

THE STATE OF TEXAS   §  
   §  
 COUNTY OF COLLIN     §

**RETAINING WALL SUPPLEMENT**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR TANNER'S MILL**

This instrument supplements the Declaration of Covenants, Conditions & Restrictions for Tanner's Mill, recorded or to be recorded in the Real Property Records of Collin County, Texas, as it may be amended or supplemented from time to time, and pertains to the Property described on Exhibit A hereto.

1.1. **GENERAL.** Retaining walls are used to stabilize soil, modify slopes, level sites, and adjust for grade or elevation differences between adjoining parcels of land, such as between two lots. As used in this Supplement, "**parcel**" means any piece of real property that contains, abuts, or is benefitted by a retaining wall, such as a residential lot or common area.

1.1.1. **Definitions Based on Location.** As originally constructed, retaining walls within Tanner's Mill may be located (1) wholly within an individual lot and not near or along a boundary of the lot (an "**Internal Wall**"), (2) on or along the boundary between two residential lots or between a residential lot and a common area (a "**Shared Boundary Wall**"), or (3) on or along the boundary between a Tanner's Mill parcel and either a public street or a parcel of land that is not subject to the Declaration (a "**Perimeter Wall**"). Internal Walls, Shared Boundary Walls, and Perimeter Walls may be referred to, collectively and individually, as "**retaining walls**."

1.1.2. **Definitions Based on Elevation.** In its relation to the retaining wall, the parcel having the higher elevation is referred to as the "**Higher Parcel**," and the parcel having the lower elevation is referred to as the "**Lower Parcel**."

1.1.3. **Deemed Benefit.** A Shared Boundary Wall is hereby deemed to benefit the parcel on each side of the wall ~ to be mutually beneficial ~ even though the wall may be entirely within the legal boundaries of only one of the parcels. Accordingly, the owner of each parcel has an interest in, and an obligation for, the Shared Boundary Wall. Although a Perimeter Wall also benefits the parcel on each side of the wall, this Supplement cannot create an obligation for the parcel that is not subject to the Declaration.

1.1.4. **Applicability.** This Supplement applies to every lot and common area in Tanner's Mill on which a retaining wall is located, or which has a retaining wall on or along one or more of its boundaries. Although Perimeter Walls on and within the boundaries of Tanner's Mill are subject to this Supplement, the parcel on the other side of a Perimeter Wall and the owner of that parcel are not subject to the Declaration or this Supplement. Also, if a lot or common area is subject to a parcel-specific publicly recorded document that addresses retaining walls, the parcel-specific document controls the property to which it pertains for the purposes of that document.

1.1.5. **Maintenance & Repair Specifications.** The Initial Retaining Wall Maintenance Specifications are attached hereto as the Chapter Exhibit.

1.1.6. **Rule of Law.** To the extent not inconsistent with the provisions of this Supplement, a retaining wall is subject to the general rules of law regarding party walls, retaining walls, and liability for property damage due to negligence, willful acts, or omissions.

1.1.7. **Materials.** Unless the Architectural Reviewer grants a variance, the material used to repair or reconstruct an existing retaining wall must substantially match the original retaining wall in quality and appearance. If the repair or reconstruction is on a segment of a continuous wall, an effort must be made to blend the work with the continuous wall of which it is part. The surfaces of new retaining walls that are visible from a street, common area, or adjacent parcel must be made of stone or other masonry material approved in writing by the Architectural Reviewer. Wood, including railroad ties, may not be used for retaining walls.

1.2. **ALLOCATION OF RESPONSIBILITY.** This Section addresses the responsibility for maintaining a retaining wall, depending on its location.

1.2.1. **Continuous Retaining Walls.** A "**continuous**" retaining wall is one that extends - on either side - beyond the boundaries of a particular parcel, thereby serving two or more parcels on at least one side of the wall. In applying this Supplement to a continuous retaining wall, each parcel owner is responsible for only the segment of the continuous retaining wall that abuts the owner's parcel. Owners of parcels with segments of a continuous retaining wall may be required to cooperate in performing maintenance, repair, and reconstruction ~ if and when needed.

1.2.2. **Owner of a Higher Parcel with a Perimeter Wall.** This Section contravenes a possible common misperception that a retaining wall on the perimeter of a subdivision is automatically a "common area" and the responsibility of the Association. Unless a publicly recorded document to which Declarant or the Association is a party specifically assigns Perimeter Wall responsibility, the owner of a Higher Parcel with a Perimeter Wall is responsible for the Perimeter Wall. If the Higher Parcel is a residential lot, the owner of the residential lot is responsible. If the Higher Parcel is a common area, the Association is responsible.

1.2.3. **Owner of a Parcel with an Internal Retaining Wall.** A retaining wall that is entirely within the boundaries of a parcel and not on or near a boundary between two parcels is solely the responsibility of the parcel owner, who acts as Owner of the Higher Parcel and as Owner of the Lower Parcel for purposes of keeping the retaining wall in good repair.

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**NOTICE**

Individual home owners may be responsible for portions of retaining walls on the perimeter of Tanner's Mill, along public streets, and around common areas.

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1.2.4. **Owner of the Higher Parcel.** The owner of the Higher Parcel is solely responsible for all aspects of the retaining wall, except what is identified below for the owner of the Lower Parcel. This allocation of responsibility is warranted because the owner of the Higher Parcel has more control over the conditions that affect the stability and structural integrity of the retaining wall. Regarding a Shared Boundary Wall between a residential lot and a common area, this Section's allocation of responsibility may contravene a possible common misperception that a retaining wall bordering a common area is automatically the responsibility of the Association. If the common area is the Higher Parcel, the Association is responsible. However, if the residential lot is the Higher Parcel, the owner of the residential lot is responsible. Specifically, the owner of the Higher Parcel, at the owner's sole cost and expense, has the following retaining wall responsibilities:

- (1) From time to time, as conditions warrant, perform the Maintenance Guidelines published in the Retaining Wall Maintenance Specifications for Tanner's Mill.
- (2) From time to time, as needed, perform the Routine Repairs published in the Retaining Wall Maintenance Specifications for Tanner's Mill.
- (3) Obtain and maintain property insurance on the retaining wall to the extent such insurance is reasonably available.

1.2.5. **Owner of the Lower Parcel.** The owner of a Lower Parcel has the following retaining wall responsibilities, at the owner's sole cost and expense:

- (1) Maintain the grounds up to the retaining wall, even if the retaining wall is inside the boundaries of the Higher Parcel.
- (2) Provide access to the owner of the Higher Parcel for purposes of periodic inspection, repair, and replacement of the retaining wall.
- (3) Prevent or refrain from taking any action on the Lower Parcel that may damage the retaining wall.

- (4) Report to the owner of the Higher Parcel any condition or change of condition that may have an adverse affect on the retaining wall, if the condition is known to the owner of the Lower Parcel.

1.2.6. Allocations Varied by Agreement. Nothing in this Section may be construed to prevent the owners of parcels that share a retaining wall from agreeing in writing to a different allocation of responsibilities between themselves. Such an agreement is not binding on a subsequent owners of either parcel unless the agreement is in the form of a deed restrictions or mutual covenant, signed by the owners of both parcels, and recorded in the Real Property Records of Collin County, Texas. In the absence of such an agreement, the above allocations apply.

1.3. SHARED BOUNDARY WALLS. This Section pertains the category of retaining walls defined above as "Shared Boundary Walls," and does not pertain to Perimeter Walls.

1.3.1. Encroachments & Easement. If the retaining wall is on one parcel or another due to an error in construction, the retaining wall is nevertheless deemed to be on the dividing line for purposes of this Section. The owner of the parcel on each side of the retaining wall hereby grants to the owner of the parcel on the other side of the retaining wall the following easements across his parcel:

- (1) A reciprocal access easement for maintenance, repair, replacement, or reconstruction of the retaining wall, as appropriate and necessary to effect the purposes and provisions of this Supplement.
- (2) An easement for the existence and continuance of any encroachment by the retaining wall as a result of construction, repair, shifting, settlement, or movement in any portion of the retaining wall, so that the encroachment may remain undisturbed as long as the retaining wall stands.

1.3.2. Use by Higher and Lower Parcel Owners. The owner of the Higher Parcel hereby grants to the owner of the Lower Parcel a non-exclusive and perpetual right and easement of enjoyment and use over (1) the exterior surface of the retaining wall for use as a perimeter wall or fence of the Lower Parcel, and (2) any lower portion of the Higher Parcel that is contiguous to the Lower Parcel and appears to be part of it. The owner of the Lower Parcel hereby grants to the owner of the Higher Parcel a non-exclusive and perpetual right and easement of enjoyment and use over any elevated portion of the Lower Parcel that is contiguous to the Higher Parcel and appears to be part of it.

1.3.3. Additional Fences in Connection with Retaining Wall. The owner of either the Higher Parcel or the Lower Parcel may construct a fence in connection with the retaining wall. The owner of the Higher Parcel may construct or install a fence inside the retaining wall on the elevated surface of the Higher Parcel, or, with the prior approval of the Lower Parcel owner, on the retaining wall itself. The owner of the Lower Parcel may construct or install a fence on his lot, provided the fence does not interfere with his duty to maintain the grounds up to the retaining wall.

1.3.4. Right to Repair. If the retaining wall is damaged or destroyed from any cause, the owner of either lot may repair or rebuild the retaining wall to its previous condition, and the owners of both lots, their successors and assigns, have the right to the full use of the repaired or rebuilt retaining wall.

1.3.5. Maintenance Costs. Regardless of which lot contains the retaining wall, the owners of the adjoining lots share equally the costs of repair, reconstruction, or replacement of the retaining wall, subject to the right of one owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an owner is responsible for damage to or destruction of the retaining wall, that owner will bear the entire cost of repair, reconstruction, or replacement. If an owner fails or refuses to pay his share of costs of repair or replacement of the retaining wall, available remedies include the following:

- (1) The owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Collin County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien; provided the claim of lien is filed within 90 days after the date of repairs or replacements to the retaining wall, and suit is filed within one year after the date the lien is filed.

The right of an owner to contribution from another owner under this Section is appurtenant to the land and passes to the owner's successors in title.

- (2) The Association may (but is not required to) perform or fund the defaulting owner's share of the work on the retaining wall, the cost of which may be levied against the defaulting owner and his lot as an individual assessment.

1.3.6. Alterations. The owner of a parcel with a Shared Boundary Wall may not alter the retaining wall in any manner that affects the use, condition, or appearance of the retaining wall to the other parcel, without the prior written consent of the Architectural Reviewer and the owner of the other parcel. The retaining wall will always remain in the same location as when erected, unless a change of location is approved by the owners of both parcels and the Architectural Reviewer.

1.4. PERIMETER WALL NOTICE. Notice is hereby given that a Tanner's Mill parcel with a Perimeter Wall may have no lawful right to access the adjacent parcel for purposes of inspecting, maintaining, repairing, and reconstructing the Perimeter Wall, if and when needed. If such access is needed, the Tanner's Mill parcel owner is solely responsible for obtaining permission to lawfully access the adjacent parcel. By acquiring an ownership interest in a Higher Parcel with a Perimeter Wall, each owner acknowledges that if access to the adjacent Lower Parcel is not available, other options for repairing or replacing the Perimeter Wall may result in excavation and removal of soil from the Higher Parcel, the practical loss of portions of the elevated and usable surface of the Higher Parcel, and substantially more expense than if the owner of the Higher Lot had unfettered access to the adjacent Lower Parcel to perform the required work.

1.5. AMENDMENT. As a Supplement to the Declaration, this instrument may be amended by the same terms and conditions as the Declaration. However, the Chapter Exhibit attached hereto ~ Retaining Wall Maintenance Specifications ~ constitutes a Chapter in the Owner's Manual of Rules & Regs for Tanner's Mill, whether or not it is published with the Owner's Manual, and is subject to the amendment provisions of the Owner's Manual.

**SIGNED AND ACKNOWLEDGED**

As the Declarant of Tanner's Mill, I execute this Retaining Wall Supplement to the Declaration of Covenants, Conditions & Restrictions for Tanner's Mill as one of the initial Governing Documents of Tanner's Mill.

SIGNED on the date stated in the acknowledgment below.

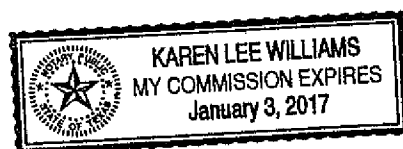
**D. R. HORTON - TEXAS, LTD.**, a Texas limited partnership

By: D. R. HORTON, INC., a Delaware corporation, its authorized agent

By:   
David L. Booth, Assistant Vice President

THE STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 17 day of September 2014 by David L. Booth, Assistant Vice President of D. R. Horton, Inc., a Delaware corporation, on behalf of said corporation in its capacity as authorized agent for D. R. Horton - Texas, Ltd., a Texas limited partnership, on behalf of the limited partnership.



  
Notary Public, The State of Texas

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

This Retaining Wall Supplement pertains to that certain real property that is subject to the Declaration of Covenants, Conditions & Restrictions for Tanner's Mill, recorded or to be recorded in the Real Property Records of Collin County, Texas, as it may be amended or supplemented from time to time, including (without limitation) the 138.538-acre tract described by metes and bounds in Appendix A of the Declaration. The Property is being platted in phases, the first two plats having been recorded on August 8, 2014, as Document Nos. 20140808010002540 and 20140808010002550 (respectively), in Book 2014, at Pages 405 and 407 (respectively), Plat Records, Collin County, Texas.

*(End of Exhibit A)*

*(Chapter Exhibit on Next Page)*

**CHAPTER EXHIBIT**  
to Retaining Wall Supplement to  
Declaration of Covenants, Conditions & Restrictions for Tanner's Mill

**RETAINING WALL MAINTENANCE SPECIFICATIONS  
FOR  
TANNER'S MILL**

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NOTE: Retaining wall obligations may be allocated differently by  
agreement of owners of adjoining parcels, on a wall-by-wall basis.

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1.1. **ARTICLE 1, BY REFERENCE.** Article 1 of the Owners Manual of Rules & Regs for Tanner's Mill is hereby incorporated by reference, including its exemption for Declarant-owned lots, whether vacant or improved.

1.2. **GENERAL.** The purpose and significance of retaining walls and the allocation of maintenance responsibility for them are addressed in the Retaining Wall Supplement to the Declaration of Covenants, Conditions & Restrictions for Tanner's Mill. These Specifications may be published with the Supplement, as a Chapter of the Owner's Manual of Rules & Regs for Tanner's Mill, or independently. This Exhibit constitutes a Chapter of the Owner's Manual whether or not it is published with the Owner's Manual.

1.3. **MAINTENANCE GUIDELINES.** Recommended guidelines for routine maintenance of retaining walls include:

- (1) If the wall was engineered with a designated drainage system, periodically inspect and probe the system to ensure it is not clogged, and inspect the wall for evidence that water is leaking through the wall in places other than the designated system.
- (2) Maintain the grade at the top and sides of the retaining wall to ensure that water is diverted away from the wall and that changes of grade do not interfere with the wall's engineered drainage system (if any).
- (3) Periodically inspect the base of the retaining wall to ensure a proper grade that slopes away from the wall, and to ensure that the ground on which the wall stands is not eroding or moving.
- (4) Monitor increases in weight on top of the wall, and periodically inspect the vertical face of the wall for bowing which may occur with increased pressure on the wall.
- (5) Monitor plantings above and around the wall to avoid types of plants that have a reputation for active and destructive root systems, or that may adversely affect moisture levels behind or below the wall.
- (6) Monitor normal cosmetic hairline cracks for increases in width that warrant repair. Periodically inspect the wall for missing or deteriorated joint fillers, joint sealant, and mortar joints, particularly after severe freeze and thaw cycles, and after severe wet and dry cycles, both of which may create extra stress on a wall. Periodically inspect the wall for signs of distress, such as severe cracking, tilting or bulging of the wall, and dislodged rocks and stones used to construct the wall.
- (7) Protect the wall from excavation, trenching, and burrowing animals.

1.4. **ROUTINE REPAIRS.** Routine repairs by the owner of the parcel with the higher elevation typically consists of the following:

- (1) Clear clogs in the wall's drainage system so water can drain the way the wall was engineered.
- (2) Treat wash-outs when they are small and manageable, using either backfill or flowfill.
- (3) When chunks of mortar break away, promptly rebuild the mortar joint with professional repointing.
- (4) Professionally repair hairline cracks that are 1/4 inch in width or great.

*(End of Chapter Exhibit)*

PAGE FOR USE BY COLLIN COUNTY CLERK



Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
09/18/2014 11:50:12 AM  
\$46.00 CJAMAL  
20140918001013590

*Stacey Kemp*