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DECLARATION

OF

COVENANTS, CONDITIONS, RESTRICTIONS and EASEMENTS

ON AND FOR

THE GATES OF GLORY

Being a Replat of Lot 1-17 and Tracts "A-F", THE GATES, AN ADDITION TO THE CITY OF LUBBOCK, LUBBOCK COUNTY, TEXAS.

NOTICE: THIS DOCUMENT CONTAINS PROVISIONS WAIVING AND RELEASING DECLARANT AND THE ASSOCIATION FROM LIABILITY FOR NEGLIGENCE IN SPECIFIED CIRCUMSTANCES.

TABLE OF CONTENTS

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS is made and effective as of the 17 day of July, 2025, by WINDMILL MANAGEMENT, LLC, a Texas limited liability company, (sometimes referred to herein as the Declarant):

PREAMBLE

Declarant is the owner and developer of certain residential Lots within a tract of land now commonly known and described as *THE GATES OF GLORY* (which lots are more particularly described on Exhibit "A" attached hereto). Declarant proposes to establish and implement plans for residential living, recreation, aesthetic and quality-of-life considerations. The purposes of this Declaration are to: protect the Declarant and the Owners against inappropriate development and use of Lots within the Properties; assure compatibility of design of improvements within the subdivision; secure and preserve sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment; provide for landscaping and the maintenance thereof; and in general to encourage construction of attractive, quality, permanent improvements that will promote the general welfare of the Declarant and the Owners. Declarant desires to impose these restrictions on *THE GATES OF GLORY* now and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the quality and distinction of the Property. Declarant intends for this instrument to be a "dedicatory instrument" within the meaning of Chapter 202 of the *Texas Property Code* and the *Texas Residential Property Owners Protection Act*, as said statutes are now enacted or hereafter amended.

THE GATES OF GLORY POA (Property Owners 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 within *THE GATES OF GLORY* and to assist in the administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens described in this Declaration.

DECLARATION

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

ARTICLE I.
CONCEPTS AND DEFINITIONS

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

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

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

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

"Assessment" means any charge levied against a Lot or Owner by the Association, pursuant to the Governing Documents or public law, including but not limited to Annual Assessments, Initial Capital Contribution, Special Assessments and Individual Assessments, as defined in Article V of this Declaration.

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

"Association" means the association of owners of Lots in *THE GATES OF GLORY*, and serving as the "property owners association" as defined in Section 202.001(2) of the *Texas Property Code*. The initial name of the Association is THE GATES OF GLORY POA.

"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.

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

"Common Properties" shall mean and refer to any and all areas of land within *THE GATES OF GLORY*, or adjacent thereto, which are described in Exhibit "B" attached hereto, described or designated as common areas, parks, recreational easements, jogging trails, floodway easement areas, perimeter fences and columns, off-site monuments and directional signs, landscape easements, open spaces, paths and trails, boulevards, and the like including without limitation those shown on any recorded subdivision plat of portions of *THE GATES OF GLORY*, as well as those not shown on a recorded subdivision plat but which are intended for or devoted to the common use and enjoyment of the Owners, together with any and all improvements that are now or that may hereafter be constructed thereon. It is anticipated that the Common

Properties will be owned and maintained by the Association. The 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 *THE GATES OF GLORY*. The 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 of Lubbock or County of Lubbock, Texas has required that the 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 the 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.

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

"Declarant" shall mean and refer to **WINDMILL MANAGEMENT, LLC** and any or a successor(s) and assign(s) of WINDMILL MANAGEMENT, LLC with respect to the voluntary disposition of all (or substantially all) of the assets and/or stock of WINDMILL MANAGEMENT, LLC, and/or the voluntary disposition of all (or substantially all) of the right, title and interest of WINDMILL MANAGEMENT, LLC in and to *THE GATES OF GLORY*. However, no person or entity merely purchasing one or more Lots from WINDMILL MANAGEMENT, 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 at least a majority of the 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. Unless Applicable Law requires a different Declarant Control Period, the Declarant Control Period shall run continuously from the date this Declaration is recorded until 180 days after Ninety percent (90%) of the Lots that may be created on the Property and on the Additional Property have been conveyed to Owners other than Declarant, and have been improved with Dwelling Units, to the extent permitted by Applicable Law. In no event may the Declarant Control Period last longer than ten (10) years after the date on which this Declaration is publicly recorded, subject to the right of Declarant 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. 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, and Easements on and for *THE GATES OF GLORY*," together with any and all amendments or supplements hereto.

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

"Design Guidelines" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Properties, and all amendments, bulletins, modifications, supplements and interpretations thereof and are further described in Article VII, Section 3 of this Declaration.

"Development Period" means the period 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. If Applicable Law requires a stated term for the Development Period, 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 the earliest of the following events: (1) ten (10) years after the date on which this Declaration is publicly recorded, or (2) the date on which every Lot in the Property and in the Additional Property have been improved with a Dwelling Unit. No act, statement, or omission by the Association may cause termination of the Development Period earlier than the term stated in this paragraph. Declarant, however, may terminate the Development Period at any earlier time by publicly recording a notice of termination. The Development Period is for a term of years or until the stated status is attained, and does not require that Declarant own a Lot or any other land in the Property.

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

"Easement Area" shall mean and refer to those areas which may be covered by an easement specified in Article IV and in Article IX below.

"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-month period.

"Governing Documents" means, singly or collectively as the case may be, the Plat, this Declaration, the Bylaws of the Association, the Association's Articles of Association, and (if any) the Rules of the Association, 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.

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

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

"Lot" shall mean and refer to each separately identifiable portion of the Property which is platted, filed and recorded in the office of the County Clerk of Lubbock County, Texas and which is assessed by any one or more of the Taxing Authorities and which is not intended to be an "open space" or a portion of the Common Properties.

"THE GATES OF GLORY" shall mean and refer to THE GATES OF GLORY, 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.

"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.

"Member" shall mean and refer to each Resident who is in good standing with the Association and who has complied with all directives and requirements of the Association. Each and every Owner shall and must take such affirmative steps as are necessary to become and remain a Member of, and in good standing in, the Association. Each and every Resident (who is not otherwise an Owner) may, but is not required to be a Member of the Association.

"Payment and Performance Lien" shall have the meaning and refer to the lien described within Article V, Sections 5 and 6 of this Declaration.

"Property" or "Properties" shall mean and refer to: (i) the land described within Exhibit "A" attached hereto; and (ii) other land within THE GATES OF GLORY, either now or in the future, including the Additional Property.

"Resident" shall mean and refer to:

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

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

(c) each individual lawfully domiciled in a Dwelling Unit other than an Owner or

bona-fide lessee.

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

"Taxing Authorities" shall mean and refer to the City of Lubbock, as applicable, Lubbock County and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the Texas Constitution and applicable statutes and codes.

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 *THE GATES OF GLORY* 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 and/ or Common Property to the scheme of this Declaration, such annexation proposal must have the express approval of the Board.

Any additions made pursuant to this Section 2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the Additional Property and

correspondingly subject the Additional Property to the covenants of the enabling declaration. Upon any merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law or by lawful articles or agreement of merger, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law or by lawful articles or agreement of merger, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants established by this Declaration, together with the covenants and restrictions established upon any other properties, as one scheme.

ARTICLE III.
MEMBERSHIP AND VOTING; RIGHTS IN THE ASSOCIATION

Section l. 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 the 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 the Declarant. Upon conclusion of the Development Period, the Declarant Class membership shall terminate and the 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 if 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 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.

Any Owner, Resident or Member shall not be in "good standing" if such person or entity is: (a) in violation of any portion of the Governing Documents; or (b) 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.

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. At the conclusion of the Declarant Control Period the Board of Directors shall automatically be increased to Five (5) individuals, and, as required by Applicable Law, One of the Five 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 Homebuilders or to affiliates of Declarant. *However, during the Declarant Control Period and the Development Period, the 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.*

The Directors need not be Members of the Association. Directors shall be elected for two-year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Directors representing the same class of Members who elected the Director whose position has become vacant. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill.

The election of the directors shall take place in accordance with the Bylaws or, to the extent not inconsistent with the Bylaws, the directives of the then-existing Board.

Section 5. Powers and Duties. The Board, for the benefit of the Association, the Properties and the Owners and the Members and Residents, may provide and may pay for, out of the Assessment fund(s) provided for in 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 the Declarant and any affiliates of the 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 its opinion shall be necessary or proper for the operation or protection of the Association or for 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 the 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 VI 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 and amend 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 Lot Owner Assessment secured by the continuing Payment and Performance Lien herein established.

The Association may: (i) borrow monies from the Declarant; (ii) lease equipment from the Declarant; (iii) contract with the 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 the Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with the 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 the 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 the 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, the 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 the 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. The 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. Record Production and Copying. Per Applicable Law, this Section constitutes the record production and copying policy of the Board. This Section of the Declaration is subject to amendment by the Board (or during the Development Period, by the Declarant), without the approval of the Owners or the Owner Class of Members. The record 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 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 10 business days of the request.

(2) **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 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. As of the date of this Declaration, 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 constitutes the record retention policy of the Board. This Section of the Declaration is subject to amendment by the Board (or during the Development Period, by the 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 year: 4 years after expiration of contract;
(b) Account records of current Owners: 5 years;
(c) Minutes of Owner meetings and Board meetings: 7 years;
(d) Tax returns and audits: 7 years;
(e) Financial books and records (other than account records of current Owners): 7 years;
(f) Governing Documents: permanently.

Records not listed above may be maintained or discarded in the Association's sole discretion.

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 the 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 the 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, the 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 the Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of the 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 the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member 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 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 the 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 the 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 pubic or quasi-public entity or agency for such purposes and upon such conditions as may be agreed to by the Declarant and the Board; and

(i) The right of the 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 *THE GATES OF GLORY* and the 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 Board. All Members shall abide by any rules and regulations adopted by the Board. 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 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. 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 an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee shall be delinquent and upon written notice to said Owner shall become a personal debt of said Owner. Failure of any Owner to pay said fee and charge when due and payable, in addition, shall be a breach of these Covenants.

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 the Declarant and, thereafter, the Association shall be responsible for the operation and maintenance of the Common Properties. Further, Declarant shall 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 Obligation 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 are 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. 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 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 of Lubbock or County of Lubbock, Texas in connection with any zoning, subdivision, platting, building, development or occupancy requirements. 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, unless otherwise approved by a majority of the individuals comprising the Board.

(b) **Special Assessments**. Special Assessments, if assessed, shall be 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 a majority 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 a majority of the individuals comprising the Board.

(c) **Individual Assessments**. Individual Assessments 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.

(d) **Initial Capital Contributions**. Each Owner, upon acquiring title to a Lot within the Association, shall pay to the Association an Initial Capital Contribution Assessment. This one-time fee, also known as a capital contribution, is due at closing and is intended to provide the Association with additional funds to support its reserve accounts and operational needs and reimburse the Association for up-front costs of construction of Common Area property benefitting the Lot Owners. The amount of the Initial Capital Contribution Assessment shall be determined by the Board of Directors and specified in the Association's governing documents but will generally be equal to two to three times the amount of the then-current regular annual assessment for the Lot. The Initial Capital Contribution Assessment is separate from and in addition to regular assessments, special assessments, or other charges, and shall not be considered an advance payment of any other assessments. Funds collected through the Initial Capital Contribution Assessment may be used for the maintenance, repair, and replacement of common areas, enhancement of community amenities, and to ensure the financial stability of the Association for the benefit of all Members.

The annual Assessments, special Assessments, individual Assessments, and initial capital contribution, 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.

Section 2. Basis and Amount of Annual Assessments. The Board of Directors of the Association determines the initial annual Assessment to meet the needs of the Association during the the Association's initial fiscal year. If 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 a quorum of the Members present at an

Annual or Special Meeting of the Members of the Association called for, among other scheduled matters, that purpose. Notwithstanding any provision to the contrary in this Declaration, the Declarant reserves the right during the Declarant Control Period to unilaterally increase Assessments, as further provided in Article X, Section 4 of this Declaration.

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 which is owned by a Homebuilder (whether improved with a Dwelling Unit or unimproved) shall be assessed as provided in this Article V, Section 3 at the rate of one-half of the annual Assessment, for the first year that the Homebuilder owns the Lot; however, the Homebuilder shall receive no discount as to a Lot owned more than one year. The rate of Assessment for any Lot, within a calendar year, may change as the character of ownership and the status of occupancy by a 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. 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. 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 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. 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 Assessment, 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 (10.00 %) 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 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 the 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 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 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 not be included in calculating the payments due under 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 attorneys 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) **Board Discretion.** The Association's Board may vary the obligations imposed on Owners under these rules on a case-by-case basis, including curtailing or lengthening the payment plan terms (so long as the plan is between 3 and 18 months), as it may deem appropriate and reasonable. The term length set forth in Article V, Section 6(b) shall be the default term length absent Board action setting a different term length. No such action shall be construed as a general abandonment or waiver of these rules, nor vest

rights in any other Owner to receive a payment plan at variance with the requirements set forth in these rules.

(f) **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 *THE GATES OF GLORY*, 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 **Hayden Olson**, whose address is **1408-A Buddy Holly Ave., Lubbock, Lubbock County, Texas, 79401**. 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 home 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 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 THE 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 the 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 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 control.

(a) **Architectural Control During Development Period.** During the Development Period, neither the Association, the Board, nor any committee appointed by the Board may involve itself with the approval of Dwelling Units or Improvements on Lots. During the Development Period, the Declarant shall be the sole member of the Architectural Review Committee ("ARC"); or, the Declarant may delegate such duties as provided below and in Article X. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market the Property or the ability of Homebuilders to sell homes in the Property. Accordingly, each Owner agrees that during the Development Period, no Improvements will be commenced on an Owner's Lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications. During the Development Period, the Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article (and Article X) to (i) a modifications or architectural committee appointed by Declarant or the Board; (ii) a modifications or architectural committee elected by the Owners; or (iii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation is subject to the unilateral right of the Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated. References in this Declaration to the ARC shall refer to Declarant, when Declarant is acting as the ARC during the Development Period.

(b) **Architectural Control by Association.** On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant (which writing must be recorded in the Official Public Records of Lubbock County, Texas), the Association, acting through the ARC, will assume jurisdiction over architectural control. The ARC will consist of at least Three (3) but not more than Five (5) persons appointed by the Board, pursuant to the Bylaws. Members of the ARC will serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ARC, in which case all references in the Governing Documents to the ARC are construed to mean the Board. Members of the ARC need not be Owners or Residents and may but need not be architects, engineers, and design

professionals whose compensation, if any, may be established from time to time by the Board.

Section 2. ARC Jurisdiction. No building, Structure, fence, wall, Dwelling Unit, or Improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications (the "Plans") have been submitted to and approved in writing by the ARC (or the Declarant during the Development Period), or a majority of its members, as to:

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

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

(c) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;

(d) drainage solutions;

(e) the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors to and from the Common Properties;

(f) the proposed Homebuilder, taking into account the proposed Homebuilder's willingness to building accordance with the plans and specifications, quality of past work, client satisfaction and financial history; and

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

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

The ARC (and the Declarant during the Development Period) is authorized and empowered to consider and review any and all aspects of construction, location and landscaping,

which may, in the reasonable opinion of the ARC, adversely affect the living enjoyment of one or more Owner(s) or Residents or the general value of the Properties. Also, the ARC is permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the ARC.

The ARC may require, as a condition precedent to any approval of the Plans, that the applicant obtain and produce an appropriate building permit from any governmental entity which may now, or in the future, exercise permitting authority. The ARC is also authorized to coordinate with the County of Lubbock, or any applicable governmental permitting authority, in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration, the Design Guidelines, and any bulletins or lot information sheets promulgated thereunder. However, the mere fact that a governmental authority issues a building permit with respect to a proposed structure does not automatically mean that the ARC is obliged to unconditionally approve the Plans. Similarly, the ARC's approval of any Plans does not mean that all applicable building requirements of the County of Lubbock, or any other governmental authority, have been satisfied.

Section 3. Design Guidelines. The ARC may, from time to time, publish and promulgate additional or revised Design Guidelines, and such Design Guidelines shall be explanatory and illustrative of the general intent of the proposed development of the Properties and are intended as a guide to assist the ARC in reviewing plans and specifications.

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PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF ANY LOT IN THE SUBDIVISION IS STRONGLY ENCOURAGED TO CONTACT THE DECLARANT OR ASSOCIATION OR THE ARC TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT.

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Section 4. Plan Submission and Approval. Within ten (10) business days ("business days" being days other than Saturday, Sunday or legal holidays) following its receipt of the Plans, the ARC shall advise the submitting Owner whether or not the Plans are approved. If the ARC (or the Declarant) shall fail to approve or disapprove the Plans in writing within said ten-day period, it shall be conclusively presumed that the ARC has approved the Plans. Plans shall not be deemed to have been received by the ARC until the Plans are received and a written receipt is signed by the ARC (during the Development Period, when the Declarant is serving as the ARC, the written receipt must be signed by the Declarant). If the Plans are not sufficiently complete or are otherwise inadequate, the ARC may reject them as being inadequate or may approve or disapprove certain portions of the same, whether conditionally or unconditionally. The ARC shall not approve any Plans unless it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding Lots, that the appearance of any structures affected thereby will be in harmony with surrounding structures and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the subdivision or the enjoyment thereof by the

Owners. Approval shall be based, among other things, on adequacy of site dimensions, structural design, proximity with and relation to existing neighboring structures and sites, as well as proposed and future neighboring structures and sites, relation of finished grades and elevations and elevations to existing neighboring site and conformity to both specific and general intent of the terms of this Declaration. The ARC may adopt rules or guidelines setting forth procedures for the submission of Plans and may require a reasonable fee to accompany each application for approval in order to defray the costs of having the same reviewed. The ARC may require such details in Plans submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARC of the Plans and any other information or materials requested by the ARC, the ARC shall not be deemed to have received such Plans or be obligated to review the same.

Section 5. Liability. Neither Declarant, nor the ARC, nor the officers, directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting Plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such Plans or specifications. No approval of Plans and specifications and no publication of any Design Guidelines, architectural bulletins or lot information sheets shall be construed as representing or implying that such Plans, specifications, guidelines, bulletins or sheets will, if followed, result in properly designed Improvements and/or Improvements built in a good and workmanlike manner. Every person or entity who submits Plans or specifications, and every Owner of each and every Lot, agrees that he will not bring any action or suit against Declarant, the ARC, or the officers, directors, managers, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. **The Declarant and the ARC has sole discretion with respect to taste, design, and all standards specified by this Declaration and any Design Guidelines. The Declarant and the ARC (and each of its members) has no liability for decisions made in good faith, and which are not arbitrary and capricious.**

Section 6. No Waiver. No approval by the ARC of any Plans for any work done or proposed to be done shall be deemed to constitute a waiver of any rights on the part of the ARC to withhold approval or consent to any similar Plans which subsequently are submitted to the ARC for approval or consent.

Section 7. Construction. Upon approval of the Plans by the ARC, the Owner submitting such Plans for approval promptly shall commence construction of all Improvements and Structures described therein and shall cause the same to be completed in compliance in all material respects with the approved Plans, and in compliance with these Covenants. Construction must begin within Twelve (12) months of Lot purchase. Owners shall ensure that construction of the Dwelling Unit is completed within Twenty-four (24) months from the date any unimproved Lot building permit was issued by the City of Lubbock, Texas. If an Owner shall vary materially from the approved Plans in the construction of any Improvements and Structures, the ARC shall

have the right to order such Owner to cease construction and to correct such variance so that the Improvement will conform in all material respects to the Plan as approved. If an Owner shall refuse to abide by the ARC's request, the ARC shall have the right to take appropriate action to restrain and enjoin any further construction on a Lot that is not in accordance with approved Plans. The ARC shall have the right, but not the obligation, to inspect the Improvements during construction to ensure compliance with the Plans and compliance with the City of Lubbock or County of Lubbock code requirements (to the extent that such requirements are applicable to the Properties). During the Development Period, the Declarant shall have all of the rights granted herein to the ARC.

Section 8. Variances. The ARC may authorize variances from compliance with any of the provisions of this Declaration relating to construction of Improvements and Structures on a Lot, including restrictions upon height, size, floor area or replacement of Structures, or similar restrictions, when circumstances such as governmental code changes, topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least a majority of the members of the ARC (or by the Declarant during the Development Period) and shall become effective upon their execution. Such variances may be recorded. If such variances are granted, no violation of any of the provisions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Lot.

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

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

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

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

(ii) "front yard" shall mean that portion of a Lot existing from the front of the Dwelling Unit located thereon to the front property line, and from side property line to side property line with a minimum of 15% consisting of live plants and maximum of 5% of the yard area being inert materials; and

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

Section 1. Residential Use of Lots. All Lots within the Property shall be used,

known and described as residential Lots unless otherwise indicated on the plat of the Property. Lots shall not be further subdivided and except for the powers and privileges herein reserved by the Declarant, the boundaries between Lots shall not be relocated without the prior express written consent of the ARC. No building or Structures shall be erected, altered, placed or permitted to remain on any residential Lot other than one (1) single-family Dwelling Unit and unless otherwise prohibited by this Declaration, its customary and usual accessory Structures and Accessory Buildings ("Accessory Buildings" as defined in Article VIII, Section 6(o)). No Dwelling Unit, garage or other Structure appurtenant thereto, shall be moved upon any Lot from another location. No building or Structure intended for or adapted to business or commercial purposes shall be erected, placed, permitted or maintained on such premises, or any part thereof, save and except those related to development, construction and sales purposes of a Homebuilder or the Declarant. No Owner or Resident shall conduct, transmit, permit or allow any type or kind of home business or home profession or hobby on any Lot or within any Dwelling Unit or Accessory Building which would: (i) attract automobile, vehicular or pedestrian traffic to the Lot; (ii) involve lights, sounds, smells, visual effects, pollution and the like which would adversely affect the peace and tranquility of any one or more of the Residents within the Property. A Resident may use a Dwelling Unit for business uses, such as telecommuting, personal business, and professional pursuits, provided that: (w) the uses are incidental to the primary use of the Dwelling Unit as a residence; (x) the uses conform to applicable governmental ordinances; (y) there is no visible evidence of the business; and (z) the uses do not entail visits to the Lot by employees or the public in quantities that materially increase the number of vehicles parked on the street and the uses do not interfere with the residential use and enjoyment of neighboring Lots by other Owners and Residents. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations and ordinances of the City of Lubbock, County of Lubbock, Texas or any other governmental authority having jurisdiction over the Property. In addition to the residential use restriction described above, the Lots are subject to the following additional use restrictions:

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

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

(c) **Animals.** No animals of any kind shall be raised, bred, or kept on any Lot except

that not more than four (4) dogs, cats, or other similar domesticated household pets may be kept and not more than four (4) chickens may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. All permitted animals must be maintained in the rear yard of each Lot without access to the front yard or otherwise be visible from the street. Chicken coops and runs are permitted within in the rear yard of the Lots, but (i) are subject to a minimum setback of ten feet (10') from any side or rear Lot line; (ii) may not exceed six feet (6') in height; (iii) must be maintained in clean order as to prevent any noxious odors or nuisance; (iv) are subject to ARC review and additional requirements made thereby; and (v) are subject to additional requirements and enforcement actions made by the Board of Directors of the Association. In no event shall horses, roosters, pigs, cows, sheep or goats be kept on any portion of the Lots. Additionally, no animals shall be permitted which are obnoxious, offensive, dangerous or vicious (e.g. pit bull terriers shall not be permitted within the Properties).

(d) **Trash.** No rubbish, trash, garbage, debris or other waste shall be dumped or allowed to remain on any Lot. Trash pits and the burning of trash are specifically prohibited.

(e) **Trash Containers.** Each Lot Owner shall be responsible for disposing of all trash and recyclable materials in a sanitary manner and in a receptacle designed for such purpose. Additionally, each Lot Owner shall be responsible for contracting with a trash collection service authorized to act for that purpose, whether private or public. Trash containers and/or recycling bins, including private dumpsters, must be stored in one of the following locations: (i) inside the garage of the Dwelling Unit; or (ii) behind a screen not visible from public view or from its adjacent Lots [*See* Article XIII, Section 8] said screen being located no closer to the front lot line than the front line of the corner of the Dwelling Unit. The ARC will have the right to specify additional locations in which trash containers and/or recycling bins must be stored.

(f) **Clotheslines.** No clothesline may be maintained on any Lot.

(g) **Antennas, Towers and Vertical Structures.** No antenna, tower, wind generator or other similar vertical structure shall be erected on any Lot for any purpose except as provided in this Article VIII, Section 1(g). A flagpole or flagpoles will be permitted where approved in writing by the ARC. No antenna or tower shall be affixed to the outside of any Dwelling Unit or located on any other portion of a Lot without the prior written consent of the ARC. No satellite reception device or equipment used in the reception of satellite signals shall be allowed on any Lot or structure unless approved in writing by the ARC and approval will be granted only where the devices are reasonably concealed from view of any street, public areas and neighboring Lots, and structures. No satellite dishes will be permitted which are larger than one meter in diameter. The Declarant, by promulgating this Section is not attempting to violate the Telecommunications Act of 1996 (the "Act"), as may be amended from time to time. This Section shall be interpreted to be as restrictive as possible while not violating the Act.

(1) **Additional Requirements Regarding Flagpoles and Flags.** Nothing

within this Declaration shall prohibit an Owner from displaying (i) the flag of the United States of America; (ii) the flag of the State of Texas; or (iii) an official or replica flag of any branch of the United States armed forces. The flag of the United States shall be displayed in accordance with 4 U.S.C., Sections 5 through 10, and the flag of Texas shall be displayed in accordance with Chapter 3100, *Texas Government Code*. The location and design of any proposed flagpole must be approved by the ARC, and no flagpole will be approved that is taller than twenty (20) feet above the ground. Further, no more than three (3) flagpoles will be installed on a Lot at any one time. All flags will be maintained in good condition, and any deteriorated flag or deteriorated or structurally unsafe flagpole will be promptly repaired, replaced or removed. The size of each flag must be in proportion to the height of the pole from which it is displayed, and no flag shall be larger than three feet by five feet for a twenty-foot pole. The flagpole shall have an appropriate devise to abate noise from any external halyard. If the flagpole is illuminated, the illumination must be of an intensity, wattage or lumen count that does not cause an annoyance to adjacent Lots or other Owners, and the ARC must first approve all such illumination. Except for the flags herein permitted, no other types of flags, pennants, banners, kites or similar types of displays are permitted on a Lot, if the display is visible from the street or an adjacent Lot. The Association may adopt additional rules and regulations or grant waivers regarding the illumination, location, installation of flagpoles and the display of flags.

(2) **Additional Requirements Regarding Wind Generators.** A single wind generator or other devise designed to convert wind to usable wind energy may be installed and maintained on any Lot improved with a Dwelling Unit, provided it (a) is on a portion of a Lot, Dwelling Unit, or roof that is not street-facing; (b) is not clearly visible from a street or another Lot; (c) is not mounted on a pole; (d) it is not taller than the highest point on the roof of the Dwelling Unit; and (e) it is no larger in size than one yard (3 feet) in diameter.

(h) **Oil Drilling Operations.** No oil drilling, oil development operation, oil refining, or quarrying or mining operations of any kind shall be permitted on or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on or in any Lot. No derrick or other structure designed for use of boring for oil and/or natural gas shall be erected, maintained or permitted on any Lot.

(i) **Signs.** No sign of any kind shall be displayed to the public view on any Lot, except one professional sign of not more than five (5) square feet advertising the property for sale, or a sign used by Declarant or a Homebuilder to advertise the building of Improvements on such property during the construction and sales period. In accordance with Applicable Law, an Owner may display one ground-mounted sign for each political candidate or ballot item for an election, provided that the sign shall be installed no earlier than ninety (90) days before the election and removed not later than ten (10) days after the election: and, no sign will be allowed or permitted that: (i) contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component; (ii) is attached in any way

to plant material, a traffic control devise, a light, a trailer, a vehicle, or any other existing structure or object; (iii) includes the painting of architectural surfaces; (iv) threatens the public health or safety; (v) is larger than four feet by six feet; (vi) violates the law; (viii) contains language, graphics, or any display that would be offensive to the ordinary person; or (viii) is accompanied by music or sounds or by streamers or is otherwise distracting to motorists.

(j) **Vehicles**. All vehicles on the Properties, whether owned or operated by the Owners or Residents or their invitees, are subject to this Section and any supplemental Rules adopted by the ARC to regulate the types, sizes, numbers, conditions, uses, appearances, and locations, of vehicles on the Property.

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

Further, Declarant hereby adopts the following policy regarding the use of self-propelled vehicles within THE GATES OF GLORY Properties. This policy will be part of the Association's Rules and Regulations. However, the application and enforcement of this policy will in no way limit enforcement of any other provisions of the Declaration including but not limited to Article VIII, Section 1(a) defining Annoyance, and/or this subsection pertaining to Compliance with Laws applicable to Vehicles, or the enforcement of same pursuant to the terms of Article XI, Section 4 of the Declaration. In order to promote the health and safety of Owners and Residents within THE GATES OF GLORY Properties, it will be the policy of the Association that any unlawful use of an "All-Terrain Vehicle," "Golf Cart," "Moped," "Motor Vehicle," "Recreational Off-Highway Vehicle" or other self-propelled vehicle under the Texas Transportation Code Section 502.001 et. seq., or as further established and applicable by the City of Lubbock or Lubbock County, Texas within THE GATES OF GLORY Properties shall also be a violation of the protective covenants set forth in the Declaration, the act of which will constitute an Annoyance and a violation of Compliance with Laws pertaining to Vehicles as those terms are defined and set forth in the Declaration. Any Owner may report a violation to the managing agent or any Association Board member. The Complaint should include as much identifying information as possible, including but not limited to the identity of the party violating the Policy, the date, time, and approximate location of the incident, and a detailed description of the alleged violation. All reported violations will be reviewed by the Association's Board of Directors to determine if the report of a violation is valid before any action is taken. Prior to any action against an Owner, the affected Owner shall be given notice and an opportunity for a hearing before the Board of Directors. Any act constituting a violation may be enforced by the Association under the provisions of Article XI, Section 4 of this Declaration, and any costs incurred by the Association for said enforcement will be considered an "Individual Assessment" defined under Article V, Section 1(c) of this

Declaration, for all purposes.

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

(3) **Prohibited Vehicles.** Subject to the last sentence of this Subsection, the following types of vehicles and vehicular equipment – mobile or otherwise – may not be kept, parked, or stored anywhere on a Lot or on the Property: inoperable passenger vehicle, vehicle that transports inflammatory or explosive cargo, junk vehicle, abandoned vehicle, and any vehicle which the ARC deems to be a nuisance, unsightly or inappropriate. Subject to the last sentence of this Subsection, the following types of vehicles and vehicular equipment – mobile or otherwise – may not be kept, parked, or stored anywhere on a Lot or on the Property unless contained in an Accessory Garage, as described in Article VIII, Section 6(o)(vii) or located under covered parking located behind a fence or other type of screening enclosure approved by ARC: travel trailer, camper trailer; pop-up or tent camper, house trailer, utility or cargo or stock trailer, motor home, recreational vehicle ("RV"), house car, boat, personal water craft, race car or car parts, snowmobile, dune buggy, all-terrain vehicle ("ATV"), or golf cart. This prohibition does not apply to vehicles and equipment temporarily on the Property in connection with maintenance of Common Property, or construction or maintenance of any Improvement on a Lot or on the Property.

(k) **Solar Energy Devices.** Solar Energy Devices shall be permitted on a Dwelling Unit only as approved by the ARC. During the Development Period, the Declarant reserves the right to prohibit all Solar Energy Devices. A "Solar Energy Device," for purposes of the Governing Documents, is a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. All solar devices not meeting this definition are prohibited. The ARC will not approve, and an Owner may not install Solar Energy Devices that:

(1) threaten the public health or safety;
(2) violate a law;
(3) are located on property owned by the Association;
(4) are located in an area on the Owner's Lot other than:
    (i) on the roof of the Dwelling Unit (or of another Structure on the Owner's Lot allowed under the Association's Governing Documents; or
    (ii) in a fenced rear yard or patio in the rear yard owned and maintained by Owner on the Owner's Lot;
(5) are installed in a manner that voids material warranties;
(6) are installed without prior approval of the ARC; or
(7) substantially interfere with the use and enjoyment of land by causing

unreasonable discomfort or annoyance to persons of ordinary sensibilities.

If a Solar Energy Device is mounted on the roof of a Dwelling Unit, it must: (i) extend no higher or beyond the roofline; (ii) be located only on the back of the Dwelling Unit – being the side of the roof opposite the street (the ARC may grant a variance in accordance with this Declaration if an alternate location is substantially more efficient and/ or less visible); (iii) conform to the slope of the roof, and have all top edges parallel to the roofline; and (iv) not have a frame, a support bracket, or visible piping or wiring that is any color other than silver, bronze, or black tone, commonly available in the marketplace. If the Solar Energy Device is located in a fenced rear yard or patio, it may not be taller than the fence line. Any solar shingles must be designed primarily to (i) be wind and hail resistant; (ii) provide heating/ cooling efficiencies greater than those provided by customary composite shingles; or provide solar generation capabilities. In addition, solar shingles, when installed, must (i) resemble the shingles used or otherwise authorized for use on Lots in the Property; (ii) be as durable and of equal or superior quality to the shingles used or otherwise authorized for use on Lots in the Property; and (iii) match the aesthetics of the Dwelling Units surrounding the Owner's Dwelling Unit.

(l) **Rain Barrel or Rainwater Harvesting Systems.** Rain barrel or rainwater harvesting systems shall be located only in the rear yard of the Lot and shall be screened from view of all streets and other Lots, as approved by the ARC. Exceptions may be approved by the ARC only if the rain barrel or rainwater harvesting system is compatible in color, style, materials, and screening with the architecture of the Dwelling Unit and only if the rain barrel or rainwater harvesting system is not visible from the street or other Lots.

(m) **Residential Leases.**

(1) **Definitions.**

(a) For the purposes of this subsection, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a residence by any person other than the Owner, for which the Owner receives any consideration or benefit including, without limitation, a fee, service, or gratuity. "Rent," "Rentals," or "Renting" shall have the same meaning.

(b) "Family" shall be defined as meaning one or more persons, each related to the other by blood, marriage or adoption, or a group of not more than three persons not all so related, maintaining a common household.

(2) **Approved Leases.** If the Lease or Leasing strictly complies with the following terms and conditions, the lease shall be deemed approved:

(a) **Written Lease.** All Leases for any Property must be in writing and shall provide that: (i) such Lease is specifically subject to the provisions of this Declaration; (ii) any failure of the Owner or tenant to

comply with the terms of the Declaration shall be deemed to be a default under such lease; and (iii) the Owner acknowledges giving to the tenant copies of the Declaration as a part of the Lease.

(b) **Whole Dwelling Unit**. Any Dwelling Unit that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a Dwelling Unit may not be separately leased.

(c) **One Family**. It is expressly forbidden to Rent or Lease and occupy an Owner's Lot or Dwelling Unit to more than one Family and at least one tenant of the Single Family must be over the age of 25 and must occupy the Property.

(d) **Lease Term**. The Lease shall provide for a minimum initial term of at least twelve (12) months. The Dwelling Unit may not be subleased and the Lease may not be assigned during the initial term.

(e) **Termination**. In the event of termination of the Lease after the tenant has taken occupancy and prior to the end of the minimum initial term, the Owner may not enter into a new Lease with a term commencing prior to the date on which the previous Lease would have expired unless the Owner acted in good faith with no intent to circumvent the requirements of this subsection and could not have reasonably anticipated the early termination of the previous Lease at the time the previous Lease was signed.

(3) **Leases Prohibited**. Leasing of a Dwelling Unit other than in strict conformity with Article XIII, Section 1(m)(2) hereof, including short-term or vacation rentals, is strictly prohibited.

(4) **Advertisements**. No home or lot shall be advertised for lease for a period less than six (6) months. Further, no home or lot shall be advertised or listed on any short term or vacation rental website, media platform or database (e.g. Airbnb, VRBO, Flipkey, HomeAway, Hometogo, etc.).

(n) **Religious Items**. Except as otherwise provided by this section, the association will not enforce or adopt a provision herein, that prohibits a property owner or resident from displaying or affixing on the owner's or resident's property or dwelling one or more religious items the display of which is motivated by the owner's or resident's sincere religious belief, according to the Texas Property Code Sec. 202.018. The Association will enforce a prohibition, to the extent allowed by the constitution of this state and the United States, a prohibition of the display or affixing of a religious item on the owner's or resident's property or dwelling that:

(1) threatens the public health or safety;
(2) violates a law other than a law prohibiting the display of religious speech;
(3) contains language, graphics, or any display that is patently offensive to a passerby for reasons other than its religious content;

(4) is installed on property:

(A) owned or maintained by the property owners' association; or

(B) owned in common by members of the property owners' association;

(5) violates any applicable building line, right-of-way, setback, or easement; or

(6) is attached to a traffic control device, street lamp, fire hydrant, or utility sign, pole, or fixture.

Section 2. Minimum Floor Space. Each one (1) story dwelling and multi-story dwelling constructed on any Lot shall contain such minimum square feet of air-conditioned floor area (exclusive of all porches, garages or breezeways attached to the main dwelling) as may be specified by the Design Guidelines and/or the ARC for the first and/or additional stories and/or the total; however, in no event shall any Dwelling Unit have less than the 3,000 sq. Foot minimum of air conditioned floor area.

Section 3. Garages; Parking.

(a) Each single-family residential dwelling erected on any Lot shall have at least one main garage structure attached to the Dwelling Unit with space for a minimum of two (2) conventional automobiles, unless otherwise specifically approved by the ARC. As a means of creating uniformity and order among the Lots within THE GATES OF GLORY, the garage for each Lot shall not be front facing. Each Owner and Resident shall use their respective best efforts to park and store their automobiles within the garage. All garage doors shall be closed at all times when not in use. Carports are not encouraged but may be permitted under limited rigid circumstances if, as and when, in the absolute opinion of the ARC the exterior surface and appearance will substantially compare with a garage and if absolutely no storage of items will be visible from any street or neighboring Lot. Any and all proposed garage or carport plans and specifications must be submitted to the ARC for review and approval.

(b) Access to each Lot is permissible only along the street abutting the front lot line of each Lot, however the ARC may adjust this requirement for corner Lots or irregularly shaped Lots. No vehicular traffic or vehicular access is allowed via the rear line of each Lot. Subject to ARC approval, a paved circle driveway is permissible, however, each Lot is limited to no more than Four (4) curb cuts.

(c) The main two (2) car garage will be situated on the Lot in such a manner that the garage door or entry will face away from the street upon which the Lot is situated (such that the garages will be rear-entry or side-entry). Subject to a determination by the ARC, a street facing garage may be permissible if situated an additional forty feet (40') behind the front build-to Line for a Lot, as set forth on Exhibit "C" attached to this Declaration. The ARC may adjust this requirement as necessary to accommodate the particular dimensions of each Lot, especially on corner Lots.

(d) Each Owner and Resident shall use their respective best efforts to refrain from:

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

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

(3) Long-term parking in front of the Dwelling Unit is prohibited.

(e) Under no circumstances or conditions shall any automobile, boat or other vehicle be parked on a non-paved portion of any Lot. Any trailers or trade vehicles which cannot be stored within a garage, must, at a minimum, be parked behind the front line of any improvement, and the ARC reserves the right to make additional requirements in order to limit the exposure of said trade equipment. Any Structure designed to house, store or conceal a trailer, motor home, boat or recreational vehicle, where herein permitted, shall be subject to approval by the ARC, and such approval will be limited to such Structures which use designs and materials which are compatible with the Dwelling Unit, all as more fully set forth in Article VIII, Section 6(o)(vii).

Section 4. Setback/Build-to Requirements. Each Dwelling Unit will face the street which abuts the front of the Lot upon which the Dwelling Unit is to be situated; however, for all corner Lots or irregularly shaped Lots, the ARC will determine the location of the Dwelling Unit in accordance with the Plans submitted by each Owner. The build-to line shall be a line generally parallel to the front Lot line and indicates the location from which the vertical plane of the front of the Dwelling Unit must be erected. Additionally, no portion of the Dwelling Unit shall be constructed between the front Lot line and the build-to line. No Structure shall be placed within the setback lines requirements described on Exhibit "C" to this Declaration. If an Owner owns two or more adjacent Lots and desires to construct one Dwelling Unit on such Lots, construction of which Dwelling Unit would violate the side setback lines provided herein, the ARC may waive, in writing, said side setback lines as to such Dwelling Unit, and such Lots shall be considered to be one Lot solely for purposes of determining the setback lines.

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

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

Section 5. Fences. Any fence to be constructed on a Lot must conform to the

following requirements:

(a) Except as hereinafter provided for required fences, a perimeter shall be constructed on each Lot within Thirty days (30) days after final completion of construction of the Dwelling Unit. Said perimeter fence is to be constructed (i) across the rear property line of each Lot and (ii) along the side of each Lot from the rear fence corner to a point which is not behind the rear building line of the Dwelling Unit on the Lot nor in front of the front building line of such Dwelling Unit. All perimeter fences shall be constructed of solid masonry (stone or stucco), Seven (7) feet in height and shall be approved by the ARC as to materials, appearance and design prior to being erected. All perimeter fences located on a Lot in a manner in which the fence abuts or faces a street and on which a fence is required to be constructed (as shown by the recorded plat of the Property) shall be built in manner in which the finished or smooth side of the fences faces outwards towards the street, and shall be solid masonry (stone or stucco), shall be of such design, materials and construction as conform to the design of the Dwelling Unit, and shall be approved by the ARC. No fence, wall or hedge (which serves as a barrier) shall be erected, placed or altered on any Lot without the approval of the ARC. All perimeter fences shall be located wholly within the boundaries of a Lot and shall not encroach across such boundaries; provided, however, that the Owners of adjoining side Lots may agree to construct a fence along the common boundary of such Lots which extend onto each Lot. Any such agreement must be in writing and must be recorded in the Lubbock County Clerk's office in Lubbock, Texas. To the extent any such common perimeter fence is constructed, the Owners of the Lots on which it is located shall be jointly and severally responsible for the maintenance and repair thereof.

(b) Side and Rear fencing can also be constructed using painted cinderblock with wood panels above a stone knee wall with stone columns, matching the design of the community fencing, subject to ARC approval.

(c) Fences and walls shall not be permitted within the front yard directly in front of any Dwelling Unit; provided, however, decorative fences and walls shall be allowed which do not exceed thirty (30) inches in height and which are approved by the ARC, all fencing should be located behind the leading face of the residence.

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

(e) On those Lots described above with perimeter fences abutting or facing a street (and on which fences are required), the ARC must approve all fencing to be constructed along the streets. In addition to meeting the requirements described in this Section, the ARC may require additional treatments for transitions between fences on different Lots and at changes in grade or elevation; and, in additional

requirements may be imposed to create a uniform appearance from the street in regard to height, color, and materials utilized in the construction of the fences. The ARC, or the Declarant during the Development Period, shall be entitled to amend this Declaration, without the approval of any other person or entity, in regard to any additional requirements applicable to fences adjacent to streets.

Exterior Gates. Each residence with a street-facing fence shall have one (1) gate opening into a side yard. Gates material shall wood or iron with locking hardware. Cedar designed gates may be allowed with ARC approval. Gates shall have a minimum clear opening width of 36 inches; 6-foot width maximum for double gates. Gates shall be no higher than fencing.

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

(a) **Exterior Walls**: All exterior walls shall have a plate height of no less than Nine (9) feet, unless approved by the ARC. All of the exposed exterior wall areas, exclusive of doors, windows and covered porch area, shall be at least 80 percent stucco, stone, or other masonry materials approved by the ARC, which does not include Masonite or Hardie board. Approved masonry materials may include conventional stone, or stucco. The use of brick is subject to ARC review and will only be used as an accent in construction of exterior walls. The use of other materials in amounts violative of the 80 percent restriction above may only be accomplished with a waiver by the ARC on a case-by-case basis. The ARC is specifically authorized to require a continuous uniform surface with respect to all Structures which directly face the street or county road or another Lot.

(b) **Roofing Design, Materials and Pitch**: Flat roofs, mansard roofs and other "exotic" roof forms shall not be permitted. Standing seem metal roof may be allowed as accents, subject to ARC approval. All roofing materials utilized on any Structure on a Lot must be approved by the ARC. The ARC will not approve of a roof of crushed stone, marble or gravel, it being intended that each roof shall be constructed only of standing seam metal, composition or wood shingles rated for a minimum of 30 years (provided that any composition shingles must be at least 300-pound shingles), tile, slate, or other materials approved by the ARC taking into account harmony, conformity, color, appearance, quality and similar considerations. In no event shall a roof constructed of corrugated steel be permitted. Functional roof-affixed appurtenances, such as exposed flashing, plumbing stacks, roof vents, and downspouts, must be painted to match, blend with or complement the color of adjacent materials. The same roof pitch must be used for the Dwelling Unit and attached garage portions of the house. The minimum roof pitch must be Eight (8) feet of rise for each Twelve (12) feet of run; however, other pitches or ratios may be approved by the ARC for an entire roof, or for portions of a roof, on a case-by-case basis.

(c) **Front Door**: The main door slab to the Dwelling Unit shall be a minimum height of Eight (8) feet. Storm doors or similar outer doors are not permitted on the main door of a Dwelling Unit without the prior approval of the ARC.

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

(e) **Garages**: In addition to meeting the requirements stated in Article VIII, Section 3, all garages shall be given the same architectural treatment as the Dwelling Unit located on such Lot. No garage shall be enclosed for living area or utilized for any other purpose than storage of automobiles and related normal uses.

(f) **Exterior Lighting**: No exterior light shall be installed or situated such that neighboring Lots are unreasonably lighted by the same. All freestanding exterior lights located between the property lines and the Dwelling Unit shall be architecturally compatible with the Dwelling Unit, and shall be approved by the ARC. Front porch light must be gas-light featured design or electric gas-light appearance.

(g) **Driveways**: Driveways shall be a minimum of 12-feet wide. The driveway shall be constructed of concrete, or other material as may be approved by the ARC. Any concrete or other material utilized must have a minimum strength of 3,000 psi with steel reinforcing. No driveway gates will be allowed without the prior approval of the ARC.

(h) **Window Units**: No Structure shall utilize window mounted or wall-type air conditioners or heaters. Mini splits are allowed on Accessory Buildings only placed in a position not viewable from the street.

(i) **Skylights; Solar Installations**: Skylights shall be permitted on the roof of a Dwelling Unit, subject to approval by the ARC. No other equipment, including without limitation, heating or air conditioning units, solar panels, solar collection units, satellite dishes, and antennas, shall be located on the roof of any Dwelling Unit or Structure, unless the same are concealed from view from adjoining Lots and public streets, and do not materially alter the roof line of the Dwelling Unit or Structure; and further, plans and designs for such equipment to be located on a roof must be submitted with the Plans required pursuant to Article VII hereof, and the design, plans, and installation of skylights, and all equipment located on the roof, are subject to the approval of the ARC.

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

(k) **Tennis Courts:** No tennis court shall be constructed on any Lot unless and until the design, plans and specifications for the tennis court have been approved by the ARC. Approval will be limited to those tennis courts which are located only in the rear yard of

the Lot, and which: (i) utilize only "low profile" lighting; (ii) have no chain-link fencing or chain-link backstops; (iii) are fenced with material compatible with those materials utilized on the exterior of the Dwelling unit; and (iv) are concealed to the greatest extent possible from view from any street, neighboring Lot, or other public area.

(l) **Septic Systems:** The Lots shall be serviced by individual septic systems installed and maintained by each Owner. All septic tanks, leach lines and drain fields shall be located in the Front or Rear Yard, and will be serviced and/or maintained from the street, , and its location is subject to ARC approval. Any septic system equipment which may be visible from the street or an adjoining Lot shall be properly screened from view. All septic systems shall be properly permitted and comply in all respects with all applicable state, county and/or governmental laws, rules and regulations. No cesspool, outhouse or outside toilet shall be permitted on any Lot. Toilets located in any Structure, shall be connected to an approved septic disposal system.

(m) **Water Wells:** Water wells on a Lot must comply in all respects with all applicable state, county and/or governmental laws, rules and regulations. Water wells can be located on the Lot as long as it is the state required distance from the Septic System and equipment shall be screened from street view. Only submersible pumps having not more than one and one-half (1 ½) horsepower in capacity shall be used in any water wells located on the Lot. Under no circumstances shall any above-ground irrigation motors or similar devises (whether gasoline or electric) be located on a Lot and/or used in connection with providing water to that Lot for irrigation use and watering of landscaping. No individual water well shall be drilled within the side yard setback for each Lot. All water wells shall be cased from the surface to the water formation. Owners and Residents may utilize water from water well for irrigation purposes only, and all water produced from a well shall be utilized solely on the Lot from which the water is removed. No Owner or Resident may remove or sell water from their Lot to the public, or to any person or entity.

(n) **Mailboxes:** Each Lot shall receive mail service from the United State Postal Service using "cluster boxes," located in an area designated by Developer and acceptable to the postmaster. No individual pedestal mailboxes shall be permitted for any Lot. The Association shall be responsible for the maintenance, and if necessary, replacement of the cluster boxes, and reserves the right, but not the obligation, to assess the users of that particular cluster box or individual Owners with the costs of any repair or replacement, as necessary.

(o) **Approved Structures Other than Dwelling Unit ("Accessory Buildings"):** No Structure or Improvement shall be permitted on any Lot other than the Dwelling Unit and such permanent Structures and Improvements as are approved in writing by the ARC, such as swimming pool equipment houses, workshops, cabanas, greenhouses, children's playhouses, barns, shops, detached garages and storage buildings (such approved Structures and Improvements other than the Dwelling Unit being hereafter referred to as "Accessory Buildings"). In no event will the ARC approve an Accessory Building that is not of new construction and material. All Accessory Buildings will be subject to the conditions stated in this paragraph. If an Accessory Building is constructed in violation

of this Section, the ARC reserves the right to determine that the Accessory Building is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the Owner to screen, modify, or remove it. The following conditions apply to permitted Accessory Buildings:

(1) All Accessory Buildings shall be constructed with exteriors of the same materials as are used on the main Dwelling Unit on each Lot (special purpose structures such as green houses may vary from this requirement, subject to an ARC variance, as provided in this Declaration). Accessory Buildings will be visually harmonious with the Dwelling Unit, such as matching on all sides, construction details and roof pitch.

(2) Accessory Buildings must be constructed on the Lot, and may not be fabricated elsewhere, even though assembled or finished on the Lot.

(3) Accessory Buildings will have a maximum height of sixteen feet (16') at the highest ridge or point, unless the ARC has issued a variance as provided in this Declaration;

(4) To the extent required by any governmental authority exercising permitting authority, Accessory Buildings must have a building permit and appropriate inspections by said governmental authority, and the location must not violate the setback requirements as shown on Exhibit "C," or the restrictions on location as determined by the ARC;

(5) Accessory Building may be used as a dwelling, but may not be leased to others for any purpose.

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

(7) As an exception to the requirements stated above, one "Accessory Garage" may be allowed on the side of each Lot designated for garage and Accessory Garage placement on Exhibit "C", subject to the review and approval of the ARC. An "Accessory Garage" is a steel barn, shop or large storage building accessible by a paved driveway connecting to and visible from the street which, among other things, may house a travel trailer, camper trailer; pop-up or tent camper, house trailer, utility or cargo or stock trailer, motor home, recreational vehicle ("RV"), house car, boat, personal water craft, race car or car parts, snowmobile, dune buggy, all-terrain vehicle ("ATV"), or golf cart. Any Accessory Garage must have a slab on grade concrete foundation throughout the entirety of the improvement. All street-facing sides or other areas of the Accessory Garage visible from the street must be constructed of stucco, stone or other acceptable exterior building material utilized on the Dwelling Unit. While the street facing portion of the Accessory Garage containing a garage door or other access from

the paved driveway may be visible from the street, all other sides of the Accessory Garage shall be located in the rear or side yard behind a fence or other screening acceptable to the ARC. Any Accessory Garage must comply with the setback requirements shown on Exhibit "C."

(8) As an exception to the requirements stated above, one "Accessory Shed" may be allowed on each Lot. An "Accessory Shed" is a pre-fabricated structure that is typically portable, constructed primarily of metal or plastic, and moved-to or assembled on a Lot. One Accessory Shed will be permitted on a Lot, provided that it: (a) is located inside a fenced portion of the Lot; (b) has a floor area of no more than 100 square feet, (c) is no taller than 8 feet at any point, and (d) complies with the setback requirements shown on Exhibit "C." Any other dimension and location must be approved in writing by the ARC. If an Accessory Shed is installed in violation of this Section, the ARC reserves the right to determine that the Accessory Shed is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the Owner to screen it or to remove it, at the Owner's sole expense.

(p) **Sports Equipment; Basketball Goals.** Permanent basketball goals must be approved by the ARC. Basketball goals will be approved only when (i) the pole is permanently mounted to the side of the driveway in a location behind the build-to line of the Lot; and (ii) the pole is situated in a manner that is concealed, to the greatest extent possible, from other Lots. The basketball pole, backboard and net must be maintained in good condition at all times. Portable sports equipment, including portable basketball goals, may be moved alongside the driveways in the front and side yards only when in use, and must otherwise be stored in a manner as to not be visible from the street. Under no circumstances shall portable sports equipment remain in a front or side yard overnight. Any other proposed permanent sports equipment must be approved by the ARC prior to its installation, and the ARC reserves the right to condition its approval based upon the proposed location and materials of the sports equipment.

Section 7. Landscaping of Lots. Construction of each and every Dwelling Unit within the Properties shall include the installation and placement of appropriate landscaping as described in greater detail in the landscape design guidelines. All landscaping shall be completed by no later than six (6) months after final completion of construction of the Dwelling Unit, weather permitting. Landscaping must (i) permit reasonable access to public and private utility lines and easements for installation and repair; (ii) provide an aesthetically pleasing variety of trees, shrubs, groundcover and plants; and (iii) provide for landscaping of all portions of the Lot not covered by Improvements, including any portion of a Lot situated between the rear fence line and rear Lot line. Landscaping shall include, groundcover, trees, shrubs, vegetation, other plant life and swimming pools. Trees shall not be removed without prior ARC approval. Landscaping shall not include gravel, concrete, timber or rocks except where used as borders, walkways, accent pieces, or as otherwise approved by the ARC. By owning or occupying a Dwelling Unit in the Property, each Owner and Resident acknowledges that the appearance of yards in the neighborhood may not be uniform, and that Lots that adjoin or face one another may look different.

(a) **Irrigation:** Except for typical garden hoses having a diameter of not more than one-inch, and common portable yard sprinklers that may be attached to such hoses, no pipes, hoses, sprinklers, or other parts of any irrigation system for watering of landscaping on a Lot shall be located above the ground. An under-ground irrigation system adequate to suitably water all landscaping located in the front yard of each Lot shall be installed at the time the Dwelling Unit is constructed. Owners are encouraged to use adaptive or native plant materials that are environmentally durable, consume less water and need fewer chemical treatments, and which are also appropriate for use in a residential neighborhood. Accordingly, the specifications stated in this Section 7 may be modified by the ARC for yards that are designed for xeriscaping.

(b) **Trees:** All Lots shall have a minimum landscaping within the front yard on each Lot of at least four (4) trees planted and maintained alive, including at least two (2) canopy-type trees. Each tree, at the time it is planted, which will be within a reasonable time not to exceed six (6) months from the date of original occupancy of the Dwelling Unit, shall be at least four (4) inches in caliper as measured six (6) inches from the ground level of each tree. Unless otherwise approved by the ARC, all trees within the front facing yard shall be of the following varieties: Cedar Elm, Red Oak, Live Oak, Evergreen, Pistache, Lacebark Elm,, Chinquapin Oak, Dessert Willow, Eastern Red Cedar, Afghan Pine. Multi-trunk trees must have a minimum combined 7 inch diameter trunk. Damaged or dead trees and plant material must be replaced within 60 days, weather permitting, with trees and plant materials of a similar type.

(c) **Alternative Landscaping:** An Owner who desires to xeriscape, utilize artificial turf or ground coverings, or utilize any other form of landscaping other than those contemplated in this Section in any portion of the unfenced portions of the Owner's Lot must submit a detailed landscape plan to the ARC for prior approval. Xeriscaping may not be construed as permission to let yards "go to weeds" under the pretext of "adapted native landscaping," nor as justification for turning a lawn into a cactus or rock garden – without the prior written approval of the ARC.

(d) **Prohibitions:** "Yard art" if visible from a street or if located in a front yard or side yard that is not fenced from view, is prohibited if not first approved by the ARC. "Yard art" shall include any ornamentation, decoration, sculpture, fountain, structure, artificial tree, bush or shrub that is placed in a yard for decorative purposes.

Section 8. Screening. All trash containers, air conditioning compressors, generators, swimming pool filters, heaters and pumps and any other similar exposed mechanical devises on any Lot must be screened so that the same are not visible from other Lots or any public street or county road on which the Lot borders. All Screens must be solid and constructed in the same architectural style and of the same material as the Dwelling Unit on a Lot. As used in this Section, "screened" does not pertain to the view from overhead or from a second-floor window.

Section 9. Utilities. All public or private utility and service connections including, but not limited to gas, water, electricity, telephone, cable television or security system, or any wires, cables, conduits or pipes used in connection therewith, located upon any Lot shall be underground; except that fire plugs, gas meters, supply pressure regulators, electric service

pedestals, pad mount transformers, and street lights may be located above ground only when necessary to furnish the service required by the use of such utilities, all visible from the street must be screened with shrubs and bushes. In no event shall any poles be permitted, other than for street lights or as otherwise permitted herein, and no wires or transmission lines to or from such street lights shall exist above the ground. In no event shall a fire hydrant be screened.

Section 10. General.

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

(b) **Stoppage of Construction**: Once commenced, construction shall be diligently pursued to the end that it will be completed within 24 months from the date of the approval of building permit by the City of Lubbock, Texas. For purposes of this instrument, construction shall be deemed to be commence on the date on which excavation or other work for the construction of the footings and/or foundation of any Improvements or Structures shall begin.

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

Section 11. Easements; Utilities. Easements for the installation and maintenance of utilities and drainage facilities are reserved in this Declaration and as shown on the recorded Property plat. Utility service may be installed along or near the front Lot lines and each Lot Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the ARC (e.g. fencing, flatwork, landscaping, etc.), no Owner shall erect, construct or permit any obstructions or permanent Improvements or Structures of any type or kind to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Electrical (and possibly other utility) easements are likely to be located at or near or along the rear Lot line(s), and each Lot Owner assumes full, complete and exclusive liability and responsibility for all cost and expense related to damage, repair, relocation and restoration of such improvements or fence. Except as to special street lighting or other aerial facilities which may be required by the City of Lubbock or County of Lubbock, Texas or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development-plan, no aerial utility facilities of any-type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Property whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Property, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be

buried underground unless otherwise required by a public utility. All utility meters, equipment, air conditioning compressors, water wells and similar items must be visually screened and located in areas designated by the Architectural Review Committee. The Architectural Review Committee shall have the right and privilege to designate the underground location of any CATV-related cable.

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

Section 12. Duty of Maintenance. Each Owner of any Lot shall have the responsibility, at his or her sole cost and expense, to keep such Lot, including any Improvements thereon, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include, but is not limited to, the following:

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

(b) Regular mowing of grasses;

(c) Tree and shrub pruning;

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

(e) Watering;

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

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

(h) Repainting of Structures and Improvements and Restaining of fence;

(i) Repair of exterior damages to Improvements.

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

The Association and its agents shall have the right (after 5 days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any person or entity) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The

cost of such remedy or abatement will be paid to the Association upon demand as an individual Assessment against the Owner, and if not paid within thirty (30) days thereof, will become a lien upon the Lot affected. The Association, or its agent, shall further have the right (upon like notice and conditions), to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance, and the costs incurred by the Association shall be immediately reimbursed to the Association by the Owner upon demand. The lien provided under this Section will constitute a lien against the violating Owner's Lot with the same force and effect as the Payment and Performance Lien for Assessments as set forth in this Declaration.

ARTICLE IX.
EASEMENTS; UTILITY SERVICES

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

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

ARTICLE X
DECLARANT RIGHTS AND RESERVATIONS

Section 1. General Reservation of Rights During Development Period and Declarant Control Period. Declarant hereby reserves for itself the Development Period and Declarant Control 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.

Section 2. General Provisions During the Development Period and the 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 Mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with ninety (90) days notice. 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, other Owner, or the Association 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, Mortgagees, Homebuilders, and the Association. 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 reserves the following powers, rights and duties during the Declarant Control Period:

(a) **Incorporation of 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, the Declarant may delay the initiation of annual meetings, the keeping of minutes of meetings and other corporation-type requirements of the By-laws until such time is Declarant in its sole discretion deems appropriate.

(c) **Officers and Directors**. During the Declarant Control Period, the Board may consist of Three (3) persons. During the Declarant Control Period, Declarant may unilaterally appoint, remove, and replace any officer or director of the Association, none of whom need be Members or Owners. Declarant's unilateral right to remove and replace officers and directors applies to officers and directors who were elected or designated by Owners or by Lot Owners, as well as to 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 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.

(f) **Transition Meeting**. Within one hundred eighty (180) days after the end of the Declarant Control Period or sooner at the 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 of 10% of the Lots, 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.

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, the 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 or Homebuilders to facilitate the marketing of new homes in 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 the 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 the 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 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 or by Homebuilders 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 anytime during the Development Period:

(a) **Platting.** If the Property includes unplatted parcels, they may be platted in whole or in part and in phases. The right to plat belongs to the owner of the unplatted parcel, provided, however, that a plat creates common areas or obligations for the Association must also be approved by Declarant. The Declarant's right to have the Property platted, or to approve such plats, is for a term of years and does not require that Declarant own land described on Exhibit "A" at the time or times Declarant exercises its rights of platting.

(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, under Article VII of this Declaration, reserved the absolute right to serve as the sole member of the Architectural Review Committee (ARC). 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 an Architectural Control Committee appointed by Declarant or the Board, or a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. 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:

(1) To add real property to the Property;
(2) To withdraw real property from the Property;
(3) To create lots, easements, and common areas within the Property;
(4) To subdivide, combine, or reconfigure lots;
(5) To convert lots into common areas;
(6) To allocate the use of certain common areas to specified lots as limited common areas;
(7) To modify - even to increase - Declarant's rights and reservations;
(8) 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;

(9) To merge the Association with another property owners association;

(10) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Governing Documents;

(11) To qualify the Property or the Association for mortgage underwriting, tax exemption, insurance coverage, and any public or quasi-public program or benefit;

(12) To enable a reputable company to issue title insurance coverage on the lots;

(13) To change the name or entity of Declarant;

(14) To change the name of the addition in which the Property is located;

(15) To change the name of the Association; or

(16) 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 or unplatted tract of land owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the common area and Lots and unplatted tracts of land owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

(f) **Easement to Inspect & Right to Correct**. During the Development Period, Declarant reserves for itself and Homebuilders, and their respective architects, engineers, other design professionals, materials manufacturers, and general contractors, the right, but not the duty, 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 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 the Additional Land, 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, if any, that restricts vehicular access to the Property or to the Additional Land in connection with the active marketing of Lots and homes by Declarant or Builders, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

(i) **Utility Easements**. 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, and as provided in Article IX of this Declaration, 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. To exercise this right as to land that is not a common area of the Property or not owned by Declarant, Declarant must have the prior written consent of the Owner of the Lot.

(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. An Owner who acquires a Lot while the Property is being developed is hereby given notice that a Common Properties improvement or feature that is not installed at the time an Owner contracts is subject to change. Representations given to a prospective purchaser about a proposed Common Property or community feature are based on a development plan that makes assumptions that are subject to change.

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 home acquisition and ownership, and marketability of homes 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 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 the Declarant or by the affiliates, assignees or successors of the Declarant within a one-mile radius of the Property.

Section 2. Duration. This Declaration and the covenants and restrictions set out herein shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by every Owner, including the Declarant, and their respective legal representatives, heirs, successors and assigns, for an original forty (40) year term expiring on the fortieth (40th) anniversary of the date of recordation of this Declaration, after which time these Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of at least fifty-one percent (51%) of all Lots within this Property and all Lots of any additions added or annexed to the scheme of this Declaration as provided in Article II of this Declaration, which instrument is recorded in the Official Public Records of Lubbock County, Texas, and which contains and sets forth an agreement to abolish these Covenants; provided, however, no such agreement [where approved by less than seventy-five percent (75%) of the Owners of all Lots within this Property and all Lots of any additions

added or annexed to the scheme of this Declaration] to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

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, 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. An amendment that may be made by Declarant acting in accordance with Article X is not required to name the Association or to be signed by an officer of the Association. 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. This Article XI, Section 3, may not be amended without Declarant's written and acknowledged consent.

(b) **Amendment by Members.** Except for amendments to this Declaration that can only be made by Declarant alone, 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.

(c) **Amendment by Board.** Certain provisions of this Declaration may be amended by the Board (or during the Development Period, by the 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 the 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. 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 the Association, 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 on 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 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. 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 owns and intends in the future to develop certain 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.

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

Section 11. Disputes. Matters pertaining to Article VII architectural matters and issues concerning substantial completion shall be determined by the ARC (or by Declarant when acting for the ARC). These respective 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 ARC, the members of the ARC, the Association, the Board of Directors of the Association, or the Declarant, or any combination of said parties, including any claim based on or arising from an alleged tort or from Declarant's sale or development of (or failure to develop) the Properties, shall be settled informally, and said parties shall make every effort to meet and settle their dispute in good faith informally. If said parties cannot agree on a written settlement to the dispute within fourteen days after it arises, then the matter in controversy shall be submitted to non-binding mediation (except that disputes between Owners that are not regulated by the Declaration shall not be subject to the dispute resolution process), and the dispute resolution process shall be conducted as follows:

(1) **Outside Mediator**. In a dispute between any of the above entities or individuals, the parties must voluntarily submit to the following mediation procedures before commencing any judicial or administrative proceeding. Each party will represent himself/herself individually or through an agent or representative, or may be represented by counsel. The dispute will be brought

before a mutually selected mediator. Such mediator will be an attorney-mediator skilled in community association law. In order to be eligible to mediate a dispute under this provision, a Mediator may not reside in the Property, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. Costs for such mediator shall be shared equally by the parties. If the parties cannot mutually agree upon the selection of a mediator after reasonable efforts (not more than 30 days), each party shall select their own mediator and a third will be appointed by the two selected mediators. If this selection method must be used, each party will pay the costs of their selected mediator and will share equally the costs of the third appointed mediator.

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

(3) **Assessment Collection**. The provisions of this Declaration dealing with alternate 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 alternate dispute resolution (mediation) shall not apply in the circumstances described in Article XI, Section 12(b)(2), below.

(b) **Arbitration**. If a matter in controversy cannot be resolved by mediation as set forth in Article XI, Section 12.(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 the 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.

(1) **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 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 60 days.

(4) **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 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 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 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 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, and 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 GATES OF GLORY, the Property, the Common Properties 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 GATES OF GLORY, the Property, the Common Properties 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, the Common Properties 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, the Common Properties and any Lot; and

(iv) the compliance of THE GATES OF GLORY, the Property, the Common Properties and any Lot with any laws, rules, ordinances or regulations of any governmental or quasi-governmental body (including without limitation, zoning, environmental and land use laws and regulations).

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

By acceptance of a Deed to any Lot, and to the maximum extent permitted by Applicable Law, Owner and any Homebuilder hereby waives, releases, acquits and forever discharges Declarant and any successor or assign of Declarant, and the Declarant's general partners, limited partners, members, managers, officers, agents, employees, representatives, attorneys and any other person or entity acting on behalf of Declarant (sometimes referred to in this Declaration as the "Released Parties"), of and from, any claims, actions, causes of action, demands, rights, damages, liabilities, costs and expenses whatsoever (including court costs and attorney's fees), direct or indirect, known or unknown, foreseen or unforeseen, which Owner and any Homebuilder now has or which may arise in the future, on account of or in any way growing out of or in connection with the design or physical condition of the Property, the Common Properties, or any Lot, or any law, rule, order, statute, code, ordinance, or regulation applicable thereto.

Each Owner, Homebuilder, Resident, and Member waives and releases the Released Parties from any liability to said Owner, Homebuilder, Resident and Member and to said Owner's, Homebuilder's, Resident's and Member's respective heirs, successors and assigns, for the design and/or condition of the Property, the Common Properties, 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, Common Properties, 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, RESIDENT AND MEMBER EXPRESSLY WAIVES THE RIGHT TO CLAIM AGAINST THE RELEASED PARTIES BY

REASON OF, AND RELEASES THE RELEASED PARTIES FROM ANY LIABILITY WITH RESPECT TO, ANY INJURY TO PERSON OR DAMAGE TO OR LOSS OF PROPERTY (INCLUDING CONSEQUENTIAL DAMAGES) RESULTING FROM ANY CAUSE WHATSOEVER (EXPRESSLY INCLUDING THE RELEASED PARTIES OWN NEGLIGENCE).

(c) **Indemnity.** Each Owner, Homebuilder, Resident and Member agrees to indemnify and hold harmless the Released Parties from all claims, suits, actions, liabilities and proceedings whatsoever and of every kind, known or unknown, fixed or contingent (the "Claims") which may be brought or asserted against the Released Parties, on account of or growing out of any and all injuries or damages, including death, to persons or property relating to Owner's, Homebuilder's, Resident's or Member's use, occupancy, ownership, construction, operations, maintenance, repair or condition of THE GATES OF GLORY, the Property, the Common Properties, any Lot, or any Improvements located thereon, following the effective date of this Declaration, **even if such Claims arise from or are caused in whole or in part by the sole or concurrent negligence (whether active or passive, gross negligence or strict liability) of the Released Parties**, and all losses, liabilities, judgments, settlements, costs, penalties, damages and expenses relating thereto, including, but not limited to, attorney's fees and other costs of defending against, investigating and settling the Claims. The indemnity agreement provided herein includes without limitation *all* Claims, whether from:

(i) the design, maintenance, operation or supervision of THE GATES OF GLORY, the Property, the Common Properties, any Lot, or any Improvement located thereon;

(ii) the Owner's, Homebuilder's, Resident's or Member's activities on THE GATES OF GLORY, the Property, the Common Properties, any Lot, or any Improvement located thereon;

(iii) the existence, now or hereafter of hazardous materials or substances on the Property, Common Properties or any Lot; or

(iv) due to a violation, now or hereafter, of any environmental laws, rules, regulations or ordinances, or otherwise. Each Owner, Homebuilder, Resident and Member does assume on behalf of the Released Parties and will conduct with due diligence and in good faith the defense of all Claims against any of the Released Parties.

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.

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

DECLARANT:
WINDMILL MANAGEMENT, LLC, a Texas limited liability company

By: _____
Joshua Jowers, Manager

THE STATE OF TEXAS

COUNTY OF LUBBOCK

BEFORE ME, the undersigned, being a Notary Public in and for the State of Texas, on this day personally appeared **Joshua Jowers**, known to me, or proved 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 WINDMILL MANAGEMENT, LLC, a Texas limited liability company, and that he executed the instrument on behalf of the entity for the purposes and consideration expressed, and in the capacity hereinabove stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 17 day of July, 2025.

_____
Notary Public, State of Texas

GABRIELA JAZMINE HOLGUIN NOTARY PUBLIC STATE OF TEXAS ID 131702120 EXP. 08-29-2026

EXHIBIT "A"

PROPERTY SUBJECT TO DECLARATION THE GATES OF GLORY

LOTS ONE (1) through EIGHTEEN (18), and Tracts "A"-"D", THE GATES OF GLORY, being a Replat of Lots 1-17 and Tracts "A"-"F", The Gates, an Addition to City of Lubbock, Lubbock County, Texas, according to the Map, Plat and/ or Dedication Deed thereof recorded in the Official Public Records of Lubbock County, Texas.

EXHIBIT "B"

COMMON PROPERTIES

Tracts "A"-"D", THE GATES OF GLORY, being a Replat of Lots 1-17 and Tracts "A"-"F", The Gates, an Addition to City of Lubbock, Lubbock County, Texas, according to the Map, Plat and/ or Dedication Deed thereof recorded in the Official Public Records of Lubbock County, Texas.

Exhibit "C"

MINIMUM SETBACK/BUILD-TO
and SQUARE FOOTAGE REQUIREMENTS

- **SETBACKS**
  - Front of Lot – 40 feet, except Lots 4,5,7, 8 and 11 which have a 25 feet front setback
  - Rear of Lot- 15 feet
  - Side – 10 feet
  - Lots that back up 114th, Memphis, and 110th but have 15 feet rear setback with tree line between the building and the community wall, see recorded Plat.

- **EXCLUSIONS TO SETBACKS**, if any

  - Lots 4,5,7, 8 and 11 which have a 25 feet front setback

- **MINIMUM FLOOR SQUARE FOOTAGE**
  - First Floor Minimum 3,000 square feet