

**After Recording, Please Return To:
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**FIFTH AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE DOWNS OF HILLCREST**

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF DALLAS §

INTRODUCTORY PROVISIONS

WHEREAS, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Downs of Hillcrest was filed on August 21, 2000, as Instrument No. 200001105271 in the Official Public Records of Dallas County, Texas (“*Declaration*”); and

WHEREAS, the Declaration was modified by virtue of that certain First Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Downs of Hillcrest, filed on October 1, 2003, as Instrument No. 200302580198 in the Official Public Records of Dallas County, Texas (“*First Amendment*”); and

WHEREAS, the Declaration was again modified by virtue of that certain Second Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Downs of Hillcrest, filed on September 1, 2004, as Instrument No. 200403041349 in the Official Public Records of Dallas County, Texas (“*Second Amendment*”); and

WHEREAS, the Declaration was again modified by virtue of that certain Third Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Downs of Hillcrest, filed on April 19, 2010, as Instrument No. 201000096484 in the Official Public Records of Dallas County, Texas (“*Third Amendment*”); and

WHEREAS, the Declaration was again modified by virtue of that certain Fourth Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Downs of Hillcrest, filed on December 11, 2019, as Instrument No. 201900332083 in the Official Public Records of Dallas County, Texas (“*Fourth Amendment*”); and

WHEREAS, the Declaration, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment are collectively referred to as “*The Downs of Hillcrest Declaration*”; and

WHEREAS, The Downs of Hillcrest Declaration affects certain tracts or parcels of real property located in the City of Dallas, Dallas County, Texas, more particularly described in The Downs of Hillcrest Declaration, including any amendments and supplements thereto, and is incorporated herein by reference for all purposes (“*Property*”); and

WHEREAS, Article XII, Section 12.02 of The Downs of Hillcrest Declaration, provides that The Downs of Hillcrest Declaration may be amended and/or changed by the affirmative vote or written consent, or any combination thereof, of the Owners representing a majority of the total votes of The Downs of Hillcrest Residential Association, Inc. (“*Association*”); and

WHEREAS, a meeting of the Association was duly held in which a quorum was present on the ___ day of _____ 202___; and

WHEREAS, the following amendment to The Downs of Hillcrest Declaration was approved by the affirmative vote or written consent, or any combination thereof, of at least a majority of the total votes of the Association.

NOW, THEREFORE, The Downs of Hillcrest Declaration is hereby amended as follows:

- Article V, Section 5.01 of The Downs of Hillcrest Declaration is hereby amended and shall read, in its entirety, as follows:

5.01 Creation of the Lien and Personal Obligation of Assessments, Fees, and Charges. Declarant, for each Lot owned by it, hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the Lot), to pay to the Association (or to an entity or collection agency designated by the Association): (1) annual maintenance assessments or charges (as specified in Section 5.04 hereof), such assessments to be fixed, established and collected from time to time as herein provided; (2) special assessments for capital improvements and other purposes (as specified in Section 5.05 hereof), such assessments to be fixed, established and collected from time to time as herein provided; (3) special individual assessments levied against Lot Owners for those items specified in Section 5.05(b) hereof, all of such assessments to be fixed, established and collected from time to time as hereinafter provided; and (4) working capital transfer fee or charges (as specified in Section 5.12 hereof), such fees or charges to be fixed, established and collected from time to time as herein provided. The annual maintenance assessment, the special capital assessments, special individual assessments, and the working capital transfer fee described in this Section 5.01 (hereinafter, the "Assessment" or the "Assessments" together with interest thereon, attorney's fees, court costs and other costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which any such Assessment is made. Each such Assessment, together with interest thereon,

attorneys' fees, court costs, and other costs of collection thereof shall also be the continuing personal obligation of the Owner of such Lot at the time when the Assessment fell due, or in the case of a working capital transfer fee, the purchase of a Lot. Further, no Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his Lot. Existing obligations of an Owner to pay Assessments and other costs and charges shall not pass to bona fide first lien mortgagees which became Owners by reason of foreclosure proceedings or an action at law subsequent to the date the Assessment was due; provided, however, any such foreclosure proceeding or action at law shall not relieve such new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment.

- Article V, Section 5.12 of The Downs of Hillcrest Declaration is hereby added and

shall read, in its entirety, as follows:

5.12 Working Capital Transfer Fee. *Upon each transfer of record title to a Lot from any seller, the purchaser of such Lot shall pay a one-time working capital transfer fee to the Association in an amount equal to the amount of the Annual Maintenance Assessment for either an Interior Lot or Water Lot, dependent on the Lot purchased, due for the year in which closing occurs, which amount will be due and payable immediately upon the transfer of title and shall be paid at closing. Notwithstanding the above, no working capital transfer fee shall be levied upon transfer of title to a Lot: (1) by a co-Owner to any person who was a co-Owner immediately prior to such transfer; (2) to an Owner's spouse, parent, sibling, child, or grandchild, in each instance whether natural or by adoption; (3) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner; (4) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the working capital transfer fee shall become due; or (5) to an institutional lender upon foreclosure of a bona-fide mortgage or deed of trust. The working capital transfer fee may be increased without amendment to this Declaration, by the Board, but only to the extent the Board has contemporaneously increased the Annual*

Maintenance Assessment as provided in Section 5.04 (a) herein. Any increase in the working capital transfer fee shall be subject to the same restrictions on increases in the Annual Maintenance Assessment as set forth in Section 5.04 (a) herein.

The terms and provisions of The Downs of Hillcrest Declaration, except as modified herein, are hereby declared to be in full force and effect with respect to the Property. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings set forth in The Downs of Hillcrest Declaration. The Property shall continue to be held, occupied, sold, and conveyed subject to the terms and conditions of The Downs of Hillcrest Declaration and this Fifth Amendment, which shall run with title to the Property and are binding on all parties having any right, title or interest in and to the Property or any part thereof, including their heirs, representatives, successors, transferees and assigns, and shall inure to the benefit of each Owner thereof.

IN WITNESS WHEREOF, the Association has caused this Fifth Amendment to The Downs of Hillcrest Declaration to be effective when filed with the office of the Dallas County Clerk.

**THE DOWNS OF HILLCREST
RESIDENTIAL ASSOCIATION, INC.,
a Texas non-profit corporation**

By: _____
Signature

Name

Its: President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared _____ the President for The Downs of Hillcrest Residential Association, Inc., a Texas non-profit corporation, known to me to be the person whose name is subscribed on the foregoing instrument and acknowledged to me that he executed the same for the purposes therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND AFFIRMED SEAL OF OFFICE on this the ____ day of _____ 202__.

Notary Public, State of Texas

**CERTIFICATION OF APPROVAL OF THE
FIFTH AMENDMENT TO THE AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE DOWNS OF HILLCREST**

I, _____, the duly-elected Secretary of The Downs of Hillcrest Residential Association, Inc. hereby certify:

That this Fifth Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Downs of Hillcrest was approved upon the affirmative vote or written consent, or any combination thereof, of at least a majority of the total votes of the Association in accordance with The Downs of Hillcrest Declaration, and that the same does now constitute an official part of The Downs of Hillcrest Declaration and shall be filed of record with the Office of the Dallas County Clerk.

By: _____
Signature

Name

Its: Secretary