

FIRST AMENDMENT TO FIRST AMENDED AND RESTATED.  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

HARPER'S PRESERVE

A RESIDENTIAL SUBDIVISION IN MONTGOMERY COUNTY,  
TEXAS

STATE OF TEXAS                    §  
  §     KNOW ALL BY THESE PRESENTS THAT:  
COUNTY OF MONTGOMERY       §

**WHEREAS**, that certain First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Harper's Preserve (the "Declaration") was executed by 242, LLC, a Texas limited liability company (the "Declarant") and Beyer Construction LLP, a Texas limited liability partnership and recorded in the Office of the County Clerk of Montgomery County, Texas, under Clerk's File No. 2011011454 on February 8, 2011, and subjects real property located in Montgomery County, Texas, and more particularly described therein to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration; and

**WHEREAS**, Article XI, Section 11.10.1 of the Declaration provides that during the Development Period (as defined in the Declaration and herein called the "Development Period"), the Declarant reserves the sole and exclusive right, without joinder and consent of, and without notice of any kind to, any owner or other person, to amend the Declaration; and

**WHEREAS**, the Declarant desires to amend the Declaration to clarify that meetings of the members ("Members") of Harper's Preserve Community Association, Inc., a Texas non-profit corporation (the "Association") prior to the expiration of the Declaration Period shall be for informational purposes only; and

**NOW THEREFORE**, in consideration of the recitals set forth above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant does hereby amend the Declaration as set forth below effective as of November 1, 2012.

1. **Article XI, Section 11.04.1 is amended to read as follows:**

11.04.1 Meetings of Class A Members. Declarant may call, notice

and conduct meetings of Class A Members at any time during the Development Period and such meetings will be for informational purposes only and the Class A Members will not elect Directors, conduct official business of the Association or be entitled to vote on any matter. Declarant must call, notice and conduct the first meeting of Class A Members after the expiration or termination of the Development Period (the "First Meeting") within a reasonable period of time after the date of expiration of the Development Period. The First Meeting will be held on such date and at such place and time as determined by Declarant. The sole purpose of the First Meeting is to conduct the election of Directors by Class A Members ("Owner Directors") unless Declarant designates one or more other purposes in the notice of the meeting. No business other than as stated in the notice of the First Meeting may be conducted at the meeting. Declarant shall appoint a Chairperson and Secretary for the First Meeting who need not be officers, directors or Members of the Association. Notwithstanding any other provisions hereof or of any other Governing Documents, at the First Meeting, the Owner of each Lot, including Declarant, is entitled to cast one vote for each Lot owned. Declarant is additionally entitled to (but is not obligated to) cast its one "at large" vote, but only for the purpose of breaking a tie vote.

For the First Meeting and any Alternate First Meeting only, the presence, in person or by proxy, and whether or not in good standing, of Class A Members representing not less than one-twentieth of all Lots then contained in the Subdivision constitutes a quorum for the purpose of election of Owner Directors.

**2. Article XI, Section 11.04.3 is amended to read as follows:**


11.04.3 Costs of Meeting; Turnover of Association Funds, Books and Records. All costs, including attorney's fees, to notice, call and conduct any meeting of the Class A Members, including but not limited to the First Meeting, or to maintain any funds, books, records or any other property of the Association pending election of Owner Directors, transfer of Declarant control, or transfer of Association funds, books or records, whether incurred before or after the First Meeting are a common expense of the Association which shall be paid from the Maintenance Fund. If and when at least one Owner Director is elected by Class A Members as above provided, all funds, and all books and records of the Association (if not previously abandoned or destroyed as provided or permitted by this Section 11.04) must be transferred to the possession or control of any Owner Director, or to the then Managing Agent of the Association, if any, within a reasonable period of time after election of the Owner Director(s) (and receipt by Declarant of notice thereof as applicable). Notwithstanding the foregoing, Declarant may maintain possession or control of the Maintenance Fund to the extent Declarant determines is

necessary for payment of any unpaid expenses of, or as security against other asserted or outstanding obligations or liabilities of, the Association, including but not limited to the Association's obligation to reimburse the Declarant for the costs to prepare and amend the governing documents of the Association, any promissory notes payable to the Declarant for advances made to the Association and interest attributable thereto or the adoption of any special assessments until such expenses have been paid and/or such obligations and liabilities finally resolved.

EXECUTED this 30 day of November, 2012.

**DECLARANT:**

242, LLC, a Texas limited liability company

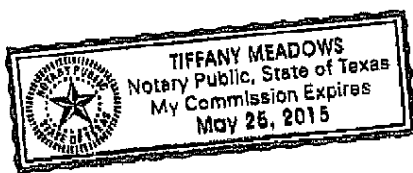
By:   
Sam Yager III, Vice President

THE STATE OF TEXAS

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§  
§

COUNTY OF HARRIS

This instrument was acknowledged before me on the 30 day of November, 2012, by Sam Yager III, Vice President of 242, LLC, a Texas limited liability company, on behalf of said entity.



Tiffany Meadows  
Notary Public

## JOINDER OF LIENHOLDER

TEXAS CAPITAL BANK, joins herein for the purpose of acknowledging and agreeing to the amendments set forth in the First Amendment to First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Harper's Preserve to which this Joinder of Lienholder is attached and hereby ratifies and confirms that the liens it holds on the property located in the Subdivision (as defined in the Declaration) are subordinate to the covenants, conditions and restrictions imposed by the Declaration with, however, the stipulation that such subordination does not extend to any lien or charge imposed by or provided for in the Declaration.

TEXAS CAPITAL BANK

By: 

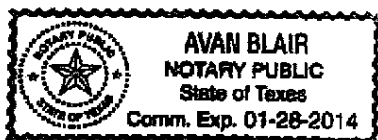
Jerry Schillaci, Vice President

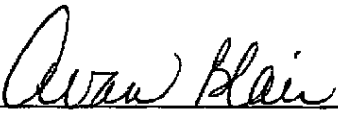
THE STATE OF TEXAS

COUNTY OF HARRIS

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This instrument was acknowledged before me on the 26<sup>th</sup> day of November, 2012, by Jerry Schillaci, the Vice President of Texas Capital Bank, on behalf of said entity.



  
Notary Public

### AFTER RECORDING RETURN TO:

Mark K. Knop  
Hoover Slovacek LLP  
5847 San Felipe, Suite 2200  
Houston, Texas 77057-3918  
File No: 122602-06

E-FILED FOR RECORD  
12/03/2012 8:05AM

*Mark Jumball*

COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS  
COUNTY OF MONTGOMERY

I hereby certify this instrument was e-FILED in  
file number sequence on the date and at the time  
stamped herein by me and was duly e-RECORDED in  
the Official Public Records of Montgomery County, Texas.

12/03/2012



*Mark Jumball*

County Clerk  
Montgomery County, Texas