16 pgs 201410338
AMD

FIRST AMENDMENT

TO

RESTRICTIONS, RESERVATIONS AND ARCHITECTURAL CONTROL

FOR

TERRA VISTA

STATE OF TEXAS §
§
COUNTY OF VICTORIA §

RECITALS

WHEREAS, by those instruments entitled "Restrictions, Reservations and Architectural Control for Terra Vista" recorded under Document No. 201107482 of the Official Public Records of Victoria County, Texas (the "Phase I Declaration"), "Restrictions, Reservations and Architectural Control for Terravista, Phase II" recorded under Document No. 201208823 of the Official Public Records of Victoria County, Texas (the "Phase II Declaration"), "Restrictions, Reservations and Architectural Control for Terravista, Phase III" recorded under Document No. 201302001 of the Official Public Records of Victoria County, Texas (the "Phase III Declaration"), "Restrictions, Reservations and Architectural Control for Terravista, Phase IV" recorded under Document No. 201301238 of the Official Public Records of Victoria County, Texas (the "Phase IV Declaration"), "Restrictions, Reservations and Architectural Control for Terravista, Phase V" recorded under Document No. 201400923 of the Official Public Records of Victoria County, Texas (the "Phase V Declaration"), "Restrictions, Reservations and Architectural Control for Terravista, Phase VI" recorded under Document No. 201406494 of the Official Public Records of Victoria County, Texas (the "Phase VI Declaration"), and "Restrictions, Reservations and Architectural Control for The Ranches at Terravista – Phase I" recorded under Document No. 201408092 of the Official Public Records of Victoria County, Texas (the "Ranches at Terravista – Phase I Declaration") (the Phase I Declaration, Phase II Declaration, Phase III Declaration, Phase IV Declaration, Phase V Declaration, Phase VI Declaration and Ranches at Terravista – Phase I Declaration, as the same may be amended from time to time, together with such other restrictive covenants that may be recorded against any Additional Land (as defined in the Bylaws of the Association (as hereinafter defined)) shall be collectively referred to herein as the "Declaration"), LANDMARK RESIDENTIAL DEVELOPMENT, LTD. and LANDMARK RESIDENTIAL CONSTRUCTION, LTD. (collectively "Grantor") created Terra Vista, a subdivision in Victoria County, Texas (the "Subdivision");

WHEREAS, pursuant to Article III, Section 2 of the Declaration, a Homeowners Association for the Subdivision (the "Association") has been created;

WHEREAS, pursuant to Article III, Section 4 of the Declaration, an initial Board of Directors (the "Board") of the Association has been established;

WHEREAS, pursuant to Article III of the Declaration, the Board may approve rules to govern the operations of the Association;

WHEREAS, the 82nd Texas Legislative Session (2011) enacted legislation changing several provisions of the Texas Property Code applicable to homeowners associations (collectively the "Legislative Changes"); and

WHEREAS, the Board desires to comply with the Legislative Changes, and hereby adopts and approves this First Amendment to the Declaration (the "Amendment") in furtherance thereof.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THAT THE DECLARATION IS AMENDED AS FOLLOWS:

1. Display of Flags. Notwithstanding any provision in the Declaration to the contrary, (including, without limitation, Article IV, Section H.17) each owner (an "Owner") of a lot (a "Lot") located within the Subdivision shall be permitted to display the flag of the United States, the State of Texas or an official or replica flag of any branch of the United States armed forces, subject to the following conditions:

A) No flag may be installed by an Owner in any Common Area and Owner installed flags must be entirely located on the Owner's Lot;

B) Flagpoles shall be constructed of durable materials and with a finish that is harmonious with the dwelling on the Lot, subject to the discretion of the Architectural Control Committee;

C) No flag or flagpole may be installed within an easement, building setback line or other area where buildings, structures, fences, landscaping, hardscaping or other improvements of any nature (collectively, "Improvements") are prohibited as provided in the Declaration, applicable ordinances, any plat or separate instrument;

D) The flag and flagpole must be kept in good condition and repair at all times, subject to the discretion of the Board;

E) The U. S. Flag must be displayed in accordance with the requirements of 4 U.S.C. Sections 5-10;

F) The State of Texas Flag must be displayed in accordance with the requirements of Chapter 3100, Texas Government Code;

G) Only two (2) flags or flagpoles, only one (1) of which may be freestanding, shall be permitted per Lot;

H) Freestanding flagpoles may not exceed twenty (20) feet in height and flagpoles attached to a residence may not exceed five (5) feet in height. A flagpole associated with a model home or sales office used by the Grantor or a homebuilder may be taller than twenty (20) feet in height but only during such time as the model home or sales office is in use for such purpose;

I) Any halyard or securing device must be installed to eliminate noise from flapping against the flagpole;

J) The Architectural Control Committee may adopt additional standards governing the size of the flag or the location and intensity of lights illuminating the flag;

K) Prior to installation of a flag or flagpole, the Owner shall submit an application to the Architectural Control Committee to ensure compliance with the standards set forth in this Section and the application shall be processed according to the procedures and conditions set forth in Article II of the Declaration, or such additional procedures and conditions as the Architectural Control Committee may adopt..

2. <u>Rainwater Harvesting Systems</u>. Notwithstanding any provision in the Declaration to the contrary, each Owner shall be permitted to install rain barrels or rainwater harvesting systems on their Lot in connection with the Improvements on the Lot and for purposes of domestic water use and subject to the following conditions:

A) such device must be consistent with the color scheme of the residence constructed on the Lot;

B) the device does not include any language or other graphic depiction that is not typically present on such device;

C) the device is not located between the front of the residence on the Lot and any adjacent or adjoining street or thoroughfare;

D) there is sufficient area on the Lot to install the device;

E) if the device is to be installed on or within the side yard of a Lot or would be visible from a street, Common Area or another Owner's property, the Architectural Control Committee may regulate the size, type, shielding of, and materials used in the construction of the device;

F) installation of the device must be commenced within thirty (30) days after approval by the Architectural Control Committee and diligently completed thereafter; and

G) prior to installation of such a device, the Owner shall submit an application to the Architectural Control Committee to ensure compliance with the standards set forth in this Section and the application shall be processed according to the procedures and conditions set forth in Article II of the Declaration, or such additional procedures and conditions as the Architectural Control Committee may adopt..

3. Solar Devices. Each Owner shall be permitted to install Solar Energy Devices on their Lot in connection with the Improvements on the Lot subject to the following conditions:

A) "Solar Energy Device" shall be defined as a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power;

B) the Solar Energy Device does not represent a threat to public health or safety;

C) the Solar Energy Device does not violate any applicable law;

D) no portion of the Solar Energy Device is located on any Common Area;

E) the Solar Energy Device must only be located on the roof of the residence located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the residence, the Architectural Control Committee may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National

Renewable Energy Laboratory, by more than 10 percent above the energy production of the Solar Energy Device if installed in the location designated by the Architectural Committee. If the device is to be installed within a fenced area or patio, then no portion of the Solar Energy Device may be installed above the fence line. If the Solar Energy Device is mounted on the roof of the residence located on the Owner's Lot, the (i) the Solar Energy Device may not extend higher than or beyond the roofline; (ii) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Energy Device must be parallel to the roofline; and (iii) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black;

F) the Solar Energy Device, as installed, will not void any manufacturer's warranty;

G) prior to installation of such a device, the Owner shall submit an application to the Architectural Control Committee to ensure compliance with the standards set forth in this Section and the application shall be processed according to the procedures and conditions set forth in Article II of the Declaration, or such additional procedures and conditions as the Architectural Control Committee may adopt.. In any event, the Architectural Committee may withhold approval of a Solar Energy Device, even if it meets the standards set forth in this Section, if the Architectural Committee determines in writing that the placement of the Solar Energy Device, as proposed by the Owner, constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to person of ordinary sensibilities. The written approval of the Solar Energy Device by each of the Owners adjoining Lots shall constitute prima facie evidence that such a condition does not exist; and

H) during the period when Grantor owns any portion of the Property or the Additional Land, no Solar Energy Device may be installed by an Owner unless approved by Grantor, which approval may be withheld in Grantor's sole discretion.

4. Energy Efficient Roofing. "Energy Efficient Roofing" shall be defined as shingles that are designed primarily to: a) be wind and hail resistant; b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or c) provide solar generation capabilities. Each Owner shall be permitted to install Energy Efficient Roofing on the Improvements on the Lot provided that the Energy Efficient Roofing shingles: a) resemble the shingles used or otherwise authorized for use within any architectural standards and guidelines promulgated and published by the Architectural Control Committee, or resemble shingles previously authorized for use by the Architectural Control Committee; b) are more durable than, and are of equal or superior quality to the shingles used or otherwise authorized for

use within the Subdivision; and c) match the aesthetics of the adjacent Lots. Authorization for Energy Efficient Roofing from the Architectural Control Committee shall be processed according to the procedures and conditions set forth in Article II of the Declaration, or such additional procedures and conditions as the Architectural Control Committee may adopt.

5. Display of Certain Religious Items Permitted. An Owner or resident is permitted to display or affix to the entry door or doorframe of the residence located on the Owner's Lot (which may not extend beyond the outer edge of the doorframe) one or more religious items, the display of which is motivated by the Owner's or resident's sincere religious belief. This policy outlines the standards which shall apply with respect to the display or affixing of certain religious items on the entry door or doorframe of the residence located on the Owner's Lot.

A) General Guidelines. Religious items may be displayed or affixed to the entry door or doorframe of the residence located on an Owner's Lot (which may not extend beyond the outer edge of the doorframe); provided, however, that individually or in combination with each other, the total size of the display is no greater than twenty-five (25) square inches (5" x 5" = 25 square inches);

B) Prohibitions. No religious item may be displayed or affixed to the entry door or doorframe of the residence constructed on an Owner's Lot (which may not extend beyond the outer edge of the doorframe) if said religious item: (i) threatens the public health or safety; (ii) violates applicable law; or (iii) contains language, graphics or any display that is patently offensive. No religious item may be displayed or affixed in any location other than the entry door or doorframe of the residence constructed on an Owner's Lot (which may not extend beyond the outer edge of the doorframe). Nothing in this policy may be construed in any manner to authorize an Owner or resident to use a material or color for the entry door or doorframe of the residence constructed on an Owner's Lot or to make an alteration to the entry door or doorframe that is not otherwise permitted pursuant to the Association's governing documents;

C) Removal. The Association may remove any item which is in violation of the terms and provisions of this policy; and

D) Covenants in Conflict with Statutes. To the extent that any provisions of the Association's recorded covenants restrict or prohibit an Owner or resident from displaying or affixing a religious item in violation of the controlling provisions of Section 202.018 of the Texas Property Code, the Association shall have no authority to enforce such provisions and the provisions of this Section shall hereafter control.

6. Assessment Collection Policy.

A) Delinquencies, Late Charges and Interest

1. Due Date. An Owner will timely and fully pay any and all assessments assessed by the Board pursuant to Article III of the Declaration (the "Assessments").

2. Delinquent. Any Assessment that is not fully paid when due is delinquent. When the account of an Owner becomes delinquent, it remains delinquent until paid in full – including collection costs, interests and late fees.

3. Late Fees and Interest. If the Association does not receive full payment of any Assessment by 5:00 p.m. after the due date established by the Board, the Association may levy a late fee of $25.00 per month and/or interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date therefor (or if there is no such highest rate, then at the rate of 2% per month) until paid in full.

4. Liability for Collection Costs. The defaulting Owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, court costs, filing fees, and other reasonable costs and attorneys' fees incurred by the Association in collecting the delinquency.

5. Insufficient Funds. The Association may levy a charge of $25.00 for any check returned to the Association marked "not sufficient funds" or the equivalent.

6. Waiver. Properly levied collection costs, late fees and interest may only be waived by a majority of the Board.

B) Installments and Acceleration

If an Assessment is payable in installments, and if an Owner defaults in the payment of any installment, the Association may declare the entire Assessment in default and accelerate the due date on all remaining installments of the Assessment. An Assessment payable in installments may be accelerated only after the Association gives the Owner at least fifteen (15) days prior notice of the default and the Association's intent to accelerate the unpaid balance if the default is not timely cured. Following acceleration of the indebtedness, the Association has no duty to reinstate the installment program upon partial payment by the Owner.

C) Payments

1. <u>Application of Payments</u>. After the Association notifies the Owner of a delinquency and the Owner's liability for late fees or interest, and collection costs, any payment received by the Association shall be applied in the following order, starting with the oldest charge in each category, until that category is fully paid, regardless of the amount of payment, notations on checks, and the date the obligations arose:

(a) Delinquent Assessments.

(b) Current Assessments.

(c) Attorneys' fees and costs associated with delinquent Assessments.

(d) Other attorneys' fees.

(e) Fines.

(f) Any other amount.

2. <u>Payment Plans</u>. The Association shall offer each delinquent Owner a payment plan for the payment of delinquent Assessments. The minimum term of such plan must be three (3) months and the maximum term must be eighteen (18) months from the date the payment plan in requested by the Owner and instituted. The Board shall determine the exact payment plan on a case-by-case basis and may delegate such authority to the such third parties as the Board may delegate, in its sole discretion. The Board may refuse to offer the payment plan to any Owner has previously been delinquent within the two years preceding the payment plan request or who, in the Board's sole discretion, has demonstrated a pattern of delinquencies.

3. <u>Form of Payment</u>. The Association may require that payment of delinquent Assessments be made only in the form of cash, cashier's check or certified funds.

4. <u>Partial and Conditioned Payment</u>. The Association may refuse to accept partial payment (i.e., less than the full amount due and payable) and payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's endorsement and deposit of a payment does not constitute acceptance. Instead, acceptance by the Association occurs when the Association posts the payment to the Owner's account. If the Association does not accept the payment at that time, it will promptly refund the payment to the payer. A payment that is not refunded to the payer within thirty (30) days after being deposited by the Association may be deemed accepted as to

payment, but not as to words of limitation or instruction accompanying the payment. The acceptance by the Association of partial payment of delinquent Assessments does not waive the Association's right to pursue or to continue pursuing its remedies for payment in full of all outstanding obligations.

5. Notice of Payment. If the Association receives full payment of the delinquency after recording a notice of lien, the Association will cause a release of notice of lien to be publicly recorded, a copy of which will be sent to the Owner. The Association may require the Owner to prepay the cost of preparing and recording the release.

6. Correction of Credit Report. If the Association receives full payment of the delinquency after reporting the defaulting Owner to a credit reporting service, the Association will report receipt of payment to the credit reporting service.

D) Liability for Collection Costs

The defaulting Owner may be liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, filing fees and other reasonable costs and attorneys' fees incurred in the collection of the delinquency.

E) Collection Procedures

1. Delegation of Collection Procedures. From time to time, the Association may delegate some or all of the collection procedures, as the Board in its sole discretion deems appropriate, to the Association's managing agent, attorney or a debt collector.

2. Delinquency Notices. If the Association has not received full payment of an Assessment by the due date, the Association may send written notice of nonpayment to the defaulting Owner, by hand delivery, first class mail, and/or by certified mail, stating the amount delinquent. The Association's delinquency-related correspondence may state that if full payment is not timely received, the Association may pursue any or all of the Association's remedies, at the sole cost and expense of the defaulting Owner.

3. Verification of Owner Information. The Association may obtain a title report to determine the name of the Owner and the identity of other lienholders, including the mortgage company.

4. Collection Agency. The Board may employ or assign the debt to one or

more collection agencies.

5. Notification of Mortgage Lender. The Association may notify the Owner's mortgage lender of the default obligations.

6. Notification of Credit Bureau. The Association may report the defaulting Owner to one or more credit reporting services.

7. Collection by Attorney. If the Owner's account remains delinquent for a period of ninety (90) days, the manager of the Association or the Board of the Association shall refer the delinquent account to the Association's attorney for collection. In the event an account is referred to the Association's attorney, the Owner will be liable to the Association for its legal fees and expenses. Upon referral of a delinquent account to the Association's attorney, the Association's attorney will provide the following notices and take the following actions unless otherwise directed by the Board:

a. Initial Notice: Preparation of the Initial Notice of Demand for Payment Letter. If the account is not paid in full within thirty (30) days (unless such notice has previously been provided by the Association), then

b. Lien Notice: Preparation of the Lien Notice of Demand for Payment Letter and record a Notice of Unpaid Assessment Lien. If the account is not paid in full within thirty (30) days, then

c. Final Notice: Preparation of the Final Notice of Demand for Payment Letter and Intent to Foreclose and Notice of Intent to Foreclose to Lender. If the account is not paid in full within thirty (30) days, then

d. Foreclosure of Lien: Only upon specific approval by a majority of the Board.

8. Notice of Lien. The Association's attorney may cause a notice of the Association's Assessment lien against the Owner's home to be publicly recorded. In that event, a copy of the notice will be sent to the defaulting Owner, and may also be sent to the Owner's mortgagee.

9. Cancellation of Debt. If the Board deems the debt to be uncollectible, the Board may elect to cancel the debt on the books of the Association, in which case the Association may report the full amount of the forgiven indebtedness to the Internal Revenue Service as income to the defaulting Owner.

10. Suspension of Use of Certain Facilities or Services. The Board may suspend the use of the Common Area amenities by an Owner, or his tenant, whose account with the Association is delinquent for at least thirty (30) days.

F) General Provisions

1. Independent Judgment. Notwithstanding the contents of this detailed policy, the officers, directors, manager and attorney of the Association may exercise their independent, collective and respective judgment in applying this policy.

2. Other Rights. This policy is in addition to and does not detract from the rights of the Association to collect Assessments under the Declaration and the laws of the State of Texas.

3. Limitations of Interest. The Association, and its officers, directors, managers and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Declaration or any other document or agreement executed or made in connection with this policy, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Assessments, or reimbursed to the Owner if those Assessments are paid in full.

4. Notices. Unless the Declaration, applicable law, or this policy provide otherwise, any notice or other written communication given to an Owner pursuant to this policy will be deemed to be delivered to Owner upon depositing same with the United States Postal Service, addressed to the Owner at the most recent address shown on the Association's records, or on personal delivery to the Owner. If the Association's records show that an Owner's property is owned by two (2) or more persons, notice to one co-Owner is deemed notice to all co-Owners. Similarly, notice to one resident is deemed notice to all residents. Written communications to the Association, pursuant to this policy, will be deemed given on actual receipt by the Association's president, secretary, managing agent or attorney.

5. Amendment of Policy. This policy may be amended from time to time by the Board.

7. The provisions of this Amendment are hereby incorporated into and made a part of the Declaration. As updated herein, the terms and conditions of the Declaration shall continue in full force and effect. Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to such terms in the Declaration.

EXECUTED this the 29th day of August, 2014.

ASSOCIATION:

TERRA VISTA HOMEOWNERS ASSOCIATION, INC., a Texas nonprofit corporation

By: ______________________
Steve Klein, President

THE STATE OF TEXAS §
§
COUNTY OF Williamson §

This instrument was acknowledged before me on this 29th day of August, 2014, by Steve Klein, as President of Terra Vista Homeowners Association, Inc., a Texas nonprofit corporation, on behalf of said nonprofit corporation.

____
Notary Public in and for the State of Texas

LENA SHAYNE COCKRELL
NOTARY PUBLIC
STATE OF TEXAS
EXPIRES
06-18-2018

CONSENT OF LIENHOLDER

The undersigned financial institution, being the owner and holder of an existing mortgage lien upon and against the land and property described as Phase V of the Subdivision in the foregoing Amendment, hereby consents to the Amendment and to the recording of same, provided that the undersigned lienholder's lien(s) and security interest(s) shall remain superior to any liens or security interests created by the Amendment with respect to Phase V of the Subdivision.

This consent shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof. The granting of this consent does not constitute a waiver of lienholder's right to withhold consent in the future.

LIENHOLDER:

NEWFIRST NATIONAL BANK

By: [signature]
Name: Neal W. Stevenson
Title: Vice President

THE STATE OF TEXAS §
§
COUNTY OF Victoria §

This instrument was acknowledged before me on this 27 day of August, 2014, by Neal W. Stevenson, as Vice President of Newfirst National Bank, on behalf of said entity.

GERRI A RAAZ
My Commission Expires
March 14, 2017

Gerri A. Raaz
Notary Public in and for the State of Texas

CONSENT OF LIENHOLDER

The undersigned financial institution, being the owner and holder of an existing mortgage lien upon and against the land and property described as Phase VI of the Subdivision in the foregoing Amendment, hereby consents to the Amendment and to the recording of same, provided that the undersigned lienholder's lien(s) and security interest(s) shall remain superior to any liens or security interests created by the Amendment with respect to Phase VI of the Subdivision.

This consent shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof. The granting of this consent does not constitute a waiver of lienholder's right to withhold consent in the future.

LIENHOLDER:

FIRST NATIONAL BANK IN PORT LAVACA

By: John Stevenson
Name: John Stevenson
Title: Sr. Vice President

THE STATE OF TEXAS §
§
COUNTY OF VICTORIA §

This instrument was acknowledged before me on this 27 day of AUGUST, 2014, by JOHN STEVENSON, as SR. VICE PRESIDENT of First National Bank of Port Lavaca, on behalf of said entity.

NOTARY PUBLIC STATE OF TEXAS
ISABEL RODRIGUEZ
Notary Public
STATE OF TEXAS
My Comm. Exp. Mar. 17, 2016

Isabel Rodriguez
Notary Public in and for the State of Texas

CONSENT OF LIENHOLDER

The undersigned financial institution, being the owner and holder of an existing mortgage lien upon and against the land and property described as The Ranches at Terravista – Phase I of the Subdivision in the foregoing Amendment, hereby consents to the Amendment and to the recording of same, provided that the undersigned lienholder's lien(s) and security interest(s) shall remain superior to any liens or security interests created by the Amendment with respect to The Ranches at Terravista – Phase I of the Subdivision.

This consent shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof. The granting of this consent does not constitute a waiver of lienholder's right to withhold consent in the future.

LIENHOLDER:

AMERICAN BANK

By: Jim Johnson
Name: Jim Johnson
Title: Sr. Lending Officer

THE STATE OF TEXAS §
§
COUNTY OF Victoria §

This instrument was acknowledged before me on this 27th day of August, 2014, by Jim Johnson, as Senior Lending Officer of American Bank, on behalf of said entity.

Shirley L. Kuecker
My Comm. Exp. 04/13/2016

Shirley L. Kuecker
Notary Public in and for the State of Texas

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Robert S. Cortez

Robert S. Cortez, County Clerk
Victoria County Texas

September 12, 2014 01:47:36 PM

RONNIEO FEE: $72.00 201410338
AMD

ORIGINAL SCANNED &
RETURNED TO:
Lesley Smejkal
DATE 9-12-2014