



**FIRST AMENDED 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 X.

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This First Amended and Supplementary Declaration of Covenants, Conditions and Restrictions (the "First Supplementary Declaration") is made this 12th day of November, 2020, by SWLLD, LLC, and a Texas Limited Liability Company (sometimes referred to herein as the "Declarant").

**RECITALS:**

1. Declarant executed a Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") on July 28, 2016, applicable to certain real property located in the County of Lubbock, State of Texas (said property being Lots 1 through 61, SUNDANCE ESTATES, an Addition to the City of Lubbock, Lubbock County, Texas, accordingly to the Map, Plan and/or Dedication Deed therefore recorded in Clerk's Document No. 2016026077, of the Official Recorded Public Records of Lubbock County, Texas. The Declaration was filed of record in Clerk's Document No. 2016026953 of the Official Public Records of Lubbock County, Texas.
2. The property described in the Declaration and in this First Supplementary Declaration is herein referred to as the "Property".
3. Article II, Section 2 of the Declaration permits the Declarant (without the joinder and consent of any person or entity) to add or annex additional real property to the scheme of the Declaration, within the "Development Period" (as "Development Period" is defined in the Declaration), by filing of record an appropriate enabling declaration, generally similar to the Declaration, extending the scheme of the Covenants (as "Covenants" is defined in Article I of the Declaration) to such additional property. Article II, Section 2 of the Declaration further provides that the enabling declaration related to the additional property may contain such complementary additions and modifications of the Covenants as may be necessary to reflect the different character, if any, of the added properties, provided that such additions and modifications are consistent with the concept and purpose of the Declaration. In addition, Article VI, Section 3 (a) of the Declaration allows the Declarant, during the Development Period, to amend the Declaration, unilaterally, for any purpose.
4. Declarant desires to add additional property (the "Additional Property") as described on **Exhibit "A"** to this First Supplementary Declaration (being Lots 62-111, inclusive, SUNDANCE ESTATES, an Addition to the City of Lubbock, Lubbock County, Texas); and, Declarant desires that the Additional Property described on **Exhibit "A"** to this First Supplementary Declaration shall be added to the scheme of the Declaration subject to the modifications and amendments as contained within this First Supplementary Declaration, pertaining to said Additional Property.

Declarant further desires to amend the Declaration as set forth herein, with said amendments being applicable to the Additional Property. The Development Period continues to effect and Declarant is entitled to make this First Supplementary Declaration without the joinder or consent of any other person or entity. As used in this First Supplementary Declaration, the "Declaration" shall mean not only the Declaration, but also this First Supplementary Declaration and any other amendments or supplements to the Declaration which may in the future be filed in the Official Public Records of Lubbock County, Texas.

5. Sundance Estates Lubbock Homeowners Association has been or will be chartered as a non-profit Texas corporation to assist in the ownership, management, use and care of the common areas with Sundance Estates and to assist in the administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens described in this Declaration.

**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:

“**Affiliate Member**” shall have the meaning described within Article III, Section 12, below.

“**Assessment(s)**” means any charged levied against a Lot or Owner by the Association, pursuant to the Governing Documents or public law, including but not limited to Annual Assessments, Special Assessments and Individual Assessments as defined in Article V, below.

“**Architectural Review Committee**” (sometimes referred to herein as the “**ARC**”) shall mean and refer to that particular committee (or Declarant, when acting as the ARC) which is described and explained within Article VII, below.

“**Association**” means the association of owners of Lots in *Sundance Estates*, and serving as the “property owner’s association” as define in Section 202.001(2) of the *Texas Property Code*. The initial name of the Association is “*Sundance Estates Lubbock Homeowners Association*.”

“**Board**” means the Board of Directors of the Association.

“**Bylaws**” means and refers to the Bylaws of the Association, as adopted and amended from time to time.

“**Common Properties**” shall mean and refer to any and all areas of land within *Sundance Estates*, or adjacent thereto, which are known, described or designated as common areas, parks, recreational easements, jogging trails, floodway easement areas, lakes and ponds, perimeter fences and columns, off-site monuments and directional signs, landscape easements, open spaces, paths and trails, boulevards, private streets, swimming pools, recreational facilities and any and all other improvements to any such areas, and including without limitation those shown on any recorded plat of portions of *Sundance Estates* as well as those not shown on a recorded plat but which are intended for or devoted to the common use and enjoyment of the Owners. It is anticipated that the Common Properties will be owned and maintained by the Association. Declarant reserves the right to use, during the Development Period, portions of the Common Properties for business matters directly and indirectly related to the sale of Lots within *Sundance Estates*. Declarant further reserves the right to utilize the Common Properties for such purposes as set forth in this Declaration. The concept of Common Properties will also include: (i) any and all public right-of-way lands for which the City or County of Lubbock, Texas has required that Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as but not limited to: street medians, streetscape, park areas and quasi-governmental service facilities; and (ii) any and all facilities provided by Declarant and/or the Association to or for the benefit of the local police, fire and similar governmental departments for which no reimbursement via public funds is requested or anticipated. Declarant shall convey record title to some or all of the Common Properties to the Association if, as and when deemed appropriate by Declarant or as may be required by governmental officials, and Declarant shall at all times have and retain the right to effect minor redesigns or minor reconfigurations of the Common Properties (particularly along the edges) and to execute any open space declarations applicable to the Common Properties which may be permitted in order to reduce property taxes, and to take whatever steps may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes. *Nothing within this Declaration shall obligate Declarant to create any Common Properties or to make or construct any improvements to the Common Properties. Further, the Common*

*Properties may be located in the Additional Property, which may not be part of the Property on the date that this Declaration is filed in the Official Public Records of Lubbock County, Texas.*

**“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.”

**“Declarant Control Period”** means the period of time during which Declarant controls the operation and management of the Association by appointing officers and directors of the Association, pursuant to the rights and reservations contained in this Declaration, to the full extent and the for the maximum duration permitted by Applicable Law. The duration of the Declarant Control Period will be from the date that this Declaration is recorded in the Official Public Records of Lubbock County, Texas until three (3) months after ninety percent (90%) of the Lots that may be created in the Property and any Additional Property have been improved with Dwelling Units and conveyed to Owners, other than Homebuilders. If Applicable Law requires a stated term for the duration of the Declarant Control Period, then the Declarant Control Period shall run continuously from the date that this Declaration is recorded in the Official Public Records of Lubbock County, Texas until the earlier of the following events: (i) fifteen (15) years after the date that this Declaration is publicly recorded, and (ii) three (3) months after the date that ninety percent (90%) of the Lots that may be created in the Property and any Additional Property have been improved with a Dwelling Unit and conveyed to Owners, other than Homebuilders. Declarant reserves the right to unilaterally amend this definition of “Declarant Control Period” for any purpose, including to increase or decrease the maximum length of the Declarant Control Period, except as may be prohibited by Applicable Law. No act, statement, or omission by the Association may cause termination of the Declarant Control Period earlier than the term stated in this paragraph. Declarant, however, may terminate the Declarant Control Period at any earlier time by publicly recording a notice of termination. The Declarant Control 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.

**“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.

**“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.

**“Fiscal Year”** shall mean each twelve (12) month period commencing on January 1 and ending on the following December 31, unless the Board shall otherwise select an alternative twelve (12) month period.

“**Good Standing**” shall mean, with respect to any Owner, Resident or Member, that such person or entity is not: (i) in violation of any portion of the Governing Documents; and (ii) not delinquent in the full, complete and timely payment of any Assessment which is levied, payable or collectible pursuant to the provisions of any Governing Document.

“**Governing Documents**” means, singly or collectively as the case may be, the Plat, this Declaration, the Bylaws of the Association, the Association’s Certificate of Formation, (if any) the Rules of the Association, and all documents and instruments recorded in the County Clerk’s Office of Lubbock, Texas as part of this Dedication Instrument as any of 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.

“**Member**” shall mean and refer to each Owner (except for an Owner of a Phase I Lot) who is in Good Standing with the Association and who has complied with all directives and requirements of the Association. Each and every Owner (except for an Owner of a Phase I Lot) shall and must take such affirmative steps as are necessary to become and remain a Member of, and in Good Standing in, the Association.

“**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.

“**Payment and Performance Lien**” shall have the meaning and refer to the lien described within Article V, Sections 5 and 6, below.

“**Phase I Lots**” shall mean and refer to Lots 1 through 61, inclusive, and “**Phase I Lot**” shall mean any one of the Phase I Lots.

“**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.

“**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. MEMBERSHIP AND VOTING; RIGHTS IN THE ASSOCIATION**

**Section 1. Membership.** Each and every Owner of each and every Lot which is subject to these, or substantially similar, Covenants shall automatically be, and must at all times remain, a Member of the Association in Good Standing. Membership is appurtenant to and may not be separated from ownership of a Lot. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a non-voting Member of the Association. During the Development Period, the Association shall have two (2) classes of Members: “**Owner Class**” and “**Declarant Class**.” The Owner Class Members shall include: (a) all Owners (other than Declarant during the Development Period); and (b) all Residents (not otherwise Owners) who have properly and timely fulfilled all registration and related requirements prescribed by the Association. The Declarant Class Member shall be Declarant. Upon conclusion of the Development Period, the Declarant Class membership shall terminate and Declarant shall become an Owner Class Member, entitled to one vote for each Lot then owned by Declarant.

**Section 2. Voting Rights.** One indivisible vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. If the Property contains unplatted tracts of land, each tenth of an acre is allotted one vote. When the unplatted tracts are platted, the number of votes in the Property will be automatically adjusted by the number of platted Lots – with one vote per Lot, regardless of its size. If Additional Property is made subject to this Declaration, the total number of votes will be increased automatically by the number of additional Lots or by the product obtained from calculating the votes in the unplatted tracts comprising the Additional Land. Each vote is uniform and equal to the vote appurtenant to every other Lot, except during the Declarant Control Period (during which period Declarant’s votes are weighted, as provided in more detail in Article X). As long as the Declarant Class exists, Declarant has the right to veto any decision made by the Board or other Members of the Association. Further, during the Declarant Control Period, as described below in Article X, Declarant has reserved the right to act unilaterally in regard to many matters that may, in the future, be managed by the Board of Directors of the Association; and nothing within this Article III or within any other provision of the Declaration shall be construed as diminishing or restricting any rights that Declarant has reserved to itself during the Development Period or the Declarant Control Period. Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association’s Bylaws.

The Board may make such rules and regulations, consistent with the terms of the Governing Documents and Applicable Law, as it deems advisable, for: any meeting of Members; proof of membership in the Association; the status of Good Standing; evidence of right to vote; the appointment and duties of examiners and inspectors of votes; the procedures for actual voting in person or by proxy; registration of Members for voting purposes; and such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

**Section 3. Notice and Voting Procedures.** Quorum, notice, and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Texas law.

**Section 4. Board of Directors.** The Association is governed by a Board of Directors (the "Board"). Unless the Governing Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, reference in the Governing Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors." The affairs of the Association shall be managed during the Development Period by a Board of three (3) individuals elected or appointed by the Declarant Class Member. However, as required by Applicable Law, on or before one hundred twenty (120) days after the date that seventy five percent (75%) of the Lots that may be created and made subject to this Declaration are conveyed to Owners other than Declarant and/or Homebuilders, one of the three (3) individuals elected to the Board must be elected by the Owner Class Members. Declarant construes the Applicable Law in effect on the date of this Declaration as applying only to Lots improved with a Dwelling Unit that have been conveyed to Owners, other than Homebuilders, and not applying to vacant Lots conveyed to other than Homebuilders and/or affiliates of Declarant. *However, during the Declarant Control Period and the Development Period, Declarant has reserved certain rights, actions and decisions to itself, acting unilaterally, and without the joinder of the Board or any other person, and these rights, actions and decisions are set forth in more detail in the Governing Documents, including Article X of this Declaration.*

**Section 5. Powers and Duties.** The Board, for the benefit of the Association, the Properties, and the Owners, Members, and Residents, may provide and may pay for, out of the Assessment fund(s) provided for in the Article V below, one or more of the following (unless such funds are limited to a particular use as expressly provided in Article V):

- (a) Care, preservation, and maintenance of the Common Properties and the furnishing and upkeep of any desired personal property for use in or on the Common Properties;
- (b) Recreational and social programs and activities for the general benefit of the Residents and programs which are designed only for separately identifiable sub-groups of Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;
- (c) Supplementing (to the extent, if any, deemed necessary, appropriate, and affordable by the Board) the police, fire, ambulance, garbage, and trash collection and similar services within the Properties traditionally provided by local governmental agencies (**NOTE: NOTHING WITHIN THIS DECLARATION SHALL BE CONSTRUED AS A REQUIREMENT, DUTY, OR PROMISE ON THE PART OF THE ASSOCIATION OR THE DECLARANT TO PROVIDE SECURITY, UTILITY, OR MEDICAL SERVICES TO ANY OWNER, RESIDENT, OR MEMBER – ALL OWNERS, RESIDENTS, AND MEMBERS SHALL BE SOLELY RESPONSIBLE FOR THEIR OWN SAFETY AND WELFARE, AND SHOULD TAKE SUCH PRECAUTIONS AS THEY DEEM NECESSARY TO PROTECT PERSONS AND PROPERTY**);
- (d) Taxes, insurance, and utilities (including, without limitation, electricity, gas, water, sewer, and telephone charges) which pertain to the Common Properties;
- (e) The services of any person or firm (including Declarant and any affiliates of Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or

proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association. The Board is specifically authorized to hire and employ one or more managers, secretarial, clerical, staff, and support employees;

(f) Legal and accounting services and all costs and expenses reasonably incurred by the Architectural Review Committee; and

(g) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes, or Assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in the Board's opinion, shall be necessary or proper for the operation or protection of the Association or the enforcement of this Declaration.

The Board shall have the following additional rights, powers, and duties:

(h) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(i) To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Properties; (ii) monthly escrow and impound payments by a mortgagee regarding the Assessment, collection, and disbursement process envisioned by Article V below; (iii) utility installation, consumption, and service matters; and (iv) the escrow or impounding of monies sufficient to timely pay the Annual Assessment applicable to any Lot (or any other Assessment authorized in this Declaration);

(j) To borrow funds (including, without limitation, the borrowing of funds from Declarant and/or its affiliates) to pay costs of operation or the construction of improvements to the Common Properties, secured by such assets of the Association as deemed appropriate by the lender and the Association;

(k) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association;

(l) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association, and to provide adequate reserves for repairs and replacements;

(m) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time and to enter into concession agreements regarding food, beverage, vending and other products and services within the Common Properties;

(n) To prepare an annual operating budget and to make available for review by each Owner at the Association offices within ninety (90) days after the end of each Fiscal Year an annual report;

(o) Pursuant to Article IV herein, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency; and

(p) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner, Resident, or Member for violation of such provisions or rules. The Board is specifically authorized and empowered to establish (and to revise from time to time) a monetary fines system which may include component steps such as warning citations, ticketing, due process hearings, and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted individual Assessment secured by the continuing Payment and Performance Lien herein established.

The Association may: (i) borrow monies from Declarant; (ii) lease equipment from Declarant; (iii) contract with Declarant concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are: generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties; and, as to professional management contracts, terminable by the Association at any time for any reason whatsoever and without penalty upon furnishing at least ninety (90) days advance notice thereof to Declarant. The Board shall not be required to solicit bids from unrelated third parties before entering into any contract with Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with Declarant (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

**Section 6. Declarant Powers.** The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association; however, in the event or if for any reason the Board is not deemed authorized to act for and on behalf of the Association and the Members, then Declarant may exercise its power and authority under Article X, to act for and on behalf of the Association and the Members, and the Association shall reimburse Declarant for any and all reasonable expenses incurred in so acting.

**Section 7. Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract, with any Owner, Member or Resident (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

**Section 8. Liability Limitations.** Neither any Resident nor the directors and officers and managers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another Resident, whether such other Resident was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or corporation responsible for making such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

**Section 9. Reserve Funds.** The Board may establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.

**Section 10. Records Production and Copying.** Per Applicable Law, this Section 10 constitutes the record production and copying policy of the Board. This Section 10 of the Declaration is subject to amendment by the Board (or during the Development Period, by Declarant), without the approval of the Owners or the Owner Class of Members. The records production and copying policy of the Board is as follows:

(a) **Request for Records.** The Owner or the Owner's authorized representative requesting Association records must submit a written request by certified mail to the mailing address of the Association or authorized representative as reflected on the most current filed management certificate. The request must contain (i) sufficient detail to describe the books and records requested, and (ii) an election either to inspect the books and records before obtaining copies or to have the Association forward copies of the requested books and records.

(b) **Timeline for Record Production.**

1) **If Inspection Requested.** If an inspection is requested, the Association will respond within ten (10) Business Days by sending written notice by mail, fax, or email of the date(s) and times during normal business hours that the inspection may occur. Any inspection will take place at a mutually-agreed time during normal business hours, and the requesting party must identify any books and records the party desires the Association to copy.

2) **If Copies Are Requested.** If copies are requested, the Association will produce the copies within ten (10) Business Days of the request.

3) **Extension of Timeline.** If the Association is unable to produce the copies within 10 Business Days of the request, the Association will send written notice of such delay to the Owner by mail, fax, or email, and state a date, within fifteen (15) Business Days of the date of the Association's notice, that the copies or inspection will be available.

(c) **Format.** The Association may produce documents in hard copy, electronic, or other format of its choosing.

(d) **Charges.** Per Applicable Law, the Association may charge for time spent compiling and producing all records, and may charge for copy costs if copies are requested. Those charges will be the maximum amount then-allowed by the Texas Administrative Code. The Association may require advance payment of actual or estimated costs. Effective as of the date that this Declaration is recorded in the Official Public Records of Lubbock County, Texas, and until otherwise amended, a summary of the maximum permitted charges for common items are: (i) paper copies: \$0.10 per page; (ii) CD: \$1.00 per disc; (iii) DVD: \$3.00 per disc; (iv) labor charge for requests of more than 50 pages: \$15.00 per hour; (v) overhead charge for requests of more than 50 pages: 20% of the labor charge; (vi) labor and overhead may be charged for requests for fewer than 50 pages if the records are kept in a remote location and must be retrieved from it.

(e) **Private Information Exempted from Production; Attorney's Files.** Per Applicable Law, the Association has no obligation to provide information of the following type: (i) Owner violation history; (ii) Owner personal financial history; (iii) Owner contact information other than the Owner's address; (iv) information relating to an Association employee, including personnel files. Except as provided by Applicable Law, an attorney's files and records relating to the Association (excluding invoices for attorney's fees and costs requested by an Owner under Applicable Law

relating only to those matters for which the Association seeks reimbursement of fees and costs), are not records of the Association and are not subject to inspection by an Owner or production in a legal proceeding.

(f) **Existing Records Only.** The duty to provide documents on request applies only to existing books and records. The Association has no obligation to create a new document, prepare a summary of information, or compile and report data.

**Section 11. Record Retention.** Per Applicable Law, this Section 11 constitutes the record retention policy of the Board. This Section 11 of the Declaration is subject to amendment by the Board (or during the Development Period, by Declarant), without the approval of the Owners or the Owner Class of Members. The record retention policy of the Board is as follows: The Association will keep the following records for at least the following time periods:

- (a) Contracts with terms of at least one (1) year: four (4) years after expiration of contract;
- (b) Account records of current Owners: five (5) years;
- (c) Minutes of Owner meetings and Board meetings: seven (7) years;
- (d) Tax returns and audits: seven (7) years;
- (e) Financial books and records (other than account records of current Owners): seven (7) years;
- (f) Governing Documents: permanently.

**Section 12. Affiliate Member.** Anything in this Declaration to the contrary notwithstanding, a Resident of Lots 1 through, and including 61 (“**Phase I Lots**”) shall not be a Member of the Association, however, a Resident of a Phase I Lot may, but is not required to, request to become an “**Affiliate Member**” of the Association by submitting a completed Affiliate Membership Request Form to Declarant or the Association, as applicable, within thirty (30) days after (a) acquiring fee simple title to a Phase I Lot or (b) becoming lawfully domiciled in a Dwelling Unit on a Phase I Lot, as applicable. Upon approval of the Affiliate Membership Request Form by Declarant or the Association, as applicable, such Resident of a Phase I Lot shall deliver good funds in the amount of the Initial Annual Affiliate Member Fee (defined below) to Declarant or the Association, as applicable. There shall be only one (1) Affiliate Member per each Phase I Lot. Declarant or the Association is the sole authority for the approval of the Affiliate Membership Request Form and such decision shall be final. Additionally, to remain in Good Standing as an Affiliate Member, on June 1st of each subsequent calendar year, such Resident of a Phase I Lot must deliver good funds in the amount of the Annual Affiliate Member Fee to Declarant or the Association. As used herein, the term “**Affiliate Membership Request Form**” shall mean that certain required form designated by Declarant or the Association, as applicable, to be completed and submitted by the Resident of a Phase I Lot seeking to become an Affiliate Member of the Association, which said form being subject to change from time to time, in the sole discretion of Declarant or the Association, as applicable. As used herein, the term “**Initial Annual Affiliate Member Fee**” shall mean the Initial Annual Member Fee, prorated for the remainder of the calendar year during which such Resident elects to become an Affiliate Member (e.g., if a Resident elects to become an Affiliate Member on September 1 of a given calendar year, then the Initial Annual Affiliate Member Fee will be 4/12 of the Annual Affiliate Member Fee. As used herein, the term “**Annual Affiliate Member Fee**” shall mean the amount established by Declarant or the Association from time to time. As of the Effective Date of this Declaration, the Annual Affiliate Member

Fee is Four Hundred and No/100th Dollars (\$400.00), but such amount may be changed by Declarant of the Association at any time. Once an Initial Annual Affiliate Member Fee or an Annual Affiliate Member Fee is paid, there shall be no prorations or refunds. Only a Resident of a Phase I Lot can be an Affiliate Member; no other Resident may be an Affiliate Member. An Affiliate Member is not a “**Member**” of the Association and shall not have any voting rights, any ownership interest in the Common Properties, or any other rights, privileges or benefits of a Member, except that an Affiliate Member shall have the right to use and enjoy all recreational facilities (including without limitation, swimming pools) that are available to Members in Good Standing (the “**Limited Affiliate Member Rights**”). Additionally, an Affiliate Member shall not be obligated to pay Assessments (except Individual Assessments). Anything in this Declaration to the contrary notwithstanding, (i) each and every Phase I Lot, and each Resident of each and every Phase I Lot, is subject to the Covenants set forth herein, and (ii) Owners of Phase I Lots shall have all obligations of “**Owners**” under this Agreement notwithstanding not being “**Members**” under this Declaration, and (iii) Affiliate Members shall have only the Limited Affiliate Member Rights and no other rights under this Declaration.

**ARTICLE IV.**  
**RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES**

**Section 1. Easement.** Subject to the provisions of Sections 2 through 7 of this Article IV, each and every Owner in Good Standing with the Association shall have a non-exclusive right and easement of enjoyment in and to all Common Properties, and such easement shall be appurtenant to and shall pass with every Lot, provided the conveyance and transfer is accomplished in accordance with this Declaration. All Residents in Good Standing with the Association shall have a non-transferable, non-exclusive privilege to use and enjoy all Common Properties for so long as they are Members in Good Standing with the Association.

**Section 2. Extent of Members’ Easements.** The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

- (a) The right of Declarant or Association to prescribe reasonable regulations and policies governing, and to charge reasonable expense reimbursements and/or deposits related to the use, operation and maintenance of the Common Properties;
- (b) Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by Declarant to develop and improve the Properties or Common Properties or by the Association to improve or maintain the Common Properties;
- (c) The right of the Association to enter into and execute contracts with any party (including, without limitation, Declarant or its corporate affiliates) for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;
- (d) The right of Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;
- (e) The right of Declarant or the Association to enter into and execute contracts with the owner-operators of any community antenna television system (“**CATV**”) or other similar operations for the purpose of extending cable or utility or security service on, over or under the Common Properties to ultimately provide service to one or more of the Lots;

(f) Subject to the limitations of Applicable Law, the right of Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member and Resident to use or enjoy any of the Common Properties for any period during which any Assessment (including without limitation fines) against a Lot resided upon by such Member or Resident remains unpaid, or during which non-compliance with the Governing Documents exists, and otherwise for any period deemed reasonable by the Association for an infraction of the then-existing rules and regulations and/or architectural guidelines;

(g) The right of Declarant and/or the Association to hold and sponsor, whether alone or in conjunction with municipal departments or other non-profit groups and entities, events and activities within the Common Properties which are not necessarily limited only to Owners, Residents and Members, but which may also include selected invitees and/or the general public (for which the Board may, in its discretion, charge a user fee equal to or greater than any fee charged to Owners, Residents and Members), such as (but not necessarily limited to) children's summer recreational events, sports festivals and tournaments, summer camps, day care centers, concerts in the park, wedding receptions, reunions, conferences, picnics, national and/or state holiday commemorations, educational and cultural presentations and other similar events which the Board reasonably believes will be of direct or indirect benefit to the Association and/or an appreciable number of its Members;

(h) The right of Declarant and/or the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, special district, public agency, governmental authority, utility, or any other public or quasi-public entity or agency for such purposes and upon such conditions as may be agreed to by Declarant and the Board;

(i) The right of Declarant and/or the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes necessary for the proper operation of Sundance Estates and the Properties; and

(j) The right of Declarant and/or the Association to enter into contracts, agreements or easements with any other association or entity for the shared maintenance, use and operation of all or any portion of the Common Properties.

**Section 3. *Restricted Actions by Members.*** No Member shall permit anything to be done on or in the Common Properties which would violate any applicable public law or Zoning Ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

**Section 4. *Damage to the Common Properties.*** Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his family and guests.

**Section 5. *Notice and Voting Procedures.*** Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Texas law.

**Section 6. *Rules of the Association.*** All Members shall abide by any rules and regulations adopted by the Board ("Rules of the Association"). The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and a Member determined to have violated said rules and regulations shall be liable to the Association for all damages and costs,

including reasonable attorneys' fees.

**Section 7. Use of Common Properties.** The Board shall have the power and authority to prescribe rules and regulations which extend to and cover matters such as the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, dress and attire and the supervision by attending adults of children. The Board may also prescribe rules and regulations which govern conduct for a particular portion of the Common Properties, such as a park or lake. The Association may, on its own motion, permit and allow town hall meetings, voting precincts, community garage sales and bazaars and other reasonable activities to occur on the Common Properties in accordance with rules and regulations deemed reasonable and appropriate by the Association.

**Section 8. User Fees and Charges.** The Board may levy and collect special charges and fees for any and all extraordinary operation and maintenance of the Common Properties and services which the Board determines to be necessary for the advancement, benefit and welfare of the Owners or Residents; and, the Board may require that such special charges and fees be paid in advance of the proposed event related to such operation or maintenance. Examples (by way of illustration, and not limitation) of these - special charges and fees would include: post-party trash pick-up and removal; valet parking arrangements; extraordinary utility consumption; additional security personnel for parties or special events; management overtime services; and additional insurance conditions or requirements. If payment is not required in advance, and if an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee will be delinquent and upon written notice to said Owner will become a personal debt of said Owner. Failure of any Owner to pay said fee and charge when due and payable, in addition, will be a breach of these Covenants. Notwithstanding the foregoing, such charges and fees shall not be applicable to an Affiliate Member unless such charges or fees are a result of an event sponsored by an Affiliate Member.

**Section 9. Title to Common Properties.** Unless Declarant elects to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility, Declarant may convey ownership of the Common Properties to the Association at such point as is deemed reasonable and appropriate by Declarant and, thereafter, the Association will be responsible for the operation and maintenance of the Common Properties. Further, Declarant will have the right and option, at any time, to convey to the Association additional real property located within the Properties; and thereafter such additional property shall be deemed a part of the Common Properties for all purposes hereunder and the Association shall thereafter maintain the same for the benefit of all Owners.

**Section 10. Acceptance.** By accepting an interest in or title to a Lot, each Owner is deemed (i) to accept the Common Properties, and any improvements thereon, in its then-existing "as is" condition; (ii) to acknowledge the authority of the Association for all decisions pertaining to the Common Properties; (iii) to acknowledge that transfer of title to all or any portion of the Common Properties by or through Declarant is a ministerial task that does not require acceptance by the Association; and (iv) to acknowledge the continuity of maintenance of the Common Properties, regardless of changes in the Association's Board of Directors or management.

#### **ARTICLE V. COVENANTS FOR ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligations of Assessments.** Each Owner of any Lot (but not including Declarant) by acceptance of a Deed therefore, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree ( and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for

acquisition of the Lot so as to have affected the purchase price) to pay to the Association ( or to an independent entity or agency which may be designated by the Association to receive such monies):

(a) **Annual Assessments.** “**Annual Assessments**” shall be Assessments based on the annual budget for operating the Association; however, until otherwise determined, the Annual Assessment shall be the amount stated in Section 2 of this Article V. Each Lot is liable for its equal share of the annual budget. The Annual Assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Residents of the Properties and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the construction, improvement and maintenance of recreational areas and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: the payment of taxes on the Common Properties and insurance in connection with the Common Properties; the payment for utilities and the repair, replacement and additions of various items within the Common Properties; paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; carrying out the duties of the Board of Directors of the Association as set forth in the Governing Documents; carrying out the other various matters set forth or envisioned herein or in any Amended Declaration related hereto; and for any matters or things designated by the City and County of Lubbock, Texas in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The annual budget upon which the Annual Assessments is based may include reserve funds, as the Board of Directors determines to be reasonable, to be used in making future anticipated repairs or replacements. The items and areas described above are not intended to be exhaustive but merely illustrative. The Annual Assessments must be fixed at a uniform rate for all Lots owned by Owner Class Members (other than Homebuilders), unless otherwise approved by at least three-fourths of the individuals comprising the Board.

(b) **Special Assessments.** “**Special Assessments,**” if assessed, shall be Assessments for capital improvements or unusual or emergency matters, such Assessments to be fixed, established, and collected from time to time in accordance with the Governing Documents. The Association may levy in any Fiscal 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, unexpected repair or replacement of a capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto or for any unusual or emergency purpose(s) (including without limitation those matters arising out of litigation and/or judgments); provided that any such Assessment shall have the affirmative approval of at least three-fourths of the individuals comprising the Board. The Special Assessments must be fixed at a uniform rate for all Lots owned by Owner Class Members, unless otherwise approved by at least three-fourths of the individuals comprising the Board.

(c) **Individual Assessments.** “**Individual Assessments**” shall be Assessments that may be levied against individual Owners to reimburse the Association for extra or unusual costs incurred for items such as (but not limited to): maintenance and repairs to portions of the Properties caused by the willful or negligent acts of the individual Owner, Member or Resident; the remedy, cure or minimizing of problems caused by, or as a result of, violations of these Covenants by an Owner, Member or Resident; and individual Assessments and fines levied against an individual Owner, Member or Resident for violations of rules and regulations pertaining to the Association and/or the Common Properties.

The Annual Assessments, Special Assessments, and Individual Assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such Assessment is made and shall also be the continuing personal obligation of the then-existing Owner, Member and Resident of such Lot at the time when the Assessment fell due. Each Owner of each Lot shall be directly liable and responsible to the Association for the acts, conduct and omission of each and every Member and Resident associated with the Dwelling Unit(s) on such Owner's Lot. Payment of the Assessments must be made by the Owners in full, regardless of whether an Owner has a dispute with the Association, Declarant, another Owner or any other person or entity regarding any matter to which this Declaration pertains. An Owner's obligation for payment of any Assessment is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of the Assessments is both a continuing affirmative covenant personal to each Owner and a continuing covenant running with the Lot.

**Section 2. Basis and Amount of Annual Assessments; Right of Increase Reserved to Declarant.** Annual Assessments will begin on June 1, 2021. The maximum initial Annual Assessment shall be Four Hundred and No/100th Dollars (\$400.00) per Lot per Fiscal Year. If the Board of Directors of the Association determines that the initial Annual Assessment is insufficient to meet the needs of the Association during the remainder of the Association's initial Fiscal Year, the Board of Directors may, by majority vote, increase the initial Annual Assessment by not more than fifteen percent (15%) above the amount initially determined; and, the Board of Directors may increase the initial Annual Assessment by more than fifteen percent (15%) above the amount initially determined, but only by a majority vote of the voting power of the Association. **Note:** *Nothing within this Declaration or any other document shall be construed as requiring Declarant to have Common Properties as part of the Property, or to construct any improvements on Common Properties. Prior to June 1, 2022, Declarant may elect not to have Common Properties as part of the Property, in which event there shall be no Annual Assessments. If on June 1, 2022 there are no Common Properties shown or designated on any plat or other document then on file in the Official Public Records of Lubbock County, Texas, then no Annual Assessments will be due, and the provisions of this Declaration providing/or Annual Assessments will be of no further force or effect.*

On the first anniversary of the date that the Annual Assessments begin, and in accordance with the budget prepared by the Board for the upcoming Fiscal Year and the provisions of Article V, Section 4, the maximum Annual Assessment for any Fiscal Year (including the second year that Annual Assessments are due) may be increased by the Board of Directors above the Annual Assessment for the previous Fiscal Year without a vote of the Members, provided that such increase is not effective before the first day of the Fiscal Year in which the increase occurs, and provided further that such increase will be an amount not exceeding fifteen percent (15%) of the Annual Assessment for the previous Fiscal Year of the Association. Any increase in the Annual Assessment which exceeds fifteen percent (15%) of the Annual Assessment for the previous Fiscal Year, shall require the vote or written consent of Members representing a majority of the voting power of the Association. Notwithstanding the foregoing, in the event that taxes, insurance premiums and/or utilities increase during any year by more than fifteen percent (15%), the Board of Directors may, without the vote or consent of the Members, increase the Annual Assessment for the next Fiscal Year to cover the actual increase for taxes, insurance premiums and/or utilities, even if such increase results in an amount that exceeds the Annual Assessment for the previous Fiscal Year by more than fifteen percent (15%).

*Notwithstanding any provision to the contrary contained in this Declaration, Declarant reserves the right during the Declarant Control Period to unilaterally increase Assessments, as further provided in Article X, Section 4 of this Declaration; and during the Declarant Control Period, and unless limited by Applicable Law, Declarant's right to unilaterally increase Assessments will not be limited to fifteen percent of the Annual Assessment for the previous Fiscal Year of the Association.*

The Board of Directors may, after consideration of current and future anticipated needs of the Association, reduce the actual Annual Assessment for any year to a lesser amount than specified herein, and in such event, any future increases of such Annual Assessment which may be permitted herein without a vote of the Membership of the Association will be computed and based upon such actual Annual Assessment for the previous Fiscal Year of the Association.

Any Lot which is owned by Declarant, as unimproved property, is exempt from the Annual Assessment, and from all other Assessments which are authorized in this Article V. Any Lot owned by a Homebuilder shall be exempt from the Annual Assessment for as long as such Homebuilder owns such Lot, for a term not to exceed one (1) full year from the date such Homebuilder originally purchased such Lot. Upon the sale of any Lot by a Homebuilder, the Owner purchasing such Lot will be required to pay, at the closing of such purchase, a pro rata share of the Annual Assessment applicable to such Lot for the remainder of the calendar year in which the closing takes place. Any Lot owned by a Homebuilder for more than one (1) year will no longer be exempt from the Annual Assessment, and in such event, the Homebuilder will be required to pay the Annual Assessment, including a pro rata share of the Annual Assessment that is owing for the year in which the one (1) year anniversary occurs. The rate of Assessment for any Lot within a Fiscal Year may change as the character of ownership and the status of occupancy by any Resident changes. The applicable Assessment for any Lot will be prorated according to the rate specified in these covenants for each type of ownership.

**Section 3. *Date of Commencement of Assessments; Due Dates.*** Beginning June 1, 2019, 2021, and subject to the provisions of Article V, Section 2 above, the Annual Assessment shall be due and payable in full in advance on the first day of each Fiscal Year and shall, if not automatically paid within thirty (30) consecutive calendar days thereafter, automatically become delinquent. Prior to June 1, 2019, 2021, an Owner's pro rata share of the Annual Assessment shall be paid by the Owner at the closing of the purchase of the Lot, as provided above in Article V, Section 2. The Board shall use reasonable efforts to provide each Owner with an invoice statement of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence. The Board may prescribe: (a) procedures for collecting advance Annual Assessments from new Owners, Members or Residents out of closing transactions; and (b) different procedures for collecting Assessments from Owners who have had a recent history of being untimely in the payment(s) of Assessments.

**Section 4. *Duties of the Board of Directors with Respect to Assessments.***

(a) In the event of a revision to the amount or rate of the Annual Assessment, or establishment of a Special Assessment, the Board shall fix the amount of the Assessment against each Lot, and the applicable due date(s) for each Assessment, at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association;

(b) Written notice of the applicable Assessment shall be actually or constructively furnished to every Owner subject thereto in accordance with the procedures then determined by the Board as being reasonable and economical; and

(c) The Board shall, upon reasonable demand, furnish to any Owner originally liable for said Assessment, a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

**Section 5. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; and Remedies of the Association.**

(a) Effective as of, and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract payment and performance lien and equitable charge on each Lot to secure the full and timely payment of each and all Assessments and all other charges and monetary amounts and performance obligations due hereunder (“**Payment and Performance Lien**”). Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any Assessment, charge or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such Assessment, charge or fine shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the highest lawful rate of interest per annum and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner/Member/Resident which shall bind such Lot in the hands of the Owner and Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. Except as expressly provided below in Article V, Section 6, the Association shall have the right to reject partial payments of an unpaid Assessment or other monetary obligation and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such, however, shall remain the Owner's personal obligation and shall not pass to Owner's successors in title unless expressly assumed by them. However, the lien for unpaid Assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any Assessment provided herein by non-use of the Common Properties or abandonment of the Lot. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner;

(b) The Association may also give written notification to the holder(s) of any mortgage on the Lot of the non-paying Owner of such Owner's default in paying any Assessment, charge or fine, particularly where the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage, a reasonable supply of self-addressed postage prepaid envelopes, and a written request to receive such notification;

(c) If any Assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but not to exceed 5% of the Assessment, charge or fine claimed due) to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent Assessment, charge or fine shall bear interest from and after the date when due at the rate of ten percent (10%) per annum until fully paid. If applicable state law provides or requires an alternate ceiling, then that ceiling shall be the indicated rate ceiling. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid Assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid Assessment, charge, fine or any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association;

(d) The Association may, at its discretion but subject to all applicable debt collection statutes:  
(i) prepare and file a lien affidavit in the public records of Lubbock County, Texas, which

specifically identifies the unpaid Assessments, charges or fines; and (ii) publish and post, within one or more locations within the Properties, a list of those individuals or entities who are delinquent and, if applicable, their suspended use and enjoyment of the Common Properties until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association;

(e) All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual base Assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of the actual Annual Assessment hereof and such other indebtedness, the excess shall be refunded to Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

**Section 6. *Alternative Payment Plans.*** Section 209.0062 of the *Texas Property Code* requires the Association to adopt reasonable guidelines to establish an alternative payment schedule by which an Owner may make partial payments to the Association for delinquent Annual Assessments or Special Assessments or any other amount owed to the Association, without accruing additional monetary penalties (which penalties do not include reasonable costs associated with administering the payment plan or interest). The initial alternative payment rules are set forth in this Article V, Section 6; however, the Board (or Declarant during the Development Period) may, without the approval of the Owners or the Members, amend these rules at any time by filing in the Official Public Records of Lubbock County, Texas a revised alternative payment schedule, containing the revised rules, duly adopted at any meeting of the Board. This Article V, Section 6 controls over any provision in any other Governing Document to the contrary. The initial alternative payment plan rules of the Association are as follows:

(a) ***Eligibility for Payment Plan.***

1) ***Standard Payment Plans.*** An Owner is eligible for a "Standard Payment Plan" (see Section 6(b), below) only if:

(i) The Owner has not defaulted under a prior payment plan with the Association in the prior 24-month period;

(ii) The Owner requests a payment plan no later than thirty (30) days after the Association sends notice to the Owner via certified mail, return receipt requested under Texas Property Code Section 209.0064 (notifying the Owner of the amount due, providing thirty (30) days for payment, and describing the options for curing the delinquency). Owner is responsible for confirming that the Association has received the Owner's request for a payment plan within this 30-day period. It is recommended that requests be in writing; and

(iii) The Association receives the executed Standard Payment Plan and the first payment within 15 days of the Standard Payment Plan being sent via email, fax, mail, or hand-delivered to the Owner.

2) **Other Payment Plans.** An Owner who is not eligible for a Standard Payment Plan may still request that the Association's Board grant the Owner an alternate payment plan. Any such request must be directed to the person or entity currently handling the collection of the debt {i.e., the Association's Board, manager or Association's attorney). The decision to grant or deny an alternate payment plan, and the terms and conditions for any such plan, will be at the sole discretion of the Board.

(b) **Standard Payment Plans.** The terms and conditions for a "Standard Payment Plan" are:

1) **Term.** Standard Payment Plans are for a term of 6 months (see Section 6(e) for Board discretion involving term lengths).

2) **Payments.** Payments will be made at least monthly and will be roughly equal in amounts or have a larger initial payment (small initial payments with a large balloon payment at the end of the term are not allowed). Payments must be received by the Association at the designated address by the required dates and may not be rejected, returned or denied by the Owner's bank for any reason (i.e., check returned NSF).

3) **Assessments and Other Amounts Coming Due During the Plan.** The Owner will keep current on all additional Assessments and other charges posted to the Owner's account during the term of the payment plan, which amounts may but need not be included in calculating the payments due under the plan. The Association may include additional Assessments to the plan without altering the term of the Plan.

4) **Additional Charges.** The Owner is responsible for reasonable charges related to negotiating, preparing and administering the payment plan, and for interest at the rate of six percent (6%) per annum, all of which shall be included in calculating the total amount due under the plan and the amount of the related payments. The Owner will not be charged late fees or other charges related to the delinquency during the time the Owner is complying with all terms of a payment plan.

5) **Contact Information.** The Owner will provide relevant contact information and keep same updated.

6) **Additional Conditions.** The Owner will comply with such additional conditions under the plan as the Board may establish.

7) **Default.** The Owner will be in default under the plan if the Owner fails to comply with **any** requirements of these rules or the payment plan agreement.

(c) **Account Sent to an Attorney/Agent for Formal Collection.** An Owner does not have the right to a Standard Payment Plan after the 30-day timeframe referenced in Section 6(a)(1)(ii). Once an account is sent to an attorney or agent for collection, the delinquent Owner must communicate with that attorney or agent to arrange for payment of the debt. The decision to grant or deny the Owner an alternate payment plan, and the terms and conditions of any such plan, is solely at the discretion of the Board.

(d) **Default.** If the Owner defaults under any payment plan, the Association may proceed with any collection activity authorized under the Governing Documents or state law without further notice. If the Association elects to provide notice of default, the Owner will be responsible for all fees and costs associated with the drafting and sending of such notice. All late fees and other charges that otherwise would have been posted to the Owner's account may also be assessed to the Owner's account in the event of default. Any payments received during a time an Owner is in default under any payment plan may be applied to any out-of-pocket costs (including attorney's fees for administering the plan), administrative and late fees, Assessments, and fines (if any) in any order determined by the Association, except that fines will not be given priority over any other amount owed but may be satisfied proportionately (e.g. a \$100 payment may be applied proportionately to all amounts owed, in proportion to the amount owed relative to other amounts owed).

(e) **Legal Compliance.** These payment plan rules are intended to comply with the relevant requirements established under *Texas Property Code* Section 209. In case of ambiguity, uncertainty, or conflict, these rules shall be interpreted in a manner consistent with all such legal requirements.

**Section 7. Power of Sale.** The lien described within Article V, Section 5 of this Declaration is and shall be a contract Payment and Performance Lien. Each Owner, for the purpose of better securing each and all monetary obligations described within these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of real estate within *Sundance Estates*, has granted, sold and conveyed and by these covenants does grant, sell and convey unto the Trustee, such Owner's Lot, to have and to hold such Lot, together with the rights, privileges and appurtenances thereto belonging unto the said Trustee, and to its substitutes or successors, forever. The initial Trustee is Ryan J. Bigbee, whose address 11010 Indiana Avenue, Lubbock, Texas 79423. And each Owner does hereby bind himself and/or herself, their heirs, executors, administrators and assigns to warrant and forever defend the Lot unto the said Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all persons claiming or to claim the same or any part thereof.

This conveyance is made in trust to secure payment of each and all Assessments and other obligations prescribed by these Covenants to and for the benefit of the Association as the Beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, Beneficiary may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject, however, to the notice and cure provisions set forth in Sections 209.0091 and 51.002 of the *Texas Property Code*; and subject to the requirements set forth in Section 209.0092 of the *Texas Property Code*), and in the event of default in the payment of said indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or its successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Lot then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, *Texas Property Code*, or Applicable Law, and otherwise complying with that statute and Applicable Law, the Trustee shall sell the Lot, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock

P.M., to the highest bidder for cash, selling all of the Lot as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the purchaser or purchasers, with general warranty binding upon the Owner, his heirs and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees provided for, and then to Beneficiary the full amount of principal, interest, attorney's fees and other charges due and unpaid on said indebtedness secured hereby, rendering the balance of the sales price, if any, to the Owner, his heirs or assigns and/or to any other lienholders (if so required by applicable law); and the recitals in the conveyance to the purchaser or purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his heirs and assigns.

It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or its substitute or successor, Beneficiary may at any time before the sale of said property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said indebtedness, and for the foreclosure of this contract Payment and Performance Lien; it is further agreed that if Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this contract lien, that it may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, its substitute or successor to sell the Lot in accordance with the provisions of this Section. Beneficiary, if it is the highest bidder, shall have the right to purchase at any sale of the Lot, and to have the amount for which such Lot is sold credited on the debt then owing. Beneficiary in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until said Lot is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein. In the event any sale is made of the Lot, or any portion thereof, under the terms of this Section, the Owner, his heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the purchaser at such sale, and in the event of his failure to do so he shall thereupon from and after the making of such sale be and continue as tenants at will of such purchaser, and in the event of his failure to surrender possession of said property upon demand, the purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated. The foreclosure of the continuing contract Payment and Performance Lien on any one or more occasions shall not remove, replace, impair or extinguish the same continuing lien from securing all obligations arising from and after the date of foreclosure.

The enforcement of the Association's Payment and Performance Lien, and all prerequisite procedures, must comply with at least the minimum requirements of Applicable Law for foreclosures, in general, and for foreclosures by property owner associations, in particular. On the date of this Declaration, enforcement of the Association's Payment and Performance Lien is subject to the provisions of Chapter 209 of the *Texas Property Code*, and to the extent that any of the provisions of the Governing Documents conflict with the provisions of Chapter 209 of the *Texas Property Code* or other Applicable Law, the provisions of the Governing Documents shall be construed in a manner, to the extent possible, so as to be in full compliance with said statute and any amendments thereto and all other Applicable Law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorney's fees, subject to any limitations of Applicable Law.

**Section 8. Subordination of the Lien to Mortgages.** The lien securing the payment of the Assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising

from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

- (a) bona-fide first mortgage or deed of trust liens for purchase money and/or improvement purposes placed upon a Lot, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;
- (b) liens for taxes or other public charges as are by applicable law made superior to the Association's lien; and
- (c) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien;

provided, however, such each subordination shall apply only to: (i) the Assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien; (ii) the permitted lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties or for such other uses as are provided in this Declaration. Such sale shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien of any such subsequent Assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay Assessments and/or to hinder the Association in performing its functions hereunder.

**Section 9. Exempt Property.** The following property otherwise subject to this Declaration shall be exempted from any Assessments, charge and lien created herein:

- (a) All properties dedicated to and accepted by a local public or governmental authority;
- (b) Common Properties; and
- (c) Unimproved Lots owned by Declarant.

#### **ARTICLE VI. INSURANCE; REPAIR; RESTORATION**

**Section 1. Right to Purchase Insurance.** The Association shall have the right to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board of Directors, officers, managers, agents and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be deemed appropriate by the Board. Such insurance may include, but need not be limited to:

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs;
- (b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Board, Owners, Residents and Members with respect to the Common Properties;

- (c) Fidelity bonds for all officers and employees of the Association having control over the receipt or disbursement of funds; and
- (d) Liability insurance regarding the errors and omissions of directors, officers, managers, employees and representatives of the Association.

**Section 2. Insurance and Condemnation Proceeds.** The Association shall be the exclusive representative of the Members in any proceedings, negotiations, settlements, or agreements concerning insurance or condemnation. The Association and the Members may use the net insurance or condemnation proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance or condemnation. Any balance from the proceeds of insurance or condemnation paid to the Association, remaining after satisfactory completion of repair and replacement or after the Board has elected to waive the repair, restoration or replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

**Section 3. Insufficient Proceeds.** If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a Special Assessment as provided for in Article V of this Declaration to cover the deficiency.

**Section 4. Owner's Insurance.** The Association will not carry any insurance pertaining to, nor does it assume any liability or responsibility for, the real or personal property of the Owners, Residents, Members, Homebuilders (and their respective family members and guests). NEITHER THE ASSOCIATION NOR DECLARANT IS INSURING, THE REAL OR PERSONAL PROPERTY OF THE OWNERS, RESIDENTS, MEMBERS, OR HOMEBUILDERS AND NO SECURITY SERVICES ARE BEING PROVIDED.

Each Owner, Resident, Member and Homebuilder expressly understands, covenants and agrees with Declarant and the Association that:

- (a) Neither Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner, Resident, Member and Homebuilder;
- (b) Each Owner, Resident, Member and Homebuilder shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Resident's, Member's and Homebuilder's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner, Resident, Member and Homebuilder covering his or her real and personal property; and
- (c) Each Owner, Resident, Member and Homebuilder shall take such action as each Owner, Resident, Member and Homebuilder deems necessary to protect and safeguard persons and property.

## **ARTICLE VII. 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.*

**VIII.**  
**USE OF LOTS IN THE PROPERTY; PROTECTIVE COVENANTS**

The following provisions shall be applicable to the Additional Property (the “Additional Property”, being Lots 62 through 111, inclusive, herein designated as Phase II lots) as set forth in Zoning Ordinance 2015-00112, as passed by the City Council of the City of Lubbock, Texas on second reading on November 5, 2015.

**Section 1. Minimum Floor Space and Setback Requirements.** Attached hereto and made a part hereof for all purposes, said minimum floor space and setback requirements being applicable only to the Additional Property with the minimum floor space and setback requirements as shown on Exhibit “B” to the Declaration continuing to apply to Lots 62 through 111 of Sundance Estates.

**Section 2. Construction Standard of Lots.** Declarant shall install cluster mailboxes per the United States Postal Services (“USPS”) requirements at the locations described on Exhibit “C”, attached hereto.

**ARTICLE IX.**  
**EASEMENTS; UTILITY SERVICES**

Conditions in original Declaration remain in effect for Lots 62 through Lots 111.

**ARTICLE X.**  
**DECLARANT RIGHTS AND RESERVATIONS**

**Section 1. General Reservation of Rights During Development Period and Declarant Control Period.** Declarant hereby reserves for itself and its successors, assigns and designees, the Development Period (as “Development Period” and “Declarant Control Period” are 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 and Declarant Control 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 X 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 X. 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 X which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between the provisions of this Article X and any other Governing Document, the provisions of this Article X control. This Article X may not be amended without the prior written consent of the Declarant. The terms and provisions of this Article X must be construed liberally to give effect to Declarant’s intent to protect Declarant’s interests in the Property. As used throughout this Article X, “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 X 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. Declarant Control Period Reservations: Governance.** Declarant expressly reserves the following powers, rights and duties during the Declarant Control Period:

(a) ***Incorporation of the Association.*** Declarant will incorporate the Association as a Texas non-profit corporation before the end of the Declarant Control Period.

(b) ***Association Formality.*** Before the Association is incorporated, Declarant may delay the initiation of annual meetings, the keeping of minutes of meetings and other corporation-type requirements of the Bylaws until such time as Declarant in its sole discretion deems appropriate. During the Declarant Control Period, to the extent not prohibited by Applicable Law, meetings of the Board of Directors are permitted but not required. The Bylaws provision that requires periodic Board meetings becomes effective when the Declarant Control Period ends.

(c) ***Officers and Directors.*** During the Declarant Control Period, the Board may consist of three (3) persons. During the Declarant Control Period, and subject to the following described limitations, Declarant may unilaterally appoint, remove, and replace any officer or director of the Association, none of whom need be Members or Owners. To the extent required by Applicable Law, including Section 209.00591 of the *Texas Property Code*, within one hundred and twenty (120) days after the conveyance of seventy-five percent (75%) of the Lots that may be created in the Property and any Adjacent Property, at least one-third (1/3) of the Board must be elected by Owners other than Declarant. Declarant's unilateral right to remove and replace officers and directors applies only to officers and directors who were Declarant's appointees.

(d) ***Weighted Votes.*** During the Declarant Control Period, the vote appurtenant to each Lot owned by Declarant is weighted five (5) times that of the vote appurtenant to the Lot owned by another Owner. In other words, during the Declarant Control Period, Declarant may cast the equivalent of five (5) votes for each Lot owned by Declarant on any issue before the Association. On termination of the Declarant Control Period and thereafter the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes.

(e) ***Association Meetings.*** During the Declarant Control Period, meetings of the Association may be held at a location, date and time that is convenient to Declarant, whether or not it is mutually convenient for the Owners. During the Declarant Control Period, the Board may use its discretion in setting the agenda for meetings of the Association, and is not bound by the order of business stated in the Bylaws. Annual meetings during the Declarant Control Period may be informational only. If the Association gives notice of one meeting of Members during the year, the meeting will be deemed to be the annual meeting of the Association, whether such meeting is so designated in the notice. During the Declarant Control Period, notice of each Association meeting must be given to Declarant, whether or not Declarant owns any Lot in the Property. The presence of Declarant, in person or by proxy, is required to attain a quorum for any meeting of the Association during the Declarant Control Period. Declarant may waive this requirement in writing on a meeting by meeting basis. However, Declarant's waiver may not be assumed, deemed, or construed from circumstances, omissions or verbal statements. A meeting of the Association called during the Declarant Control Period is not valid without Declarant's presence or a written waiver signed by Declarant prior to the start of the meeting.

(f) ***Transition Meeting.*** Within one hundred and twenty (120) days after the end of the

Declarant Control Period or sooner at Declarant's option, Declarant will call a transition meeting of the Members of the Association for the purpose of electing by vote of the Owners, directors to the Board. Written notice of the transition meeting must be given to an Owner of each Lot at least 10 days before the meeting. For the transition meeting, Owners present in person or by proxy constitute a quorum. The directors elected at the transition meeting will serve until the next annual meeting of the Association or special meeting of the Association called for the purpose of electing directors at which time the staggering of terms will begin. Regardless of the timing specified in the Bylaws for the annual meeting, in the year of the transition meeting, the annual meeting may be scheduled to coincide with the transition meeting to avoid the cost of conducting two (2) membership meetings in any one (1) year period.

**Section 4. Declarant Control Period Reservations: Financial.** Declarant reserves the following additional powers, rights and duties during the Declarant Control Period:

(a) **Association Budget.** During the Declarant Control Period, Declarant-appointed Board will establish a projected Budget for the Properties of fully developed, fully phased, fully constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of the Property. During the Declarant Control Period, the budget is not a warranty or representation by Declarant or by the Association that the Association will annually incur or fund every category of expense that is shown on the budget, or that the relative size of an expense category will be achieved. Neither the Association nor any Owner has a right or expectation of being reimbursed by Declarant or by the Association for a budgeted line item that was not realized, or that was not realized at the budgeted level. **Notwithstanding the foregoing, and to the extent not prohibited by Applicable Law, during the Declarant Control Period Declarant reserves the right to unilaterally increase the Annual Assessment or make any Special Assessment without approval of the Board, the Owners or any other person, if Declarant determines that such increases are necessary to address the costs and expenses of maintaining the Common Properties and operating the Association.**

(b) **Declarant Assessments.** During the Declarant Control Period, any real property or Lot owned by Declarant is not subject to Assessment by the Association. Any voluntary election by Declarant to fund shortfalls in the Association operating expenses shall not be construed as an obligation to fund future shortfalls or provide financing to the Association or to pay expenses of maintenance in regard to the Common Properties or the expenses of the Association.

(c) **Commencement of Assessments.** During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of Assessments until a certain number of Lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies regular Assessments against the Lots. Prior to the first levy, Declarant will be responsible for operating expenses of the Association.

(d) **Expenses of Declarant.** Expenses related to completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

(e) **Budget Control.** During the Declarant Control Period, any right of Owners to veto Assessment increases or Special Assessments is not effective and may not be exercised.

**Section 5. Development Period Reservations.** Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion at any time during the Development Period:

(a) **Platting.** As of the Effective Date of this Declaration some or all of the Property may not have been platted into Lots. Declarant shall have the right to plat all or any portion of the Property into Lots after the Effective Date of this Declaration, whereupon the lots as reflected by the final recorded plat shall become the Lots for all purposes under this Declaration, and Declarant shall have the right to amend this Declaration to include such Lots. Declarant shall also have the right to create common areas and/or obligations for the Association. Declarant's right to have the Property platted and to create common areas and/or obligations for the Association does not require that Declarant own land more particularly on Exhibit "A" attached hereto at the time or times Declarant exercises its rights.

(b) **Expansion.** As described in Article II, the Property is subject to expansion. During the Development Period, Declarant may unilaterally add Additional Property.

(c) **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 VII and this Article X 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:

- (i) To add real property to the Property.
- (ii) To withdraw real property from the Property.
- (iii) To create lots, easements, and common areas within the Property.
- (iv) To subdivide, combine, or reconfigure lots.
- (v) To convert lots into common areas.
- (vi) To allocate the use of certain common areas to specified lots as limited common areas.
- (vii) To modify – even to increase – Declarant's rights and reservations.
- (viii) To change or modify any aspect of the building specifications stated in Article VIII of this Declaration and to add provisions to Article VIII to address changes, improvements and innovations in building and construction materials and designs.
- (ix) To merge the Association with another property owners association.
- (x) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or

omissions in the Governing Documents.

- (xi) To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, and any public or quasi-public program or benefit.
- (xii) To enable a reputable company to issue title insurance coverage on the Lots.
- (xiii) To change the name or entity of Declarant.
- (xiv) To change the name of the addition in which the Property is located.
- (xv) To change the name of the Association.
- (xvi) 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, Owners and/or 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. Declarant, Owner and/or Homebuilders, as applicable, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, location of a screening wall located on a Lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant, a Homebuilder, or the Association.

(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 fire lane 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.

(j) **Assessments.** For the duration of the Development Period, any Lot owned by Declarant is not subject to mandatory Assessment by the Association until the date Declarant transfers title to an Owner other than Declarant. If Declarant owns a Lot on the expiration or termination of the Development Period, from that day forward Declarant is liable for Assessments on each Lot owned by Declarant in the same manner as any Owner.

**Section 6. 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.

**Section 7. *Veto Over Management of Association.*** Management of the Association affects the appearance and condition of the Property, the quality of life for Residents, the costs of acquisition and ownership, and marketability of improvements in the Property. For itself and Homebuilders, Declarant has a vested interest in the below-described aspects of management until every Lot in the Property has been improved with a Dwelling Unit and sold to an Owner other than a Homebuilder. After the Declarant Control Period, and until every Lot in the Property has been improved with a Dwelling Unit and sold to an Owner, Declarant has the continuing unilateral right to approve the Association's choice of manager or managing agent (if the Association elects to employ or hire a manager or managing agent). A manager or agent who purports to represent the Association without Declarant's continuing approval acts without authority, violates the Declaration, and is not eligible for indemnification or insurance by the Association. This Section applies even if Declarant voluntarily terminates control of the Association earlier than the maximum period of Declarant control.

## **ARTICLE XI. GENERAL PROVISIONS**

**Section 1. *Further Development.*** During the Development Period, each and every Owner and/or 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 residential uses of any real property owned by Declarant or by the affiliates, assignees or successors of Declarant within a one-mile radius of the Property.

**Section 2. *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 3. *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 XI, 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 X of this Declaration. This Article XI, Section 3, 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.

(c) ***Amendment by Board.*** Certain provisions of this Declaration may be amended by the Board (or during the Development Period, by Declarant), without the approval of the Owners or Members; and such provisions include Article III, Sections 10 (entitled "**Record Production and**

**Copying**”) and 11 (entitled “**Record Retention**”), and Article V, Section 6 (entitled “Alternative Payment Plans”). Any such amendment by the Board (or Declarant during the Development Period) shall be by an instrument in writing duly executed, acknowledged and filed for record in the Official Public Records of Lubbock County, Texas. Article III, Sections 10 and 11, and Article V, Section 6 contain policies related to the subject matter of said Sections, and it is recognized and agreed by all Owners and Members that such policies may change over time and are subject to modification without approval or consent of the Owners or Members, except as may be required by Applicable Law.

**Section 4. Enforcement.** The Association, and 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 Association, 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 5. 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 6. 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 7. *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 8. *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 9. *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 10. *Use of Adjacent or Other Properties Owned by Declarant.*** Declarant intends to develop certain property adjacent to or in the vicinity of the Lots ("**Declarant's Other Property**") for commercial uses and purposes. Without limiting the generality of the foregoing, such commercial uses could include general or local retail, offices, garden offices, medical offices or facilities, hotels, apartments, townhouses, duplexes and other multi-family or two-family uses, and nothing within this Declaration shall be construed to limit the potential uses of Declarant's Other Property. Declarant's Other Property may be subject to restrictions materially varying in form from those contained in this instrument. All Lot Owners are advised that as the adjacent properties are developed, such properties could be utilized for commercial uses and purposes as herein described. Nothing contained in this instrument shall be deemed to impose upon Declarant any obligation with respect to Declarant's Other Property, including, without limitation, any obligation to enforce any covenants or restrictions applicable thereto. Nothing within this Declaration shall be construed as constituting an obligation, promise, covenant or duty on the part of Declarant to develop Declarant's Other Property in a particular manner or for a particular use or purpose. Nothing contained in or inferable from this Declaration shall ever be deemed to impose upon any other property or 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 11. *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:

(i) **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.

(ii) **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.

(iii) **Assessment Collection.** The provisions of this Declaration dealing with alternative dispute resolution (mediation) shall not apply to the collection of Assessments or the enforcement of any Assessment owing to the Association. Further, the provisions of this Declaration dealing with alternative dispute resolution (mediation) shall not apply in the circumstances described in Article XI, Section 11(b)(2), below.

(b) **Arbitration.** If a matter in controversy cannot be resolved by mediation as set forth in Article XI, Section 11 (a) above, then the matter in controversy shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Endispute, Inc., doing business as J.A.M.S./Endispute ("J.A.M.S."), as amended from time to time, and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any Owner, Resident, the ARC or Declarant may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Declaration applies in a court having jurisdiction over such action.

(i) **Special Rules.** The arbitration shall be conducted in the City of Lubbock, Texas and administered by J.A.M.S. who will appoint an arbitrator; if J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within ninety (90) days

of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(ii) **Reservation of Rights.** The provisions of this Declaration dealing with mediation and arbitration shall not apply to the collection of Assessments or the enforcement of any lien by the Association as set out in 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 Association or 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 or arbitration 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, the Association or Declarant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

(c) **Other Remedies.** If a matter in controversy cannot be resolved by mediation as set forth in Article XI, Section 9(a) or Section 9(b) 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 12. 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 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 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, the Association, the Board of Directors, the ARC, the Architectural Reviewer, 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, (i) 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; (ii) the exercise or failure to exercise or the use or misuse of any of the Released Parties' respective rights or obligations contained in this Declaration or any of the Governing Documents; and (iii) the breach by an Owner or Owners of any provision of this Declaration or the negligence, fraud, willful misconduct or criminal misconduct of an Owner or Owners.*

*Each Owner, Homebuilder, Member and Resident waives and releases the Released Parties from any liability to said Owner, Homebuilder, Member and Resident and to said Owner's, Homebuilder's, Member'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, MEMBER 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).**

**Section 13. 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 14. 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

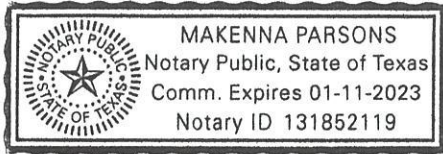
By: \_\_\_\_\_  
Thomas K. Payne, Manager

**LENDER:**  
**FIRST BANK AND TRUST CO.**

By: \_\_\_\_\_  
Print Name: Matt Gray  
Title: SVP

THE STATE OF TEXAS {}  
COUNTY OF LUBBOCK {}

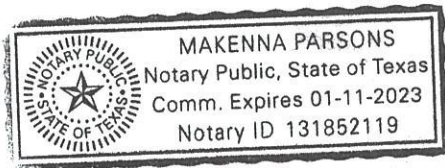
Before me, the undersigned authority on this 12 day of November, 2020, personally appeared THOMAS K. PAYNE, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the instrument as the act of **SWLLD, LLC**, a Texas limited liability 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.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS {}  
COUNTY OF LUBBOCK {}

This instrument was acknowledged before me on the 12 day of November, 2020, by Matt Graves, SVP of **FIRST BANK AND TRUST CO.** a state banking association, on behalf of said association.



[Signature]  
NOTARY PUBLIC, STATE OF TEXAS

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROPERTY**

LOTS SIXTY TWO (62) THROUGH AND INCLUDING ONE HUNDRED ELEVEN (111), 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. 2020050873 of the Official Public Records of Lubbock County, Texas.

**EXHIBIT "B"**  
**MINIMUM FLOOR SPACE REQUIREMENTS**

In no event shall any Dwelling Unit constructed on Lots Sixty Two (62) through and including One Hundred Eleven (111) has less than 2400 square feet of air conditioned floor area.

**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). 40 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), unless otherwise approved or required by the ARC;
- (b). 20 feet from the rear property line of the Lot, unless otherwise approved or required by the ARC;
- (c). 10 feet from any side Lot lines (the "Side Lot Lines" being the side boundaries of the Lot), unless otherwise approved or required by the ARC.

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.

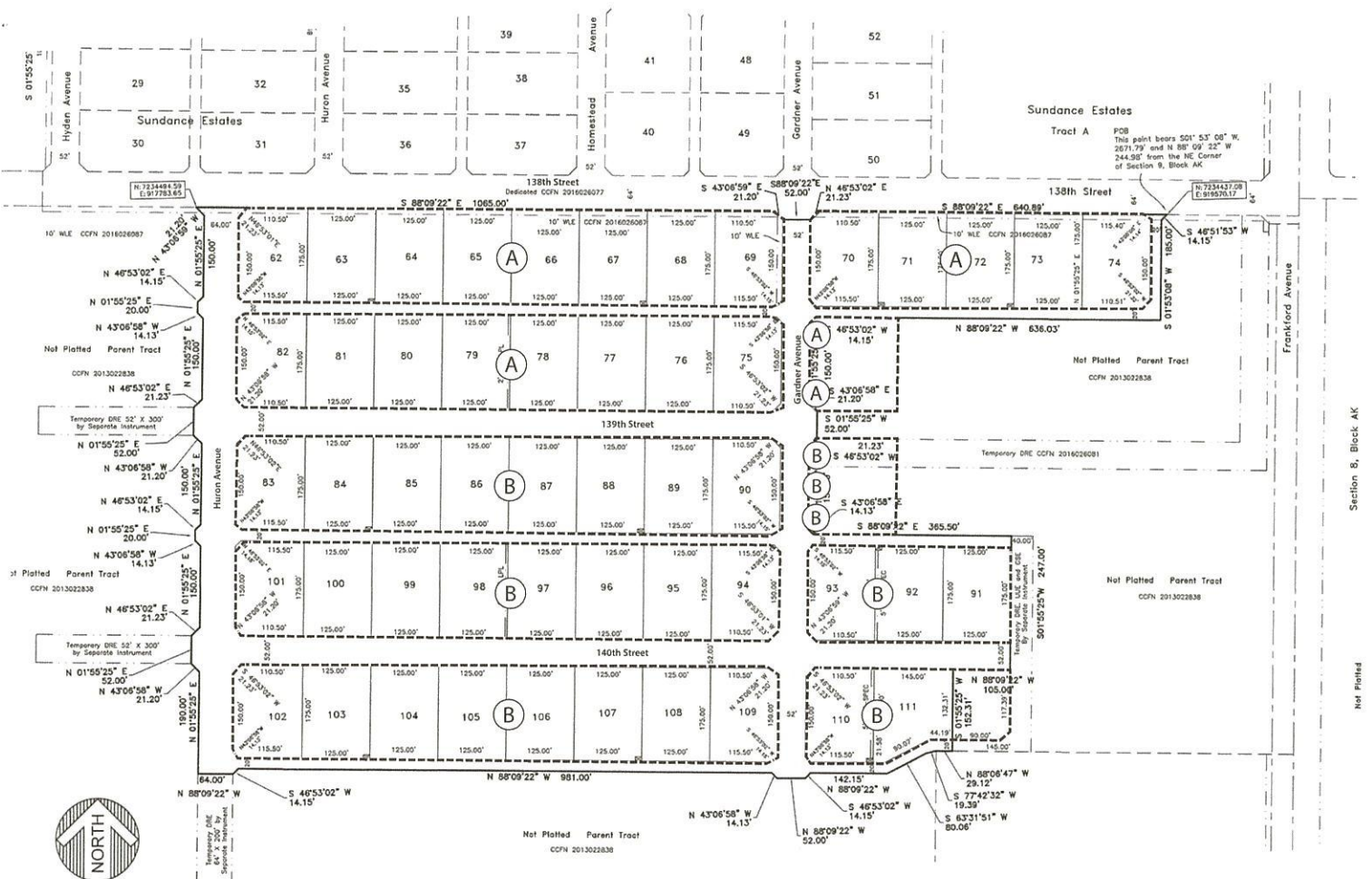
**EXHIBIT "C"**  
**USPS CLUSTER BOX LOCATIONS**

Lots 62 - 111

SUNDANCE ESTATES PHASE II  
CLUSTER MAIL BOX CONFIGURATION

(A) Lots 62-74  
Lots 75-82

(B) Lots 83-90  
Lots 91-101  
Lots 102-111



Section 8, Block AK  
Not Platted

# FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



*Kelly Pinion*

Kelly Pinion, County Clerk  
Lubbock County, TEXAS  
11/12/2020 03:43 PM  
FEE: \$198.00  
2020050994