2016026953 35 PGS DECLAR

DECLARATION

OF

COVENANTS, CONDITIONS

AND

RESTRICTIONS

ON AND FOR

SUNDANCE ESTATES,

AN ADDITION

TO THE CITY OF LUBBOCK, LUBBOCK COUNTY, TEXAS

THE DECLARANT IN THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICITONS HAS RESERVED FOR ITSELF EXTENSIVE RIGHTS, INCLUDING BUT NOT LIMITED TO THOSE RIGHTS DESCRIBED IN ARTICLE VI.

TABLE OF CONTENTS

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS is made and effective as of the 26 day of July, 2016, by SWLLD, LLC, a Texas limited liability company (sometimes referred to herein as the Declarant):

PREAMBLE

Declarant is the owner and developer of certain residential Lots within a tract of land now commonly known and described as *SUNDANCE ESTATES, an Addition to the City of Lubbock, Lubbock County, Texas* (which lots are more particularly described on **Exhibit "A"** attached hereto). Declarant proposes to establish and implement plans for residential living, recreation, aesthetic and quality-of-life considerations. The purposes of this Declaration are to: protect the Declarant and the Owners against inappropriate development and use of Lots within the Properties; assure compatibility of design of improvements within the Properties; secure and preserve sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment; provide for landscaping and the maintenance thereof; and in general to encourage construction of attractive, quality, permanent improvements that will promote the general welfare of the Declarant and the Owners. Declarant desires to impose these restrictions on the Properties now and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the quality and distinction of the Property.

DECLARATION

The Declarant hereby declares that the *Sundance Estates* residential lots described on Exhibit "A" attached hereto, and such phases or additions thereto as may hereafter be made pursuant to this Declaration is and shall be owned, held, mortgaged, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to hereinafter as "the Covenants") hereinafter set forth.

ARTICLE I.
CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or in any amended or supplementary Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

"**Additional Property**" means real property which may be added to the Property and subjected to this Declaration by Declarant, as described in this Declaration, including Article II, Section 2.

"**Amended Declaration**" shall mean and refer to each and every instrument recorded in the Official Public Records of Lubbock County, Texas which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

"**Applicable Law**" means the statutes and public laws, codes, ordinances, and regulations in effect at the time a provision of the Governing Documents is applied, and pertaining to the subject matter of the Governing Document provision. Statutes and ordinances specifically referenced in the Governing Documents are "Applicable Law" on the date of the Governing Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

"**Architectural Reviewer**" shall mean and refer to the person, entity or committee described and explained within Article III below.

"**Central Appraisal District" ("CAD")** shall mean and refer to the governmental and/or quasi-governmental agency(ies) (including without limitation the Lubbock Central Appraisal District) established in accordance with *Texas Property Tax Code* Section 6.01 et seq. (and its successor and assigns as such law may be amended from time to time) or other similar statute which has, as one of its purposes and functions, the establishment of an assessed valuation and/or fair market value for various lots, Architectural Reviewer and tracts of land in Lubbock County, Texas.

"**Covenants**" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration.

"**Declarant**" shall mean and refer to **SWLLD, LLC, a Texas limited liability company** and any successor(s) and assign(s) of SWLLD, LLC. However, no person or entity merely purchasing one or more Lots from SWLLD, LLC in the ordinary course of business shall be considered a "Declarant."

"**Declaration**" shall mean and refer to this particular instrument entitled "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens on and for Sundance Estates" together with any and all amendments or supplements hereto.

"**Deed**" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

"**Design Guidelines**" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Properties, and all amendments, bulletins, modifications, supplements and interpretations thereof, and are further described in Article III, Section 5 of this Declaration.

"**Development Period**" means the period of time, beginning on the date that this Declaration is recorded in the Official Public Records of Lubbock County, Texas, during which the Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape, and composition of the Property, pursuant to the rights and reservations contained in this Declaration, to the full extent permitted by Applicable Law. **The length of the reserved Development Period is ten (10) years** (however, Declarant reserves the right to increase or decrease the length of the Development Period by amendment of this Declaration). If Applicable Law requires an event of termination as an alternative to a stated number of years, the Development Period shall mean a period commencing on the date of the recording of this Declaration in the Official Public Records of Lubbock County, Texas and continuing thereafter until two years after the date on which every Lot in the Property and Additional Property is: (i) made subject to this Declaration, (ii) improved with a Dwelling Unit, and (iii) conveyed to an Owner, other than a Homebuilder or Declarant. No act, statement, or omission by any person or entity other than Declarant may cause termination of the Development Period earlier than the term stated in this paragraph. However, Declarant may terminate the Development Period at any earlier time by publicly recording a notice of termination. The Development Period is for a term of years or until the stated status is attained, and does not require that Declarant own a Lot or any other land in the Property.

"**Dwelling Unit**" shall mean and refer to any building or portion of a building situated upon the Properties which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a group of persons authorized by Applicable Law to reside in one single family detached residential unit.

"**Easement Area**" shall mean and refer to those areas which may be covered by an easement specified in Articles V and VI below.

"**Governing Documents**" means, singly or collectively as the case may be, the Plat and this Declaration, as these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Governing Document is a part of that Governing Document.

"**Homebuilder**" shall mean and refer to each entity and/or individual which: (i) is regularly engaged in the ordinary business of constructing residential dwellings on subdivision lots for sale to third-party homeowners as their intended primary residence; and (ii) has entered into a contract with the Declarant to purchase one or more Lots.

"**Improvement**" shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

"**Lot**" shall mean and refer to each separately identifiable portion of the Property which is platted, filed and recorded in the office of the County Clerk of Lubbock County, Texas and which is assessed by any one or more of the Taxing Authorities.

"**Owner**" shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot.

"**Property**" or "**Properties**" shall mean and refer to: (i) the land described within **Exhibit "A"** attached hereto; and (ii) other land within *Sundance Estates*, either now or in the future, including the Additional Property, if any.

"**Resident**" shall mean and refer to:

(a) each Owner of the fee simple title to any Lot within the Properties;

(b) each person residing on any part of the Property who is a bona-fide lessee pursuant to a written lease agreement with an Owner; and

(c) each individual lawfully domiciled in a Dwelling Unit other than an Owner or bona-fide lessee.

"**Structure**" shall mean and refer to: (i) any thing or device, other than trees, shrubbery (less than two feet high if in the form of a hedge) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot) including but not limited to any building, garage, porch, shed, greenhouse or bathhouse, cabana, covered or uncovered patio, swimming pool, play apparatus, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent Improvement to any Lot; (ii) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; and (iii) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; (iv) any change in the grade of any Lot of more than three (3) inches from that existing at the time of initial approval by the Architectural Reviewer.

"**Taxing Authorities**" shall mean and refer to Lubbock County and all other governmental

entities or agencies which have (or may in the future have) the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the Texas Constitution and applicable statutes and codes.

"**Sundance Estates**" shall mean and refer to *Sundance Estates*, a subdivision phase of certain land as described within **Exhibit "A"** attached hereto, in accordance with the map and plat thereof filed of record in the Map/Plat and/or Dedication Records of Lubbock County, Texas, as well as any and all revisions, modifications, corrections or clarifications thereto.

ARTICLE II.
PROPERTY SUBJECT TO THIS DECLARATION

Section 1. ***Existing Property***. The residential Lots which are, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration within *Sundance Estates* are more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference for all purposes.

Section 2. ***Additions to Existing Property***. Additional land(s) (the "Additional Property") may become subject to this Declaration, or the general scheme envisioned by this Declaration, as follows:

(a) The Declarant may (without the joinder and consent of any person or entity) add or annex Additional Property to the scheme of this Declaration within the Development Period by filing of record an appropriate enabling declaration, generally similar to this Declaration or incorporating this Declaration, which may extend the scheme of the Covenants to such Additional Property. Provided further; however, such other declaration(s) may contain such complementary additions and modifications of these Covenants as may be necessary to reflect the different character, if any, of the Additional Property as are not materially inconsistent with the concept and purpose of this Declaration.

(b) In the event any person or entity other than Declarant desires to add or annex Additional Property to the scheme of this Declaration during the Development Period, such annexation proposal must have the express approval of the Declarant.

Any additions made pursuant to this Section 2, when made, shall automatically subject the Additional Property to the covenants of the enabling declaration.

ARTICLE III.
ARCHITECTURAL REVIEW

Section 1. ***Purpose, and Architectural Reviewer Control during Specified Periods.*** This Declaration creates rights to regulate the design, use and appearance of the Lots in order to preserve and enhance the value of the Property. *During the Development Period, the Declarant reserves the right of architectural reviewer control.*

Section 2. ***Architectural Reviewer Control During Development Period.*** During the Development Period, *the Declarant shall be the sole Architectural Reviewer;* or, the Declarant may delegate or assign such duties to a person, entity or committee that enforces the use and appearance of Dwelling Units within the Property. Each Owner, by accepting an interest in or title to property within the Property, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period, no Dwelling Unit will be commenced by the Owner on any portion of the Properties without the prior written approval of Architectural Reviewer, which approval may be granted or withheld at the Architectural Reviewer's sole reasonable discretion. The rights of Declarant as

Architectural Reviewer shall be assignable during the Development Period to any person or entity, provided that such assignment will be in a written instrument to be filed in the Official Public Records of Lubbock County, Texas. Any delegation by Declarant of its rights under this Declaration is subject to the unilateral right of the Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated.

Section 3. ***Architectural Reviewer Control Following Development Period.*** Prior to the expiration of the Development Period, the Declarant may create a mechanism for perpetuating the function of the Architectural Reviewer for the Property in a publicly recorded instrument filed in the Official Public Records of Lubbock County, Texas.

Section 4. ***Jurisdiction of Architectural Reviewer.*** No building, Structure, fence, wall, Dwelling Unit or Improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications (the "Plans") have been submitted to and approved in writing by the Architectural Reviewer as to:

(i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and proper facing of main elevation with respect to nearby streets, all in accordance with this Declaration and/or the Design Guidelines and/or bulletins;

(ii) minimum finished floor elevation and proposed footprint of the dwelling;

(iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping, and the treatment of all surfaces, walls and components which are shared with adjoining Dwelling Units;

(iv) drainage solutions;

(v) the observance of and compliance with applicable setback lines and easement areas; and

(vi) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Design Guidelines, bulletins promulgated by the Architectural Reviewer or matters in which the Architectural Reviewer has been vested with the authority to render a final interpretation and decision.

The Plans to be submitted to the Architectural Reviewer will include: (i) a site plan showing the location, description of materials and Architectural Reviewer treatment of all walks, driveways, fences, walls, the Dwelling Unit and any other Structures and Improvements; (ii) floor plan showing the exact window and door locations, exterior wall treatment and materials, and the total square feet of air conditioned living area; (iii) exterior elevations of all sides of any Structure must be included, the type of roofing materials must be indicated, and the type, use and color of exterior wall materials must be clearly indicated throughout; (iv) front, rear, and side elevations must show all ornamental and decorative details; (v) specifications of materials may be attached separately to the plans or written on the plans themselves (plans will not be approved without specifications - specifications must include type, grade of all exterior materials, and color of all exposed materials); and (vi) landscaping plan.

The Architectural Reviewer is permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Architectural Reviewer.

The Architectural Reviewer may require as a condition precedent to any approval of the Plans,

that the applicant obtain and produce an appropriate building permit from the City of Lubbock, Texas. The Architectural Reviewer is also authorized to coordinate with the City of Lubbock in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration, the Design Guidelines, and any bulletins or lot information sheets promulgated thereunder. However, the mere fact that the City of Lubbock issues a building permit with respect to a proposed structure does not automatically mean that the Architectural Reviewer is obliged to unconditionally approve the Plans. Similarly, the Architectural Reviewer's approval of any Plans does not mean that all applicable building requirements of the City of Lubbock or County of Lubbock have been satisfied.

Section 5. ***Design Guidelines***. The Architectural Reviewer may, from time to time, publish and promulgate additional or revised Design Guidelines, and such Design Guidelines shall be explanatory and illustrative of the general intent of the proposed development of the Property and are intended as a guide to assist the Architectural Reviewer in reviewing plans and specifications.

Section 6. ***Plan Submission and Approval***. Within ten (10) business days ("business days" being days other than Saturday, Sunday or legal holidays) following its receipt of the Plans, the Architectural Reviewer shall advise the submitting Owner whether or not the Plans are approved. If the Architectural Reviewer shall fail to approve or disapprove the Plans in writing within said ten-day period, it shall be presumed that the Architectural Reviewer has disapproved the Plans. Plans shall not be deemed to have been received by the Architectural Reviewer until the Plans are received and a written receipt is signed by the Architectural Reviewer (during the Development Period, when the Declarant is serving as the Architectural Reviewer, the written receipt must be signed by Declarant or its authorized representative or agent). If the Plans are not sufficiently complete or are otherwise inadequate, the Architectural Reviewer may reject them as being inadequate or may approve or disapprove certain portions of the same, whether conditionally or unconditionally. The Architectural Reviewer shall not approve any Plans unless it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding Lots, that the appearance of any structures affected thereby will be in harmony with surrounding Structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the *Sundance Estates* Lots and the Property. The Architectural Reviewer may adopt rules or guidelines setting forth procedures for the submission of Plans and may require a reasonable fee to accompany each application for approval in order to defray the costs of having the Plans reviewed. In addition to the Plans described in Article III, Section 4 of this Declaration, the Architectural Reviewer may require such details in Plans submitted for its review as it deems proper. Until receipt by the Architectural Reviewer of the Plans and any other information or materials requested by the Architectural Reviewer, the Architectural Reviewer shall not be deemed to have received such Plans or be obligated to review the same.

Section 7. ***Liability***. Neither Declarant, nor the Architectural Reviewer nor the officers, directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting Plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such Plans or specifications. No approval of Plans and specifications and no publication of any Design Guidelines, architectural review bulletins or lot information sheets shall be construed as representing or implying that such Plans, specifications, guidelines, bulletins or sheets will, if followed, result in properly designed Improvements and/or Improvements built in a good and workmanlike manner. Every person or entity who submits Plans or specifications, and every Owner of each and every Lot, agrees that he or she will not bring any action or suit against Declarant, the Architectural Reviewer, or the officers, directors, managers, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which

provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. **The Declarant and the Architectural Reviewer have sole discretion with respect to taste, design, and all standards specified by this Declaration and any Design Guidelines. The Declarant and the Architectural Reviewer (and each of its officers, directors, managers, members and employees) have no liability for decisions made in good faith, and which are not arbitrary and capricious.**

Section 8. ***No Waiver***. No approval by the Architectural Reviewer of any Plans for any work done or proposed to be done shall be deemed to constitute a waiver of any rights on the part of the Architectural Reviewer to withhold approval or consent to any similar Plans which subsequently are submitted to the Architectural Reviewer for approval or consent.

Section 9. ***Construction***. Upon approval of the Plans by the Architectural Reviewer, the Owner submitting such Plans for approval promptly shall commence construction of all Improvements and Structures described therein and shall cause the same to be completed in compliance in all material respects with the approved Plans, and in compliance with these Covenants. If an Owner shall vary materially from the approved Plans in the construction of any Improvements and Structures, the Architectural Reviewer shall have the right to order such Owner to cease construction and to correct such variance so that the Improvement will conform in all material respects to the Plan as approved. If an Owner shall refuse to abide by the Architectural Reviewer's request, the Architectural Reviewer shall have the right to take appropriate action to restrain and enjoin any further construction on a Lot that is not in accordance with approved Plans. The Architectural Reviewer shall have the right, but not the obligation, to inspect the Improvements during construction to insure compliance with the Plans and compliance with City of Lubbock code requirements. During the Development Period, the Declarant shall have all of the rights granted herein to the Architectural Reviewer.

Section 10. ***Variances***. The Architectural Reviewer may authorize variances from compliance with any of the provisions of this Declaration relating to construction of Improvements and Structures on a Lot, including restrictions upon height, size, floor area or replacement of Structures, or similar restrictions, when circumstances such as governmental code changes, topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, and shall become effective upon their execution. Such variances may be recorded. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Lot.

ARTICLE IV.
USE OF LOTS IN THE PROPERTY; PROTECTIVE COVENANTS

The Property (and each Lot situated therein) shall be constructed, developed, occupied and used in accordance with the covenants, conditions and restrictions contained in this Article IV.

As used in this Article IV, the following words shall be deemed to have the following meanings:

(i) "***rear yard***" shall mean that portion of a Lot existing from the rear of the Dwelling Unit located thereon to the rear property line, and from side property line to side property line;

(ii) "***front yard***" shall mean that portion of a Lot existing from the front of the Dwelling Unit located thereon to the front property line, and from side property line to side property line; and

(iii) "***side yard***" shall mean that portion of a Lot existing between the front and rear of the Dwelling Unit located thereon, and from the side of such Dwelling Unit to the side property line.

Section 1. ***Residential Use of Lots***. All Lots within the Property shall be used, known and described as residential Lots unless otherwise indicated on the plat of the Property. Lots shall not be further subdivided and except for the powers and privileges herein reserved by the Declarant, the boundaries between Lots shall not be relocated without the prior express written consent of the Architectural Reviewer. No building or Structures shall be erected, altered, placed or permitted to remain on any residential Lot other than one (1) single-family Dwelling Unit and unless otherwise prohibited by this Declaration, its customary and usual accessory Structures and Accessory Buildings (as "Accessory Buildings" is hereinafter defined). No Dwelling Unit, garage or other Structure appurtenant thereto, shall be moved upon any Lot from another location. No building or Structure intended for or adapted to business or commercial purposes shall be erected, placed, permitted or maintained on such premises, or any part thereof, save and except those related to development, construction and sales purposes of a Homebuilder or the Declarant. No Owner or Resident shall conduct, transmit, permit or allow any type or kind of home business or home profession or hobby on any Lot or within any Dwelling Unit or Accessory Building which would: (i) attract automobile, vehicular or pedestrian traffic to the Lot; (ii) involve lights, sounds, smells, visual effects, pollution and the like which would adversely affect the peace and tranquility of any one or more of the Residents within the Property. A Resident may use a Dwelling Unit for business uses, such as telecommuting, personal business, and professional pursuits, provided that: (w) the uses are incidental to the primary use of the Dwelling Unit as a residence; (x) the uses conform to applicable governmental ordinances; (y) there is no visible evidence of the business; and (z) the uses do not entail visits to the Lot by employees or the public in quantities that materially increase the number of vehicles parked on the street and the uses do not interfere with the residential use and enjoyment of neighboring Lots by other Owners and Residents. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations and ordinances of the City and County of Lubbock, Texas or any other governmental authority having jurisdiction over the Property. In addition to the residential use restriction described above, the Lots are subject to the following additional use restrictions:

(a) ***Annoyance.*** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may become an annoyance, danger, or nuisance to the neighborhood. No Lot may be used in any way that (i) may reasonably be considered annoying to neighbors; (ii) may be calculated to reduce the desirability of *Sundance Estates* as a residential neighborhood; (iii) may damage the reputation of *Sundance Estates*; (iv) may endanger the health or safety of the Owners and Residents of other Lots; or (v) is unlawful.

(b) ***Temporary Structures.*** Except as may be otherwise permitted in this Declaration [*See*, Article IV, Section 6(n)], no Structure or Improvement of a temporary character, including, but not limited to, a trailer, recreational vehicle, mobile home, modular home, prefabricated home, manufactured home, tent, shack, barn or any other Structure or building (other than the Dwelling Unit to be built thereon) shall be placed on any Lot either temporarily or permanently, if visible from a street. However, a portable toilet or construction trailer is permitted on a Lot during construction of the Dwelling Unit.

(c) ***Animals.*** No animals of any kind shall be raised, bred, or kept on any Lot except that not more than two (2) dogs, cats, or other similar domesticated household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. No animals shall be permitted which are obnoxious, offensive, dangerous or vicious. Owners will take reasonable means to prevent animals from disturbing neighboring owners (e.g. dogs that remain outdoor must not be permitted to bark in a manner that disturbs the peace, and dogs and cats shall not be

allowed to roam outside of the Owner's Lot without a leash). Livestock, chickens, geese, ducks, guineas, pigeons, rabbits or any other such animals shall not be raised or kept on any Lot.

(d) ***Trash.*** No rubbish, trash, garbage, debris or other waste shall be dumped or allowed to remain on any Lot.

(e) ***Clotheslines.*** No clothesline may be maintained on any Lot, unless enclosed by a hedge or other type of screening enclosure.

(f) ***Antennas, Towers and Vertical Structures.*** No antenna, tower, wind generator or other similar vertical structure shall be erected on any Lot for any purpose; however, flagpoles will be permitted where approved by the Architectural Reviewer. No antenna or tower shall be affixed to the outside of any Dwelling Unit on any Lot without the prior written consent of the Architectural Reviewer. No satellite reception device or equipment used in the reception of satellite signals shall be allowed on any Lot or structure unless approved in writing by the Architectural Reviewer and approval will be granted only where the devices are reasonably concealed from view of any street, public areas and neighboring Lots, and structures. No satellite dishes will be permitted which are larger than one meter in diameter. The Declarant by promulgating this Section is not attempting to violate the Telecommunications Act of 1996 (the "Act"), as may be amended from time to time. This Section shall be interpreted to be as restrictive as possible while not violating the Act.

(i). ***Flagpoles and Flags***. Nothing within this Declaration shall prohibit an Owner from displaying (a) the flag of the United States of America; (b) the flag of the State of Texas; or (c) an official or replica flag of any branch of the United States armed forces. The flag of the United States shall be displayed in accordance with 4 U.S.C., Sections 5 through 10, and the flag of Texas shall be displayed in accordance with Chapter 3100, *Texas Government Code*. The location and design of any proposed flagpole must be approved by the Architectural Reviewer, and no flagpole will be approved that is taller than twenty (20) feet above the ground. Further, no more than one (1) flagpole will be installed on a Lot at any one time; and, such flagpole, subject to applicable zoning ordinances, easements, and setbacks of record, must be located in the front yard on the Lot, or attached to the Dwelling Unit as approved by the Architectural Reviewer. All flags will be maintained in good condition, and any deteriorated flag or deteriorated or structurally unsafe flagpole will be promptly repaired, replaced or removed. The size of each flag must be in proportion to the height of the pole from which it is displayed, and no flag shall be larger than three feet by five feet for a twenty foot pole. The flagpole shall have an appropriate devise to abate noise from any external halyard. If the flagpole is illuminated, the illumination must be of intensity, wattage or lumen count that does not cause an annoyance to adjacent Lots or other Owners, and the Architectural Reviewer must first approve all such illumination. Except for the flags herein permitted, no other types of flags, pennants, banners, kites or similar types of displays are permitted on a Lot, if the display is visible from the street or an adjacent Lot or Townhome.

(ii). ***Wind Generators***. Any wind generator or other devise designed to convert wind to usable wind energy may be installed and maintained on any Lot improved with a Dwelling Unit, only if such generator or devise is first approved by the Architectural Reviewer. The Architectural Reviewer will not approve any wind generator or similar devise unless the generator or devise: (a) is on a portion of a Lot, Dwelling Unit, or roof that is not street-facing; (b) is not clearly visible from a street or another Lot; (c) is not

mounted on a pole; (d) is not taller than the highest point on the roof of the Dwelling Unit; and (e) is no larger in size than one yard (3 feet) in diameter.

(g) ***Oil Drilling Operations.*** No oil drilling, oil development operation, oil refining, or quarrying or mining operations of any kind shall be permitted on or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on or in any Lot. The oil, gas and mineral interests related to the Property have been reserved by predecessors in title, and the residential Lots which are, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration are subject to the reservations of the oil, gas and other minerals made by predecessors in title. No derrick or other structure designed for use of boring for oil and/or natural gas shall be erected, maintained or permitted on any Lot. Nothing herein shall be construed to prevent the owner(s) of the mineral interest in the Property from exploring for, developing and/ or producing the oil, gas and/ or other minerals in and under, or that may be produced from, the Property by pooling or by directional drilling under the Property from well sites located on other lands, provided that such operations in no way interfere with the surface or subsurface support of any Improvements constructed or to be constructed on the Property.

(h) ***Signs.*** No sign of any kind shall be displayed to the public view on any Lot, except one professional sign of not more than five (5) square feet advertising the property for sale, or a sign used by Declarant or a Homebuilder to advertise the building of Improvements on such property during the construction and sales period. In accordance with Applicable Law, an Owner may display one ground-mounted sign for each political candidate or ballot item for an election, provided that the sign shall be installed no earlier than ninety (90) days before the election and removed not later than ten (10) days after the election: and, no sign will be allowed or permitted that: (i) contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component; (ii) is attached in any way to plant material, a traffic control devise, a light, a trailer, a vehicle, or any other existing structure or object; (iii) includes the painting of Architectural Reviewer surfaces; (iv) threatens the public health or safety; (v) is larger than four feet by six feet; (vi) violates the law; (vii) contains language, graphics, or any display that would be offensive to the ordinary person; or (viii) is accompanied by music or sounds or by streamers or is otherwise distracting to motorists.

(i) ***Vehicles***. All vehicles on the Properties, whether owned or operated by the Owners or Residents or their invitees, are subject to this Section.

(1). ***Compliance with Laws.*** Any ordinance of the City of Lubbock or County of Lubbock, Texas relating to vehicles and parking, and which may be applicable to the Properties, is incorporated herein by reference. Any vehicle on the Property that violates such an ordinance is deemed to also violate these use restrictions.

(2). ***Repairs and Storage.*** A driveway, street or unfenced portion of a Lot may not be used for repair, maintenance, restoration, or storage of vehicles, except for emergency repairs, and then only to the extent necessary to enable movement of the vehicle to a repair facility.

(3). ***Prohibited Vehicles.*** Subject to the last sentence of this Subsection, the following types of vehicles and vehicular equipment – mobile or otherwise – may not be kept, parked, or stored anywhere on a Lot or on the Property: travel trailer, camper trailer; pop-up or tent camper, house trailer, utility or cargo or stock trailer, mobile home, motor home, recreational vehicle ("RV"), house car, boat, personal water craft, race car

or car parts, snowmobile, dune buggy, inoperable passenger vehicle, vehicle that transports inflammatory or explosive cargo, junk vehicle, abandoned vehicle, and any vehicle which the Architectural Reviewer deems to be a nuisance, unsightly or inappropriate. This prohibition does not apply to (i) vehicles and equipment temporarily on the Property in connection with maintenance of Common Property, or construction or maintenance of any Improvement on a Lot or on the Property, or (ii) recreational vehicles and boats that are temporarily parked on a driveway for the purpose or loading, unloading or cleaning, provided that under no circumstances may a recreational vehicle or boat be parked in a manner that violates any ordinance or regulation promulgated by the City of Lubbock, or County of Lubbock, Texas or other Applicable Law (including, without limitation, any zoning ordinances). Prohibited Vehicles as described in this paragraph must be stored (i) at a location other than the Lot or the Property; or (ii) within a garage or Accessory Building approved by the Architectural Reviewer and designed to conceal such Prohibited Vehicles from view of other Lots and from public streets which border such Lot. Any garage designed to conceal a Prohibited Vehicle must meet the requirements of Article IV, Section 3 of this Declaration, and any Accessory Building designed to conceal a Prohibited Vehicle must meet the requirements of Article IV, Section 6(n) of this Declaration.

(4). ***Control of Speed***. All Owners and Residents shall control their speed when utilizing the alleys and driveways. The speed limit in all alleys shall be 15 miles per hour, or as otherwise established by ordinance or regulation promulgated by the City of Lubbock, or County of Lubbock, Texas or other Applicable Law.

(j) ***Solar Energy Devices.*** Solar Energy Devices shall be permitted on a Dwelling Unit only as approved by the Architectural Reviewer. During the Development Period, the Declarant reserves the right to prohibit all Solar Energy Devices. A "Solar Energy Device," for purposes of the Governing Documents, is 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. All solar devices not meeting this definition are prohibited. The Architectural Reviewer will not approve, and an Owner may not install Solar Energy Devices that:

(i) threaten the public health or safety;
(ii) violate a law;
(iii) are located in an area on the Owner's Lot other than:
  (a) on the roof of the Dwelling Unit (or of another Structure on the Owner's Lot allowed under the Governing Documents; or
  (b) in a fenced rear yard or patio in the rear yard owned and maintained by Owner on the Owner's Lot;
(iv) are installed in a manner that voids material warranties; or
(v) substantially interfere with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities.

If a Solar Energy Device is mounted on the roof of a Dwelling Unit, it must: (i) extend no higher or beyond the roofline; (ii) be located only on the back of the Dwelling Unit – being the side of the roof opposite the street; (iii) conform to the slope of the roof, and have all top edges parallel to the roofline; and (iv) not have a frame, a support bracket, or visible piping or wiring that is any color other than silver, bronze, or black tone, commonly available in the marketplace. If the Solar Energy Device is located in a fenced rear yard or patio, it may not be taller than the fence

line. Any solar shingles must be designed primarily to (i) be wind and hail resistant; (ii) provide heating/ cooling efficiencies greater than those provided by customary composite shingles; or provide solar generation capabilities. In addition, solar shingles, when installed, must (i) resemble the shingles used or otherwise authorized for use on Lots in the Property; (ii) be as durable and of equal or superior quality to the shingles used or otherwise authorized for use on Lots in the Property; and (iii) match the aesthetics of the Dwelling Units surrounding the Owner's Dwelling Unit.

(k). ***Rain Barrel or Rainwater Harvesting Systems.*** Rain barrel or rainwater harvesting systems shall be located only in the rear yard of the Lot and shall be screened from view of all streets and other Lots.

Section 2. ***Minimum Floor Space.*** Each one (1) story dwelling and each one-and-one half (1.5) and two (2) story dwelling constructed on any Lot shall contain such minimum square feet of air-conditioned floor area (exclusive of all porches, garages or breezeways attached to the main dwelling) as may be specified by the Design Guidelines for the first and/or second stories and/or the total; however, in no event shall any Dwelling Unit constructed on Lots One (1) through and including Fifty-eight (58) have less than 2,400 square feet of air conditioned floor area. No Structure will be in excess of two (2) stories (however, a Dwelling Unit may have a basement and two above-ground stories). If the Dwelling Unit consists of more than one story or level (including Dwelling Units with a basement) then not less than eighty percent (80%) of the minimum floor space shall be ground floor space (first story), unless the Architectural Reviewer approves a different percentage in order to accommodate a particular Lot configuration or a special circumstance related to a particular Dwelling Unit.

Section 3. ***Garages; Parking.*** Each single-family Dwelling Unit erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles unless otherwise specifically approved by the Architectural Reviewer. Each Owner and Resident shall use their respective best efforts to park and store their automobiles within the garage. All garage doors shall be closed at all times when not in use. Carports are not encouraged but may be permitted under limited rigid circumstances if, as and when, in the absolute opinion of the Architectural Reviewer the exterior surface and appearance will substantially compare with a garage and if absolutely no storage of items will be visible from any street or neighboring Lot. Any and all proposed garage or carport plans and specifications must be submitted to the Architectural Reviewer for review and approval. A garage will be situated on the Lot in such a manner that the garage door or entry will face away from the street upon which the Lot is situated. On Lots with alley access to the driveway, the garage must provide for rear-entry access from the driveway, with the garage door set back at least twenty feet from the rear property line. On Lots without alley access, the garage must provide for rear-entry access from the driveway (such that the garage door entry will face away from the street), with the driveway having access from the street upon which the Lot is situated. In regard to those Lots without alley access, the Architectural Reviewer will have authority to accommodate special Lot configurations and corner Lots, and allow garages providing for side entry access, provided that such side-entry garages are situated in a manner that the garage doors are, to the greatest extent possible, screened from view of the street and neighboring Lots. On those Lots for which side-entry access is proposed, the Architectural Reviewer, as part of the architectural review conducted in regard to such Lots, may require screening fences, landscaping and the other elements to screen vehicles parked in the driveway from the view of the street on which the Lot is situated and the other Lots, and all plans and specifications providing for side-entry garages will contain details showing how the screening of the garage and driveway area will be accomplished. Except for loading and visitation by guests, vehicles will not be parked on that portion of the driveway situated to the front of any dwelling unit located on the Lots having driveway access from the street. Vehicles on all Lots will, to the extent possible, be parked in the garage when not in use (no vehicle will be stored or continuously remain parked in a driveway). The Architectural Reviewer or Declarant may adjust the requirements of this Article IV, Section 3 as

necessary to accommodate the particular dimensions of each Lot, especially on corner and cul-de-sac Lots; however, an effort must be made to face the garage doors away from the abutting street to the extent possible. Each Owner and Resident shall use their respective best efforts to refrain from:

(a) habitually parking any automobile or vehicle on any Lot outside of an approved garage area between any Dwelling Unit and the abutting front street or between any Dwelling Unit and an abutting side street; and

(b) performing, permitting or allowing repair or maintenance work to any automobile or other vehicle outside the garage and visible to the abutting street(s).

Under no circumstances or conditions shall any automobile, boat or other vehicle be parked on a non-paved portion of any Lot.

Section 4. ***Setback Requirements***. Each Dwelling Unit will face the street which abuts the front of the Lot upon which the Dwelling Unit is to be situated; however, for all corner Lots and Lots located in a cul-de-sac, the Declarant will determine the location of the Dwelling Unit in accordance with the Plans submitted by each Owner and in accordance with the specific dimensions of such corner or cul-de-sac Lots. All Structures shall be constructed in accordance with the setback requirements stated in **Exhibit "B"** to this Declaration, unless the specific dimensions of a corner or cul-de-sac Lot require a variance of such setback requirements by the Architectural Reviewer (in which case the variance will be made in writing). If an Owner owns two or more adjacent Lots and desires to construct one Dwelling Unit on both Lots, construction of which Dwelling Unit would violate the side lot setback lines provided herein, the Architectural Reviewer may waive, in writing, said side lot setback line as to such Dwelling Unit, and such Lots shall be considered to be one Lot solely for purposes of determining the setback lines. Further, if two Owners own three adjacent Lots and desire to construct two Dwelling Units on such three Lots, construction of which Dwelling Units would violate the side lot setback lines provided herein, the Architectural Reviewer may waive, in writing, said side lot setback lines as to such Dwelling Units in order to accommodate the construction of two Dwelling Units on three Lots, as requested by the two Owners.

The following Structures are expressly excluded from the setback restrictions: (i) Structures below and covered by the ground; (ii) steps, walks, below ground-level swimming pools, uncovered patios, driveways and curbing; (iii) landscaping as approved by the Architectural Reviewer pursuant to Article III hereof; (iv) planters, walls, fences or hedges, not to exceed 7 feet in height, and which comply with the restrictions set forth in this Declaration; (v) any other Structures exempted from the setback restrictions by the Architectural Reviewer on a case-by-case basis and as provided in Article III hereof. In no event shall the Architectural Reviewer exempt from the side setback restrictions, any Accessory Buildings.

In addition to the setback requirements stated above in this Article IV, Section 4, and except as otherwise expressly provided in this Declaration, no Structure shall be placed within any setback requirement imposed by the City of Lubbock, Texas.

Section 5. ***Fences.*** Fences to be constructed on a Lot must conform to the following requirements:

(a). Except as otherwise provided in this Declaration, a perimeter fence shall be constructed on each Lot. The required perimeter fence must be constructed (i) across the rear property line of each Lot and (ii) along the side of each Lot from the rear fence corner to a point which intersects either the rear building line of the Dwelling Unit on the Lot or the front building line of the

Dwelling Unit. Except as herein provided in regard to fences constructed by the Declarant, all perimeter fences shall be constructed of flat-top cedar, redwood, or other similar materials as approved by the Architectural Reviewer, and shall be of such design, materials and construction as conform to the design of the Dwelling Unit. All perimeter fences shall be approved by the Architectural Reviewer. All perimeter fences, unless otherwise approved by the Architectural Reviewer, shall be seven feet (7') in height and capped with materials that match the fencing (for example, cedar fencing will have cedar capping). Under no circumstances will the Architectural Reviewer approve perimeter fences to be constructed of chain link, barbed wire, pipe, woven design or other material not expressly permitted and approved by the Architectural Reviewer. No fence, wall or hedge (which serves as a barrier) shall be erected, placed or altered on any Lot without the approval of the Architectural Reviewer. Perimeter fences constructed on common boundary lines between Lots will be maintained and repaired jointly by the Owners of the adjoining Lots, unless the adjoining Owners agree otherwise.

(b). Fences and walls shall not be permitted within the front yard directly in front of any Dwelling Unit; provided, however, decorative fences and walls shall be allowed which do not exceed thirty inches in height and which are approved by the Architectural Reviewer. The area of each Lot between the boundary line of the Lot and the fence shall be landscaped as approved by the Architectural Reviewer and maintained by the Owner or Resident of the Lot.

(c). Fences not otherwise provided for in this Section 5 shall be constructed of such materials and design as approved by the Architectural Reviewer; however, the Architectural Reviewer shall not approve a fence constructed of chain link, barbed wire, r-panel metal fencing, or other material not expressly permitted and approved by the Architectural Reviewer.

(d). On selected Lots with perimeter fences abutting or facing a street, the Declarant may, but shall not be required, to construct fences that incorporate brick columns or other features creating a uniform appearance from the street. If a fence is constructed on said Lots by Declarant, it shall be the sole responsibility of the Owners of said Lots, at each Owner's sole cost and expense, to maintain, repair and replace that portion of the fence situated on the Lot owned by each Owner, and any landscaping located between the fence and the adjacent street. If any Owner is required under this paragraph to repair or replace a fence that was originally constructed by Declarant, the Owner will repair or replace the fence with identical materials and construction standards as used by Declarant (such that the replaced fence will, as nearly as possible, match the fence that is being replaced and the neighboring fences). Should any Owner fail to repair or replace a fence as herein required, the Declarant will have the right, but not the obligation, to make such repairs or replacements, in which event the cost incurred by the Declarant may be assessed against the failing Owner as further described in Article IV, Section 13, below.

Section 6. ***Construction Standards for Lots***. In addition to meeting all applicable building codes, all Improvements and Structures on each Lot shall meet with the following requirements (except as may be modified in writing by the Architectural Reviewer, or the Declarant during the Development Period):

(a) ***Exterior Walls***: The exposed exterior wall area, exclusive of doors, windows and covered porch area, shall be at least 80 percent brick, stone, or other masonry materials approved by the Architectural Reviewer. Approved masonry materials may include conventional clay brick and brick veneer, natural stone and stone veneer, glass block or brick, and stucco. Any exposed exterior area not covered by brick, stone or approved masonry materials must be covered by wood or siding (metal or synthetic) having the appearance of wood, or stucco and as approved by

the Architectural Reviewer. The Architectural Reviewer is specifically authorized to require a continuous uniform surface with respect to all Structures which directly face the street or county road or another Lot.

(b) ***Roofing Design, Materials and Pitch***: Except as approved by the Architectural Reviewer on a case-by-case basis, flat roofs, mansard roofs and other "exotic" roof forms shall not be permitted. All roofing materials utilized on any Structure on a Lot must be approved by the Architectural Reviewer. The Architectural Reviewer will not approve of a roof of crushed stone, marble or gravel, it being intended that each roof shall be constructed only of metal, composition or wood shingles (provided that any composition shingles must be at least 300-pound shingles), tile, slate, copper or other materials approved by the Architectural Reviewer taking into account harmony, conformity, color, appearance, quality and similar considerations. Functional roof-affixed appurtenances, such as exposed flashing, plumbing stacks, roof vents, and downspouts, must be painted to match, blend with or complement the color of adjacent materials. Decorative roof accessories, such as weathervanes, shall be permitted, subject to approval of the Architectural Reviewer. The roof pitches and ratios for the Dwelling Unit and attached garage portions of the house will be approved by the Architectural Reviewer on a case-by-case basis.

(c) ***Chimneys***: All fireplace chimneys shall be constructed of the same brick, stone, or masonry material, as appropriate, used for the Dwelling Unit.

(d) ***Garages***: In addition to meeting the requirements stated in Article IV, Section 3, all garages shall be given the same Architectural Reviewer treatment as the Dwelling Unit located on such Lot. All garage doors shall remain closed when not in use, and must not exceed nine feet in height, unless otherwise approved by the Architectural Reviewer. The interior walls of all garages must be finished (taped, floated and painted as a minimum). No garage shall be enclosed for living area or utilized for any other purpose than storage of automobiles and related normal uses. "Oversized" garages must first be approved by the Architectural Reviewer, and no oversized garage will be approved unless the design is compatible and in harmony with the Dwelling Unit and the exterior materials match the Dwelling Unit and comply with the requirements of Article IV, Section 6(a) of this Declaration.

(e) ***Exterior Lighting***: No exterior light shall be installed or situated such that neighboring Lots are unreasonably lighted by the same. All freestanding exterior lights located between the property lines and the Dwelling Unit shall be architecturally compatible with the Dwelling Unit, and shall be approved by the Architectural Reviewer.

(f) ***Driveways***: The driveway shall be constructed of concrete or other material as may be approved by the Architectural Reviewer. Any concrete or other material utilized must have a minimum strength of 2500 psi with steel reinforcing. The design of driveway gates must be approved by the Architectural Reviewer as part of the Plans.

(g) ***Window Units:*** No Structure shall utilize window mounted or wall-type air conditioners or heaters.

(h) ***Skylights; Solar Installations***: Skylights shall be permitted on the roof of a Dwelling Unit, subject to approval by the Architectural Reviewer. No other equipment, including without limitation, heating or air conditioning units, solar panels, solar collection units, satellite dishes, and antennas, shall be located on the roof of any Dwelling Unit or Structure, unless the same are concealed from view from adjoining Lots and public streets, and do not materially alter the roof line of the Dwelling Unit or Structure; and further, plans and designs for such equipment to be

located on a roof must be submitted with the Plans required pursuant to Article VII hereof, and the design, plans, and installation of skylights, and all equipment located on the roof, are subject to the approval of the Architectural Reviewer.

(i) ***Swimming Pools***: No above-ground swimming pools shall be permitted on any Lot. However, an above-ground spa or hot tub may be constructed on a Lot provided that the same is located on a porch or deck associated with the Dwelling Unit. Any in-ground swimming pool shall be located in the rear yard of the Lot, and shall be securely enclosed by a fence and gates designed to prevent children and animals from accidently entering the pool enclosure. An enclosed in-ground pool may be constructed at the rear of the Dwelling Unit (either attached to the Dwelling Unit or as a separate Structure), provided that the enclosure for such pool shall be of the same materials used on, and in the same Architectural style, as the Dwelling Unit. All swimming pools, and all swimming pool enclosures, must be approved by the Architectural Reviewer.

(j) ***Tennis Courts:*** No tennis court shall be constructed on any Lot unless and until the design, plans and specifications for the tennis court have been approved by the Architectural Reviewer. Approval will be limited to those tennis courts which are located only in the rear yard of the Lot, and which: (i) utilize only "low profile" lighting; (ii) have no chain-link fencing or chain-link backstops; (iii) are fenced with material compatible with those materials utilized on the exterior of the Dwelling unit; and (iv) are concealed to the greatest extent possible from view from any street, neighboring Lot, or other public area.

(k) ***Septic Systems:*** No cesspool, outhouse or outside toilet shall be permitted on any Lot. Toilets located in any Structure shall be connected to either an approved public sewage disposal system or to a septic tank located in the rear yard of the Lot on which such Structure is constructed. Sewage disposal facilities and septic tanks must comply in all respects with all applicable state, county and/or other governmental laws, rules and regulations. The Architectural Reviewer may approve the location of the required septic tank. **On the date that this Declaration is being filed, public sewer service is not available to the Lot, and all Owners are required to install a septic tank at the time that the Dwelling Unit is constructed.**

(l) ***Water Wells:*** Water wells on a Lot must comply in all respects with all Applicable Laws. Water wells on a Lot shall be restricted to the front yard of each Lot. Only submersible pumps having not more than one and one-half (1 ½) horsepower in capacity shall be used in any water wells located on the Lot. Under no circumstances shall any above-ground irrigation motors or similar devises (whether gasoline or electric) be located on a Lot and/or used in connection with providing water to that Lot for household use and watering of landscaping. No individual water well shall be drilled within the side yard setback for each Lot. All water wells shall be cased from the surface to the water formation. Owners and Residents may utilize water from water well for domestic purposes only, and all water produced from a well shall be utilized solely on the Lot from which the water is removed. No Owner or Resident may remove or sell water from their Lot to the public, or to any person or entity. The water rights related to the Property may have been reserved by predecessors in title, and the residential Lots which are, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration may be subject to the reservations of the water rights made by predecessors in title. Notwithstanding prior reservations of the water rights, a Lot may have water wells, provided that such wells comply in all respects with the restrictions contained in this Declaration. If any Lot(s) has a water well in existence on the date that this Declaration is recorded in the Official Public Records of Lubbock County, Texas, such water well is exempt from the requirements stated in this paragraph (for example, if the existing water well is in the rear yard of the Lot, the Owner will not be required to move the

water well). Notwithstanding anything in this Declaration to the contrary, all water wells and septic systems, and the location of same, must comply with all laws, ordinances and regulations of any governmental entity or agency, including but not limited to requirements established by the Texas Commission on Environmental Quality (the "TCEQ"), and water wells and septic systems must be spaced and located in a manner that complies with TCEQ requirements.

(m) ***Mailboxes:*** Mailbox location and design will be subject to approval by the Architectural Reviewer. Mailboxes will then be installed by the Homebuilder or Owner at the sole cost and expense of the Homebuilder or Owner.

(n) ***Approved Structures Other than Dwelling Unit ("Accessory Buildings"):*** No Structure or Improvement shall be permitted on any Lot other than the Dwelling Unit and such permanent Structures and Improvements as are approved in writing by the Architectural Reviewer, such as swimming pool equipment houses, workshops, cabanas, greenhouses, gazebos, children's playhouses, barns and storage sheds (such approved Structures and Improvements other than the Dwelling Unit being hereafter referred to as "Accessory Buildings"). In no event will the Architectural Reviewer approve an Accessory Building that is not of new construction and material. All Accessory Buildings will be subject to the conditions stated in this paragraph. If an Accessory Building is constructed in violation of this Section, the Architectural Reviewer reserves the right to determine that the Accessory Building is unattractive or inappropriate or otherwise unsuitable for the Property; and, upon such determination, the Architectural Reviewer may require the Owner to screen, modify, or remove the Accessory Building. The following conditions apply to Accessory Buildings, where permitted by the Architectural Reviewer:

(i). All Accessory Buildings shall be constructed with exteriors of the same materials as are used on the main Dwelling Unit on each Lot or of other masonry material or of metal with a factory applied non-reflective painted finish. Special purpose structures such as greenhouses may vary from these requirements, subject to an architectural review variance, as provided in this Declaration. Accessory Buildings will be visually harmonious with the Dwelling Unit, such as matching or complementing dominant colors, construction details and roof pitch.

(ii) The Architectural Reviewer must approve the location of the Accessory Building on the Lot. The Accessory Building will be located on the Lot, to the extent possible, which is least visible from adjacent and neighboring Lots. The Architectural Reviewer may condition the approval of an Accessory Building upon the Owner's installation of landscaping or other screening devices that will limit the visibility of the Accessory Building from other Lots or streets.

(iii). No Accessory Building may be used as the Dwelling Unit or as a residential dwelling, and may not be leased to others for any purpose.

(iv). Pre-manufactured sheds and storage buildings must be bricked or finished on all sides with the same exterior as approved for use on the exterior of the Dwelling Unit [See, Article IV, Section 6.(a), above].

(v). The Declarant reserves the right to erect, place, maintain, and to permit Homebuilders to erect, place and maintain such facilities in and upon any Lot as in its discretion may be necessary or convenient during the period of or in connection with the improvement and/or sale of any Lots.

(vi). Notwithstanding the foregoing, no Accessory Building will be approved by the Architectural Reviewer if such Accessory Building violates any ordinance or regulation promulgated by the City of Lubbock, or County of Lubbock, Texas or other Applicable Law (including, without limitation, any zoning ordinances).

(o). ***Basketball Goals.*** Permanent basketball goals must be approved by the Architectural Reviewer. Basketball goals will be approved only when (i) the backboard is constructed of clear material; (ii) the pole is permanently mounted to the side of the driveway in a full upright position, and in a manner that is concealed to the greatest extent possible from other Lots. The basketball pole, backboard and net must be maintained in good condition at all times. Portable basketball goals will only be located to the side of the driveway, as approved by the Architectural Reviewer, and will not be utilized or located on any other portion of the Lot without the consent of the Architectural Reviewer.

(p). **Patio Covers (Including Pergolas, Loggias, and Screened-in Porches).** Exterior alterations to the Dwelling Unit such as screened-in porches, patio covers, pergolas and loggias must be approved by the Architectural Reviewer, and must be professionally designed, fabricated and constructed.

Section 7. ***Landscaping of Lots***. Construction of each and every Dwelling Unit within the Properties shall include the installation and placement of appropriate landscaping. All landscaping shall be completed by no later than one year after final completion of the Dwelling Unit, weather permitting. Landscaping must (i) permit reasonable access to public and private utility lines and easements for installation and repair; (ii) provide an aesthetically pleasing variety of trees, shrubs, groundcover and plants; and (iii) provide for landscaping of all portion of the Lot not covered by Improvements. Landscaping shall include groundcover, trees, shrubs, vegetation and other plant life. On all Lots, the landscaping in the front yard shall include at least two trees having a trunk diameter of not less than 4-inch caliper, and shall be red oak, live oak, burr oak, lace bark elm, cedar elm, or such other variety as approved by the Architectural Reviewer (the Architectural Reviewer will not under any circumstances approve mulberry trees, pecan trees, silver leaf maple trees, weeping willow trees, or trees having root systems that could cause damage to Improvements located on adjacent Lots). Landscaping shall not include gravel, concrete, timber or rocks except where used as borders, walkways, accent pieces, or as part of a xeriscape landscape plan approved by the Architectural Reviewer. Damaged or dead trees and plant material must be replaced within 60 days, weather permitting, with trees or plant materials of a similar type. "Yard art," if visible from a street or if located in a front yard or side yard that is not fenced from view, is prohibited if not first approved by the Architectural Reviewer. "Yard art" shall include any ornamentation, decoration, sculpture, fountain or structure that is placed in a yard for decorative purposes. A swimming pool, where approved by the Architectural Reviewer and located in the rear yard, may be considered landscaping. Except for typical garden hoses having a diameter of not more than one-inch, and common portable yard sprinklers that may be attached to such hoses, no pipes, hoses, sprinklers, or other parts of any irrigation system for watering of landscaping on a Lot shall be located above the ground. An under-ground irrigation system adequate to suitably water all landscaping located in the front yard of each Lot shall be installed at the time the Dwelling Unit is constructed. Owners are encouraged to use adaptive or native plant materials that are environmentally durable, consume less water and need less chemical treatments, and which are also appropriate for use in a residential neighborhood. An Owner who desires to xeriscape the unfenced portions of the Owner's Lot must submit a detailed landscape plan to the Architectural Reviewer for prior approval. By owning or occupying a Dwelling Unit in the Property, each Owner and Resident acknowledges that the appearance of yards in the neighborhood may not be uniform, and that Lots that adjoin or face one another may look different. Xeriscaping may not be construed as permission to let yards "go to weeds" under the pretext of "adapted native landscaping," nor as justification for turning a lawn into a cactus or rock garden – without the prior written approval of the

Architectural Reviewer. During the Development Period, the Declarant reserves the right to unilaterally amend this paragraph to accommodate the requirements of Applicable Law related to xeriscaping and other landscaping issues.

Alleyways (meaning the area between the rear perimeter fence and the alley on each Lot) will not be landscaped with bushes, shrubs, trees or other similar landscaping material that extends above the ground; and instead, alleyways will be covered only in gravel, rock or similar non-plant groundcover material as approved by the Architectural Reviewer.

Section 8. ***Screening.*** All utility meters, equipment, air conditioning compressors, swimming pool filters, heaters and pumps and any other similar exposed mechanical devises on any Lot must be screened so that the same are not visible from other Lots or any public street on which the Lot borders. All screens must be solid and constructed in the same architectural style and of the same material as the Dwelling Unit on a Lot.

Section 9. ***Utilities.*** All public or private utility and service connections including, but not limited to gas, water, electricity, telephone, cable television or security system, or any wires, cables, conduits or pipes used in connection therewith, located upon any Lot shall be underground; except that fire plugs, gas meters, supply pressure regulators, electric service pedestals, pad mount transformers, and street lights may be located above ground only when necessary to furnish the service required by the use of such utilities. In no event shall any poles be permitted, other than for street lights or as otherwise permitted herein, and no wires or transmission lines to or from such street lights shall exist above the ground (this restriction shall not be applicable during the construction process, when temporary utility service is being provided to the Lot).

Section 10. ***Trash Containers***. All dumpsters and other trash containers shall be located in the alley at the rear of each Lot. All trash and debris shall be disposed of in proper containers, and at no time shall an Owner allow trash or debris to remain on a Lot, or in an alley.

Section 11. ***General.***

(a) ***Construction Debris:*** During the construction or installation of any Improvement or Structure on any Lot, construction debris shall be removed from the Lot on a regular basis and the Lot shall be kept as clean as possible. Construction debris shall not be dumped or disposed on any portion of the Property, and each Owner will be responsible for ensuring that his contractor removes all trash and debris from the Property. Concrete contractors will not be permitted to washout concrete on the Property.

(b) ***Stoppage of Construction***: Once commenced, construction shall be diligently pursued to the end that it will be completed within 18 months from the date commenced. For purposes of this instrument, construction shall be deemed to be commence on the earlier of (i) the date on which any governmental authority shall issue any building permit or other permission, consent or authorization required in connection with such construction, or (ii) the date on which excavation or other work for the construction of the footings and/or foundation of any Improvements or Structures shall begin.

(c). ***Portable Sanitary Systems.*** For use by workers during construction of the Dwelling Unit on any Lot, Owner must provide a portable sanitary system, located at the rear of the Lot (or away from traffic on Lots that have a rear boundary line on a street). The sanitary system will be timely serviced to prevent odors.

(d). ***Screening Requirements***. As used in this Declaration, any Improvement or Structure that is required to be "screened" from neighboring Lots does not pertain to the view from overhead or from a second floor window.

Section 12. ***Easements; Utilities***. Easements for the installation and maintenance of utilities and drainage facilities are reserved in this Declaration and as shown on the recorded Property plat. Utility service may be installed along or near the front and/or side and/or rear Lot lines and each Lot Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the Architectural Reviewer (e.g. fencing, flatwork, landscaping, etc.), no Owner shall erect, construct or permit any obstructions or permanent Improvements or Structures of any type or kind to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Electrical (and possibly other utility) easements are likely to be located at or near or along the rear Lot line(s), and each Lot Owner assumes full, complete and exclusive liability and responsibility for all cost and expense related to damage, repair, relocation and restoration of such improvements or fence. Except as to special street lighting or other aerial facilities which may be required by the City of Lubbock or County of Lubbock, Texas or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development-plan, no aerial utility facilities of any-type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Property whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Property, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility. All utility meters, equipment, air conditioning compressors, water wells and similar items must be visually screened and located in areas designated by the Architectural Reviewer. The Architectural Reviewer shall have the right and privilege to designate the underground location of any CATV-related cable.

Each Owner shall assume full and complete responsibility for all costs and expenses arising out of or related to the repair, replacement or restoration of any utility equipment damaged or destroyed as a result of the negligence or mischief of any Resident or Owner. Each Owner agrees to provide, at the sole cost and expense of each Owner, such land and equipment and apparatus as are necessary and appropriate to install and maintain additional lighting and security-related measures which becomes technologically provident in the future.

Section 13. ***Duty of Maintenance***. Each Owner of any Lot shall have the responsibility, at his or her sole cost and expense, to keep such Lot, including any Improvements thereon, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include, but is not limited to, the following:

(a) Prompt removal of all liter, trash, refuse and waste, and regular cutting of weeds and grasses on the Lot prior to and during construction of any Improvements;

(b) Regular mowing of grasses;

(c) Tree and shrub pruning and prompt removal of diseased plants and trees;

(d) Keeping landscaped areas alive, free of weeds, and attractive;

(e) Watering;

(f) Keeping parking areas and driveways in good repair;

(g) Complying with all government health and police requirements;

(h) Repainting of Structures and Improvements;

(i) Repair of exterior damages to Improvements.

Each Owner of any Lot shall have the responsibility, at his or her sole cost and expense, to keep all areas located between the boundaries of such Lot and the paved portion of any streets or roads on which such Lot borders in a well maintained, safe, clean and attractive condition.

During the Development Period, the Declarant, it's agent, representatives and assigns shall have the right, but not the obligation or duty (after 5 days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any person or entity) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement will be paid to the Declarant upon demand and if not paid within thirty (30) days thereof, will become a lien upon the Lot affected. The Declarant, or its agent, representative or assign, shall further have the right (upon like notice and conditions), to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Declarant, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots or Dwelling Units, is dangerous or is unattractive in appearance, and the costs incurred by the Declarant shall be immediately reimbursed to the Declarant by the Owner upon demand. The rights of Declarant or its agents or assigns to contribution from any Owner under this Declaration shall be appurtenant to such Owner's Lot and shall pass to such Owner's successors in title. Declarant and Declarant's agents and assigns shall have the right to enforce by any proceeding at law or in equity the provisions contained in this Section 13. Failure by Declarant to enforce any provision, however, shall in no event be deemed a waiver of the right of Declarant's agents or assigns to do so thereafter. The rights of Declarant as described in this Section 13 shall be assignable during the Development Period to any person or entity, provided that such assignment be in writing and filed in the Official Public Records of Lubbock County, Texas. Any delegation by Declarant of its rights hereunder is subject to the unilateral right of the Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated.

ARTICLE V.
EASEMENTS; UTILITY SERVICES

Section 1. ***Utility Easement.*** A non-exclusive easement for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across an area five foot (5') wide around the perimeter of each Lot is reserved by Declarant for itself and all utility and CATV companies and their respective successors and assigns, serving the Property and no Improvement or Structure shall be constructed or placed thereon without the express prior written consent of the Architectural Reviewer Full rights of ingress and egress shall be had by Declarant and all utility and CATV companies serving the Property, and their respective successors and assigns, at all times over the Property for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction (excluding, however, any driveway, fence or other Improvement or Structure which has been theretofore specifically approved by the Architectural Reviewer) that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. As further provided in Article VI, Section 3 (f) of this Declaration, Declarant

reserves the right during the Development Period to grant and utilize such utility easements as therein described.

Section 2. ***Ingress, Egress and Maintenance by Architectural Reviewer.*** Full rights of ingress and egress shall be had by the Architectural Reviewer at all times over and upon the front, rear and side setback areas applicable to each Lot for the carrying out by the Architectural Reviewer of its functions, duties and obligations hereunder; provided, however, that any such entry by the Architectural Reviewer upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Architectural Reviewer at the expense of the Architectural Reviewer.

ARTICLE VI
DECLARANT RIGHTS AND RESERVATIONS

Section 1. ***General Reservation of Rights During Development Period.*** Declarant hereby reserves for itself and its successors, assigns and designees, the Development Period (as "Development Period" is defined in Article I of this Declaration), with each and every right, reservation, privilege, and exception available or permissible under Applicable Law for declarants and developers of residential subdivisions, if and to the full extent that such right, reservation, privilege, or exception is beneficial to or protective of Declarant. No other provision in any of the Governing Documents may be construed to prevent or interfere with Declarant's exercise of its rights and reservations as described in this Declaration. **Declarant need not be an owner of any Lot to exercise the rights and reservations contained in this Declaration**.

Section 2. ***General Provisions During the Development Period.*** The Declarant hereby reserves certain rights to: (i) ensure a complete and orderly build-out and sell-out of the Property, (ii) to facilitate the development, construction, and marketing of the Properties, and (iii) to direct the size, shape, and composition of the Properties, all of which is ultimately for the benefit and protection of Owners and their lenders. Because this Article VI benefits Declarant's interest in the Property, it may not be amended without Declarant's written approval as evidenced by Declarant's acknowledged signature on the instrument of amendment that purports to amend this Article VI. Notwithstanding other provisions of the Governing Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee or lender or other Owner prevent or interfere with the rights contained in this Article VI which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between the provisions of this Article VI and any other Governing Document, the provisions of this Article VI control. This Article VI may not be amended without the prior written consent of the Declarant. The terms and provisions of this Article VI must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property. As used throughout this Article VI, "unilaterally" means that the Declarant may take the authorized action without the consent, approval, vote or joinder of any other person, such as Owners (or their lenders), and Homebuilders. Certain provisions in this Article VI and elsewhere in the Governing Documents authorize the Declarant to act unilaterally. Unilateral action by Declarant is favored for purposes of efficiency and to protect the interests of Declarant.

Section 3. ***Development Period Reservations.*** In addition to any other rights reserved to Declarant in this Declaration, Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion at any time during the Development Period:

(a) ***Architectural Control.*** During the Development Period, Declarant has reserved the absolute right to serve as the Architectural Reviewer. Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under Article III and this Article VI to

another person or entity. Any such delegation must be in writing and must specify the scope of the delegated responsibilities, any such delegation is at all times subject to the unilateral rights of Declarant (i) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

(d) ***Amendment.*** During the Development Period, Declarant may amend and/or restate this Declaration and other Governing Documents, unilaterally, for any purpose including without limitation the following purposes:

a. To create lots, easements, and common areas within the Property.
b. To subdivide, combine, or reconfigure lots.
c. To convert lots into common areas.
d. To allocate the use of certain common areas to specified lots as limited common areas.
e. To modify - even to increase - Declarant's rights and reservations.
f. To change or modify any aspect of the building specifications stated in Article IV of this Declaration and to add provisions to Article IV to address changes, improvements and innovations in building and construction materials and designs.
g. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Governing Documents.
h. To qualify the Property for mortgage underwriting, tax exemption, insurance coverage, and any public or quasi-public program or benefit.
i. To enable a reputable company to issue title insurance coverage on the Lots.
j. To change the name or entity of Declarant.
k. To change the name of the addition in which the Property is located.
l. For any other purpose not prohibited by Applicable Law.

(e) ***Completion***. During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any Lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

(f) ***Easement to Inspect & Right to Correct***. During the Development Period, Declarant reserves for itself and Homebuilders, and their respective architects, engineers, other design professionals, materials manufacturers, and general contractors, the right, *but not the duty or obligation,* to inspect, monitor, test, redesign, correct, relocate, and replace any Structure, Improvement, material, or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right.

(g) ***Promotion***. During the Development Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Residents, for purposes of promoting, identifying, and marketing the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant

also reserves the right to sponsor marketing events - such as open houses, MLS tours, and broker's parties - at the Property to promote the sale of Lots.

(h) ***Access***. During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the public through any existing or future gate that restricts vehicular access to the Property in connection with the active marketing of Lots and homes by Declarant or Homebuilders, including the right to require that the gate be kept open during certain hours and/or on certain days.

(i) ***Utility Easements and Contracts***. During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any Lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, cable, internet service, and security. In addition, Declarant hereby reserves an easement across every utility, drainage, access, or firelane easement shown on a recorded plat (the "platted easements") for the installation, operation, maintenance, repair or removal of a utility serving any portion of the Property, together with a full right of ingress and egress at all times over the burdened Lot for the stated purposes, and the right to remove any obstruction that interferes with the use or exercise of the easement. To exercise this right as to land that is not owned by Declarant, Declarant must have the prior written consent of the Owner of the Lot. Declarant may enter into contracts for utility equipment and services for all or portions of the Property, including bulk rate service agreements. Such contract(s) may provide for installation, operation, management, maintenance, and upgrades or modifications to the utilities as Declarant determines appropriate. After the Development Period, Declarant's right to contract for utilities is limited to vacant Lots.

Section 4. Notice of Possible Changes. Until every Lot in the Property is improved with a Dwelling Unit, Declarant reserves the following exclusive rights which Declarant may exercise unilaterally from time to time when circumstances warrant:

(a) ***Changes in Development Plan***. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the owner of the land or Lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of Lots and streets; (b) change the minimum floor space requirements for Dwelling Units; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

(b) ***Change of Architectural Styles***. Declarant reserves the right to periodically change the types of architectural styles, building materials, and elevations that are eligible for approval by the Architectural Control Committee. On the date of this Declaration, Declarant does not contemplate that the Property will have a single uniform architectural style.

(c) ***Change of Construction Specifications***. Declarant has the right to establish specifications for the construction of all initial improvements in the Property, to establish different specifications of or each phase of the Property, and to grant variances or waivers from community-wide standards to certain phases of the Property.

(d) ***Change of Community Features***. The initial plans for use and development of the Property may change in response to a number of circumstances, influences, and opportunities that may not be apparent or applicable at the inception of the development. There are no planned common amenities or common facilities for the Property and any representations given to a prospective purchaser about a proposed community feature or amenity are hereby disclaimed.

ARTICLE VII
GENERAL PROVISIONS

Section 1. ***Duration***. Unless terminated or amended by Declarant or the Owners as permitted in this Declaration, the provisions of this Declaration shall run with and bind the Property, and will remain in effect perpetually to the extent permitted by Applicable Law.

Section 2. ***Amendments.*** The Covenants set forth herein are expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as provided herein. Notwithstanding Section 2 of this Article VII, these Covenants may be amended and/or changed in part as follows:

(a). ***Amendment by Declarant.*** Declarant has the exclusive right to unilaterally amend this Declaration during the Development Period, for the purposes stated in Article VI of this Declaration. This Article VII, Section 2, may not be amended without Declarant's written and acknowledged consent.

(b). ***Amendment by Owners.*** Except for amendments to this Declaration that can be made unilaterally by Declarant during the Development Period, amendments to this Declaration must be approved by Owners of at least a majority of the Lots. Any such amendment by the Owners shall be by an instrument in writing duly executed, acknowledged and filed for record in the Official Public Records of Lubbock County, Texas. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument.

Section 3. ***Enforcement***. Each Owner of a Lot in the Property, including the Declarant, shall have the right to enforce observance or performance of the provisions of this Declaration. In addition, the Declarant may assign its rights under this Declaration, in those circumstances described in this Declaration. If any person violates or attempts to violate any term or provision of this Declaration, it shall be lawful for any Owner, the Declarant, or Declarant's assigns, to prosecute proceedings at law or in equity against the person violating or attempting to violate any term or provision of this Declaration, in order to accomplish one or more of the following: (i) to prevent the Owner, Resident or their tenants, invitees, guests or representatives from violating or attempting to violate any term or provision of this Declaration; (ii) to correct such violation; (iii) to recover damages; or, (iv) to obtain such other relief for such violation as then may be legally available. Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), guests and invitees. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Properties. Failure by the Declarant, its assigns, or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City of Lubbock and the County of Lubbock, Texas are specifically authorized (but not obligated) to enforce these Covenants. With respect to any litigation hereunder, the prevailing party shall

be entitled to recover all costs and expenses, including reasonable attorneys' fees, from the non-prevailing party.

Section 4. ***Validity***. Violation of or failure to comply with these Covenants shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of these Covenants, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of Lubbock, or County of Lubbock, Texas or other Applicable Law (including, without limitation, any zoning ordinances), then such municipal or county requirement or Applicable Law shall control, but only to the extent as necessary to bring these Covenants into compliance with said ordinance, regulation or Applicable Law.

Section 5. ***Proposals of Declarant; No Imposition of Restrictions on Other Properties***. The proposals of the Declarant, as set forth in various provisions hereinabove, are mere proposals and expressions of the existing good faith intentions and plans of the Declarant and shall not be deemed or construed as promises, solicitations, inducements, contractual commitments or material representations by the Declarant upon which any person or entity can or should rely. Nothing contained in or inferable from this Declaration shall ever be deemed to impose upon any other land owned or to be owned by the Declarant, or any related entity, any covenants, restrictions, easements or liens or to create any servitudes, negative reciprocal easements or other interests in any such land in favor of any person or entity other than the Declarant. Declarant may now or in the future own or develop property adjacent to or in the vicinity of the Properties. Such adjacent property may be subject to restrictions materially varying in form from those contained in this instrument. Nothing contained in this instrument shall be deemed to impose upon Declarant any obligation with respect to such adjacent property, including, without limitation, any obligation to enforce any covenants or restrictions applicable hereto. During the Development Period, each and every Owner and Resident waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities regarding the following: to contest, object, challenge, dispute, obstruct, hinder or in any manner disagree with the proposed or actual development (including, without limitation, zoning or rezoning efforts or processes) pertaining to (i) residential uses of any real property owned by the Declarant or by the affiliates, assignees or successors of the Declarant within a one-mile radius of the Property.

Section 6. ***Additional Restrictions***. Declarant may make additional restrictions applicable to any Lot by appropriate provision in the Deed conveying such Lot to the Owner, without otherwise modifying the general plan set forth herein, and any such other restrictions shall inure to the benefit of and be binding upon the parties to such Deed in the same manner as if set forth at length herein.

Section 7. ***Headings***. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

Section 8. ***Notices to Owners***. Any notice required to be given to any Owner (or any Resident or other occupant of an Owner's Lot) under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States Mail, postage prepaid, addressed to the last known address of the Owner designated in the Deed conveying the Lot or Lots to that Owner, as recorded in the Lubbock County Clerk's Office in Lubbock County, Texas, or to the address of the Owner shown in the most recent records of the Taxing Authorities.

Section 9. ***Disputes.*** Matters pertaining to Article III architectural matters and issues concerning substantial completion shall be determined by the Architectural Reviewer. These determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners and Residents.

(a) ***Mediation.*** Except as otherwise provided herein, any controversy or claim between or among any Owner, Resident, the Architectural Reviewer, or the Declarant, Declarant's assigns, or any combination of said parties, including any claim based on or arising from an alleged tort or from Declarant's sale or development of (or failure to develop) the Properties, shall be settled informally, and said parties shall make every effort to meet and settle their dispute in good faith informally. If said parties cannot agree on a written settlement to the dispute within fourteen days after it arises, then the matter in controversy shall be submitted to non-binding mediation (except that disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process), and the dispute resolution process shall be conducted as follows:

(1) *Outside Mediator.* In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought before a mutually selected mediator. Such mediator will be an attorney-mediator skilled in community association law. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in the Property, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than 30 days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

(2) *Mediation is Not a Waiver.* By agreeing to use this dispute resolution process, the parties in no way waive their rights to extraordinary relief including, but not limited to, temporary restraining orders or temporary injunctions, if such relief is necessary to protect or preserve a party's legal rights before mediation may be scheduled.

(b) **Other Remedies**. If a matter in controversy cannot be resolved by mediation as set forth in Article VII, Section 9.(a) above, then the matter in controversy shall be resolved through any other legal or equitable remedy available to the parties affected by this Declaration. Further, nothing in this Declaration shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waiver contained in this Declaration; or (ii) limit the right of any party to enforce the Covenants contained in this Declaration through a proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both; or (iii) limit the right of any party to enforce any lien created in this Declaration, and to foreclose said liens by exercise of the power of sale hereunder or by judicial foreclosure in a court having jurisdiction; or (iv) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunction relief or the appointment of a receiver and, in the previously described situations, mediation and arbitration shall not be required. Subject to Applicable Law, the Declarant may exercise any self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any mediation proceeding brought pursuant to this Declaration.

Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any Owner, Resident, or the Declarant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

Section 10. ***ASSUMPTION OF RISK, DISCLAIMER, RELEASE AND INDEMNITY.***

(a) ***Assumption of Risk***. Each Owner and any Homebuilder, by his or her purchase of each Lot within the Property, hereby expressly assumes the risk of personal injury, property damage, or other loss caused by use, maintenance, and operation of the Property and any Lot, including but not limited to the design, development and construction of the Property.

(b) ***Disclaimer and Release***. Except as specifically stated in this Declaration or in any Deed, Declarant hereby specifically disclaims any warranty, guaranty, or representation, oral or written, expressed or implied, past, present or future, of, as to, or concerning:

> *(i) the nature and condition of the the Property, and any Lot, including but not by way of limitation, the water (either quantity or quality), soil, subsurface, and geology, and the suitability thereof and of the the Property, and any Lot within the Property, for any and all activities and uses which Owner, Resident, or any Homebuilder may elect to conduct thereon;*
>
> *(ii) the manner, construction, design, condition, and state of repair or lack of repair of any improvements located on the Property and any Lot;*
>
> *(iii) except for any warranties contained in the Deeds to be delivered from Declarant to an Owner or any Homebuilder, the nature and extent of any right-of-way, possession, reservation, condition or otherwise that may affect the Property and any Lot; and*
>
> *(iv) the compliance of the Property and any Lot with any laws, rules, ordinances or regulations of any governmental or quasi-governmental body (including without limitation, zoning, environmental and land use laws and regulations).*

To the maximum extent permitted by Applicable Law, Declarant's sale of each Lot within the Property is on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, and each Owner and Homebuilder purchasing a Lot within the Property expressly acknowledges that as part of the consideration for the purchase of a Lot, and except as expressly provided in this Declaration or in any Deed, Declarant makes NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTIES, OR ANY LOT WITHIN THE SUBDIVISION.

By acceptance of a Deed to any Lot, and to the maximum extent permitted by Applicable Law, Owner and any Homebuilder hereby waives, releases, acquits and forever discharges Declarant and any successor or assign of Declarant, and the Declarant's general partners, limited partners, members, managers, officers, agents, employees, representatives, attorneys and any other person or entity acting on behalf of Declarant (sometimes referred to in this Declaration as the "Released Parties"), of and from, any claims, actions, causes of action, demands, rights, damages, liabilities, costs and expenses whatsoever (including court costs and attorney's fees),

direct or indirect, known or unknown, foreseen or unforeseen, which Owner and any Homebuilder now has or which may arise in the future, on account of or in any way growing out of or in connection with the design or physical condition of the Property or any Lot, or any law, rule, order, statute, code, ordinance, or regulation applicable thereto.

Each Owner, Homebuilder and Resident waives and releases the Released Parties from any liability to said Owner, Homebuilder and Resident and to said Owner's, Homebuilder's and Resident's respective heirs, successors and assigns, for the design and/or condition of the Property or any Lot, known or unknown, present and future, including liabilities, if any, due to the existence, now or hereafter, of any hazardous materials or hazardous substances, on the Property or any Lot, and due to the existence, now or hereafter, of a violation, if any, of any environmental laws, rules, regulations or ordinances.

EACH OWNER, HOMEBUILDER AND RESIDENT EXPRESSLY WAIVES THE RIGHT TO CLAIM AGAINST THE RELEASED PARTIES BY REASON OF, AND RELEASES THE RELEASED PARTIES FROM ANY LIABILITY WITH RESPECT TO, ANY INJURY TO PERSON OR DAMAGE TO OR LOSS OF PROPERTY (INCLUDING CONSEQUENTIAL DAMAGES) RESULTING FROM ANY CAUSE WHATSOEVER (EXPRESSLY INCLUDING THE RELEASED PARTIES OWN NEGLIGENCE).

(c) ***Indemnity.*** To the extent and only to the extent caused by the acts or omissions of such Owner, Homebuilder or Resident each Owner, Homebuilder or Resident agrees to indemnify and hold harmless the Released Parties from all claims, suits, actions, liabilities and proceedings whatsoever and of every kind, known or unknown, fixed or contingent (the "Claims") which may be brought or asserted against the Released Parties, on account of or growing out of any and all injuries or damages, including death, to persons or property relating to such Owner's, Homebuilder's or Resident's use, occupancy, ownership, construction, operations, maintenance, repair or condition of the Property, any Lot, or any Improvements located thereon, following the effective date of this Declaration, and all losses, liabilities, judgments, settlements, costs, penalties, damages and expenses relating thereto, including, but not limited to, attorney's fees and other costs of defending against, investigating and settling the Claims.

Section 11. ***Definitions.*** The Concepts and Definitions contained in Article I of this Declaration are an integral part of this Declaration and shall be for all purposes construed as part of this Declaration.

Section 12. ***Use of Adjacent or Other Properties Owned by Declarant.*** Declarant intends to develop certain property adjacent to or in the vicinity of the Lots. Such adjacent property may be subject to restrictions materially varying in form from those contained in this instrument. Nothing contained in this instrument shall be deemed to impose upon Declarant any obligation with respect to such adjacent property, including, without limitation, any obligation to enforce any covenants or restrictions applicable thereto. Declarant may, in the future, develop certain property adjacent to or in the vicinity of the Lots as additional residential lots, or for commercial use, or for a recreational use, or any combination of such uses. However, nothing within this Declaration shall be construed as constituting an obligation, promise, covenant or duty on the part of Declarant to develop the adjacent property in a particular manner or for a particular use. Nothing contained in this paragraph or inferable from this Declaration shall ever be deemed to impose upon any other land owned or to be owned by Declarant, or any related entity, any covenants, restrictions, easements or liens, or to create any servitudes, negative reciprocal easements, or other interests in any such land in favor of any person or entity other than Declarant.

Section 13. ***Joinder of Lender.*** **First Bank and Trust Co.,** holder of liens of record against the Properties, joins in this Declaration for the sole purpose of showing its assent thereto and that it has no

objections to the filing of this Declaration. No violation of any covenant contained within this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Properties; providing however, that any mortgagee in actual possession, or any purchaser at any mortgagee's foreclosure sale, as well as all other owners, shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Properties.

Witness the hand of an authorized representative of Declarant on the acknowledgment date noted below.

DECLARANT:
SWLLD, LLC, a Texas limited liability company

By: _____
Thomas K. Payne, Manager

LENDER:
FIRST BANK AND TRUST CO.

By: _____
Print Name: Greg Garland
Title: President

THE STATE OF TEXAS

COUNTY OF LUBBOCK

Before me, the undersigned authority on this 26 day of July, 2016, personally appeared THOMAS K. PAYNE, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the instrument as the act of **SWLLD, LLC**, a Texas limited liability company, and that he executed the instrument on behalf of the limited liability company for the purposes and consideration expressed, and in the capacity hereinabove stated.

_____
Notary Public, State of Texas

THE STATE OF TEXAS

COUNTY OF LUBBOCK

MEGAN MORAN
Notary Public, State of Texas
Comm. Expires 12-12-2017
Notary ID 124067641

This instrument was acknowledged before me on the 26 day of July, 2016, by Greg Garland, President of **FIRST BANK AND TRUST CO.** a state banking association, on behalf of said association.

MEGAN MORAN
Notary Public, State of Texas
Comm. Expires 12-12-2017
Notary ID 124067641

_____
Notary Public, State of Texas

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

LOTS ONE (1) THROUGH AND INCLUDING SIXTY-ONE (61), and Tract A, SUNDANCE ESTATES, an Addition to the City of Lubbock, Texas, according to the Map, Plat and/ or Dedication Deed thereof recorded in Clerk's Document No. 2016026077 of the Official Public Records of Lubbock County, Texas.

EXHIBIT "B"
SETBACK REQUIREMENTS

Each Dwelling Unit will face the street which abuts the front of the Lot upon which the Dwelling Unit is to be situated. No Structure will be placed within the following setback lines (unless otherwise provided in the Declaration to which this Exhibit "B" is attached):

(a). 50 feet from the front Lot line (the "front Lot line" being the boundary of the Lot which abuts the street on which the Lot is situated);

(b). 20 feet from the rear property line of the Lot;

(c). 10 feet from any side Lot lines (the "side Lot lines" being the side boundaries of the Lot).

In addition to the setback requirements stated above, and except as otherwise expressly provided in the Declaration to which this Exhibit "B" is attached, no Structure shall be placed within any setback requirement imposed by the City of Lubbock, Texas.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Kelly Pinion, County Clerk
Lubbock County, TEXAS
07/28/2016 10:01 AM
FEE: $162.00
2016026953