

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WILSHIRE ESTATES SUBDIVISION UNIT I (PHASE ONE) PLANNED UNIT
DEVELOPMENT**

CITY OF LUBBOCK, LUBBOCK COUNTY, TEXAS

STATE OF TEXAS

COUNTY OF LUBBOCK

THIS DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS is made on the date set forth by WILSHIRE DEVELOPMENT, L.P., a Texas limited partnership ("Declarant"), as follows:

WITNESSETH:

WHEREAS, Declarant is the Owner of the below-described real property commonly known as WILSHIRE ESTATES SUBDIVISION, UNIT I (PHASE ONE) PLANNED UNIT DEVELOPMENT, City of Lubbock, Lubbock County, Texas (hereinafter called "the Subdivision"), to-wit:

Lots 1-79, Block 1, WILSHIRE ESTATES SUBDIVISION, UNIT I (PHASE ONE) PLANNED UNIT DEVELOPMENT in the City of Lubbock, Lubbock County, Texas, according to plat thereof recorded in Volume 7222, Page 221, Deed and Plat Records of Lubbock County, Texas;

WHEREAS, Declarant has subdivided and developed the Subdivision for construction and use as single-family detached homes and desires that the Subdivision be subject to covenants, conditions, and restrictions substantially as set forth herein, and desires that the Owners of all of the Lots within the Subdivision be Class A members of the Association, and that all of the residential Lots within the Subdivision be subject to the jurisdiction and assessments of the Association and to all of the covenants, conditions, and restrictions of this succeeding Declaration;

NOW, THEREFORE, in consideration of the foregoing, Declarant hereby adopts and imposes the covenants, conditions, and restrictions set forth herein with respect only to WILSHIRE ESTATES UNIT I (PHASE ONE) PLANNED UNIT DEVELOPMENT, Lubbock County, Texas, and all of the Lots therein, and declares that the above-described property known as WILSHIRE ESTATES UNIT I PLANNED UNIT DEVELOPMENT, Lubbock County, Texas, is and shall be held, transferred, sold, conveyed, occupied, and enjoyed subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth which shall run with the land and which property, and all current and future Owners thereof, shall hereafter be subject to the jurisdiction and assessments of WILSHIRE ESTATES HOMEOWNERS ASSOCIATION on the terms and provisions herein stated, all as follows, to-wit:

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

(a) "Association" shall mean and refer to the WILSHIRE ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns as provided for herein.

(b) "Properties" shall mean and refer to the above-described properties and additions thereto as are subject to this Declaration or any Amended or Supplementary Declaration under the provisions of Article III, Section 2 hereof.

(c) "Common Facilities" and "Common Area" shall mean and refer to all property leased, owned, or maintained by the Association for the use and benefit of the members of the Association. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: private streets, community clubhouse, signs, street medians, entry gates, tennis courts, swimming pool, and other recreational facilities, buildings and landscaping, walls, entry monuments, bridges, rails, green belts, and other similar or appurtenant improvements.

(d) "Lot" shall mean and refer to each individually numbered plot of land shown upon any recorded Subdivision map of the Properties with the exception of the Common Facilities.

(e) "Subdivision Plat" shall mean and refer to the map or plat of WILSHIRE ESTATES SUBDIVISION UNIT I (PLANNED UNIT DEVELOPMENT) filed for record in Volume 7222, Page 221, Deed and Plat Records of Lubbock County, Texas; "Living Unit" shall mean and refer to a single-family residence and its attached or detached garage situated upon a Lot. This includes Zero Lot Line garden homes.

(f) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot within the Properties, including contract sellers but excluding those having interest merely as security for the performance of an obligation.

(g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section 1 hereof.

(h) "Declarant" shall mean and refer to THE WILSHIRE ESTATES CORPORATION, and its successors or assigns in writing, provided any such writing shall reflect the intention to assign all or a portion of Declarant's rights.

(i) "Architectural Control Committee" and "ACC" shall mean and refer to the committee created hereafter, subject to the provisions of Article VII hereof, by the Declarant.

(j) "Board of Directors" shall mean and refer to the governing body of the Association, the election and proceedings of which shall be set forth in the Articles of Incorporation and By-Laws of the Association.

(k) "Improved Lot" shall mean and refer to a Lot on which construction of a Living Unit is completed and the Living Unit is either occupied as a residence or closing of the sale of said Lot has taken place, whichever shall first occur.

(l) "Eligible Mortgage Holder" shall mean and refer to an entity that (i) holds a first and superior mortgage on any Living Unit and (ii) has registered its name, address, telephone number and person to contact with the Homeowners Association.

(m) "Zero Lot Line" and "zero setback line" shall mean and refer to the side Lot Line on which a garden home is required to abut as designated by the Architectural Control Committee.

ARTICLE II

RESERVATIONS, EXCEPTIONS, DEDICATIONS, SIDEWALKS, ZONING CHANGES

Section 1. Matters Shown on Plat. The Subdivision Plat dedicates for use as such, subject to the limitations set forth herein and therein, certain easements shown thereon, and such Subdivision Plat further establishes certain private streets, dedications, limitations, reservations and restrictions applicable to the Properties. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat are incorporated herein and made a part hereof as if fully set forth herein, and shall be executed by or on behalf of Declarant, conveying said property or any part thereof. No such dedications shall be deemed or inferred to be public dedications except as specifically therein or herein stated. Within the Platted easements, if any, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or in the case of drainage easements, which may damage or impede the direction of flow of water through drainage channels in such easements. The easement area of each lot, if any, and all improvements in such area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements herein or referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

Section 2. Maintenance and Access Easements. There is hereby created in favor of all easement Owners, Declarant, the Association, and their assigns, a right of ingress or egress across, over and under the Properties for the purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, electricity, gas and appurtenances thereto, and to repair, correct, replace, or maintain any fall, fixture, light, or other structure or item constituting part of the Common Facilities or required or permitted to be maintained under the terms hereof, or to correct or remove any conditions prohibited under the terms hereof. Neither the Declarant, the Association or any member of the Architectural Control Committee shall be liable for any damage done by any utility company or their assigns, agents, employees or servants, using any easements now or hereafter in existence, whether located on, in, under or through the Properties to fences, shrubbery, trees or flowers or other property now or hereinafter situated on, in, under, or through the Properties. No

provisions hereof related to placement or nature of structures or conditions on a Lot, nor the approval thereof, express or implied, by the Declarant or the Committee shall affect the rights of easement Owners nor enlarge the rights of Lot Owners with regard to the construction or maintenance or improvements or conditions within an easement area.

Section 3. Wall and Landscaping Easement. Any fence constructed by Declarant pursuant to the rights herein retained shall be transferred and conveyed to the Association following completion of the fence construction which shall maintain said fence at all times in its original condition, with materials matching its original construction, and shall ensure that the exterior thereof is kept clean and free of all defacing, blemishes, and markings thereon. In the event the Association shall ever fail to promptly make any needed repair, maintenance or cleaning to the fence, or shall fail to properly and neatly maintain the vegetation and landscaping between the fence and right of way, Declarant, its successors and assigns, shall have the right of entry onto said Lots and right to perform such functions at the expense of the Association.

Section 4. Zero Lot Line Easements. An eight (8) inch wide Masonry Wall and Lug Easement is hereby reserved on each side of each Zero Lot Line. There is also hereby reserved and established a five foot (5') Ingress-Egress and Maintenance Easement on all Lots having a common boundary with the Zero Lot Line of an adjacent Lot. This easement shall be contiguous with and parallel to the Zero Lot Line and be for the purpose of maintenance and/or repair of residence along such Zero Lot Line.

All Lots adjacent to Lots with improvements (including the garage) situated on or within one foot (1') of the zero setback line (which is herein provided to allow for errors in the actual placement of dwellings on the Lots), as permitted by the plats, Board or Architectural Control Committee, as applicable, shall be subject to a five foot (5') access easement for the construction, repair and maintenance of improvements, located upon any adjacent Lot where said improvements are located on the zero setback line of such adjacent Lot. The zero setback line Owner must replace fencing, landscaping or other items on the adjoining Lot that he may disfigure as a result of such construction, repair or maintenance. Additionally, the easement when used must be left clean and unobstructed unless the easement is inadvertently being utilized and any items removed must be replaced. The zero setback line Owner must notify the adjoining Owner of his intent to do any construction or maintenance upon the zero setback line wall at least twenty-four (24) hours before any work is started, with the hours that such access easement may be utilized being restricted to between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 6:00 p.m. on Saturdays, (except in the case of an emergency, in which no notice need be given and maintenance can be performed at any necessary time).

Section 5. Drainage Easements and Grading. Easements for drainage throughout the Subdivision are reserved as shown on the Subdivision Plat, such easements being depicted thereon as "drainage easements". No Owner of any Lot in the Subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such easements. More specifically and without limitation, no Owner or resident of a Living Unit may:

- (a) Alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements;
- (b) Alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without the prior written approval of the Architectural Control Committee;
- (c) Construct, erect or install a fence or other structure of any type or nature, within or upon such drainage easements, that would change the course, divert, increase, accelerate or impede the natural flow of water over and across such easements;
- (d) Permit storage, either temporary or permanent, of any type upon or within such drainage easements; or
- (e) Place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

Section 6. Sidewalks. Should a sidewalk be required across a Lot as designated by the Architectural Control Committee, the Owner of the individual Lot shall construct or cause to be constructed the sidewalk at his or their own expense. The design and width of the sidewalk shall be according to the plan for sidewalks, which shall be approved by the Architectural Control Committee. The Owner or Owners of each Lot shall also be the Owner of the sidewalk which traverses his Lot. By acceptance of a deed to this Lot, each Owner shall be deemed to have granted the easement to the members and their invitees for the use of the sidewalk.

Section 7. Zoning Changes. No change in the zoning of the Properties will be applied for nor in any way become effective with respect to the Properties without the prior written approval of the Architectural Control Committee.

Section 8. Damages and Entry by Declarant and the Association. Neither Declarant, the Association, the Architectural Control Committee nor any member of the Architectural Control Committee shall be liable for any damages done by any utility company or their assigns, their agents, employees or servants, using any easements, whether now or hereafter in existence, located on, in, under or through the Properties, to fences, shrubbery, trees or flowers or other property now or hereafter situated on, in, under, or through the Properties. In the event that any Owner fails to maintain his Lot as required herein or in the event of emergency, the Declarant, the Association, and their contractors shall have the right, but not the obligation, to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Declarant or Association shall not be liable for any damage so created unless such damage is caused by willful misconduct or gross negligence. Notwithstanding the foregoing, neither the Declarant nor the Association shall be charged with any affirmative duty to police, control or enforce the above stated provisions.

ARTICLE III

PROPERTIES SUBJECT TO THIS DECLARATION:

ADDITIONS OR MODIFICATIONS THERETO; AMENDMENTS

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is all of that certain real property depicted on the Subdivision Plat for WILSHIRE ESTATES Subdivision, Unit 1 (Planned Unit Development) recorded in Volume ____, Pages ____ of the Deed and Plat Records of Lubbock County, Texas, or any subsequently recorded replat of said Subdivision, all of which real property is sometimes hereinafter referred to as the "Existing Property."

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) **Additions by Declarant.** For a period of 20 years from date of recording hereof, the Declarant, its successors and assigns shall have the right to bring within the scheme of this Declaration and without the consent of members additional properties in future stages of the development and lying within the area described as follows:

WILSHIRE ESTATES PLANNED UNIT DEVELOPMENT

68.642 Acres – One Tract

A 16,987.1 acre, or 759,958.076 square feet, more or less, tract of land being out of a 68.642 acre tract described in instrument recorded in Volume ____, Page ____ of the Official Public Records of Real Property of Lubbock County, Texas, in the City of Lubbock, Texas.

Any additions authorized under this and the succeeding subsections shall be made by filing of record a Declaration or an Amended or Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property, and the execution thereof by the Declarant and the owner of such annexed property shall constitute all requisite evidence of the required approval thereof. Such instrument may contain such complimentary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands and are consistent with the overall Subdivision concept. In no event, however, shall any such Declaration revoke, modify or add to the covenants established by this Declaration, as they are applicable to the Existing Property.

(b) **Other Additions.** Upon the approval of the Association by a two-thirds (2/3) vote of each class of its members, any property not within the area above described may be added to the scheme of this Declaration and made subject to the jurisdiction of the Association upon the recording of a Supplementary Declaration of Covenants and

Restrictions. The Owner of any such property desiring such action shall submit such documents as the Association may require, including the following:

The proposed property shall be described by size, location, proposed land use, and general nature of proposed private improvements; the proponent shall describe the nature and extent of Common Facilities to be located on the proposed property; the proponent shall state that the proposed additions, if made, will be subject to all Association assessments.

Section 3. Amendment. This Declaration may be amended until December 31, 2025, by written instrument executed by Owners of ninety percent (90%), or more, of the Lots and thereafter by written instrument executed by Owners of seventy-five percent (75%), or more, of the Lots. No amendment shall be effective until approved and filed of record in the Official Public Records of Real Property, Lubbock County, Texas. Notwithstanding the foregoing, Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by any other Owner of Lots, or any interest therein, for the limited purposes of correcting a clerical error, clarifying an ambiguity, or removing any contradiction in the terms hereof. In addition, material amendments to this Declaration must be approved by Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Living Units that are subject to mortgages held by Eligible Mortgage Holders. For the purpose thereof, the term “material amendments” shall be considered to include any amendment which changes:

- (a) Voting rights;
- (b) Assessments, assessment liens, or subordination of assessment liens;
- (c) Reserves for maintenance, repair and replacement of Common Areas;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Areas, or rights to their use;
- (f) Conversion of Lots or Living Units into Common Areas, or vice versa;
- (g) Expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
- (h) Insurance or fidelity bonds;
- (i) Leasing of Living Units;
- (j) Imposition of any restrictions on an Owner’s right to sell or transfer his or her Living Unit;

(k) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;

(l) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents; or

(m) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided interest in any Lot which is subject to the jurisdiction of, and to assessment by the Association shall be a member of the Association, provided, however, that any person or entity holding an interest merely as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from Ownership of a Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Declarant or any builder entity designated by the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B Members shall be the Declarant, and/or any builder entity as designated by the Declarant. The Class B Member shall be entitled to three votes for each Lot in which it holds the interest required by Section 1, until the happening of one of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On December 31, 2033.

From and after the happening of these events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot in which it holds the interest required for membership under Section 1, provided, however, that upon annexation of additional properties by Declarant as above provided, Class B memberships shall be reestablished for Declarant as to Lots owned by Declarant.

Notwithstanding anything to the contrary contained herein, the Declarant shall transfer control of the Association to the Owners no later than four (4) months after seventy-five percent (75%) of the Lots subject to the jurisdiction of the Association have been conveyed to Owners other than the Declarant, unless within such period Declarant has exercised its rights herein reserved to annex additional properties to this Declaration and the Association.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON FACILITIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article V, every member shall have a common right and easement of enjoyment in and to the Common Facilities and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Title to Common Facilities. The initial Common Facilities to be owned by the Association upon conveyance of the first Lot by Declarant are as follows: Lots 1 to 79, Block 1, Wilshire Estates Subdivision.

The Declarant may retain legal title or leasehold to the remainder of the Common Facilities (if any) until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same. Notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey all Common Facilities to the Association not later than December 31, 2028, or within four months following the sale of the last Lot by Declarant. In any conveyance of Common Facilities to the Association, the Declarant may reserve the right of entry, repair, renovation or improvement and may reserve additional rights as it determines needed for development, including the installation of roads, utilities, or other improvements.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following: The rights and easements existing or hereafter created in favor of others as provided for in the Subdivision Plat and/or in Article II hereof, and to such rules and regulations as the Board of Directors of the Association may adopt from time to time. Once the Association has obtained legal title to the Common Facilities, it may do the following:

(a) Borrow money for the purpose of constructing, maintaining or improving the Common Facilities and in aid thereof, to mortgage said properties and facilities, in accordance with the Articles of Incorporation and By-laws of the Association;

(b) Take such steps as are reasonably necessary to protect the above described properties and facilities against foreclosure; and

(c) Suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of the published rules and regulations; and

(d) Assess and collect the assessments as set forth in Article VI, and to charge reasonable admission and other fees for the use of the Common Facilities; and

(e) Dedicate or transfer all or any part of the Common Facilities under its Ownership to any public agency, authority, or utility for such purposes and subject to such conditions as may be approved by a two-thirds (2/3) vote of the members.

ARTICLE VI

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) monthly assessment charges and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The monthly and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time the obligation accrued. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, convenience and welfare of the members, and in particular, for the improvement and maintenance of the Properties, the Common Facilities, the streets, lighting, and for the health and safety of the street lighting. Provided certain municipal charges and such other fees and services as the Association shall maintain the common Facilities and members' yards as directed by the Board of Directors of the Homeowners Association.

Section 3. Basis and Maximum of Annual Assessments. The annual assessment for both improved and unimproved Lots shall be determined by the Board of Directors in the manner provided for herein. The annual assessment for improved Lots shall be one and one-half (1 ½) times the annual assessment for unimproved Lots. On and after January 1, 2004, the maximum annual assessment may be increased each year by the Board of Directors by an amount not to exceed ten percent (10%) of the previous year's annual

assessment without the approval of the members. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum set by membership vote.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments provided in Section 3, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Facilities, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each Improved Lot Owner who is voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Improved Lot Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum assessments fixed by Section 3 hereof for any period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 6. Quorum for Any Action Authorized Under Section 4 and 5. The quorum required for any action authorized by Section 4 and 5 hereof shall be as follows: At the first meeting called, as provided in Section 4 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in Section 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on such date as the Board of Directors may determine, and, in any event, on or before the first day of the calendar month following conveyance of a Lot by Declarant; and shall be due and payable quarterly on the first day of January, April, July and October of each year. The first quarter annual installment of the annual assessments shall be due and payable on such date as may be determined by the Board. The Board of Directors shall fix the amount of the annual assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. When a Lot becomes an improved Lot after the annual assessment for it as an unimproved Lot has been paid there shall be payable as of the first day of the month following the date it becomes an improved Lot, a sum equal to the difference between the

annual assessment for unimproved Lots and the annual assessment for improved Lots provided over the balance of the quarter remaining. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Effect of Non-Payment of Assessments; The Lien; Remedies of the Association. If the assessments are not paid on the date when due (being dates specified in Section 7 hereof) then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of fifteen percent (15%) per annum, plus a \$50.00 administrative/collection fee, and the Association may bring an action at law against the Owner to collect the same and/or to foreclose its lien against the Lot, and there shall be added to the amount of such assessment all reasonable expenses of collection including the costs of preparing and filing the complaint, reasonable attorneys' fees and cost of suit. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of any first mortgage or any proceeding or conveyance in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Working Capital Fund. In order to provide for unforeseen expenditures, or to purchase any additional equipment or services, the Association shall establish a working capital fund equal to one (1) month's estimated monthly assessment charges for each improved Lot. Any such amounts paid into the working capital fund shall be in addition to the regular monthly assessment charges and shall not be considered as advance payments of regular assessments. Each Owner's share of the working capital fund shall be collected at the time of closing of the sale of each improved Lot.

Section 11. Special Maintenance Areas. Declarant and the Association shall have a general right of access upon such Lots for the purpose of Association yard maintenance.

Section 12. Limitations on Use of Common Facilities. No permanent or temporary structure may be erected, placed and maintained in the Common Area except those facilities approved by Declarant, in its sole discretion, or by WILSHIRE ESTATES Homeowners Association. Except as herein provided, no motorized vehicles of any nature whatsoever to include, but not limited to, trucks, automobiles, motorized bikes and motorized hobby or vehicle equipment, will be permitted on the Common Facilities or

land owned by Declarant except in those areas that the Declarant or the Association has designated to accommodate this activity. The foregoing prohibition is subject, however, to the rights of the Declarant, the Association, and utility providers to ingress and egress access over, and under, the properties for the purpose of installing, replacing, repairing and maintaining all Common Facilities and utilities as provided in Article II, Section 2.

Section 13. Declarant Option of Regular Assessment. So long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant may annually elect either to pay regular assessments on its unsold Units or to pay the Association the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board of Directors in writing at least sixty (60) days before the beginning of each year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of service or material or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" entities for the payment of some portion of Common Expenses.

ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose. In that WILSHIRE ESTATES PLANNED DEVELOPMENT is designed as a single family residential community, the Declarant has established an Architectural Control Committee for the purposes of (1) preventing unusual, radical, uncommon, bizarre, or incompatible home designs, (2) maintaining a harmony of external design, and (3) to establish standards of home construction, location and compatibility. The Architectural Control Committee is sometimes hereinafter referred to as the "Committee." (Reference: Residential Community Design Guidelines, Exhibit B.)

Section 2. Committee Meetings. The Committee shall be comprised of at least three members, who shall be appointed by the Declarant so long as Declarant owns any Lot. The initial committee members shall be Gregory A. Blanchard, Mark G. Anderson, and Hillary P. Firmin III, 4417 77th Street, Suite #1, Lubbock, Texas 79424, and the address for each of them is 4417 77th Street, Suite #1, Lubbock, Texas 79424; any two of whom are authorized to approve plans or grant variances. The Declarant may, from time to time, at its sole discretion, appoint additional members or change existing committee members. In the event a vacancy occurs and the Declarant fails to fill such vacancy within thirty (30) days by appointing a new member, the Board of Directors of the Association may appoint a new member within thirty (30) days of such vacancy. The Declarant shall give

five (5) days written notice to the Board of Directors of the Association of any change in the membership of the Committee.

Section 3. Approvals. The Committee shall have the sole authority for determining whether proposed structures or improvements within the Properties, or any change or alteration to existing structures or improvements within the Properties, comply with the overall plan for the development of the Subdivision. The Committee may impose Architectural Design Guidelines for the Subdivision, which shall be kept on file with the Association and made available to any Owner, prospective Owner and builder upon request. Each Owner and builder is advised to consult with any Declarant or prospective Owner before finalizing construction plans. There shall be no review of any action of the Committee, except by procedures for injunctive relief when such action is patently arbitrary and capricious; and under no circumstances shall the Committee or its members, collectively or individually, be subject to suit by any entity for damages. The Committee shall have the right to require that sidewalks be built upon some of the Lots and the location, size, composition and finish for sidewalks and shall have the right to designate the Zero Lot Line for all Lots on which a garden home is permitted or required.

Section 4. Termination of Committee. The powers and duties of the Committee and of its designated representatives, as well as the requirements of this Covenant pertaining thereto shall cease on or after December 31, 2042; provided, however, the powers of the Committee may be extended beyond said date, or after expiration may be revived, upon filing of a duly recorded instrument electing such extension and signed by a majority of the Lot Owners then of record.

Section 5. Entitlements. No Committee Member or a representative designated by said Committee shall be entitled to any compensation for services performed pursuant to this Covenant, other than reasonable out-of-pocket expenses.

Section 6. Other Matters. All matters requiring approval of the Architectural Control Committee whether or not specifically addressed herein shall require that such approval be in writing; however, in the event the Committee fails to approve or disapprove any of such matters within thirty (30) days after written submission thereof to the Committee, approval will not be required, and the requirement that such approval be obtained shall be deemed to have been fully complied with. It is expressly understood that the applicant may not submit identical or nearly identical requests, in order to receive a de facto authorization or set a precedent.

ARTICLE VIII

DESIGN APPROVAL, CONSTRUCTION AND USE COVENANTS

Section 1. Design Approval Requirements. No building, structure, fence, wall, landscaping, recreational facilities of any kind, or other improvement shall be

commenced, erected or maintained upon the Properties; nor shall any exterior addition to or change or alteration thereto be made, including exterior painting or color changes, until the detailed plans and specifications therefor shall have been submitted to the Architectural Control Committee and said Committee has approved in writing its compliance with minimum standards in relation to property lines, easements, grades, surrounding structures, walks, topographical and all other matters related thereto. The submitted plans and specifications shall specify, in such form as the committee may reasonably require, materials, elevations, landscaping detail, and the nature, kind, shape, heights, exterior color scheme, and location of the proposed improvements or alterations thereto. In the event said Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with. The Committee is not required to police or enforce compliance with such considerations as minimum size, setbacks, or other specific, objective construction requirements. A lack of action shall not constitute authority or set a precedent.

Section 2. Property Use.

2.1 Use Restriction. The Properties shall be used only for the development of single-family detached homes, all of which are to be used exclusively as private single-family residences and common facilities serving the Owners and residents thereof. The terms “residential purposes” as used herein shall be held and construed to exclude any business, commercial, industrial, apartment house, hospital, clinic and/or professional uses, and such excluded uses are hereby expressly prohibited. This restriction shall not, however, prevent the inclusion of permanent living quarters for domestic servants or to allow domestic servants to be domiciled with an Owner or resident.

2.2 Lot Consolidation. Any Owner owning two or more adjoining Lots, or portions of two or more such Lots, may with the prior approval of the Architectural Control Committee, consolidate such Lots or portions thereof into a single building site for the purpose of constructing one residence and such other improvements as are permitted herein. Any consolidated Lot shall comply with all lawful requirements of any applicable statute, ordinance or regulation. Upon application by an Owner, the Board of Directors may adjust the assessments on a consolidated Lot to an amount not less than the full assessment rate for a single Lot. Absent such adjustment, a consolidated Lot shall bear the full assessment rate therefore applicable to all Lots which are consolidated.

2.3 Signs and Flags. No signs or banners of any kind shall be displayed to public view on any single-family residential Lot from any home or be attached to any home except one (1) professional sign of not more than nine (9) square feet advertising the property for sale unless specific approval is obtained by the Architectural Control Committee. For rent, for lease, distressed, foreclosures and bankruptcy references are specifically prohibited. Signs used by the developer to advertise the property during the construction

and sales period shall be permitted, irrespective of the foregoing. Signs advertising subcontractors or suppliers are specifically prohibited. The sign may state only the name and phone number of the seller and/or their agent. The Architectural Control Committee shall have control over all verbiage on all signs. Flags on Lots may be flown from ACC approved flagpole standards attached to the main structure. No freestanding flagpoles are allowed.

2.4 Animals and Pets. No animals, livestock, poultry, swine, exotic or dangerous pets of any type (i.e., pit bulls, boa constrictors, ferrets, etc.) that may pose a safety or health threat to the community shall be raised, bred or kept on any Lot except for cats, dogs, or other generally recognized household pets of a reasonable number provided that they are not kept or maintained for any commercial purposes and provided further that no more than a total of two (2) adult animals may be kept on a single Lot. Adult animals for the purpose of these covenants shall mean and refer to animals one (1) year or older.

2.5 Accumulation of Trash and Rubbish. Except as provided in Section 2.10 of this Article, no trash, rubbish, garbage, manure, putrescible matter or debris of any kind shall be dumped or permitted to accumulate on any portion of the Properties. All rubbish, trash or garbage shall be kept in sanitary refuse containers with tightly fitting lids, and, except as necessary for purposes of affecting garbage pickup, said containers shall be kept in an area of the Lot adequately screened by planting or fencing. Reasonable amounts of construction materials and equipment may be stored upon a Lot by the Owner thereof for reasonable periods of time during the construction of improvements thereon.

2.6 Vehicles. No trailer, motor home, tent, boat, recreational vehicle, travel trailer, any truck larger than a one (1) ton pick-up, or wrecked, junked or wholly inoperable vehicle shall be kept, parked, stored or maintained on any portion of the front yard area of a Lot nor shall be kept, parked, stored or maintained on other portions of the Lot, unless in an enclosed structure or in a screened area which prevents the view thereof from any Lot, dwelling, public area or streets. No dismantling or assembling of an auto, trailer, any truck or any other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. The ACC shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by said ACC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph.

Off-street parking shall be provided by the Owner of each Living Unit for all such vehicles in a location screened (in an approved manner) from view from the street and from the other Lots. On-street parking, except by visitors, is prohibited. No vehicles will be parked in a driveway for a period in excess of 72 hours.

No vehicles, trailers, implements, or apparatus may be driven or parked on any easement owned by Declarant or the Association or on land owned by Declarant or the Association.

Notwithstanding the other provisions of this Article, Declarant reserves unto itself and Builder Members acting as such the exclusive right to park in or on streets as may be required for construction purposes and the sale of new homes.

2.7 No Extraction of Natural Resources. No oil or natural gas drilling, oil or natural gas development or oil refining or quarrying, or mining operations of any kind shall be permitted upon any portion of the Properties, nor shall oil, natural gas, or water wells, tanks, tunnels, mineral excavations or shafts be permitted upon, in or within any portion of the Properties. No derricks or other structures for use in the boring or drilling for oil, natural gas, minerals or water shall be erected, maintained or permitted upon, in or within any portion of the Properties.

2.8 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

No Owner or occupant shall perform any work that will impair the structural soundness or integrity of another Living Unit or impair any easement or header, nor do any act nor allow any condition to exist which will adversely affect the other Living Units or the Owners or residents.

No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property (except reasonable security or landscaping lighting that has approval of the Architectural Control Committee).

No exterior speakers, horns, whistles, bells or other sound devices that exceed the City of Lubbock noise ordinance levels (except security devices used exclusively to protect the Lot and improvements situated thereon) shall be placed or used upon any Lot.

The discharge of any firearm, including BB guns and pellet guns, and the hunting or killing of any animal within any part of the Subdivision is prohibited. Additionally, arrows, slingshots, or other launching or catapulting devices are prohibited.

2.9 Landscaping, Etc. In connection with the initial construction of a residence, each Owner, builder or his landscape contractor other than the Declarant will furnish the Architectural Control Committee two copies, at minimum 1"=10' scale, of a detailed landscaping plan which shall comply with the requirements hereof and those from time to time promulgated by the Architectural Control Committee. Any landscaping shown on the plan approved by the Architectural Control Committee must be fully installed on a Lot within thirty (30) days from the first occupancy of the dwelling situated on such Lot in accordance with the landscape plan approved by the Committee. Such plans shall be drawn to scale and shall indicate delineation of existing or proposed structures, pavement and other site features, locations, size and type of all existing trees eight (8") in diameter or greater shall also be clearly shown. After a landscaping plan has been installed, each Owner is required to submit to the Architectural Control Committee a

written request for any change in the plan. Each such Owner shall at all times maintain the minimum required vegetation, trees, and each Owner shall be charged with the responsibility of replacing any vegetation which shall thereafter die or is destroyed or removed. Each Owner shall make every effort to preserve significant natural trees. Appropriate procedures consistent with sound nursery practices shall be employed in all cases.

In view of the major emphasis placed by Declarant and the Architectural Control Committee on landscaping, such Committee expressly reserves the right to require the landscape plan for each residence to include the planting of trees by Owner if in the opinion of such Committee such trees are necessary to preserve the general landscaping goals and criteria for the Subdivision as a whole. At a minimum, landscaping requirements will include: at least two (2) live oaks, cedar, elm, bald cypress, wild persimmon, pecan, or other approved trees, to remain on the plant yard of each Lot; any planted trees in the front yard shall be two inches (2") or greater in diameter; sodding in front yard and, for corner Lots, along the side yard adjacent to a street; and basic foundational planting of a minimum container size of five (5) gallons spaced in a pattern approved by the ACC. Foundation plans will be included in ground cover beds configured in shape and size that compliment the shape of the residences, flatwork, and trees. Full foundation planting is required along side street on corner Lots.

An automatic irrigation system is required to cover all of the front and side yard areas on every Lot.

In addition to the variance powers of the Architectural Control Committee hereinafter set forth, the Committee shall have the right to grant a variance or waiver of the requirements of this section of the landscape plant standards for a time to time promulgated in such instance as it shall determine that such waiver is advisable in order to accommodate a unique, attractive or advanced landscaping concept design or material and the resulting appearance, in the opinion of the Committee, will not detract from the general appearance of the neighborhood. No such variance or waiver shall be presumed and any such grant of variance or waiver shall be in writing.

2.10 Necessary Temporary Facilities. Notwithstanding the other provisions of this Article, Declarant reserves unto itself and Builder Members acting as such the exclusive right to erect, place, and maintain such facilities in or upon any portions of the Properties as Declarant in its sole discretion may determine to be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Each Builder Member may not, however, utilize more than two mobile trailers or similar vehicles as such a temporary facility, and may use such as a sales or construction office only in support of sales and construction activities within the Subdivision, and each such mobile trailer or similar vehicle shall be parked within a Lot owned by such Member, the location of which shall have been approved in advance by Declarant. In addition, each Lot Owner shall have the right to erect, place, and maintain on his Lot such temporary facilities as may be necessary or convenient for the

construction or modification of a residence thereon, provided that such right shall in no event extend beyond six months after start of construction of a renovation project.

2.11 No Cesspools. No privy, cesspool, or septic tank shall be placed or maintained upon any portion of the Properties. Portable toilets of a commercial character may be inconspicuously located during period of construction for the convenience of the workers performing such works.

2.12 Exposed Antennas and Athletic and Sports Equipment.

2.12.1 Exterior Antennas. No exterior antenna shall be permitted on any dwelling or Lot. This prohibition shall include any derricks or antennas of any nature mounted on, in or around the dwelling or the Lot upon which the dwelling rests.

2.12.2 Athletic and Sports Equipment. No basketball backboard, goal posts, net standards, etc., shall be affixed to the front or side of any Living Unit or placed on the Lot between the dwelling and the street.

2.12.3 Satellite Dishes, Antennas, Solar Apparatus, Etc. No radio, citizen band or otherwise, or television aerial wires or antennas shall be maintained on any portion of any Lot, except those which are fully enclosed within the structure of the Living Unit. No satellite, radio or television dishes or discs (or similar signal receiving devices employed for the purpose of collection and magnifying radio-electric wave signals) shall be maintained on the Lot. No satellite dishes or dishes which emanate or reflect television or radio programming, antennas, receivers, transmitters, or solar apparatus shall be placed on any Lot without having received the advance written permission of the Architectural Control Committee, provided that approval of the Architectural Control Committee shall not be required for the installation of a satellite or television dish or disk with a diameter of 24" or less so long as the same is not installed on the front of the improvements on a Lot. Any request for the Architectural Control Committee's approval (where required) shall include a detailed plan depicting pertinent dimensions of the device and its proposed location. No Owner may operate on his Lot any broadcasting or electronic device which interferes with the radio or television reception or operation of electronic or remote controlled equipment of other Owners.

2.13 Maintenance of Courtyards, Etc. The Owners of all improved Lots shall keep grass and vegetation well mowed and trimmed, shall promptly control all weeds as they grow and all trees, shrubs, vines and plants which die. All yard areas shall be kept in a sanitary, healthful, and attractive manner. No tree measuring four inches (4) or more in diameter, measured twelve inches (12) above the ground, shall be removed or cut without the written approval of the Architectural Control Committee. Lawns, front and back, must be mowed at regular intervals (maintained at less than four inches (4") in height), and fences must be repaired and maintained in an attractive manner. No objectionable or unsightly usage of lots, or condition on any Lot will be permitted which is visible to the public view. Building materials shall not be stored on any Lot except when being

employed in construction upon such Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from such Lot. The drying of clothes in full public view is prohibited and the Owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Lot is visible to public view from a street or Common Area shall construct and maintain an inner fence or other improvements to adequately screen from view of streets and Common Area any of the following: the drying of clothes, yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family. Trash, garbage or other waste materials shall be kept in a clean and sanitary condition. Lot Owners shall also be required to provide and allow safe and adequate drainage within and across their Lot to include appropriate and adequate provisions when building, maintaining or constructing fences, walks, landscaping, swimming pools, decks, patio additions or extensions or any other potential obstruction, which would divert, impede, or cause to back up run off water.

Until a Living Unit is built on a Lot, Declarant or the Association may, at its option, have the grass, weeds, and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed therefrom. Declarant may also, in its opinion, after ten (10) days written notice, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The Owner of such Lot shall be obligated to reimburse Declarant for the cost of any such maintenance or removal upon demand. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due, and may be enforced in accordance with the provisions hereof or otherwise as provided by law.

Each Owner and Building Member shall provide sanitary bathroom facilities to accommodate all contractors and subcontractors during the construction period. Construction trash and debris will be contained and preclude unsightly conditions. It is the goal of the Declarant and the Association to maintain the Subdivision in a clear and respectable manner. If Owner violates this objective, it is Declarant's and/or the Association's option to initiate the cleanup or place facilities on the Lot necessary to maintain the referenced goal at the sole cost and expense of Owner.

The Homeowners Association will be allowed to connect for the basic maintenance and cleaning of green belts as needed and shall have an easement upon and across all adjacent Lots to perform such services.

In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements, or any of them, such default continuing after ten (10) days written notice thereof, Declarant, the Association, or their agents may enter upon said Lot without liability to the Owner or any occupants in trespass or otherwise, and take such action as may be reasonably necessary to correct such defect or cure such default to secure compliance with this Declaration and/or place said Lot in a more neat, attractive, beautiful and sanitary condition. In such event, the Owner or occupant of such Lot shall

be a performed, and reasonable attorney's fee. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement and charges immediately upon receipt thereof. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due, and may be enforced in accordance with the other provisions of this Declaration or otherwise provided by law.

2.14 Fences. No fence or wall shall be built or maintained forward of the front wall line of the main structure except for decorative walls or fences, which are part of the architectural design of the main structure. However they are not to be built or maintained nearer the building setback line than the home built on that Lot unless otherwise approved in writing by the ACC.

All fences extending from the residence building to the side Lot line shall be wrought iron with a wrought iron gate of one type.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. If the Owner or occupant of any Lot shall violate or attempt to violate any of the restrictions or covenants set forth in this Declaration or any supplemental or amended Declarations, it shall be lawful for the Association, Declarant, or any Owner to prosecute any proceedings against the person or persons violating or attempting to violate any such restrictions and covenants. The failure of any Owner or tenant to comply with any restriction or covenant will result in irreparable damage to Declarant and other Owners of Lots in the Subdivision; thus the breach of any provision of this Declaration may not only give rise to an action for damages at law, but also may be made the subject of an action for injunctive relief and/or specific performance in equity in any court of competent jurisdiction. In the event enforcement actions are instituted and the enforcing party recovers, then in addition to the remedies specified above, court costs and reasonable attorneys' fees shall be assessed against the violator.

In addition to the remedies for enforcement provided for elsewhere in this Declaration, the violation or attempted violation of the provisions of the governing documents or Rules and Regulations by an Owner, his family, guests, lessees or licensees shall authorize the Board (in the case of all the following remedies) or any Owner (in case of the remedies provided in (d), below) to avail itself of any one or more of the following remedies:

(a) The imposition of a special charge not less than Fifty (\$50.00) Dollars per violation; and/or

(b) The suspension of Owner's rights to use any Association property for a period not to exceed thirty (30) days per violation, plus attorney's fees incurred by the Association with respect to the exercise of such remedy; and/or

(c) The right to cure or abate such violation and to charge the expense thereof, if any, to such Owner plus attorney's fees incurred by the Association with respect to the exercise of such remedy; and/or

(d) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorney's fees and court cost.

Before the Board may invoke the remedies provided above, it shall give written notice of such alleged violation to Owner, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Declarant, or of any Owner to take any action upon any breach with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

Section 2. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the properties designed to make the properties safer than they otherwise might be. Neither the Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security within the Properties (including, without limitation, within any Common Area), however, and neither the Association, the Declarant, nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken.

Section 3. Release of Liability Related to Use of Common Facilities. Notice is given to all Owners and Tenants that the Association is authorized to operate all Common Facilities, including the swimming pool, without supervisory, security, or safety personnel. The Association may require each Owner and Tenant to sign a release in such form as the Association shall determine as a condition of use of the pool and other Common Facilities by the Owner or Tenant and their minor children and guests. By acceptance of a deed to any Lot and by use of any of the Common Facilities and/or permitting use of the Common Facilities by a guest or invitee, each Owner, Tenant, and Owner's or Tenant's guest is deemed to have agreed to the following:

(a) Owners and Tenants are advised that the HOA may operate the Association pool without a lifeguard, fitness trainer, or other supervising person and will operate the other Common Facilities without security or supervisory personnel. Accordingly, each parent, guardian, or other adult responsible for the care or safekeeping of a child or other person unable to properly care for himself cannot rely upon the HOA or its agents to protect

such child or other person unable to properly care for himself/herself or to regulate the conduct of those who use the pool or other Common Facilities. Owners and Tenants must assume personal responsibility for the safety and supervision of all minors and others under their care in connection with the use of the pool or other Common Facilities.

(b) All Owners and Tenants are strongly encouraged to prohibit their minor children and guests from use of the swimming pool at all times when not supervised by a responsible adult. All Owners and Tenants are further strongly encouraged not to enter the pool except when another responsible adult is present.

(c) Owners, Tenants, and guests shall be deemed to release and hold harmless the Association and its directors, officers, employees, and agents from all claims and liability for property loss or personal injury, including wrongful death, due to acts of negligence of Association and its directors, officers, employees, and agents related to the condition or operation of the swimming pool and other Common Facilities. Such release and hold harmless expressly covers the election by the Association to operate the swimming pool without a lifeguard or other supervision or security personnel and expressly includes any action based upon the unsafe, improper, or illegal conduct of another Owner, Tenant, or guest or that of a trespasser. In addition, Owners and Tenants shall be deemed to indemnify the Association, its officers, directors, and employees, from and against all claims of personal injury or property damage filed by or on behalf of guests of such Owner or Tenant and related to the use or operation of the swimming pool or other Common Facilities.

(d) The provisions of this Section 3 shall be given effect to the fullest extent permitted by Texas law. To the extent, if any, that Texas law may limit the above waiver, the provisions of this Section 3 shall still be deemed effective as to all such other situations AND (1) Owners, Tenants and their guests, by use of the pool and other Common Facilities, shall be deemed to have agreed to limit their recovery for any occurrence to the limits and levels of insurance carried by the Association and in effect at the time of the loss and (b) Owners, Tenants, and their guests shall be deemed to hold harmless and claim against the Association's officers, the directors, agents, and employees, against the Association's officers, directors, agents, and employees, merely stipulating that the right of recovery against the Association and its insurance provide an adequate remedy.

Owners, Tenants and/or their guests may be required to acknowledge the foregoing or similar provisions as determined appropriate by the Board of Directors of the Association and may be required to sign a release of liability in favor of the Association and its officers, directors and employees.

As used in this Section 3, the term "Tenant" shall mean and apply to every adult resident or occupant of a Lot who is not an Owner.

Section 4. Duration. This Declaration shall remain in force and effect until December 31, 2025, at which time, and each tenth anniversary thereafter, this Declaration shall be renewed for a period of ten years unless seventy-five percent (75%) of the Owners of Lots shall file a written agreement to abandon it.

Section 5. Availability of Project Documents. Copies of the Declaration, By-Laws, Articles of Incorporation and other rules concerning the Association, and the books, records and financial statements of the Association shall be available for inspection by Owners and by the holders, insurers and guarantors of first mortgages that are secured by Living Units at the principal office of the Association located at 4417 77th Street, Suite #1, Lubbock, Texas, during normal business hours.

In addition, the Association shall provide a statement for any preceding fiscal year if the holder, insurer or guarantors of any first mortgage that is secured by a Living Unit submits a written request for it.

Section 6. Termination of Legal Status of the Project. The Eligible Mortgage Holder representing at least sixty-seven percent (67%) of the mortgaged Living Units must approve the termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Properties.

ARTICLE X

INSURANCE

The Association shall obtain and continue in effect comprehensive public liability insurance insuring the Association, the Declarant and the agents and employees of each and the Owners and respective family members, guests and invitees of the Owners against any liability incident to the Ownership or use of the Common Facilities, commercial spaces, if any, and public ways, and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured, and a "severability of interest" endorsement precluding the insurer from denying coverage to one Owner because of the negligence of other Owners or the Association. The scope of the coverage must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use. Coverage shall be in the amount not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. The Association shall at the discretion of the Board of Directors obtain liability and errors and omissions insurance, and the Association shall purchase fidelity coverage against dishonest acts by any directors, managers, trustees, employees or volunteers of the Association who are responsible for handling funds belonging to or administered by the Association. The fidelity bond insurance shall name the Association as the insured and shall provide coverage in an amount not less than one and one-half (1 ½) times the Association's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who

serve without compensation shall be added if the policy would not otherwise cover volunteers. The insurance policies required under this Article X shall be acquired from carriers meeting the qualifications of the Federal National Mortgage Association. All insurance premiums shall be considered common expense to be included in determining the level of assessments levied by the Association. The acquisition of insurance by the Association shall be without prejudice to the right of any Owner to obtain additional individual insurance.