

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
POSITANO TOWNHOMES I AT BEACHTOWN**

STATE OF TEXAS

COUNTY OF GALVESTON

Positano Townhomes I, LTD., a Texas Limited Partnership, "Declarant" the undersigned, being the owner of the real property set forth below, hereby adopts the following covenants, conditions and restrictions governing Positano Townhomes I at Beachtown (the "Restrictions"):

The property (the "Property") covered by this Declaration of Restrictions is more particularly described as follows:

Lots 1, 2, 3, 4, and 5, in Block 7, of Replat of BEACHTOWN GALVESTON, VILLAGE ONE, SECTION ONE, a subdivision in Galveston County, Texas according to the map or plat thereof recorded in Volume 2004-A, Pages 179, 180, and 181 of the Map Records of Galveston County, Texas.

The undersigned, as the owner of the Lots, hereby subject the Property to these Covenants, Conditions and Restrictions, and hereby declares that the properties, Lots and common area, if any, comprising any part of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the values and desirability of, and which shall run and continue to run with the Property and be binding upon all parties of any right, title or interest in the Property, or any part thereof, and their respective heirs, successors and assigns, and which shall inure to the benefit of each owner thereof. These Restrictions are in addition to those Restrictions, Covenants and Conditions set forth in the Master Beachtown Declaration, as herein after defined.

## ARTICLE I

### DEFINITIONS

**Section 1.** “Association” shall mean and refer to POSITANO TOWNHOMES I HOMEOWNER’S ASSOCIATION, Inc., a Texas non-profit corporation, its successors and assigns.

**Section 2.** “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. For purposes of membership in the Association, each lot shall only have one Owner, and if multiple parties own a Lot they shall designate the “Owner” for purposes hereof.

**Section 3.** “Property is defined above.

**Section 4.** “Common Area” shall mean all real property owned, either by fee simple or by easement, by the Association for the common use and enjoyment of the owners and includes General and Limited Common Areas.

General Common Areas means all the Common Areas except the Limited Common Areas.

Limited Common Areas means the Common Areas allocated for the exclusive use of one or more but less than all of the Units.

Description of Limited Common Areas: means and includes those portions of the common areas reserved for the use of certain Units to the exclusion of other Units. The Limited Common Areas will be any balconies and stairs that are immediately adjacent and contiguous to certain Units, and any demising wall between two Units. The

use and occupancy of designated Limited Common Areas will be reserved to its associated Unit. Each Unit owner is granted an irrevocable license to use and occupy their respective Limited Common Areas, and will have the responsibility to maintain their respective Limited Common Areas. The Limited Common Areas at the time of the filing of this Declaration include by way of description, but not by way of limitation, the entry stairway and porch situated along Positano Rd. of “Unit 1” 1813 East Beach and “Unit 2” 710 Positano Rd shared by these units and shall be reserved for the exclusive use of the Owners of the two Units.

**Section 5.** “Lots” shall mean and refer to the five (5) numbered Lots of land now part of the Property, and “Lot” shall mean and refer to any one of the Lots.

**Section 6.** “Master Declaration” shall mean the Master Declaration of Covenants, Conditions and Restrictions for the Beachtown Galveston Subdivision in Galveston County, Texas recorded under Clerk’s File No. 2006046960 in the Official Records of Real Property of Galveston County, Texas, and all amendments and supplements to such Master Declaration.

**Section 7.** “Unit” shall mean an attached, single family dwelling. For purpose of this Declaration, a Unit shall come into existence upon the issuance of a certificate of occupancy by the appropriate agency of the City of Galveston, or other local Government Authority.

## ARTICLE II

### PROPERTY RIGHTS

**Section 1. Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the rights of the Association to dedicate or transfer all or any part of the Common Area, if any, to any public agency, authority, or utility for such purposes and subject to such conditions as may agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded;
- (b) the right of the Association, in accordance with its Articles of Incorporation or By-Laws, to borrow money for the purpose of improving the Common Area, if any, and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.
- (c) the right of the Association to access any lines or wires that may be placed across the Units for the purpose of maintenance and replacement as long as it does not unreasonably compromise the use and enjoyment of the building. Each unit owner grants the Association permission to run lines or wires of any kind across the length of the building and across the various Units.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area, if any, and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

**Section 1.** Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2.** There shall be two classes of membership in the Association:

**Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each lot in the Subdivision in which it holds the interest required for membership by these Restrictions, Covenants and Conditions or any Supplemental Restrictions, Covenants, and Conditions.

**Class A.** Class A Member shall be all the Members of the Association, with the exception of the Declarant or the Class B Member. Class A Members shall be entitled to one vote for each Lot in the Subdivision in which they hold the interest required for membership by these Restrictions, Covenants and Conditions or any Supplemental Restrictions, Covenants and Conditions provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;
- (b) On January 1, 2020.

From and after the happening of whichever of these events occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot in the Subdivision in which it holds the interest required for membership by these Restrictions, Covenants and Conditions, or any Supplemental Restrictions, Covenant, or Conditions.

**Section 3.** Each Owner shall be entitled to one vote for each Lot owned, except as stated above in Section 2 . When more than one person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they among themselves shall determine and in no event shall more than one vote be cast with respect to any Lot, except as set forth above in Section 2.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

#### Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each Owner and each future Owner of any Lot, by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interests, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. There is expressly reserved to the Association a continuing vendor's lien to secure all such assessments against each Lot in the Property. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title unless all unpaid assessments are paid out of the purchase price of the property being sold, or unless such transfer is caused by the foreclosure of a lien superior to the lien arising under the Master Declaration or this Declaration. The assessments provided for herein shall be in addition to any and all maintenance charges provided for in the Master Declaration.

In addition to any annual or special assessments payable pursuant to the terms of the Master Declaration, the initial maintenance fee for the operation of the Association is in the amount of Six Thousand Nine Hundred and No/100 Dollars (\$6,900.00) per annum per Lot. Such maintenance fee may be increased or decreased (not to exceed 10% per

year) as required upon a majority vote in voting interest to do so in order to provide the required funds necessary to operate the Association.

**Section 2. Purpose of Assessments.** The assessment levied by the Association shall be used for, but not limited to the following purposes: to promote the health, safety and welfare of the residents in the Property; to procure fire and extended coverage, windstorm, liability, and flood insurance coverage for structures built upon the Property and any additional insurance as deemed necessary by the Board, to provide maintenance of the exterior of structures (including stairways, fences, lighting, signage and porches) built upon the Property, to create a reserve for future expenditures, to provide installation and maintenance of surveillance cameras, to pay utility and water bills, to provide installation and maintenance of landscaping and irrigation systems ,

**Section 3. Special Assessment for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, if any, the roofs and exterior portions of the homes situated upon the Property (as provided in Article VI if sixty percent (60%) per building of the Members vote to require the provision exterior maintenance by the Association), including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written consent of 60% of the members.

**Section 4. Notice and Quorum for any Action Authorized Under Section.** Written notice of any meeting called for the purposes of taking any action authorized under Section 3 shall be sent to all members not less than ten days nor more than fifty

days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be two-thirds of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

**Section 5. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a prorated monthly or quarterly basis. In addition, any and all insurance deductibles pertaining to the insurance obtained by the Positano Townhomes I Homeowners Association will be paid at a uniform rate for all Lots regardless of the location of the damages to which such deductibles relate.

**Section 6. Date of Commencement of Annual Assessments.** The annual assessments as to the Lots shall commence on the first day of the month of each fiscal year (the "annual assessment period"). The annual assessment shall be due and payable in one installment equal to the annual assessment commencing on the dates provided above, unless the Board of Directors shall decide to prorate and collect such assessment on a monthly or quarterly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.



**Section 7. Effect of Nonpayment of Assessments; Remedies of the**

**Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly grants a continuing vendor's lien to the Association and vests in the Association, or its agents, the rights and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including judicial foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, if any, or abandonment of his Lot.

**Section 8. Subordination of the Lien to Mortgages.** The lien of

assessments provided for herein shall be subordinate to the lien of any first purchase money mortgage, but the sale or transfer of any Lot shall not affect the assessment lien which shall continue to be a lien on the Lot and the personal obligation of the transferor. However, the sale or transfer of any Lot pursuant to a first purchase money mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or

transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 9. Insurance.**

(a) The Board of Directors of the Association shall have authority to obtain and maintain insurance on all homes and buildings on all Lots (including all fixtures, installations or additions thereto contained within the unfinished interior surfaces of the perimeter walls, floors, carpeting and ceilings, but not including furniture, furnishings, appliances, drapes or other personal property) and the Common Areas, if any, and all improvements, if any, located in the Common Areas, if any, against loss or damage by fire and loss or damage by all risks now or hereafter embraced by the Texas Multi-Peril Form and windstorm and flood coverage, and any similar extended coverage policy or endorsements thereto designed for insuring structures similar to the buildings on the Lots and the Common Areas, and improvements thereon in the State of Texas, with vandalism and malicious mischief endorsements, in amounts sufficient to prevent the Association or the Owners of the Lots from becoming co-insurers within the terms of the applicable policies, but in any event in an amount not less than the full insurable replacement cost of all such improvement. The full insurable replacement cost of such improvement shall be determined from time to time by the Board of Directors, and the Board of Directors shall have the authority to obtain and pay for an appraisal by a person or organization selected by the Board of Directors to make such determination. The cost of any and all such appraisal shall be paid for out of the assessments of the Association. It is the intent of the Association to initially obtain an insurance policy for the building with the following amounts of coverage:

Commercial Package \$1,000,000

Windstorm \$1,000,000

Flood \$250,000

These amounts are subject to change as set forth in these restrictions.

(b) The Board of Directors of the Association shall have authority to obtain comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or any Owner, or the family, agent, employee or invitee of any Owner, occurring, on or about the Common Areas, if any, or upon, in or about any private driveway, roadway, walkway and passage way on or adjoining the Property, which public liability and property damage insurance shall afford protection to such limits as the Board of Directors deem desirable and appropriate.

(c) The Board of Directors of the Association shall have authority to obtain officers and directors liability insurance covering the officers and directors of the Association against such risks and in such amounts as the Board of Directors deems desirable and appropriate.

(d) The Board of Directors of the Association shall have authority to obtain such other insurance in such reasonable amounts as the Board of Directors deems desirable and appropriate.

(e) All costs, charges and premiums for all insurance obtained by the Board of Directors shall be a common expense of all Owners and shall be a part of the maintenance assessment.

(f) Each Owner shall be responsible for obtaining and maintaining insurance on the interior of the Unit including but not limited to interior walls, any structural items

within the units, plumbing, electrical, and HVAC, contents and personal property located in his townhome or in his parking area, including all decorations, furnishings and personal property therein, and covering his personal liability insuring against the liability of such Owner, all at the Owner's expense. In addition, Each Owners shall be responsible for obtaining any excess flood coverage that may be required.

(g) All insurance carried by the Association under this Article shall be carried in favor of the Association and in favor of the Owner and the holders of the first lien on each Lot, if any, as their respective interests may appear of record, the respective interests of each Owner being equal as among all Owners. Each policy of insurance carried by the Association under this Article shall contain a standard mortgagee clause in favor of the first lien holder, if any, of each Lot, but the proceeds of any such policy shall be held by the Association subject to the absolute and binding requirement on each Owner and the holder of each first mortgage on each Lot that all insurance proceeds shall first be utilized to repair or replace the common walls and the exterior of a damaged townhome (if the insurance proceeds are adequate in that regard) in order to prevent continuation of any damaged townhome from degrading the value of adjacent townhomes. Each Owner shall be required to repair any such damage and to rebuild such townhome to the same conditions such townhome was in prior to the damage to the townhome in a timely manner, and all such rebuilding or repair shall be conducted in a good and workmanlike manner and shall at all times be subject to the approval of the Board of Directors of the Association. The Association has the unilateral right to enforce the repair or assess a penalty to any Owner of a townhome that has been damaged and repair has not been completed, especially in the event the townhome is a danger, presents a health hazard, or

is an impediment to neighboring Units structurally or aesthetically. The Association shall hold all such insurance proceeds and shall pay such proceeds only for rebuilding or repairs to the townhome which are approved by the Board of Directors. Notwithstanding the foregoing, each Owner shall have the right to participate directly in the negotiations with the insurance company or companies for the amount of such insurance recovery, but the amount of insurance, if any, recovered from such insurance company shall not affect the Owner's absolute obligation to rebuild or repair the townhome to its condition prior to such damage or destruction. Any deductible as it relates to the Positano Townhome I Homeowners Association will be uniformly paid as described above in Article IV Section 5 and may be paid out of any established reserve or in the form of a special assessment.

#### **ARTICLE V**

##### **ARCHITECTURAL CONTROL**

All provisions set forth in Article VII of the Master Declaration shall apply to and govern the construction of any improvements upon the Property. Any and all landscaping related additions or removals must receive the approval by the Association prior to commencement of work.

#### **ARTICLE VI**

##### **EXTERIOR MAINTENANCE**

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replace (subject to the provisions hereof concerning the Owners' obligation to rebuild in the event of destruction by fire or other casualty) and care for roofs, gutters and downspouts, (if any), exterior building surfaces and other exterior improvements.

Such exterior maintenance shall not include: glass surfaces, enclosed patio areas (if any), window and door fixtures and hardware, landscaping installed by Owner (if any), exterior light fixtures operated from a residence, air conditioning equipment, utility company meters, circuit breakers and switch panels, sanitary sewer, gas and electric power service lines, nor any work or thing specifically defined as Owner's maintenance in Article VIII, Section 3.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

In the event an Owner is responsible for certain exterior maintenance as set forth in the Rules and Regulations of the Association and such Owner shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject.

## **ARTICLE VII**

### **PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not

inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 3. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 4. Right to Contribution Runs with Land.** The rights of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 5. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the parties shall choose one arbitrator to decide the resolution of the dispute and the decision of the arbitrator, shall be binding upon both parties. Should any party refuse to participate in choosing an arbitrator within ten (10) days after written request therefore, the Board of Directors of the Association shall select an arbitrator for the refusing party.

**ARTICLE VIII**  
**USE RESTRICTIONS**

The Lots and the Common Areas shall be occupied and used as follows:

**Section 1. Residential Use.** No Owner shall occupy or use his Lot or building thereon, or permit the same or any part thereof to be occupied for any purpose other than residential use by his family, guest or tenants.

**Section 2. Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, or the Common Area, if any, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners.

**Section 3. Owner's Maintenance.** The Owner shall maintain and keep in repair the following equipment and lines located outside the residence air conditioning compressor condenser, including pipes and electrical lines connecting same to the residence, sanitary sewer line connecting the residence to the sanitary sewer collection system, electric power service conductors from the exterior of the building to the point of connecting to the electric utility company's junction box or transformer, electric circuit breakers, any portion of natural gas, and/or telephone service lines located on the Lot but not maintained by the gas and/or telephone companies, and water service line from curb stop to and throughout the dwelling unit. Declarant hereby designates a 5' Access Easement along the southeastern boundary of Lot 5 for the purpose of accessing the electrical boxes that service the townhomes and reserves in favor of the Association a right of access to such easement areas. The 5' Easement shall be considered part of the Common Area as described above and all Unit Owners have the right to access the easement for the purpose of accessing the electrical and communication lines and meters.



In addition, the Declarant reserves in favor of the Association the right to access and places an Access Easement from the Eastern exterior walls of the Units to Positano Lane for the purpose of landscaping and maintenance.

An Owner shall not do any act nor any work that will impair the structural soundness or integrity of another residence or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other residences or their Owners.

**Section 4.** No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

## **ARTICLE IX**

### **EASEMENTS**

**Section 1. Construction.** Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs. A valid easement for such encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing two or more residences is partially or totally destroyed, and then rebuilt, the Owners so affected agree that minor encroachments of parts of the adjacent residential units on Common Areas due to construction shall be permitted and that a valid easement for such encroachment and the maintenance thereof shall exist.

**Section 2. Utility, Emergency and Association.** There is hereby created a blanket easement upon, across and over and under all of said property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including

but not limited to water, sewers, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said residences. An easement is further granted to all police, fire protection, ambulance, garbage and trash collector pick-up vehicles and all similar persons to enter upon the Common Area, if any, in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area, if any, and any Lot to perform the duties of maintenance and repair of the residence or Common Area, if any, provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as approved by the Association's Board of Directors. The easements provided for in this Article shall in no way affect any other recorded easement on said premises.

**Section 3. Underground Utility Services.**

(a) **Underground Electric Service.** An underground electric distribution system will be installed to Lots as set forth in Article II, Section 8 of the Master Declaration. The provisions thereof shall apply and control regarding all underground or above-ground utility services.

**ARTICLE X**  
**TRANSFER FEE**

There shall be payable to the Association upon each transfer of a Lot, whether voluntary or not, a transfer fee in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).

**ARTICLE XI**  
**FRACTIONAL OWNERSHIP**

Upon the affirmative vote of Eighty Percent (80%) in voting interests, and provided it is in compliance with all applicable laws to do so, ownership of a Lot may be subdivided to allow fractional ownership pursuant to the Texas Time share Act.

**ARTICLE XII**  
**GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, as a Plaintiff or as a Defendant or other party in any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty-five (35) years from the date this

Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than eighty (80) percent of the Lot Owners. Any amendment must be recorded in the Deed Records of Galveston County, Texas.

**Section 4. Master Declaration Controls.** In the case of any conflict between the provisions of the Declaration and the Master Declaration, the provisions of the Master Declaration shall control. All other provisions of the Master Declaration, including but not limited to Article IV, Section 8 concerning Dispute Resolution, shall be applicable to and govern the operation of the Association.

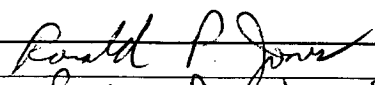
IN WITNESS WHEREOF, the undersigned being the Declarant and Lienholder, have hereunto set our hands this, the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

POSITANO TOWNHOMES I, LTD., a  
Texas Limited Partnership

BY: American Villas, LLC, a Texas  
Limited Liability Company

BY:   
Chad Murphy, Manager

**DECLARANT  
OMNI BANK, N. A.**

By:   
Name: RONALD P. JONES  
Title: S.V.P.

**LIENHOLDER**

STATE OF TEXAS  
COUNTY OF HARRIS

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BEFORE ME, the undersigned Notary, on this day personally appeared Chad Murphy, Manager of American Villas, LLC., a Texas Limited Liability Company, General Partner of Positano Townhomes I, LTD., a Texas limited partnership known to me (or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_), to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 8<sup>th</sup> day of March, 2009.

Victoria Bird  
NOTARY PUBLIC in and for the State  
Of Texas

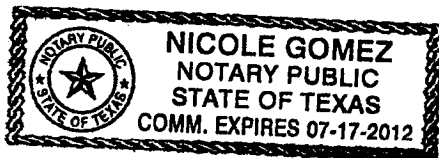


STATE OF TEXAS  
COUNTY OF HARRIS

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BEFORE ME, the undersigned Notary, on this day personally appeared Ronald P. Jones, Sr. v.P. of Omni Bank, N. A., a national banking association, known to me (or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_), to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 11<sup>th</sup> day of March, 2009. 2010  
Sta. 1.22



Nicole Gomez  
NOTARY PUBLIC in and for the State  
Of Texas