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**DECLARATION OF RESTRICTIVE  
COVENANTS—RESIDENTIAL SUBDIVISION**

STATE OF TEXAS

§

§

COUNTY OF LUBBOCK

§

This DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made by West End Townhomes, LLC, a Texas limited liability company ("Declarant").

**RECITALS**

Declarant is the sole owner of certain real property located in Lubbock County, Texas, described as and constituting any part of West End Townhomes Addition ("Subdivision"), one or more subdivisions recorded or to be recorded in Lubbock, Lubbock County, Texas.

Declarant imposes on the real property certain protective covenants, conditions, and restrictions, as described below, according to an established general plan for the improvement and development of the Subdivision.

All of the Property (defined below) will be held, sold, conveyed, and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which will run with the Property and will be binding on all parties having any right, title, or interest in or to the Property or any part of it, their heirs, successors, and assigns, and will inure to the benefit of each owner.

Each contract or deed that may later be executed with regard to the Property or any portion of it will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions, regardless of whether they are set forth or referred to in the contract or deed.

**ARTICLE 1 – DEFINITIONS**

Unless the context specifies or requires otherwise, the following terms when used in this Declaration have the following meanings:

**1.01. Architectural Committee.** "Architectural Committee" means the committee created according to these restrictions to review and approve or deny plans for the construction of Improvements on the Property.

**1.02. Architectural Committee Rules.** "Architectural Committee Rules" means the rules and regulations adopted by the Architectural Committee, as amended from time to time.

**1.03. Assessment.** "Assessment" or "Assessments" means assessment(s) levied by the Association under the terms and provisions of this Declaration.

**1.04. Association.** "Association" means and refers to West End Townhomes Owners' Association, Inc., a Texas nonprofit corporation.

**1.05. Association Rules.** "Association Rules" means the rules and regulations adopted by the Board, as amended from time to time.

**1.06. Board.** "Board" means the Board of Directors of the Association.

**1.07. Builder.** "Builder" means any professional home builder that purchases Lots within the Subdivision solely for the purpose of constructing residential homes on the Lots for sale to third-party home buyers.

**1.08. Bylaws.** "Bylaws" means the Bylaws of the Association, which may be adopted by the Board, as amended from time to time.

**1.09. Certificate of Formation.** "Certificate of Formation" means the Certificate of Formation of the Association that may be filed in the office of the Secretary of State of the State of Texas, if the Association is formed, and as amended from time to time.

**1.10. City.** "City" means Lubbock, Texas.

**1.11. Common Area and Facilities.** "Common Area and Facilities" means any Lots and other properties designated by Declarant and conveyed to the Association, if formed, along with any exclusive easements and other areas granted to Declarant or the Association and maintained for the common benefit of the Owners. Common Area and Facilities may be designated by Declarant and dedicated or otherwise conveyed to the Association, if formed, the Owners, or to any public agency, authority, or utility from time to time and at any time. If and at the time Declarant annexes additional

real property to the Property in accordance with Section 2.02, additional Common Area and Facilities may be designated.

**1.12. Declarant.** "Declarant" means by West End Townhomes, LLC, a Texas limited liability company, its duly authorized representatives or their successors or assigns. Any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant will not be sufficient to constitute an assignment of the rights of Declarant under this Declaration.

**1.13. Declaration.** "Declaration" means this instrument as amended from time to time.

**1.14. Improvement.** "Improvement" means every structure and all appurtenances to structures of every type and kind, including but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water-softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

**1.15. Living Unit.** "Living Unit" means and refers to a single-family residence and the attached garage serving it.

**1.16. Lot.** "Lot" or "Lots" means any parcel or parcels of land within the Property shown as a subdivided lot on any Plat of the Subdivision, together with all Improvements located on the parcel or parcels.

**1.17. Masonry.** "Masonry" means stucco, stone (natural, precast, or manufactured), and brick, but excluding fiber-cement siding, stone veneer, or other siding materials.

**1.18. Member.** "Member" or "Members" means any Person(s) holding membership rights in the Association.

**1.19. Mortgage.** "Mortgage" or "Mortgages" means any mortgage(s) or deed(s) of trust covering any portion of the Property given to secure the payment of a debt.

**1.20. Mortgagee.** "Mortgagee" or "Mortgagees" means the holder or holders of any Mortgage or Mortgages.

**1.21. Owner.** "Owner" or "Owners" means the Person(s), including Declarant, holding a fee-simple interest in any portion of the Property, but does not include the Mortgagee of a Mortgage.

**1.22. Person.** "Person" or "Persons" means any individual(s), entity, or entities having the legal right to hold title to real property.

**1.23. Plans and Specifications.** "Plans and Specifications" means any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.

**1.24. Plat.** "Plat" or "Plats" means the subdivision plat of Lots 1-48, West End Townhomes Addition, recorded in County Clerk's No. **2017043476**, of the Official Public Records of Lubbock County, Texas, as amended from time to time.

**1.25. Property.** "Property" means all of the real property now or later constituting any portion, phase, or section of the Subdivision.

**1.26. Restrictions.** "Restrictions" means this Declaration, as amended from time to time, together with the Architectural Committee Rules, the Association Rules, the Certificate of Formation, and Bylaws.

**1.27. Subdivision.** "Subdivision" means Lots 1-48 and Tract A, West End Townhomes Addition in Lubbock County, Texas, according to the Plat.

**1.28. Temporary Office.** "Temporary Office" means any temporary construction or marketing trailer, office, or building installed or constructed by Declarant or any Builder on any Lot owned by Declarant or the Builder, respectively, that is used for the storage of equipment or for office, administrative, sales, or marketing purposes during the construction and sale of Lots and Improvements within the Subdivision.

## **ARTICLE 2 – DEVELOPMENT OF THE PROPERTY**

**2.01. Development by Declarant.** Declarant may divide or subdivide the Property into several areas and develop some of the Property.

**2.02. Addition of Land.** Declarant may, at any time and from time to time, add land to the Property, and on such addition, this Declaration and the covenants, conditions, restrictions, and obligations set forth in it will apply to the added land, and the rights, privileges, duties, and liabilities of the Persons subject to this Declaration will be the same with respect to the added land as with respect to the lands originally covered by this Declaration. In order to add lands to the Property under this Declaration, Declarant will be required only to record in the Official Public Records of Lubbock County, Texas, a notice of addition of land containing the following provisions:

(a) A reference to this Declaration, which must include the book and page numbers, document numbers, or film codes of the Official Public Records of Lubbock County, Texas, in which this Declaration is recorded.

(b) A statement that the provisions of this Declaration will apply to the added land.

(c) A legal description of the added land.

### **ARTICLE 3 – GENERAL RESTRICTIONS**

All of the Property will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

**3.01. Subdividing.** No Lot will be further divided or subdivided, nor may any easements on or other interests relating to a Lot less than the whole be conveyed by the Owner of the Lot without the prior written approval of the Architectural Committee; however, when Declarant is the Owner, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Architectural Committee.

**3.02. Hazardous Activities.** No activities will be conducted on the Property and no Improvements constructed on the Property that are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms or fireworks will be discharged on the Property, and no open fires will be permitted except within safe and well-designed interior fireplaces or in contained barbecue units while attended and in use for cooking purposes.

**3.03. Insurance Rates.** Nothing will be done or kept on the Property that would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located on any Lot.

**3.04. Mining and Drilling.** No portion of the Property will be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

**3.05. Noise and Nuisances.** No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) will be located, used, or placed on any of the Property. No noise or other nuisance will be permitted to exist or operate on any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants. No exterior lighting of any sort will be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property (except reasonable security or landscape lighting that has the approval of the Architectural Committee).

**3.06. Animals; Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of these words may be kept, maintained, or cared for on the Property. Any dog that has been determined to be "dangerous" by the City or any other political subdivision, animal-control authority, or governmental agency, will never be maintained, kept, or cared for on the Property. No Owner may keep on the Owner's Lot more cats or dogs than permitted by the City of Lubbock Code of Ordinances. No animal will be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal will be allowed to run at large, and all animals must be kept within enclosed areas that must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. An enclosed area must be constructed in accordance with plans approved by the Architectural Committee, must be of reasonable design and construction to adequately contain animals in accordance with the provisions of this Declaration, and must be screened so as not to be visible from any other portion of the Property.

**3.07. Rubbish and Debris.** No rubbish or debris of any kind will be placed or permitted to accumulate on the Property, and no odors will be permitted to arise from it so as to make the Property or any portion of it unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and the

containers must be kept within enclosed structures or appropriately screened from view. Each Owner must contract with an independent disposal service to collect all garbage or other wastes if collection service is not provided by a governmental entity.

**3.08. Maintenance; Mowing.** Each Owner must keep all shrubs, trees, grass, and plantings of every kind on the Owner's Lot cultivated, pruned, free of trash, and other unsightly material. All Improvements on any Lot, except the roof, must at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner of the Lot. The Association shall maintain the roof of each Living Unit. Declarant, the Association, and the Architectural Committee have the right at any reasonable time to enter on any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary, to paint, repair, or otherwise maintain any Improvements in need of maintenance, including the roof of each Living Unit, and to charge the cost to the Owner of the Lot in the same manner as provided for the Association in Section 6.04(e).

**3.09. Antennae; Satellites; Structures on Roof.** No exterior radio, television antenna, aerial or satellite dish receiver, or any other structure, including but not limited to rooftop air conditioner units, may be mounted on or above the roof on any Lot.

No exterior satellite dish of any kind will be installed on any Lot.

No exterior radio receiver that is visible from any adjacent street within the Subdivision will be erected or maintained on any Lot without first obtaining the Architectural Committee's written consent.

**3.10. Signs.** No sign of any kind will be displayed to the public view on any Lot without the prior written approval of the Architectural Committee, except for (a) signs that are part of Declarant's overall marketing or construction plans or activities for the Property, (b) one (1) sign no more than five (5) square feet advertising any property within the Subdivision for sale or rent, and (c) signs advertising a political candidate or ballot item for an election, so long as (i) the signs are ground-mounted and no more than four (4) feet by six (6) feet, (ii) the signs are displayed no earlier than ninety (90) days before the date of the election to which the signs relate and no later than nine (9) days after that election date, and (iii) no more than one (1) sign is displayed for each political candidate or ballot item. All merchandising, advertising, and sales programming is subject to the approval of the Architectural Committee.

**3.11. Water and Other Tanks.** The Architectural Committee has the right to approve the location of any tank used or proposed in connection with a single-family residential structure, including tanks for the storage of fuel, water, or oil, and including swimming-pool filter tanks. No elevated tanks of any kind will be erected, placed, or permitted on any Lot. All tanks must be screened so as not to be visible from any other part of the Property. No individual water-supply systems will be permitted on any Lot, including but not limited to water wells, cesspools, or water-collection tanks; however, rain barrels and rain harvesting devices will be permitted subject to the right of the Architectural Committee to approve the location, size, type, and shielding of, and the materials used in the construction of, any such rain barrels, rain harvesting devices, and related appurtenances.

**3.12. Common Wall.** Each unit will be separated by a firewall, an airspace, and a drywall surface that presents as the interior wall of the unit. The drywall may be penetrated, but not removed. The airspace must be maintained, and the interior firewall may not be penetrated in any manner.

**3.13. Freestanding Structures.** No outbuilding, tent, shack, tool or storage shed, or other freestanding building, improvement, or structure will be placed on the Property without the prior written approval of the Architectural Committee; however, Temporary Offices and temporary structures necessary for the storage of tools and equipment or for office space for architects, Builders, and foremen during actual construction may be maintained with Declarant's approval, approval to include the nature, size, duration, and location of the Temporary Office or structure.

**3.14. Unightly Articles; Vehicles.** No article deemed to be unsightly by the Architectural Committee will be permitted to remain on any Lot so as to be visible from an adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, graders, trucks other than pickups, tractors, wagons, buses, motorcycles, all-terrain vehicles, motor scooters, sports equipment (such as volleyball nets, soccer goals or portable basketball goals), and garden-maintenance equipment must be kept at all times, except when in use, in enclosed structures or screened from view, and no repair or maintenance work may be done on any of the foregoing or on any automobile (other than minor emergency repairs) except in enclosed garages or other structures. Each single-family residential structure constructed within the Property must have sufficient garage space, as approved by the Architectural Committee, to house all vehicles to be kept on the Lot. Lot Owners may not keep more than two (2) automobiles so that they are visible from any other portion of the Property for any period in excess of forty-eight (48) hours. No automobiles or other above-

mentioned articles or vehicles may be parked overnight on any roadway within the Property. Service areas, storage areas, compost piles, and facilities for hanging, drying, or airing clothing or household fabrics must be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse, or trash will be kept, stored, or allowed to accumulate on any portion of the Property unless it is within an enclosed structure or is appropriately screened from view. No (a) racing vehicles or (b) other vehicles (including but not limited to motorcycles or motor scooters) that are inoperable or do not have a current license tag are permitted to remain visible on any Lot or to be parked on any roadway within the Subdivision. No commercial vehicles larger than a standard three-quarter (3/4) ton pickup truck or standard two-axle passenger van are permitted to remain on any Lot or to be parked on any roadway within the Subdivision.

**3.15. Mobile Homes, Travel Trailers, Recreational Vehicles, and Boats.** No mobile (i.e., manufactured) homes may be parked or placed on any Lot or used as a residence, either temporary or permanent, at any time, and no motor homes, travel trailers, recreational vehicles, or boats may be parked on or near any Lot so as to be visible from adjoining property or from public or private thoroughfares for more than forty-eight (48) hours in any thirty (30) day period.

**3.16. Compliance with the Restrictions.** Each Owner must comply strictly with the provisions of the Restrictions as amended from time to time. Failure to comply with any of the Restrictions constitutes a violation of this Declaration and gives rise to a cause of action to recover amounts due for damages or injunctive relief or both, maintainable by the Declarant, the Architectural Committee, the Board on behalf of the Association, an aggrieved Owner, or, if applicable, any Municipal Utility District having jurisdiction over the Property.

**3.17. Liability of Owners for Damage to Common Area and Facilities.** No Owner will in any way alter, modify, add to, or otherwise perform any work on the Common Area and Facilities without the prior written approval of the Board. Each Owner is liable to the Declarant, the Association, the Owners, or any public agency, authority, or utility if the Common Area and Facilities have been dedicated or otherwise conveyed to any of these parties, for any and all damages to (a) the Common Area and Facilities or (b) any Improvements constructed on any Lot, the maintenance of which has been assumed by any of these parties, which damages were caused by the neglect, misuse, or negligence of an Owner or the Owner's family, or by any tenant or other occupant of the Owner's Lot, or any guest or invitee of the Owner. The full cost of all repairs of the damage will be an Assessment against the Owner's Lot, secured by a lien against the Owner's Lot and collectable in the same manner as provided for in Section 8.06, including but not limited to foreclosure of the lien.

**3.18. Basketball Goals – Permanent and Portable.** Permanent basketball goals are allowed but must be approved by the Architectural Committee before installation. The metal pole must be permanently installed in the ground at least twenty-five (25) feet back from the curb. The permanent basketball goal must be properly maintained and painted, with nets kept in good repair. Portable goals may be used, but they must be stored in an enclosed structure or screened from view at all times when not in use.

**3.19 No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of the restrictive covenants, terms, or provisions assumes all risks of their validity and enforceability and, by acquiring the Lot, agrees to hold Declarant harmless if they are held to be invalid or unenforceable.

#### **ARTICLE 4 – USE AND CONSTRUCTION RESTRICTIONS**

**4.01. Approval for Construction.** No Improvements will be constructed on any Lot without the prior written approval of the Architectural Committee.

**4.02. Use.** All Lots, unless dedicated to the Association as Common Area and Facilities, will be improved and used solely for single-family residential use, inclusive of an attached private garage for not more than two (2) cars, fencing, and other Improvements as are necessary or customarily incident to residential use. Unless a Lot (or Lots) has (or have) been specifically developed for attached single-family Living Units, all Lots will be used solely for detached single-family Living Units. Declarant may utilize one (1) Living Unit within the Subdivision for commercial purposes until the Lot and the Living Unit on it has been conveyed. After the conveyance occurs, the Living Unit will be used for residential purposes as outlined in this Section. Despite any provision of this Declaration to the contrary, a Builder may use a select number of Lots owned by the Builder for Temporary Offices within the Subdivision.

**4.03. Rentals.** Nothing in this Declaration will prevent the rental of any Lot and the Improvements on it by the Owner for residential purposes, provided that all rentals must be for terms of at least six (6) months.

**4.04. Dwelling Height.** No single-family dwelling greater than two (2) stories in height may be constructed on any Lot without the prior written approval of the Architectural Committee.

**4.05. Fences and Sidewalks and Sight-Line Obstruction.** Unless otherwise approved by the Architectural Committee, all fences on Lots must be at least six (6) feet in height and must be constructed with wooden pickets and with treated wooden railings and posts. Any fence fronting on a street must be constructed of wood materials and must be six (6) feet in height. The Architectural Committee has the right to approve deviations from these requirements relating to the style and materials to be used based on the location of the Property. It is the intent to maintain visual continuity, especially along streets. In no event will any fence or wall be erected, placed, or altered on a Lot nearer to the front street than the front wall of the Living Unit that is located on the Lot, and no hedge may be installed or maintained more than two feet in front of the wall of the Living Unit that is located on the Lot and closest to the front property line of the Lot. The Owner of each Lot must construct, at its sole cost and expense and before occupying any improvement located on the Lot, a sidewalk, located and designed in conformance with the Plat, to the extent the Plat requires a sidewalk on the Owner's Lot.

No fence, wall, hedge, or shrub planting that obstructs sight lines will be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in the case of a rounded property corner, from the intersection of the street line extended. The same sight-line limits will apply on any Lot within ten (10) feet from the intersection of street property lines with the edge of a driveway or alley pavement. No tree will be permitted to remain within such distance of these intersections, unless the foliage is maintained at sufficient height to prevent obstruction of the sight lines.

**4.06. Dwelling Size; Building Materials; Paint Colors.** All dwellings will contain at least sixteen hundred (1,600) square feet of enclosed living space, exclusive of porches (open or covered), decks, garages, and carports. All building materials must be approved by the Architectural Committee, and only new building materials (except for used brick) will be used for constructing any Improvements. Exposed metal roof decks that reflect light in a glaring manner, such as galvanized-steel sheets, are specifically prohibited. Other roofing materials may be used with the Architectural Committee's written consent, which may specify a minimum quality or grade of materials. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings, and exterior stairways must match the color of the surface from which they project, or must be of a color approved by the Architectural Committee. No highly reflective finishes (other than glass, which may not be mirrored) will be used on exterior surfaces (other than surfaces of hardware fixtures), including but not limited to the exterior surfaces of any Improvements.

The Masonry requirements for one- and two-story dwellings are as follows:

**One-Story Dwellings.** The front and sides of the exterior walls of all single-family dwellings must be constructed of Masonry, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, and trim work.

**Two-Story Dwellings.** The front and sides of the exterior walls of the first floor of all single-family dwellings must be constructed of Masonry, exclusive of roofs, eaves, soffits, windows, doors, gables, garage doors, and trim work.

All exterior paint colors, including garage door paint colors, must be from a color palette preselected by the Architectural Committee. Any deviance from the preselected color palette must be approved by the Architectural Committee.

**4.07. Alteration or Removal of Improvements.** Any construction, other than normal maintenance, that in any way alters the exterior appearance of any Improvement or the removal of any Improvement, will be performed only with the prior written approval of the Architectural Committee.

Lot Owners will not drill through, insert nails, or otherwise penetrate through the shared two-hour separation wall between each Lot.

**4.08. Garbage Containers.** The Architectural Committee has the right to specify a specific location on each Owner's Lot in which garbage containers must be placed for trash-collection service.

**4.09. Drainage.** There will be no interference with the established drainage patterns over any of the Property, except by Declarant or any Builder, unless adequate provision is made for proper drainage and the Architectural Committee approves the provision.

**4.10. Construction Activities.** This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) on any Lot within the Property. Specifically, no construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs, or similar activities, provided that the construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. If construction on any Lot does not conform to usual practices in the area as determined by the Architectural Committee in its sole good-faith judgment, the Architectural Committee will have the authority to seek an injunction to stop the construction. In addition, if during the course of construction on any Lot there is excessive accumulation of debris of any kind that would make the Lot or any portion of it unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Architectural Committee may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection with removal.

**4.11. Landscaping.** The front and side yards of all Lots, from the front wall of the house, will be fully sodded with St. Augustine, Bermuda, Prairie Buffalo Grass, or other sod, drought-resistant landscaping, or water-conserving natural turf approved by the Architectural Committee.

EACH OWNER IS ADVISED THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES AS TO THE LIFE EXPECTANCY, VITALITY, OR FITNESS FOR INTENDED PURPOSES OF ANY TREES OR SHRUBS LOCATED ON A LOT.

#### ARTICLE 5 – COMMON AREA AND FACILITIES

**5.01. Common Area and Facilities.** No land within any Common Area and Facilities will be improved, used, or occupied, except in the manner approved by Declarant, in its sole and absolute discretion. This required approval will extend to the nature and type of use, occupancy, and improvement. Declarant may, by written instrument, delegate its right to grant this approval to the Board. Access to any Common Area and Facilities may be limited to Persons currently paying Assessments, fees, and other charges, or otherwise conditioned or restricted, or made available to nonowners, all on the terms and conditions determined by Declarant in its sole and absolute discretion.

**5.02. Maintenance.** Declarant may, but will not be obligated to, in its sole discretion, maintain the Common Area and Facilities at its own cost and expense. If Declarant elects not to maintain the Common Area and Facilities, maintenance of any Common Area and Facilities will be the obligation of the Association and will be governed by Section 6.05, and Assessments may be levied on the Owners under Article 8. Under no circumstances will Declarant be liable to the Owners, the Association, or any other Person for maintaining or failing to maintain the Common Area and Facilities.

**5.03. Condemnation.** If all or any part of the Common Area and Facilities is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), Declarant, or the Association, if applicable, will be entitled to participate in the proceedings incident to the taking or threatened taking. The expense of participation in the proceedings by the Association will be a common expense to be paid out of Assessments. The Association is specifically authorized to obtain and to pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses, and other Persons as the Association, in its discretion, deems necessary or advisable to aid it in any matters relating to the proceedings. All damages or awards for any taking will be the property of Declarant, or, if applicable, deposited with the Association. The Association, if applicable, in addition to the general powers set forth in this Declaration, will have the sole authority to determine whether to contest or defend any proceedings, to make any settlement with respect to any proceedings, or to convey the property to the condemning authority in lieu of condemnation.

#### ARTICLE 6 – THE ASSOCIATION

**6.01. Organization.** The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Certificate of Formation and Bylaws or in this Declaration. Neither the Certificate of Formation nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association will not be dissolved without the written consent of at least ninety percent (90%) of the Members entitled to vote.

**6.02. Membership.** Any Person who is or who becomes an Owner will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of

the Lot that qualifies the Owner for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to the Lot.

**6.03. Voting Rights.** There will be two classes of membership for the purpose of voting on any Association matter. The Class A Members will include each Owner (excluding Declarant) of a Lot within the Property, and each Owner will have one (1) vote for each Lot owned. The Class B Member will be Declarant, and Declarant will have ten (10) votes for each Lot it owns. The Class B Membership will convert to a Class A Membership when (a) Declarant has conveyed all Lots to owners or (b) Declarant voluntarily converts the Class B Membership to a Class A Membership by written instrument recorded in the Official Public Records of Lubbock County, Texas, whichever occurs first.

**6.04. Powers and Authority of the Association.** The Association will have the powers of a Texas nonprofit corporation, subject only to the limitations expressly set forth in this Declaration. It will further have the power to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board, acting on behalf of the Association, will have the following powers and authority:

(a) **Rules and Bylaws.** To make, establish, promulgate, amend, repeal, and re-enact the Association Rules and Bylaws. The content of the Association Rules and Bylaws may be established by the Board, provided that they do not conflict with this Declaration.

(b) **Insurance.** To obtain and maintain in effect policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

(c) **Records.** To keep books and records, including financial records, of the Association's affairs.

(d) **Assessments.** To levy Assessments as provided in Article 8. An Assessment is defined as the amount that must be levied in the manner and against the property set forth in Article 8 in order to raise the total amount for which the levy in question is being made.

(e) **Right of Entry and Enforcement.** To enter at any time in an emergency, or in a nonemergency after twenty-four (24) hours' written notice, without being liable to any Owner, on any Lot and into any Improvement on a Lot, for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Restrictions, and the expense incurred by the Association in connection with the entry on any Lot and the maintenance and repair work conducted on it will be a personal obligation of the Owner of the Lot entered on, will be a lien on the Lot entered on and the Improvements on the Lot, and will be enforced in the same manner and to the same extent as provided in Article 8 for regular Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents to it, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens, and take all action as it may deem necessary or expedient to enforce the Restrictions; however, the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, any Builder, and any of their respective successors and assigns.

(f) **Legal and Accounting Services.** To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

**6.05. Common Area and Facilities.** Subject to and in accordance with this Declaration, the Association, acting through the Board, will have the following duties:

(a) To accept, own, operate, and maintain all Common Area and Facilities that may be conveyed or leased to it by Declarant, together with all Improvements of any kind and for any purpose that may be located in those areas, and to accept, own, operate, and maintain all other property, real or personal, conveyed or leased to the Association by Declarant and to maintain in good repair and condition all lands, improvements, and other Association property owned by or leased to the Association. Such maintenance will include, but will not be limited to, painting, mowing, and removing rubbish or debris of any kind.

(b) To pay all real-property taxes, personal-property taxes, and other taxes and Assessments levied on or with respect to Common Area and Facilities or any other property owned by or leased to the Association to the extent that the taxes and Assessments are not levied directly on the Members of the Association. The Association will have all rights granted by law to contest the legality of the amount of the taxes and Assessments.



(c) To take out and maintain current a policy of liability-insurance coverage to cover accidental bodily injury or death caused by the use and enjoyment of the Common Area and Facilities. This insurance will be in an amount as the Board deems appropriate.

#### **ARTICLE 7 – ARCHITECTURAL COMMITTEE**

**7.01. Membership of Architectural Committee.** The Architectural Committee will consist of not more than four (4) voting Members (“Voting Members”) and any additional nonvoting Members serving in an advisory capacity (“Advisory Members”) that the Voting Members deem appropriate. The following Persons are designated as the initial Voting Members of the Architectural Committee: Farrell Martin, Brent Preston, Lance Inderman, Louis Garner.

**7.02. Action by Architectural Committee.** Items presented to the Architectural Committee will be decided by a majority vote of the Voting Members.

**7.03. Advisory Members.** The Voting Members may from time to time designate Advisory Members.

**7.04. Term.** Each Voting Member of the Architectural Committee will hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided in this Declaration. If any Voting Member dies or resigns, the remaining Voting Member or Voting Members will have full authority to act until a replacement Voting Member or Voting Members have been designated.

**7.05. Declarant’s Rights of Appointment.** Declarant and its successors or assigns will have the right to appoint and remove all Voting Members of the Architectural Committee. Declarant may delegate this right to the Board by written instrument. After the Declarant delegates this right, the Board will have the right to appoint and remove all Voting Members of the Architectural Committee.

**7.06. Adoption of Rules.** The Architectural Committee may adopt any procedural and substantive rules, not in conflict with this Declaration, that it deems necessary or proper for the performance of its duties, including but not limited to a building code, a fire code, a housing code, and other similar codes as it may deem necessary and desirable.

**7.07. Review of Proposed Construction.** Whenever in this Declaration the approval of the Architectural Committee is required, it will have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts that, in its sole discretion, are relevant. Except as otherwise specifically provided in this Declaration, before the commencement of any construction of any Improvement on the Property or any portion of it, the Plans and Specifications must be submitted to the Architectural Committee, and construction may not commence unless and until the Architectural Committee has approved the Plans and Specifications in writing. The Architectural Committee will consider and act on any and all Plans and Specifications submitted for its approval under this Declaration and perform the other duties assigned to it by this Declaration or as from time to time assigned to it by the Board. The Architectural Committee may also inspect any construction in progress to ensure its conformance with Plans and Specifications approved by the Architectural Committee. The Architectural Committee may review Plans and Specifications submitted for its review and any other information it deems proper. Until the Architectural Committee receives any information or documents it deems necessary, it may postpone review of any Plans and Specifications submitted for approval. No Improvement will be allowed on any Lot that is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes, and materials and similar features as to be incompatible with development within the Property and the surrounding area. The Architectural Committee will have the authority to disapprove any proposed Improvement based on the restrictions set forth in the preceding sentence and the decision of the Architectural Committee will be final and binding if it is made in good faith. The Architectural Committee will not be responsible for reviewing any proposed Improvement, nor will its approval of any Plans or Specifications or inspection of any construction in progress be deemed approval from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

**7.08. Variance.** The Architectural Committee may grant variances from compliance with any of the provisions of this Declaration when, in the opinion of the Architectural Committee, in its sole and absolute discretion, the variance will not impair or detract from the high-quality development of the Property and the variance is justified due to unusual or aesthetic considerations or unusual circumstances. Despite anything to the contrary in this Declaration, the Architectural Committee is authorized, at its sole discretion, to waive any requirements relating to garages (including size), carports, dwelling size, Masonry requirements, fences, and setbacks, and the decision will be binding on all Owners of Property encumbered by this Declaration. All variances must be evidenced by written instrument in recordable form, and must be signed by at least three (3) of the Voting Members

of the Architectural Committee. The granting of a variance will not operate to waive or amend any of the terms or provisions of the covenants and restrictions applicable to the Lots for any purpose except as to the particular property and the particular instance covered by the variance, and a variance will not be considered to establish a precedent or future waiver, modification, or amendment of the terms and provisions of this Declaration.

**7.09. Actions of the Architectural Committee.** The Architectural Committee may, by a resolution unanimously adopted in writing, designate one (1) or two (2) of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of a designation, the vote of the majority of all of the members of the Architectural Committee taken without a meeting will constitute an act of the Architectural Committee. Despite anything to the contrary, if the Architectural Committee fails to respond to a request for approval of Plans and Specifications within thirty (30) days of receiving all required information, the Architectural Committee will be deemed to have approved the Plans and Specifications.

**7.10. No Waiver of Future Approvals.** The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee will not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications or any other matter subsequently or additionally submitted for approval or consent by the same or a different Person.

**7.11. Work in Progress.** The Architectural Committee, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications.

**7.12. Address.** Plans and Specifications will be submitted to the Architectural Committee at 810 Texas Ave., Lubbock, Texas, 79401 or at any other address as may be designated from time to time.

**7.13. Fees.** The Architectural Committee will have the right to require a reasonable submission fee for each set of Plans and Specifications submitted for its review.

## **ARTICLE 8 – FUNDS AND ASSESSMENTS**

### **8.01. Assessments.**

(a) The Association may from time to time levy Assessments against each Lot that has been improved with a completed single-family residence. The level of Assessments will be equal and uniform between all improved Lots. No Assessments under this Declaration will be levied against any Lot unless a completed single-family residence has been constructed on the Lot. Neither the Declarant nor any Builder will be charged Assessments.

(b) When the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment will be prorated as of the date when the obligation first arose in proportion to the amount of the Assessment year or other period remaining after that date.

(c) Each unpaid Assessment, together with the interest on it and the costs of collection, will be the personal obligation of the Owner of the Lot against which the Assessment fell due, and will become a vendor's lien against the Lot and all Improvements on it. The Association may enforce payment of Assessments in accordance with the provisions of this Article.

**8.02. Maintenance Fund.** The Board will establish a maintenance fund; all moneys paid to the Association will be deposited into this account, and disbursements will be made from it in performing the functions of the Association under this Declaration. The funds of the Association deposited into the maintenance fund must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

**8.03. Regular Annual Assessments.** Before the beginning of each fiscal year, the Board will estimate the expenses to be incurred by the Association during the year in performing its functions under the Restrictions, which will be limited to the costs incurred in exercising the powers granted to the Association in Section 6.04, the cost of enforcing the Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay the estimated net expenses will then be levied as provided in this Declaration, and the level of Assessments set by the Board will be final and binding if it is made in good faith. All regular Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in any other manner as the Board may designate in its sole and absolute discretion. In no event will the maximum regular annual Assessments per Lot be increased by more than five percent (5%) per year, unless approved by at least two-thirds (2/3) of each class of Members

who are voting in person or by proxy at a meeting duly called for that purpose, with the same quorum as required for Special Assessments.

**8.04. Special Assessments.** In addition to the regular annual Assessments provided for above, the Board may levy special Assessments to enable the Board to carry out the mandatory functions of the Association under the Restrictions on the approval of at least two-thirds (2/3) of the Members at a meeting called for that purpose, by adequate notice, with at least fifty percent (50%) of the Members or their proxies present at the meeting. If fifty percent (50%) of the Members do not attend, a second meeting may be called with the same notice and the quorum needed for the second meeting will be thirty percent (30%) of the Members or their proxies.

**8.05. Owner's Personal Obligation for Payment of Assessments.** The regular Assessments provided for in this Declaration will be the personal and individual debt of the Owner of the Lot covered by the Assessments. No Owner may exempt itself from liability for the Assessments. For any default in the payment of any Assessment, the Owner of the Lot will be obligated to pay an annual interest rate of ten percent (10%) on the amount of the Assessment from the Assessment's due date, together with all costs and expenses of collection, including reasonable attorney fees.

**8.06. Assessment Lien and Foreclosure.** All amounts assessed in the manner provided in this Article but unpaid will, together with interest as provided in Section 8.05 and the cost of collection, including attorney fees as provided in this Declaration, become a continuing lien and charge on the Lot covered by the Assessment that will bind the Lot in the hands of the Owner and the Owner's heirs, devisees, personal representatives, successors, or assigns. This lien will be superior to all other liens and charges against the Lot, except for tax liens and all amounts unpaid on a Mortgage lien of record of first or second priority granted to an institutional lender, securing in either instance amounts borrowed for the purchase or improvement of the Lot in question. The Association will have the power to subordinate the Assessment lien to any other lien. This power will be entirely discretionary with the Board and the subordination must be signed by a duly authorized officer of the Association. To evidence the Assessment lien, the Association may prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by the lien and a description of the Lot. This notice will be signed by one of the officers of the Association and will be recorded in the office of the County Clerk of Lubbock County, Texas. The lien for payment of Assessments will attach with the priority above set forth from the date that the payment becomes delinquent. The Association may direct its legal counsel to initiate legal proceedings in a court of competent jurisdiction seeking one or both of the following remedies:

(a) Foreclosure of the assessment lien. However, the Association may not file an application for an expedited court order authorizing foreclosure of the Association's assessment lien or a petition for judicial foreclosure of the Association's assessment lien until the Association has (i) provided written notice of the total amount of the delinquency giving rise to the foreclosure to all lienholders of record (evidenced by a deed of trust) whose liens are inferior or subordinate to the Association's assessment lien, and (ii) provided each such lienholder an opportunity to cure the delinquency before the sixty-first (61st) day after the date the Association mails the notice. The notice to lienholders must be sent by certified mail to the address for the lienholder shown in the deed of trust burdening the Lot(s) subject to the Association's assessment lien.

(b) Recovery of a personal judgment against the Current Owner and, where different, from the Delinquent Owner or from the Current Owner only, for all amounts owing arising from the unpaid Assessments and their collection, including all attorney fees and costs.

**8.07. Association Budget Deficits.** If, at any time during the five-year (5-year) period following the date this Declaration is recorded, the amounts collected by the Association under this Article prove inadequate to fund the Association's obligations under this Declaration, then Declarant will be obligated to fund the deficits in the Association's budget until there are enough Members of the Association regularly paying Assessments in order to provide the Association with sufficient funds to satisfy the Association's obligations and fund the Association's budget.

**8.08. 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.

## **ARTICLE 9 – EASEMENTS**

**9.01. Reserved Easements.** All dedications, limitations, restrictions, and reservations shown on the Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights made before the Property became subject to this Declaration are incorporated by reference and made

a part of this Declaration for all purposes as if fully set forth in this Declaration and will be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the easements for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other Person, to grant, dedicate, reserve, or otherwise create, at any time or from time to time, easements for public-utility purposes (including but not limited to gas, water, electricity, telephone, and drainage) in favor of any Person along any front, rear, or side boundary line of any Lot, which easements will have a maximum width of ten (10) feet (however, easements alongside yard lot lines will straddle the lot lines with five (5) feet on each of the adjoining Owner's Lots).

**9.02. Installation and Maintenance.** There is by this Declaration created, for the benefit of the City and other governmental entities and public utilities with jurisdiction over or providing utility services to the Subdivision, an easement on, across, over, and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities (including but not limited to water, wastewater, gas, telephones, electricity lines, and related appurtenances), and for conducting authorized official governmental business. By virtue of this easement, it will be expressly permissible for the utility companies and other entities supplying utility service to install and maintain pipes, wires, conduits, service line, or other utility facilities or appurtenances on, above, across, and under the Property, within the public-utility easements from time to time existing and from service lines situated within the easements to the point of service on or in any Improvement. Despite any provision contained in this Section, no electrical lines, water lines, or other utilities or appurtenances may be relocated on the Property until approved by Declarant or the Architectural Committee. The utility companies furnishing services to the Subdivision and governmental entities conducting authorized official governmental business within the Property will have the right to remove all trees and other obstructions situated within the utility easements shown on the Plat that are obstructing or otherwise precluding accomplishment of the authorized official governmental business, and to trim overhanging trees and shrubs located on portions of the Property abutting the easements. If the City is required to remove any trees or other obstructions in order to accomplish any authorized governmental business within the Property, then the City may assess the reasonable costs and expenses required for the removal to the Association, and the Association will be reimbursed, on written demand, for all costs and expenses from the Owner of the Lot(s) on which the obstructions were located. Any reimbursement required to be paid by any Owner under this Declaration will be deemed a regular Assessment of the Owner and will be paid in accordance with, and secured by the lien described in, Article 8.

**9.03. Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There will be no construction of Improvements, temporary or permanent, in any drainage easement, except as approved in writing by the Architectural Committee.

**9.04. Surface Areas.** The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility service using any easement area will be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants, or assigns, to any of this vegetation as a result of any activity relating to the construction, maintenance, operation, or repair of any facility in any of these easement areas.

**9.05. Common Area and Facilities.** Each Owner will have a nonexclusive easement for use and enjoyment in and to all Common Area and Facilities, which will be appurtenant to and will pass with title to each Owner's Lot, subject to the following rights:

(a) The right of the Association, after notice and hearing if required by law, to suspend the Owner's right to use the Common Area and Facilities for any period during which an Assessment against the Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Association.

(b) The right of Declarant or the Association, as applicable, to dedicate or transfer all or any part of the Common Area and Facilities to any public agency, authority, or utility for any purposes and subject to any conditions as may be deemed reasonable by Declarant, in its sole discretion, or, in the case of the Association, approved by a two-thirds (2/3) vote of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, with the same quorum as required for Special Assessments.

(c) The right of the Association to borrow money for the purpose of improving the Common Area and Facilities and, in furtherance of this purpose, to mortgage the Common Area and Facilities, all in accordance with the Certificate of Formation and Bylaws.

(d) The right of Declarant or the Association, as applicable, to promulgate reasonable rules and regulations regarding use of the Common Area and Facilities.

(e) The right of Declarant or the Association, as applicable, to contract for services with third parties on any terms as Declarant or the Association may determine.

**9.06. Self-Help Easement.** Each Owner grants to the Association an easement on, over, and across its Lot for purposes of curing any violation of the restrictions, covenants, and obligations set forth in this Declaration.

**9.07 Easement to Association for Maintenance.** Each Owner grants to the Association an easement on, over, and across its Lot for purposes of installing, replacing, repairing, and maintaining the roof on each Living Unit.

## **ARTICLE 10 – MISCELLANEOUS**

**10.01. Term.** This Declaration, including all of its covenants, conditions, and restrictions, will be effective on the date this Declaration is recorded in the Official Public Records of Lubbock County, Texas, and will continue in effect for a period of thirty (30) years, after which it will be automatically extended for successive periods of ten (10) years each, unless amended or extinguished as set forth in Section 10.02.

**10.02. Amendment; Extinguishment.** This Declaration may be amended or extinguished only in accordance with the provisions of this Section. All provisions of this Declaration may be amended or extinguished by the recording in the Official Public Records of Lubbock County, Texas, of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment or extinguishment and certifying that the amendment or extinguishment has been approved by Owners entitled to cast at least sixty-seven percent (67%) of the number of votes entitled to be cast under Section 6.03.

**10.03. Notices.** Any notice permitted or required to be given by this Declaration must be in writing. Unless otherwise required by law, the notice must be delivered to the Person to whom the notice is directed (1) in person, with written receipt received, (2) by U.S. mail, registered or certified, (3) by a nationally recognized overnight delivery service, (4) by e-mail, or (5) by any other method required or permitted under the Declaration, Certificate of Formation, or Bylaws. If delivery is by U.S. mail, the notice will be deemed to have been given when deposited, properly addressed and with proper postage, with the U.S. Postal Service. If delivery is by e-mail, the notice will be deemed to have been given when the message is transmitted to the proper e-mail address. The address or e-mail address at which a Person is given notice may be changed from time to time by notice in writing given by the Person to the Association.

**10.04. Governing Law.** The provisions of this Declaration will be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration will be governed by and interpreted under the laws of the State of Texas.

**10.05. Exemption of Declarant.** Despite any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities will in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without in any way limiting the generality of the preceding sentence, this Declaration will not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of improvements, sales and leasing offices, and similar facilities, and to post signs incidental to construction, sales, and leasing anywhere within the Property.

**10.06. Nonliability of Architectural Committee and Board Members.** The Architectural Committee, the Board, and their members will not be liable to the Association or to any Owner or to any other Person for any loss, damage, or injury arising from their being in any way connected with the performance of the Architectural Committee's or the Board's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee, the Board, or their members, as the case may be.

**10.07. Assignment of Declarant.** Despite any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person and may permit the participation, in whole or in part, by any other Person in any of these privileges, exemptions, rights, and duties.

**10.08. Enforcement; Nonwaiver.** Except as otherwise provided in this Declaration, any Owner at its own expense, Declarant, the Association, and the Board will have the right to enforce any and all provisions of the Restrictions. This right of enforcement will include both damages for, and injunctive relief against, the breach of any provision. The failure to enforce any provision at any time will not constitute a waiver of the right to enforce the provision or any other provision in the future. Also, the violation of any of the Restrictions by an Owner or the Owner's family, guests, tenants, lessees, or licensees will authorize the Board, acting on behalf of the Association, to avail itself of any one or more of the following remedies in addition to any other available remedies:

(a) The imposition of a special charge not to exceed Twenty-Five Dollars (\$25.00) per violation.

(b) The suspension of the Owner's rights to use any Common Area and Facilities or other Association property so long as a violation exists.

(c) The right to cure or abate the violation and to charge any related expenses to the Owner.

(d) The right to seek injunctive and any other relief provided or allowed by law against the violation and to recover from the Owner all of the Association's related expenses and costs, including but not limited to attorney fees and court costs. Before the Board may invoke the remedies provided above, it must give notice of the alleged violation to the Owner in the manner specified in Section 10.03 and must give the Owner an opportunity to request a hearing. If, after the hearing, or if no hearing is requested, after the deadline for requesting a hearing has passed, the Board determines that a violation exists, the Board's right to proceed with the listed remedies will become absolute. Each day a violation continues will be deemed a separate violation. All unpaid special charges imposed under this Section for violation of the Restrictions will be the personal obligation of the Owner of the Lot for which the special charge was imposed and will become a lien against the Lot and all Improvements on it. The liens will be prior to any declaration of homestead and the Association may enforce payment of the special charges in the same manner as provided in Article 8. Despite any provision in this Section to the contrary, the Board will not be required to afford an Owner a hearing before the filing of a lawsuit to collect past-due Assessments.

**10.09. Construction.** The provisions of the Restrictions will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of a provision will not affect the validity or enforceability of any other provision or portion of a provision. Unless the context requires a contrary construction, the singular includes the plural and the plural the singular, and the masculine, feminine, or neuter each includes the masculine, feminine, and neuter. All headings and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles in this Declaration.

EXECUTED as of April 9<sup>th</sup>, 2020.

**DECLARANT:**  
West End Townhomes, LLC,  
a Texas limited liability company

By: [Signature]  
Farrell Martin, Manager

STATE OF TEXAS §

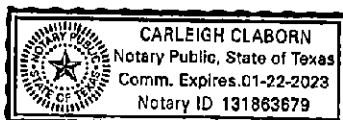
§

COUNTY OF LUBBOCK §

This instrument was acknowledged before me on April 9<sup>th</sup>, 2020, by Farrell Martin, Manager of West End Townhomes, LLC, a Texas limited liability company, on behalf of said entity.

[Signature]  
Notary Public – State of Texas

(seal)



# FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



*Kelly Pinion*

Kelly Pinion, County Clerk  
Lubbock County, TEXAS  
04/09/2020 01:30 PM  
FEE: \$78.00  
2020013964

