authority, but not the obligation, to hire a contractor to provide monitoring for the security systems installed by Declarant.

The Townhome Association shall have the right but not the obligation, to maintain property not owned by the Townhome Association where the Townhome Board has determined that such maintenance would benefit all Owners. Except as otherwise provided herein, all costs associated with maintenance, repair and replacement of the Common Property and /or other property as determined by the Townhome Board, shall be a common expense to be allocated among the Townhomes as part of the annual assessments.

The Townhome Association will only perform the various items to which it has reasonable access. If reasonable access is blocked or denied, the Townhome Association will not perform such items, however the assessments of any Owner whose Townhome does not allow reasonable access will not be reduced. Further, it shall be the obligation of such Owner or tenant of the Townhome blocking access to perform such items, at its sole cost and expense.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

## Section 2. Owner's Responsibility.

Except as provided in Section 1 above, all maintenance of the Townhome and Townhome Lot other than that required by the Townhome Association in the preceding Section shall be the sole responsibility of the Owner, and such maintenance shall include, but is not limited to, the following:

(a) Structural and Building. The Owner of each Townhome must maintain in properly working order and on a continuing basis, all structural and building items that are not specifically identified as Association Responsibility. Such structural items shall include the slab, framing, roof structure (except for decking), walkways, driveways, patios and the like.

(b) Townhome Utilities. The Owner of each Townhome must maintain in proper working order, and on a continuing basis, all Townhome 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 in such other proportions as determined by the Townhome Board upon written request when the circumstances clearly demonstrate that a different manner of allocation is required.

(c) Other items. The Owner of each Townhome is also responsible for all entry doors and hardware, garage doors and hardware, all windows, window frames, light fixtures and light bulbs and any other exterior item that is not specifically identified as Association responsibility such as the air conditioning of Townhomes, as well as any lines pipes, ducts, and wall penetration. The Owner is also responsible for 100% of the interior of the Townhome.

(d) Townhome Landscape Maintenance. The Owner is responsible, at its' sole cost and expense, for any and all front, side and rear yard maintenance including any landscaping or yard located on any adjacent public right of way, including but not limited to any street trees located in the adjacent right of way. The Owner of each Townhome shall also, at its' sole cost and expense, maintain the front and back yard (including any landscaping or yard located on any adjacent public right of way) of each Townhome's landscaping, including mowing, weeding, mulching, replacing, fertilizing, water for and repairs to any irrigation system and other such items as are necessary to that maintenance.

The maintenance items described in (a), (b), (c) and (d) above shall be performed consistent with the Master Sienna Covenants and the standards established pursuant thereto. In the event that the Master Sienna Association determines that (a) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Master Sienna Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in addition to the enforcement and self-help remedies set forth in the Master Sienna Covenants, the Master Sienna Association may turn this matter over to its attorney for further handling and/or the Master

Sienna Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Master Sienna Association's intent to provide such necessary maintenance, repair, or replacement, at Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Master Sienna Association may provide any such maintenance, repair, or replacement and shall bill the Owner therefore 110% of such cost and expenses, plus a \$50.00 administrative fee, such bill to be due upon receipt and if not timely paid, such bill shall be added to and become a part of the assessments levied by the Master Sienna Association as a reimbursement assessment to which such Owner is subject and shall become a lien against the Townhome.

Section 3. Master Sienna Association's Responsibilities. The Master Sienna Association has the obligation to maintain the restricted reserves that it owns and if it has the right to maintain, will maintain restricted reserves owned by another entity (such as a municipal utility district), including any improvements thereon, located within the Community ("**Restricted Reserves**") and keep the same in good repair. This maintenance may include, without limitation, improvements to any such Restricted Reserves including the walkways, parking areas, landscape, hardscape, irrigation and other such improvements which may have been installed within the Restricted Reserves by Master Declarant or the Master Sienna Association. Except as otherwise provided herein, all costs associated with maintenance, repair and replacement of any such Restricted Reserves shall not be an expense to the Townhome Association.

There are hereby reserved to the Master Sienna Association easements over the Community and Townhomes or Townhome Lots as necessary to enable the Master Sienna Association to fulfill its maintenance obligations described in this Townhome Declaration. The Master Sienna Association will only perform the various items to which it has reasonable access. If reasonable access is blocked or denied, the Master Sienna Association will not perform such items, however the assessments of any Owner whose Townhome does not allow reasonable access will not be reduced. Further, it shall be the obligation of such Owner or tenant of the Townhome blocking access to perform such items, at its sole cost and expense. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

#### Section 4. Party Walls.

(a) General Rules of Law to Apply. Each wall built as a part of the original construction of the Townhomes 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 repair and maintenance of a party wall shall be shared by the Owners who the wall serves 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 who the wall serves may restore it, and the other Owner or Owners that the wall serves 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, to the extent that such damage is not covered and paid by the insurance provided for herein, 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.

(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 land and shall pass to such owner's successors-in-title.

(f) Foundation, Fences. Common foundations which form a part of the Townhomes and common fences between Townhomes, if any, will be dealt with in the same fashion as party walls, as set forth in this section.

(g) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 4, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the Townhome Board, the Townhome Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other. Costs for such arbitrators shall be shared equally by the parties.

## ARTICLE VI.

### Use Restrictions and Rules

Section 1. General. The Townhome Board may, from time to time, without consent of the members, promulgate, modify, or delete use restrictions and Townhome Rules and other regulations applicable to all of the Townhomes and the Common Property and the Community, including but not limited to rules governing traffic and parking, the leasing of Townhomes by the Owners thereof and activities in the Community. Such Townhome Rules, regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by both the vote of Class "A" members holding a Majority of the total votes in the Townhome Association and the vote of the Class "B" member, so long as such membership shall exist.

Such Townhome Rules and other regulations may apply to activities in the Community, including but not limited to, the use of the Common Property, traffic and parking rules, and the leasing of residences by the Owners thereof. Such rules and regulations shall not apply to Declarant or to any property owned by it and shall not be applied in any manner which would prohibit or restrict the development of the Community and/or the development, construction and sale of residences by Declarant. In the Development Area Declaration, certain use restrictions and rules are also promulgated, which also apply to the Community. In the event of any conflict between any of the use restrictions and rules in the Development Area Declaration and any use restrictions and Rules in this Townhome Declaration, whichever is the more restrictive shall apply.

Section 2. Occupants Bound. All provisions of the Townhome Declaration and of any Townhome Rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of any Townhome or Townhome Lot.

Section 3. Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition of his or her Townhome or Townhome Lot. No Townhome or Townhome Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Townhome or Townhome Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Townhome or 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 activity shall be carried on upon any Townhome or Townhome Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Townhome or Townhome Lot. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

Section 4. Architectural Review.

Pursuant to the Master Sienna Covenants and governing Documents, all construction, improvements, and modifications on any Townhome within the Community shall be subject to the prior review and written approval pursuant to the architectural review process provided for in Article 6 of the Master Sienna Covenants.

Section 5. Occupancy. Each Townhome shall be used as a residence only, except as otherwise herein expressly provided. Each Townhome owned by an individual, corporation, limited liability company, partnership, trust or other fiduciary may only be occupied by the following persons and such persons' families and guests: (i) the individual Owner, (ii) an officer, director, stockholder or employee of such corporation or company, (iii) a partner or employee of such partnership, (iv) the fiduciary or beneficiary of such fiduciary, or (v) permitted occupants under an approved lease or sublease of a Townhome (as described below), as the case may be.



Occupants of leased or subleased Townhomes will be deemed approved occupants if they are the following persons, and such persons' families and guests: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder or employee of a corporate lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee.

Under no circumstances may more than one family reside in a Townhome at one time. "Families" or words of similar import used herein shall be deemed to include spouses, parents, parents-in-law, brothers and sisters. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom. The Townhome Board shall have the power to authorize occupancy of a Townhome by persons in addition to those set forth above. It is not the intent of the Townhome Declarant to exclude from a Townhome any individual who is authorized to so remain by any state or federal law. If it is found that this definition or any other provision contained in this Townhome Declaration is in violation of any law, then this Section or other provision will be interpreted to be as restrictive as possible to preserve as much of the original Section or provision as allowed by law. The provisions of this Section 9 shall not be applicable to Townhomes used by the Townhome Declarant for model homes, sales offices, other offices or management services.

Section 6. Window Treatment. No window in any residence or other improvement that is visible from any other Townhome or a street may be covered with any aluminum foil or other reflective material. Window coverings must be compatible with the design of the residence and the overall appearance of the Community and from the exterior must be neutral or white if visible from the street. The Sienna Plantation Reviewer shall have the sole authority to determine whether particular window coverings are compatible with the design and color of the residence and the overall appearance of the Community. Permanent window coverings must be installed within ninety (90) days of a conveyance of a Townhome to a homeowner.

Section 7. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Community. No exterior sculpture, fountains, birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted unless approved in accordance with Article VI of this Townhome Declaration. No such decorative embellishment or similar items shall be permitted on the front portion of any Townhome or yard.

Section 8. Playground. No jungle gyms, swing sets or similar playground equipment shall be erected or installed on any Townhome Lot.

Section 9. Townhome Rules. The Townhome Declarant and/or the Townhome Board is hereby specifically authorized to promulgate Townhome Rules governing the Community, including but not limited to Townhome Rules incorporating use restrictions, design guidelines, parking and traffic issues, usage of the Common Property and any other activity within or related to the Community; provided, however, that any such Townhome Rules must first be approved in advance and in writing by the Master Declarant during the Master Development Period and by the Master Sienna Board thereafter. Design guidelines promulgated pursuant to the Townhome

Rules may include, but are not limited to guidelines concerning planters, park benches, porch swings, lawn furniture and/or yard art.

Section 10. Drainage. Without the prior written consent of the Sienna Plantation Reviewer, no Owner of a Townhome or Townhome Lot shall be permitted to construct improvements on such Townhome or Townhome Lot or grade such Townhome or Townhome Lot or permit such Townhome or Townhome Lot to remain in or be placed in such condition that surface water on such Townhome or Townhome Lot drains to any other Townhome or Townhome Lot.

Section 11. Exterior Lighting. All exterior lighting must first be approved by the Sienna Plantation Reviewer. No exterior lighting may shed light onto other property in the Community or into residential dwellings in such a manner that creates a nuisance.

Section 12. Sound Devices. No external horns, whistles, bells, or other sound devices, except for security systems used exclusively to protect the residence, shall be placed or used on any Townhome. This paragraph shall not preclude the use of outdoor speakers, stereos, home entertainment systems, or radios if the sound level is maintained at a reasonably low level with respect to adjoining property.

## ARTICLE VII.

### Insurance and Casualty Losses

Section 1. Insurance. The Townhome Association's Townhome Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and for all buildings containing Townhomes. This coverage shall be for the improvements as built, i.e. the original construction standards and materials (the “**As-Built Improvements**”). The As-Built Improvements shall not include any improvements upgraded by an Owner above the original construction standards and materials. This insurance for the As-Built Improvements 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. Each Owner should obtain insurance to cover the contents of its respective Townhome. It is also highly recommended that each Owner obtain insurance to cover floods and the deductible amount on other policies. In the event that an Owner has improvements that were upgraded above the original construction standards and materials, any Owner with upgraded improvements should obtain insurance for those upgraded improvements.

The Townhome Board shall obtain a general liability policy applicable to the Common Property covering the Townhome Association and its members for all damage or injury caused by the negligence of the Townhome Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. Each Owner should obtain insurance to cover general liability within its respective Townhome or on its Townhome Lot.

Premiums and deductibles for all insurance which it is the obligation of the Townhome Association to provide shall be common expenses of the Townhome Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

In addition to the other insurance required by this Section, the Townhome Board shall obtain, if and to the extent necessary, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Townhome Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Townhome Association.

## Section 2. Damage and Destruction.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any improvement covered by insurance written in the name of the Townhome Association, the Townhome Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

(b) Repair and Reconstruction. Any damage or destruction to any Townhome or Townhomes shall be repaired or reconstructed. Any damage or destruction to any Common Property shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Townhome Board shall, without the necessity of a vote of the Townhome Association's members, levy a special assessment against all Owners for the deficiency. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Townhome Association; provided that the Owner and Mortgagee of any Townhome for which proceeds are received agree to the distribution as their interest may appear.

## ARTICLE VIII. Condemnation

Section 1. Townhomes. If the taking includes one or more Townhomes, or any part or parts thereof, whether or not there is included in the taking any part of the Common Property, then the award shall be disbursed and all related matters shall be handled pursuant to and in accordance with the consent of no less than fifty percent (50%) of all Owners expressed in a duly recorded amendment to this Townhome Declaration; provided that the consent of the Owner or

Owners of the Townhome or Townhomes so taken must first be obtained. If such consent cannot be obtained, the funds shall be disbursed as the court may determine.

ARTICLE IX.  
Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Townhomes in the Community. The provisions of this Article apply to both this Townhome Declaration and to the Townhome By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Townhome Association (such request to state the name and address of such holder, insurer, or guarantor and the Townhome number), (therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Townhome on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any lapse, cancellation, or material modification of any insurance policy maintained by the Townhome Association.

Section 2. Special Provisions. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Townhome Association.

Section 3. No Priority. No provision of this Townhome Declaration or the Townhome By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Townhome in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. Notice to Association. Each Owner other than Declarant shall be obligated to furnish to the Townhome Association the name and address of the holder of any mortgage encumbering such Owner's Townhome. Each Owner shall be obligated to furnish the Townhome Association any changes to such information within a reasonable time after such changes become effective.

ARTICLE X.  
Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang (as well as an easement for repair and maintenance of any such encroachment and overhang) as between each Townhome and such portion or portions of the Common Property adjacent thereto, or as between adjacent

Townhomes due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Townhome Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Townhome and the adjacent portion of the Common Property or as between adjacent Townhomes, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Townhome Association. The easements for encroachment and overhang also include and allow for drainage from any overhang on to adjacent Townhomes.

Section 2. Easements for Use and Enjoyment. Every Owner of a Townhome or Townhome Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Townhome or Townhome Lot, subject to the right of the Townhome Declarant to annex additional real property and the Townhomes located thereon into the Townhome Association and made subject to the terms of this Townhome Declaration. Any Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the occupants of any leased Townhome.

Section 3. Easements for Utilities. There is hereby reserved to the Master Declarant, Townhome Declarant, Townhome Association and the Master Sienna Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, alarm monitoring, or internet communication system which the Master Declarant, Townhome Declarant, Townhome Association or Master Sienna Association might decide to have installed to serve the Community. It shall be expressly permissible for the Master Declarant, Townhome Declarant, Townhome Association or Master Sienna Association or their respective designees, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Townhome Board shall have the right to grant such easement.

Section 4. Easement for Entry. The Townhome Association and/or the Master Sienna Association shall have an easement to enter into any Townhome or Townhome Lot for emergency, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Community, which right may be exercised by the Townhome Association's Townhome Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. It is intended that this right of entry shall include (and this right of entry shall include) the right of the Townhome Association to enter a Townhome or Townhome Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an

Owner fails or refuses to cure the condition upon request by the Townhome Board. The easement for entry is also for the benefit of each Owner of a Townhome or Townhome Lot, for ingress and egress, over and across the real property on which all other Townhomes or Townhome Lots are located (although the easement for Owners does not extend to the inside of the improvements of a Townhome) for emergency purposes and/or during emergency situations, to allow Owners to remove themselves from danger. Notwithstanding anything contained herein to the contrary, the Master Sienna Association shall have the rights set forth in this Section 4 but no obligation to exercise any of those rights.

Section 5. Use. The Common Property shall be used and enjoyed by the Owners on a non-exclusive basis in common with other persons, entities and corporations, who may, but are not required to be, members of the Townhome Association, entitled to use those portions of the Common Property.

Section 6. Indemnification. The Townhome Association and Owners each covenant and agree, jointly and severally, to indemnify, defend and hold harmless Declarant, the Master Sienna Association, Sienna Plantation Residential Association, Inc., and TOLL-GTIS PROPERTY OWNER LLC as Master Declarant, their respective officers, directors, parent and/or subsidiary entities, partner(s) and any related persons or corporations, and their employees, professionals and agents from and against any and all claims, suits, actions, causes of action or damages arising from any personal injury, loss of life, or damage to property, sustained on or about the Common Property or other property serving the Townhome Association and improvements thereon, or resulting from or arising out of activities or operations of Declarant or of the Townhome Association, or of the Owners, and from and against all costs, expenses, court costs, counsel fees (including, but not limited to, expenses, court costs, counsel fees (including, but not limited to, all trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred or arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered relating thereto. The costs and expense of fulfilling this covenant of indemnification shall be considered operating costs of the Townhome Association to the extent such matters are not covered by insurance maintained by the Townhome Association. IT IS EXPRESSLY ACKNOWLEDGED THAT THE INDEMNIFICATION IN THIS SECTION PROTECTS DECLARANT, THE MASTER SIENNA ASSOCIATION, SIENNA PLANTATION RESIDENTIAL ASSOCIATION, INC. AND/OR TOLL-GTIS PROPERTY OWNER LLC AS MASTER DECLARANT (AND ANY PARENT OR SUBSIDIARY OR RELATED ENTITY OF ANY OF THEM) FROM THE CONSEQUENCES OF THEIR RESPECTIVE ACTS OR OMISSIONS, INCLUDING WITHOUT LIMITATION, DECLARANT'S, THE MASTER SIENNA ASSOCIATION'S, SIENNA PLANTATION RESIDENTIAL ASSOCIATION, INC.'S AND/OR TOLL-GTIS PROPERTY OWNER LLC AS MASTER DECLARANT (OR ANY PARENT'S OR SUBSIDIARY'S OR RELATED ENTITY'S) NEGLIGENCE ACTS OR OMISSIONS, TO THE FULLEST EXTENT ALLOWED BY LAW.

Section 7. Security and Other Services. The Townhome Association or Declarant may also but shall not be obligated to provide alarm monitoring and other services and facilities for the Townhome Property and shall be authorized to enter into contracts with other entities to

provide such services and facilities. In addition to assessments, the Townhome Board shall be authorized to charge additional use and consumption fees for selected services and facilities. By way of example, some services and facilities which may be provided include, in addition to the telecommunication services listed in the preceding section, landscape, maintenance, concierge, and pest control services. The Townhome Board shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein is a representation as to what services and facilities will or will not be provided.

## ARTICLE XI.

### Annexation of Additional Property

Section 1. Annexation Without Approval of Membership. Subject to the prior written approval of the Master Declarant during the Master Development Period, as the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Townhome Declarant, its successors or assigns, shall have the unilateral right, privilege, and option, from time to time at any time until twenty (20) years from the date this initial Declaration is recorded in the Office of the County Clerk of Fort Bend County, Texas, to annex and subject to the provisions of the Townhome Declaration and the jurisdiction of the Townhome Association all or any portion of tracts of real property located within the Planned Townhome Development of Sienna ("**Declarant Annexation Property**"), whether in fee simple or leasehold, by filing in the Fort Bend County (or other applicable county) Real Property Records a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the vote of members of the Townhome Association or approval by the Townhome Association or any person. Any such annexation shall be effective upon the filing of such Supplemental Declaration in the Fort Bend County (or other applicable county) Real Property Records unless otherwise provided therein. However, no such Supplemental Declaration shall be recorded until the real property being restricted by such Supplemental Declaration has been made subject to the Master Sienna Covenants and governing Documents. As used herein, the term "**Planned Townhome Development of Sienna**" shall mean any real property that is subject to the Master Sienna Covenants and governing Documents and that is developed into Townhome Lots intended to be used to construct attached single family residential housing.

Townhome Declarant shall have the unilateral right to transfer to any other person its right, privilege, and option to annex herein additional land, provided that such transferee or assignee shall be the developer of at least a portion of the additional land and shall be expressly designated by Townhome Declarant in writing as the successor to all or any part of Townhome Declarant's rights hereunder.

Any such annexation or addition shall be accomplished by the execution and filing for record by Townhome Declarant (or the other Owner of the property being added or annexed, to the extent such Owner has received a written assignment from Townhome Declarant of the right to annex), of an instrument to be called "**Supplemental Declaration.**" Each Supplemental Declaration of annexation must set out and provide for the following:

- (i) the name of the Owner of the property being added or annexed who shall be called the "Townhome Declarant" for purposes of that Supplemental Declaration;

(ii) the legal sufficient perimeter (or recorded subdivision description of the property being added or annexed to the Community, separately describing portions of the annexed property that are dedicated and/or conveyed to the public or any governmental or quasi-governmental authority for street right-of-way or utility facility purposes, those portions that are to comprise Townhomes and related improvements and those portions that comprise Common Property (those being the only three permitted uses for annexed property);

(iii) a mutual grant and reservation of rights and assessments of the Owners in and to the existing and annexed Common Property;

(iv) that the property is being added or annexed into the Community in accordance with and subject to the provisions of the initial Declaration, as theretofore amended, and that the property being annexed into the Community shall be developed, held, used, sold and conveyed in accordance with and subject to the provisions of this Townhome Declaration as theretofore and thereafter amended;

(v) that all of the provisions of this Townhome Declaration as theretofore amended, shall apply to the property being added or annexed with the same force and effect as if said property were originally included in this Townhome Declaration as part of the property;

(vi) that a vendor's lien is therein reserved in favor of the Townhome Association, in the same manner as herein provided, to secure collection of the assessments provided for, authorized or contemplated herein or in the Supplemental Declaration of annexation;

(vii) that the Master Declarant has consented to such Supplemental Declaration during the Master Development Period.

After additions or annexations are made, all assessments collected by the Townhome Association from the Owners in the annexed areas shall be commingled with the assessments collected from all other Owners so that there shall be a common maintenance fund for the Community. Nothing in this Townhome Declaration shall be construed to represent or imply that Master Declarant or Townhome Declarant, or their respective successors or assigns, are under any obligation to add or annex additional land to the Community to this residential development.

Subject to the requirements of Article XII, Section 4(a), Declarant also reserves the unilateral right to amend this Townhome Declaration, so long as it has the right to annex additional property in this Article XI, Section 1, for the purpose of removing unimproved portions of the Community from the coverage of this Townhome Declaration; provided, however, that any amendment to this Townhome Declaration shall require the advanced written consent of the Master Declarant during the Master Development Period. Such amendment shall not require the consent of any Person other than the Master Declarant and the Owner(s) of the



property to be withdrawn, if not the Townhome Declarant. If the portion of the Community to be withdrawn is owned by the Townhome Association, then the Townhome Association shall consent to such withdrawal by majority vote of the Townhome Board. For purposes of this Section 1, the term "unimproved" shall mean no above ground, vertical improvements located on such property.

Section 2. Annexation with Approval of Membership. In addition to the above and subject to the written consent of the owner thereof, upon the written consent by affirmative vote of two-thirds (2/3) of the total eligible votes of the members of the Townhome Association entitled to be cast, and with the prior written approval of the Master Sienna Association, the Townhome Association may annex or permit the annexation of real property and to the provisions of the Townhome Declaration and the Master Sienna Covenants and governing Documents, and the jurisdiction of the Townhome Association and Master Sienna Association by filing, or having the party owning such property file, a Supplemental Declaration with respect to the property being annexed in the Fort Bend County (or other applicable county) Real Property Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Townhome Association, and any such annexation shall be effective upon recording in the Fort Bend County (or other applicable county) Real Property Records unless otherwise provided therein. The timing of and manner in which notice of any such meeting of the property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the Townhome By-Laws of the Townhome Association for regular or special meetings, as the case may be.

Notwithstanding anything contained herein to the contrary, any annexation of additional property into the Community must have the prior written approval of Master Declarant, during the Master Development Period as set forth in the Master Sienna Covenants. After expiration of the Master Development Period as set forth in the Master Sienna Covenants, any annexation of additional property into the Community must have the prior written approval of the Master Sienna Association.

## ARTICLE XII General Provisions

Section 1. Enforcement. Each Owner and every occupant of a Townhome or Townhome Lot shall comply strictly with the Townhome By-Laws, the Townhome Rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Townhome Declaration, and in the deed to his or her Townhome or Townhome Lot, if any. The Townhome Board (or Townhome Declarant as long as the Class B membership exists) or the Master Sienna Association may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments and are secured by the liens herein retained and/or granted. Further, the Townhome Board or Townhome Declarant may cause the Rule, regulation, use restriction, covenant and/or condition to be complied with and bill the Owner the costs incurred by the Townhome Association to do so, along with an administrative fee as the Townhome Board or Townhome Declarant may determine. Failure to comply with this Townhome Declaration, the Townhome By-Laws or the Townhome Rules and regulations shall be grounds for an action to recover sums

due for damages or injunctive relief, or both, maintainable by the Townhome Board, on behalf of the Townhome Association and/or Townhome Declarant (as the case may be), or, in a proper case, by an aggrieved Owner. Failure by the Townhome Association or Townhome Declarant or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Notwithstanding anything contained in this Townhome Declaration to the contrary, in the event the Townhome Association fails to enforce any of the provisions of this Townhome Declaration or maintain the Common Property, the Master Sienna Association has the authority, but not the obligation, to enforce all of the provisions of this Townhome Declaration and maintain the Common Property at the expense of the Townhome Association. Additionally, the Master Sienna Association is entitled to recover legal expenses from the Townhome Association related to any such enforcement.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Townhome Association, the Master Sienna Association, or their duly authorized agents (and/or Townhome Declarant as long as the Class B membership exists) shall have the power, but not the obligation, to enter upon a Townhome or Townhome Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Townhome Declaration, the Townhome By-Laws, the Townhome Rules and regulations, or the use restrictions. Unless an emergency situation exists, the Master Sienna Board or the Townhome Board (and/or Townhome Declarant as long as the Class B membership exists) shall give the violating Townhome or Townhome Lot Owner ten (10) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Townhome or Townhome Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Term. The covenants, conditions and restrictions of this Townhome Declaration shall run with and bind each Townhome or Townhome Lot and shall inure to the benefit of and shall be enforceable by the Townhome Declarant and the Townhome Association or the Owner of any portion of the Community, their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Townhome Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by 80% (for termination) or 67% (for modification) of the then Owners has been recorded within the year preceding the beginning of each successive period of ten (10) years, or within the initial term, agreeing to modify said covenants, conditions and restrictions, in whole or in part, or to terminate same, in which case this Townhome Declaration shall be modified or terminated as specified therein.

Section 4. Amendment.

(a) Master Declarant Consent Required. Notwithstanding any provision contained in this Townhome Declaration to the contrary, this Townhome Declaration may not be amended without the prior written consent of the Master Declarant during the Master Development Period.

(b) Amendment by Townhome Declarant. Subject to Subsection 4(a) above, this Townhome Declaration may be amended unilaterally at any time and from time to time by Townhome Declarant while the Class "B" membership exists (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Townhomes or Townhome Lot subject to this Townhome Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration, Federal Housing Administration or the Department of Housing & Urban Development, to enable such lender or purchaser to make or purchase mortgage loans on the Townhomes or Townhome Lots subject to this Townhome Declaration; (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Townhomes subject to this Townhome Declaration; or (e) Townhome Declarant deems it to be in the best interest of the Community; provided, however, any such amendment shall not materially adversely affect the title to any Owner's Townhome or Townhome Lot unless any such Townhome or Townhome Lot Owner shall consent thereto in writing. Further, so long as the Class "B" membership exists and subject to Subsection 4(a) above, Townhome Declarant may unilaterally amend this Townhome Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Townhome or Townhome Lot Owner hereunder, nor shall it adversely affect title to any Townhome or Townhome Lot without the consent of the affected Townhome or Townhome Lot Owner. Townhome Declarant's right to annex additional real property into the Townhome Association and make it subject to the terms of this Townhome Declaration shall not be deemed to materially adversely affect the substantive rights of any Owner hereunder; but in any event must first be approved in advance and in writing by the Master Declarant during the Master Development Period.

(c) Amendment by Owners. Subject to Subsection 4(a) above, and in addition to Subsection 4(b) above, this Townhome Declaration may be amended at any time upon the affirmative vote or written consent, or any combination thereof, of at least 67% of the Class "A" members, and the consent of the Class B member if the Class B membership still exists and the prior written consent of the Master Sienna Association. Amendments to this Townhome Declaration shall become effective upon recordation in the Official Public Records of Real Property of Fort Bend County, Texas, unless a different effective date is specified therein. Notwithstanding this Section, there shall be no amendment of the provisions of Article XI, Section 1, regarding annexation rights of the Townhome Declarant.

(d) Conflicts with Master Sienna Covenants. Notwithstanding anything contained herein to the contrary, any amendment to this Townhome Declaration may not conflict with the Master Sienna Covenants or the governing Documents. In the event of a

conflict, the Master Sienna Covenants shall control. Further, no amendment to this Townhome Declaration may remove or reduce any right or remedy of the Master Declarant and/or the Master Sienna Association without the written consent of the Master Declarant, during the Master Development Period, and the Master Sienna Association thereafter.

Section 5. Partition. The Common Property shall remain undivided, and no Townhome or Townhome Lot Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Townhomes or Townhome Lots located within the Community.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Townhome Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Townhome Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Townhome Declaration are declared to be severable.

Section 8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article of Section to which they refer.

Section 9. Conveyance of Common Property. The Townhome Association shall accept such conveyances of Common Property as are made from time to time to the Townhome Association by Townhome Declarant. The Townhome Declarant shall determine, in its sole discretion, the appropriate time to convey all or any part of the Common Property to the Townhome Association. Any part of the Common Property can be conveyed to the Townhome Association at any time, with the Townhome Declarant retaining any other part of the Common Property for conveyance to the Townhome Association at a later time. At such time as the Townhome Declarant conveys all or any portion of the Common Property to the Townhome Association, such conveyance shall be subject to any and all easements, restrictions, reservations, conditions, limitations and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. The Townhome Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance and administration of the conveyed portions of Common Property and other obligations relating to the Common Property imposed herein. The Townhome Association shall, and does hereby, indemnify and hold Townhome Declarant harmless on account thereof. The Townhome Association shall be obliged to accept such

conveyance(s) without setoff, condition or qualification of any nature. The Townhome Association shall immediately acknowledge any such conveyance if requested by Townhome Declarant. The Common Property, personal property and equipment and appurtenances thereto, shall be dedicated or conveyed in "AS IS", "WHERE IS" CONDITION WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON PROPERTY, PERSONALTY AND EQUIPMENT BEING CONVEYED. The Townhome Association shall pay all costs associated with the conveyance(s).

Section 10. Indemnification. The Townhome Association shall indemnify every officer and director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Townhome Board) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Townhome Association and the Townhome Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Townhome Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 11. Construction and Sale Period. Notwithstanding any provisions contained in this Townhome Declaration to the contrary, during the existence of the Class "B" membership, which is the Development Period, Townhome Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of Townhome Declarant, its successors, and assigns over, under, in, and/or on the Community, without obligation and without charge to Townhome Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Community and any other property now owned or which may in the future be owned by Townhome Declarant (whether annexed hereunder or not), (such other property is hereinafter referred to as "**Additional Property**"). The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Community; and the right to tie into any portion of the Community with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Community; and

(b) the right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, and sales offices and construction offices in the Community, but only with the prior written consent of the Sienna Plantation Reviewer.

(c) No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit-claim deed from Townhome Declarant releasing such right, privilege, or easement by express reference thereto.

(d) If these reserved easements are exercised without annexing any Additional Property to the Community, the Owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities with the Owners in the Community in the proportion that the number of completed dwellings on the affected Additional Property bears to the total number of completed dwellings upon the affected Additional Property and the number of Townhomes in the Community. The costs of maintenance and repair of Community driveways shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Community. The allocation of expenses and the collection therefore may be done on a monthly, quarterly or annual basis as may reasonably be determined by the Townhome Association in accordance with this Townhome Declaration. If any of the Additional Property is added to the Community, from the time of the annexation, the sharing of costs and expenses and the use of any property so added shall be governed by this Townhome Declaration, rather than by these reserved easements.

#### Section 12. Intentionally Deleted.

#### Section 13. Books and Records.

(a) Inspection by Members and Mortgagees. This Townhome Declaration, the Townhome By-Laws, copies of Townhome Rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Townhome Board and of committees shall be made available for inspection and copying by any member of the Townhome Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a proper purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Townhome Association or at such other reasonable place as the Townhome Board shall prescribe, as required by law.

(b) Rules for Inspection. The Townhome Board shall establish reasonable rules with respect to access, production and copying of Association records in accordance with Section 209.005 of the Texas Property Code, including but not limited to:

- (i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents and for attendance of a representative of the Townhome Association during the inspection, per the recorded policy of the Townhome Association.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Townhome Association and the physical properties owned or controlled by the Townhome Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Townhome Association.

Section 14. Audit. An audit of the accounts of the Townhome Association shall be made annually in the manner as the Townhome Board may decide; provided, however, after having received the Townhome Board's audit at the annual meeting, the Class "A" members, by a majority vote, may require that the accounts of the Townhome Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of the annual audited financial statement within one hundred eighty (180) days after the end of each fiscal year.

Section 15. Notice of Sale or Lease. Contact Information. In the event an Owner sells or leases his or her Townhome, the Owner shall give to the Townhome Association, in writing, the name of the purchaser or lessee of the Townhome and such other information as the Townhome Board may reasonably require. Every Owner shall be obligated to deliver to the Townhome Association or its managing agent current phone numbers for contact purposes and current email addresses, and to update same within ten (10) days of any change to any of them.

Section 16. NON-LIABILITY. NEITHER THE TOWNHOME ASSOCIATION, NOR TOWNHOME DECLARANT, NOR THE MASTER SIENNA ASSOCIATION, SIENNA PLANTATION RESIDENTIAL ASSOCIATION, INC. NOR TOLL-GTIS PROPERTY OWNER LLC AS MASTER DECLARANT (NOR ANY PARTNER NOR PARENT NOR SUBSIDIARY NOR RELATED ENTITY NOR EMPLOYEE NOR AGENT OF ANY OF THEM) SHALL IN ANY WAY OR MANNER BE HELD LIABLE OR RESPONSIBLE FOR ANY VIOLATION OF THIS TOWNHOME DECLARATION BY ANY OTHER PERSON OR ENTITY. NEITHER TOWNHOME DECLARANT, NOR THE TOWNHOME ASSOCIATION NOR THE MASTER SIENNA ASSOCIATION NOR SIENNA PLANTATION RESIDENTIAL ASSOCIATION, INC. NOR TOLL-GTIS PROPERTY OWNER LLC AS MASTER DECLARANT (NOR ANY PARTNER NOR PARENT NOR SUBSIDIARY NOR RELATED ENTITY NOR ANY EMPLOYEE NOR AGENT OF ANY OF THEM) HAS MADE ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE COMMON PROPERTY, RESTRICTED RESERVES OR TOWNHOMES OR RESIDENCES, OR THE EFFECTIVENESS OF ANY GATE, ACCESS SYSTEM OR MEDICAL ALERT SYSTEM. EACH OWNER DOES HEREBY HOLD TOWNHOME DECLARANT, THE TOWNHOME ASSOCIATION, THE MASTER SIENNA ASSOCIATION, SIENNA PLANTATION RESIDENTIAL ASSOCIATION, INC., TOLL-

GTIS PROPERTY OWNER LLC AS MASTER DECLARANT, AND (AND ANY PARTNER, PARENT, SUBSIDIARY, RELATED ENTITY OR EMPLOYEE OR AGENT OF ANY OF THEM) HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE TOWNHOME ASSOCIATION, NOR THE TOWNHOME DECLARANT NOR THE MASTER SIENNA ASSOCIATION NOR SIENNA PLANTATION RESIDENTIAL ASSOCIATION, INC. NOR TOLL-GTIS PROPERTY OWNER LLC AS MASTER DECLARANT (NOR ANY PARTNER NOR PARENT NOR SUBSIDIARY NOR RELATED ENTITY NOR EMPLOYEE NOR AGENT OF ANY OF THEM) SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMON PROPERTIES, TOWNHOMES OR RESIDENCES OR THE EFFECTIVENESS OF ANY SUCH SYSTEM. ALL OWNERS SPECIFICALLY ACKNOWLEDGE THAT THE TOWNHOMES MAY HAVE A PERIMETER BOUNDARY SYSTEM, SUCH AS FENCES, WALLS, HEDGES, OR THE LIKE. NEITHER THE TOWNHOME ASSOCIATION, NOR THE TOWNHOME DECLARANT, NOR THE MASTER SIENNA ASSOCIATION NOR SIENNA PLANTATION RESIDENTIAL ASSOCIATION, INC. NOR TOLL-GTIS PROPERTY OWNER LLC AS MASTER DECLARANT (NOR ANY PARTNER, NOR PARENT NOR SUBSIDIARY NOR RELATED ENTITY NOR EMPLOYEE NOR AGENT OF ANY OF THEM) SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY TOWNHOMES AND/OR RESIDENCES, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE TOWNHOME ASSOCIATION, THEIR RESPECTIVE BOARDS AND OFFICERS, TOWNHOME DECLARANT, ANY SUCCESSOR TOWNHOME DECLARANT, SIENNA PLANTATION RESIDENTIAL ASSOCIATION, INC., THE MASTER SIENNA ASSOCIATION, AND TOLL-GTIS PROPERTY OWNER LLC AS MASTER DECLARANT, OR THEIR NOMINEES, OR AGENTS OR ASSIGNS, DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, MEDICAL ALERT SYSTEM, OR OTHER SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS, MEDICAL ALERT SYSTEM OR OTHER SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

Section 17. Arbitration. In the event of any dispute arising between, among, against or on behalf of Owners relating to this Townhome Declaration, each party shall appoint one (1) arbitrator. Should any such Owner refuse to appoint an arbitrator within ten (10) days after written request therefore by the Townhome Board, the Townhome Board shall appoint an arbitrator for the refusing Owner. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) (or more) arbitrators shall be binding upon the Owners and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof and located in Fort Bend, Texas. However, this Section shall not be construed as to require Townhome Declarant or the Townhome Association to arbitrate



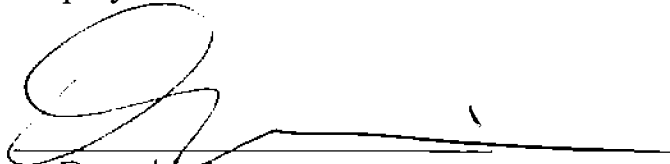
any enforcement and/or collection action initiated by Townhome Declarant and/or the Townhome Association hereunder. This Section does not apply to the Master Sienna Association and the Master Declarant.

Section 18. Attorneys' Fees. If any controversy, claim or dispute arises relating to this instrument, its breach or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs.

Section 19. Waiver of Environment Conditions. The term "Declarant" as used in this Section 19 shall mean both Master Declarant and Townhome Declarant, together with their respective general partner(s), partners, directors, managers, officers, employees, agents, contractors, sub-contractors, design consultants, architects, advisors, brokers, sales personnel and marketing agents. The term "Association" as used in this Section paragraph 19 shall mean both the Master Sienna Association and the Townhome Association, and shall further include, without limitation, the Townhome Association, its Townhome Board, managers, employees, and agents, and the Master Sienna Association, its board of directors, managers, employees and agents. Declarant and Association shall not in any way be considered an insurer or guarantor of environmental conditions or indoor air quality within the any Townhome. Neither shall Declarant nor the Association shall be held liable for any loss or damage by reason of or failure to provide adequate indoor air quality or any adverse environmental conditions. Declarant and the Association do not represent or warrant that any construction materials, air filters, mechanical, heating, ventilating or air conditioning systems and chemicals necessary for the cleaning or pest control of the Townhome will prevent the existence or spread of biological organisms, cooking odors, animal dander, dust mites, fungi, pollen, tobacco smoke, dust or the transmission of interior or exterior noise levels. Declarant and the Association are not an insurer and each Owner and occupant of any Townhome and each tenant, guest and invitee of any Owner assumes all risks for indoor air quality and environmental conditions and acknowledges that Declarant and the Association have made no representations or warranties nor has the Declarant and the Association, any Owner, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to the air quality within the Community or any portion thereof or any Townhome.

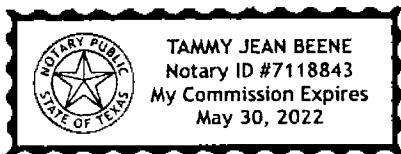
IN WITNESS WHEREOF, the undersigned being the duly appointed officers of Townhome Declarant herein, have executed this instrument this 9th day of May, 2019.


CHESMAR HOMES, LLC, a Texas limited liability company

By:   
Name: Donald P. Klein  
Title: Manager

STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 9th day of May, 2019, by Donald P. Klein, Manager of Chesmar Homes, LLC, , on behalf of said entity.



  
Notary Public

JOINDER BY MASTER SIENNA ASSOCIATION

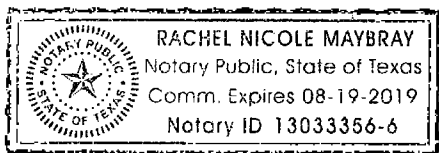
Executed this 9<sup>th</sup> day of May, 2019, also by the undersigned, as the Master Sienna Association, to acknowledge and agree to its maintenance obligations under Article V of this Townhome Declaration.

Sienna Plantation Community Association, Inc., a Texas non-profit corporation

By: [Signature]  
Name: JIMMIE F. JENKINS  
Title: PRESIDENT

STATE OF TEXAS §  
  §  
COUNTY OF Harris §

This instrument was acknowledged before me on the 9 day of May, 2019, by Jimmie F. Jenkins President of the Sienna Plantation Community Association, Inc., a Texas non-profit corporation, on behalf of such entity.



[Signature]  
Notary Public, State of Texas

JOINDER BY MASTER DECLARANT

Whereas, the undersigned, hereby joins this Townhome Declaration not as the developer of Townhomes, but as Master Declarant of the Community into which the real property subjected to this Townhome Declaration has been or will be annexed.

Signed this the 9<sup>th</sup> day of May, 2019.

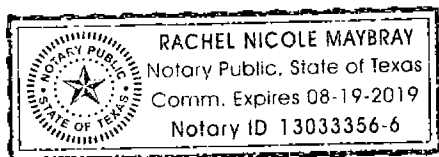
**MASTER DECLARANT:**

TOLL-GTIS PROPERTY OWNER LLC, a Texas limited liability company

By: JF Jenkins  
Name: JIMMIE F JENKINS  
Title: AUTHORIZED REPRESENTATIVE

THE STATE OF TEXAS §  
COUNTY OF Harris §

May This instrument was acknowledged before me on the 9 day of May, 2019, by Jimmie F. Jenkins as Auth. Repres. of Toll-GTIS Property Owner, LLC, a Texas limited liability company, on behalf of said company.



R Maybray  
Notary Public - State of Texas

EXHIBIT "A"

Property Subject to this Townhome Declaration

Lots 1 through 20, Block 1; Lots 1 through 14, Block 2; and Lots 1 through 12, Block 3, of Sienna Plantation, Section 17A, a subdivision located in Fort Bend County, Texas according to the map or plat recorded at Document No. 20190012 in the Plat Records of Fort Bend County, Texas.

Lots 11 and 12, Block 2, of Sienna Plantation, Section 14, a subdivision located in Fort Bend County, Texas according to the map or plat recorded at Document No. 20180256 in the Plat Records of Fort Bend County, Texas

2021028032  
ELECTRONICALLY RECORDED  
Official Public Records  
2/23/2021 3:30 PM



*Laura Richard*  
Laura Richard, County Clerk  
Fort Bend County Texas  
Pages: 4 Fee: \$ 28.00

**CLARIFICATION AMENDMENT TO THE SUPPLEMENTAL  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SIENNA TOWNHOMES**

After Recording, Return To:

Marc D. Markel  
Lisa L. Gambrell  
Roberts Markel Weinberg Butler Hailey PC  
2800 Post Oak Blvd., 57<sup>th</sup> Floor  
Houston, TX 77056

**CLARIFICATION AMENDMENT TO THE SUPPLEMENTAL  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SIENNA TOWNHOMES**

This Clarification Amendment to the Supplemental Declaration of Covenants, Conditions and Restrictions for Sienna Townhomes, hereinafter referred to as the “Clarification Amendment”, is made by the undersigned Declarant, as defined hereinbelow, with the joinder of Toll-GTIS Property Owner, LLC, a Texas limited liability company (“Master Declarant”).

WHEREAS, the Supplemental Declaration of Covenants, Conditions and Restrictions for Sienna Townhomes was filed of record under Clerk’s File No. 2019060447 in the Official Public Records of Fort Bend County, Texas, as same may be amended from time to time (the “Declaration”); and

WHEREAS, reference is hereby made to the Declaration for all purposes, and any and all capitalized terms used herein have the meanings set forth in the Declaration, unless otherwise specified in this Clarification Amendment; and

WHEREAS, pursuant to the authority set forth in Article XII, Section 4 of the Declaration, the Declarant and Master Declarant desire to amend the Declaration.

NOW THEREFORE, pursuant to the authority granted to the Declarant in the Declaration, the Declaration is hereby amended as follows:

The following provision is added to the end of Article II “Property Subject to This Townhome Declaration”:

*The number of Townhome Lots that may be created within the Community and made subject to this Declaration is four hundred and twenty-four (424). Provided, this section does not constitute a warranty or representation by the Declarant or the Master Declarant as to the total number of Townhome Lots that will ultimately be created and subjected to the provisions of this Declaration.*

The Declaration, as hereby amended, is in all respects ratified and confirmed and will remain in full force and effect. If any provision of this Clarification Amendment is found to be in conflict with the Declaration, as amended, this Clarification Amendment will control.

[SIGNATURE PAGES FOLLOW]

SIGNED this the 23 day of February, 2021.

**DECLARANT:**

CHESMAR HOMES, LLC, a Texas limited liability company

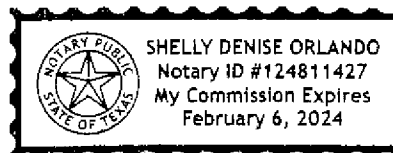
By: [Signature]  
Name: Donald P. Klein  
Title: CEO

STATE OF TEXAS §  
  §  
COUNTY OF Montgomery §

BEFORE ME, the undersigned authority, on this day personally appeared Donald P. Klein, the CEO of Chesmar Homes, LLC, a Texas limited liability company 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 the capacity herein stated, and as the act and deed of said entity.

Given under my hand and seal of office, this 23 day of February, 2021.

[Signature] Shelly Orlando  
Notary Public – State of Texas





**JOINDER BY MASTER DECLARANT**

WHEREAS, the undersigned, being the Master Declarant of the Community, hereby joins this Clarification Amendment to the Supplemental Declaration of Covenants, Conditions and Restrictions for Sienna Townhomes pursuant to the amendment provision set forth in the Declaration.

Signed this the 22<sup>ND</sup> day of February, 2021.

**MASTER DECLARANT:**

TOLL-GTIS PROPERTY OWNER, LLC, a Texas limited liability company

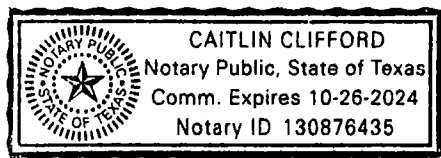
By: *J. Jenkins*  
Print Name: JIMMIE F JENKINS  
Title: AUTHORIZED REPRESENTATIVE

THE STATE OF TEXAS       §  
  §  
COUNTY OF Harris       §

BEFORE ME, the undersigned authority, on this day personally appeared Jimmie F Jenkins, the Authorized Rep of TOLL-GTIS PROPERTY OWNER, LLC, a Texas limited liability company, 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 the capacity herein stated, and as the act and deed of said entity.

Given under my hand and seal of office, this 22 day of February, 2021.

*Caitlin Clifford*  
Notary Public – State of Texas





**SIENNA TOWNHOMES**  
**SUPPLEMENTAL DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**(AMENDMENT)**

STATE OF TEXAS                                    §  
  § KNOW ALL MEN BY THESE PRESENTS THAT  
COUNTY OF FORT BEND                       §

THIS SUPPLEMENTAL DECLARATION (AMENDMENT) is executed on the date set forth below by CHESMAR HOMES, LLC, a Texas limited liability company, under the terms and conditions set forth herein (the "Supplemental Declaration (Amendment)"):

**WHEREAS**, CHESMAR HOMES, LLC ("Declarant"), as the owner of certain land created that certain subdivision known as the Sienna Townhomes, by the execution and recordation of that certain Supplemental Declaration of Covenants, Conditions and Restrictions for Sienna Townhomes (the "Declaration") recorded under Fort Bend County Clerk's File No. 2019060447 of the Official Public Records of Fort Bend County, Texas (the "Declaration"); and

**WHEREAS**, by terms of said Declaration, land subject to the Declaration (also known as the Community) was placed within the jurisdiction of the Sienna Townhome Association (the "Townhome Association"); and

**WHEREAS**, pursuant to Article XII, Section 4 of the Declaration, the Declarant has the unilateral right to amend the Declaration, without the need for the joinder or consent of any other party; and

**WHEREAS**, the Declarant is executing and recording this Supplemental Declaration to amend certain provisions of the Declaration; and

**NOW, THEREFORE**, pursuant to the power reserved in the Declaration, Declarant does hereby declare that all of the real property described in the Declaration, whether originally described therein or annexed thereto, including the improvements constructed or to be constructed thereon, is hereby subject to the terms of this Supplemental Declaration (Amendment) and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and 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.

**ARTICLE I**  
**Definitions**

All capitalized terms herein shall have the meanings set forth in the Declaration, unless defined herein otherwise.

**ARTICLE II**  
**Property Subject to the Declaration and this Supplemental Declaration (Amendment)**

The real property which is, by the recording of the Declaration and this Supplemental Declaration (Amendment), subject to the covenants and restrictions set forth in the Declaration, and which, by the virtue of the recording of this Supplemental Declaration (Amendment), shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Supplemental Declaration (Amendment) is all of the real property in the Community, being the real property described in the Declaration and any annexations thereto.

**ARTICLE III**  
**Amendments**

Pursuant to Article XII, Section 4 of the Declaration, the Declaration may be amended unilaterally by the Declarant, without the consent or joinder of any party. The Declarant hereby amends the Declaration as follows:

Article VII of the Declaration is hereby deleted in its entirety and is replaced with the following, as if originally a part thereof:

**“ARTICLE VII.**  
**Insurance and Casualty Losses**

Section 1. Insurance. The Townhome Association's Townhome Board or its duly authorized agent shall have the authority to and shall obtain insurance for all improvements on the Common Property. Each Owner shall obtain insurance for all improvements located on its Townhome Lot, including but not limited to, its Townhome. The insurance the Owner is obligated to carry shall be for the improvements as built (i.e., the original construction standards and materials, referred to herein as the “**As-Built Improvements**”), any improvements upgraded by an Owner above the original construction standards and materials, and the contents of the Townhome. This insurance for the Townhomes 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,

reconstruction, and contents in the event of damage or destruction from any such hazard. The insurance required to be obtained by each Owner shall be written on form HO5 or its equivalent and be obtained from an AM Best A Rated (or higher rated) carrier and must name the Association as an additional insured. The Townhome Association may, from time to time, update the insurance required to be carried by each Owner, in which case the Owner will be obligated to obtain the updated insurance by the following January 1<sup>st</sup>. Each Owner shall provide proof of such insurance to the Townhome Association within 7 business days of the acquisition or renewal of his or her insurance policy, and in no event later than January 31<sup>st</sup> of each year. Any Owner failing to do so shall be deemed in default hereunder and the Townhome Association shall have the authority, without the obligation, to place such insurance for the benefit of such Owner and the cost of such placed insurance will be assessed against such Owner as a reimbursement assessment, as provided herein. The Townhome Association shall have no liability to any Owner if any insurance it places because of Owner's failure to do so is insufficient in any respect.

The Townhome Board shall obtain a general liability policy applicable to the Common Property covering the Townhome Association and its members for all damage or injury caused by the negligence of the Townhome Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. Each Owner should obtain insurance to cover general liability within its respective Townhome or on its Townhome Lot. It is also highly recommended that each Owner obtain insurance to cover floods and the deductible amount on other policies.

Premiums and deductibles for all insurance which it is the obligation of the Townhome Association to provide shall be common expenses of the Townhome Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

In addition to the other insurance required by this Section, the Townhome Board shall obtain, if and to the extent necessary, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Townhome Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Townhome Association.

## Section 2. Damage and Destruction.

Repair or reconstruction, as used in this Section 2, means repairing or restoring the property to substantially the same condition and location that

existed prior to the fire or other casualty. Any repair or reconstruction to a Townhome or Townhome Lot, including proposed changes to the location or design of any improvement on the Townhome Lot, must have the prior written approval of the Sienna Plantation Reviewer in accordance with the review process provided for in the Master Sienna Covenants.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any improvement covered by insurance written in the name of the Townhome Association, the Townhome Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Immediately after the damage or destruction by fire or other casualty to all or any improvement covered by insurance written in the name of an Owner, such Owner or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property and proceed with the repair or reconstruction of the improvements.

The insurance proceeds obtained by the Townhome Association for casualty to any such improvement must be used for the repair or reconstruction of the improvement. The insurance proceeds obtained by an Owner for casualty to his or her Townhome or other improvement on a Townhome Lot must be used for the repair or reconstruction of the Townhome or other improvement on the Townhome Lot.

(b) Repair and Reconstruction. Any damage or destruction to any Townhome or Townhomes shall be repaired or reconstructed. Any damage or destruction to any Common Property shall be repaired or reconstructed.

In the event of damage or destruction to Common Property or to a Townhome for which the insurance proceeds are paid to the Townhome Association in accordance with this Article and such proceeds are not sufficient to defray the cost thereof, the Townhome Board shall, without the necessity of a vote of the Townhome Association's members, levy a special assessment against all Owners for the deficiency. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction by the Townhome Association. If the funds available from insurance exceed the costs of repair or reconstruction, such excess shall be deposited to the benefit of the Townhome Association; provided that the Owner and Mortgagee of any Townhome for which proceeds are received agree to the distribution as their interest may appear.

In the event that an Owner obtains insurance for a Townhome in accordance with the provisions in this Article and the damage or destruction for

which the insurance proceeds are paid to the Owner are not sufficient to defray the cost thereof, the Owner shall be responsible for such deficiency.”

Nothing herein contained is intended to or shall be construed to amend the Declaration other than as to the specific terms and provisions of the Declaration which are addressed herein. This Amendment shall control in the event of any conflict. This Supplemental Declaration (Amendment) is intended to comply with, and does comply with Article XII, Section 4 of the Declaration and Declarant, by execution and recordation of this Supplemental Declaration (Amendment), has amended the Declaration as set forth herein. All real property in the Community shall be developed, held, used, sold and conveyed in accordance with and subject to the provisions of the Declaration as amended.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant, has hereunto set its hand to this Supplemental Declaration (Amendment) this 2nd day of December, 2022.

Declarant:

CHESMAR HOMES, LLC, a Texas limited liability company

By: 

Name: Donald P. Klein

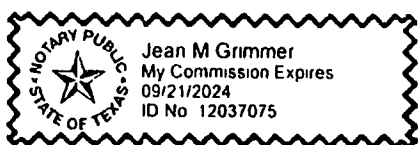
Title: CEO


STATE OF TEXAS

§  
§  
§

COUNTY OF MONTGOMERY

This instrument was acknowledged before me on this 2<sup>nd</sup> day of December, 2022 by Donald P. Klein, CEO of CHESMAR HOMES, LLC, a Texas limited liability company, on behalf of said entity.



  
Notary Public, State of Texas

**APPROVAL BY TOLL-GTIS PROPERTY OWNER, LLC**

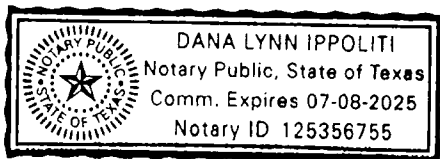
APPROVED, this the 5<sup>th</sup> day of December, 2022.

TOLL-GTIS PROPERTY OWNER, LLC, a  
Texas limited liability company

By: *J. F. Jenkins*  
Printed Name: Jimmie F. Jenkins  
Title: Authorized Representative

THE STATE OF TEXAS     §  
  §  
COUNTY OF Fort Bend   §

This instrument was acknowledged before me this 5<sup>th</sup> day of December, 2022,  
by Jimmie F. Jenkins Authorized Rep. of Toll-GTIS Property Owner, LLC, a  
Texas limited liability company, on behalf of said company.



*Dana Ippoliti*  
Notary Public – State of Texas