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DECLARATION
OF
COVENANTS, CONDITIONS
AND
RESTRICTIONS
ON AND FOR
HIGHLAND OAKS SUBDIVISION
LUBBOCK COUNTY
TEXAS

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

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This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS is made and effective as of the 25TH day of July, 2000, by The Oaks of Lubbock Development I, Ltd; a Texas limited partnership, (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 Highland Oaks Subdivision (which lots are more particularly described within 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 Highland Oaks Subdivision property 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 Highland Oaks project.

The Highland Oaks Homeowners Association, Inc. (the "Association") has been or will be chartered as a non-profit Texas corporation to assist in the ownership, management, use and care of the various common areas within Highland Oaks Subdivision and to assist in the administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration.

DECLARATION

The Declarant hereby declares that the Highland Oaks Subdivision residential lots described within Exhibit "A" attached hereto, and such phases or additions thereto as may hereafter be made pursuant to Article II hereof, 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:

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

"Annual Assessment" shall have the meaning specified in Article V below.

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

"Articles" shall mean and refer to the Articles of Incorporation (and amendments thereto and restatements thereof) of the Association on file in the Office of the Secretary of State of the State of Texas, Austin, Texas.

"Assessable Property" shall mean and refer to each and every lot, parcel and tract within the entire Properties which: (i) the Declarant has subjected to and imposed upon a set of restrictive covenants calling for, inter alia, the payment of an Annual Assessment to the Association; (ii) may

have been or will be given a separately identifiable tax or parcel number by the Lubbock Central Appraisal District ("CAD") or a similar governmental agency; (iii) is not designated an "open space" or otherwise a portion of the Common Properties. The Declarant proposes to cause each residential Lot within the Properties to constitute an Assessable Property. However, the Declarant reserves the right and discretion to include or exclude any non-residential Lot from the concept of "Assessable Property" and/or to prescribe a different assessment and/or valuation scheme(s) for any non-residential Lot which is subjected to covenants which require the payment of assessments to the Association.

"Association" shall mean and refer to the Highland Oaks Homeowners Association, Inc., a non-profit Texas corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Properties and all of the Common Properties, administering and enforcing the Covenants and otherwise maintaining and enhancing the quality of life within Highland Oaks Subdivision.

"Board" shall mean and refer to the Board of Directors of the Association.

"Bylaws" shall mean and refer to the Bylaws of the Association, as adopted and amended from time to time in accordance with the provisions of the Texas Non-Profit Corporation Act and this Declaration.

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

"Common Properties" shall mean and refer to any and all areas of land within or adjacent to the Properties which are known, 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, swimming pool(s), open spaces, paths and trails, playing fields, community halls, sports pavilions and the like including without limitation those shown on any recorded subdivision plat of portions of the Properties 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 Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. 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 Highland Oaks Subdivision. 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 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 The Oaks of Lubbock Development I, Ltd., and any or a successor(s) and assign(s) of The Oaks of Lubbock Development I, Ltd., with respect to the

voluntary disposition of all (or substantially all) of the assets and/or stock of The Oaks of Lubbock Development I, Ltd., and/or the voluntary disposition of all (or substantially all) of the right, title and interest of The Oaks of Lubbock Development I, Ltd. in and to the Properties. However, no person or entity merely purchasing one or more Lots from The Oaks of Lubbock Development I, Ltd. in the ordinary course of business shall be considered a "Declarant".

"Declaration" shall mean and refer to this particular instrument entitled "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens on and for Highland Oaks," 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.

"Development Period" shall mean a period commencing on the date of the recording of this Declaration in the Official Real Property Records of Lubbock County, Texas and continuing thereafter until the date upon which the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, upon which date the Class B membership will terminate and be converted into Class A membership, as described more fully in Article III below.

"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 permitted family size group of persons.

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

"Exempt Property" shall mean and refer to the following portions of the Properties: (i) all land and Improvements owned by the United States of America, the State of Texas, Lubbock County, the City of Lubbock or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental (rather than a proprietary) capacity; (ii) all land and Improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties; and (iii) such other land(s) and/or Improvement(s) and/or Lot(s) which are specifically exempted from the payment of Annual Assessments in accordance with a special resolution of the Board.

"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.

"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 Assessable 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.

"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.

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

"Payment and Performance Lien" shall mean and refer to the lien described within Sections 9 and 10 of Article V hereinbelow.

"Properties" shall mean and refer to: (i) the land described within Exhibit "A" attached hereto; and (ii) other land within the Highland Oaks development.

"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 Assessable Property who is a bona-fide lessee pursuant to a written lease agreement with an Owner; and
- (c) each individual lawfully domiciled in a Dwelling Unit other than an Owner or bona-fide lessee.

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

"Subdivision" shall mean and refer to the Highland Oaks Subdivision, 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.

"Taxing Authorities" shall mean and refer to Lubbock County, the Lubbock-Cooper Independent School District, the City of Lubbock and the State of Texas and any 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.

"Trustee" shall mean and refer to that certain individual(s) or entity(ies) designated or appointed from time to time and at any time by the Association to perform the duties and responsibilities described within Section 10 of Article V below, and its successors and assigns.

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 Highland Oaks Subdivision are more particularly described within Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

Section 2. Additions to Existing Property. Additional land(s) 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 real property to the scheme of this Declaration within the next ten (10) years by filing of record an appropriate enabling declaration, generally similar to this Declaration, which may extend the scheme of the Covenants to such 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 added properties and as are not inconsistent with the concept and purpose of this Declaration.

(b) In the event any person or entity other than the Declarant desires to add or annex additional Assessable 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 properties added and correspondingly subject the properties added 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 1. Membership. Each and every Owner of each and every Lot which is subject to these, or substantially similar, Covenants shall automatically be, and must at all times remain, a Member of the Association in good standing. 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: Class A and Class B. The Class A 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 Class B Member shall be the Declarant. Upon conclusion of the Development Period, the Class B membership shall terminate and the Declarant shall become a Class A Member, entitled to one vote for each Lot then owned by Declarant; and at such time, the Declarant will call a meeting as provided in the By-Laws of the Association for special meetings to advise the membership of the termination of the Class B status.

Section 2. Voting Rights. There shall be two (2) classes of voting Members during the Development Period:

Class A: The Owner(s) of each Lot shall be entitled to one (1) vote per Lot. Where more than one (1) Owner owns and holds a record fee interest in a Lot such

Owner(s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote.

Class B: The Class B Member shall have five (5) votes for each Lot it owns.

Any Owner, Resident or Member shall not be in "good standing" if such person or entity is: (a) in violation of any portion of these Covenants, the Design Guidelines, or any rule or regulation promulgated by the Board; (b) delinquent in the full, complete and timely payment of any Annual Assessment, Initial Common Properties Assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board.

The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, 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. Board of Directors. The affairs of the Association shall be managed initially by a board of three (3) individuals elected by the Class B Member. However, beginning with the third annual meeting of the Members of the Association and continuing thereafter, the Board shall be expanded to consist of five (5) individual Directors, three of whom shall be elected by the Class B Members and two of whom shall be elected by the Class A Members.

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 4. 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.

ARTICLE IV.

RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES

Section 1. Easement. Subject to the provisions of Sections 2 through 7 of this Article, 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) 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 this Declaration or the Design Guidelines 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, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Declarant and the Board;

(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 Highland Oaks; and

(j) The right (but not the obligation or duty) of the Declarant to create and operate a common water and/or sewer system providing water and/or sewer service for domestic purposes, for use by all Owners and Residents as more fully described in Article X of this Declaration, and the right to utilize the Common Properties for water wells, tanks, equipment related to the operation of the water and/or sewer system, and underground pipelines.

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. 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 6. 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 7. 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: lifeguards for swim parties; 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 8. 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.

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 therefor, 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 (being an assessment payable each year by the Owner to the Association for the purposes stated in Article V, Section 2);

(b) special assessment levied at the time of acceptance of a Deed to any Lot (the "Initial Common Properties Assessment");

(c) special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided;

(d) special individual assessments 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

(e) individual assessments and fines levied against an individual Owner, Member or Resident for violations of rules and regulations pertaining to the Association and/or the Common Properties.

The Annual Assessment, Initial Common Properties Assessment, special group assessment, special individual assessment, individual assessments and fines, 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. Purposes of Assessments. The assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Residents of the Properties and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the construction, improvement and maintenance of recreational areas and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: the payment of taxes on the Common Properties and insurance in connection with the Common Properties; the payment for utilities and the repair, replacement and additions of various items within the Common Properties; paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; carrying out the duties of the Board of Directors of the Association as set forth in Articles IV and VI herein; carrying out the other various matters set forth or envisioned herein or in any Amended Declaration related hereto; and for any matters or things designated by the City and County of Lubbock, Texas in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive but merely illustrative.

Section 3. Basis and Amount of Annual Assessments. Annual Assessments will begin on January 1, 2002, and will be due thereafter as set forth in Article V, Section 7. Until and unless otherwise determined by the Board of Directors of the Association, the maximum initial Annual Assessment (for the year 2002) will be Four Hundred and no/100 Dollars (\$400.00) per Lot per year; however, the Association's Board of Directors may fix the actual Annual Assessment at an amount equal to or less than \$400.00. If the Board of Directors of the Association determines that the initial Annual Assessment is insufficient to meet the needs of the Association during the remainder of the Association's initial fiscal year (the year 2002), the Board of Directors may, by majority vote, increase the initial Annual Assessment by not more than fifteen percent (15%) above the amount initially determined; and, the Board of Directors may increase the initial Annual Assessment by more than fifteen percent (15%) above the amount initially determined, but only by a majority vote of the voting power of the Association. No Owner shall be required to pay all or any portion of the Annual Assessment for the year in which the Owner purchases an unimproved Lot from Declarant or a Homebuilder.

Commencing on January 1, 2003 and in accordance with the provisions of Article V, Section 8, the maximum Annual Assessment for any fiscal year (including 2003) may be increased by the Board of Directors above the Annual Assessment for the previous fiscal year without a vote of the Members, provided that such increase is not effective before the first day of the fiscal year in which the increase occurs, and provided further that such increase will be an amount not exceeding fifteen percent (15%) of the Annual Assessment for the previous fiscal year of the Association. Any increase in the Annual Assessment which exceeds fifteen percent (15%) of the Annual Assessment for the previous fiscal year, shall require the vote or written consent of Members representing a majority of the voting power of the Association.

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 shall be exempt from the Annual Assessment for the year in which the Lot is purchased by the Homebuilder and for the entire following year; however, the Homebuilder shall receive no discount as to a Lot owned for longer than the year of purchase and the next following 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 4. Initial Common Properties Assessment. At such time that each Owner of any Lot accepts a Deed therefor, the Owner will pay to the Association, the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) for each Lot (the "Initial Common Properties Assessment"). The Initial Common Properties Assessments will be maintained by the Association in a special account established by the Board of Directors of the Association, and funds in such account shall be used by the Association solely for the improvement and/or maintenance of the Common Properties, which improvements may include, any, none or all of the following: clubhouse, swimming pool, basketball goals, soccer field, tennis court, playground, playground equipment, park, equipment for any such facilities, and such other improvements and facilities as determined by the Board of Directors of the Association. The Board of Directors of the Association shall, in its sole discretion, determine the improvements to be made to the Common Properties, and the time at which such improvements will be made. Nothing within this Declaration shall be construed to require the Association to provide any or all of the above-described improvements to the Common Properties. The Initial Common Properties Assessment shall in no event be refundable to the Owner, but shall be the property of the Association. Beginning on January 1, 2004, and on the first day of January every three years thereafter, the amount of the Initial Common Properties Assessment will increase by five percent (5%) of the Initial Common Properties Assessment for the preceding period, unless the Board of Directors determines to waive the increase, or unless the Board of Directors approves an increase of less than five percent, in which event the increase will be in the amount so approved by the Board of Directors. Homebuilders will be exempt from the Initial Common Properties Assessment if a Dwelling Unit is completed and sold by the Homebuilder during the year in which the Homebuilder purchases the Lot, or during the following year (the "Exemption Period"); however, if a Dwelling Unit is not completed and sold during the Exemption Period, the Homebuilder will be required to pay the Initial Common Properties Assessment at such time that the Lot is sold and the closing occurs. If a Homebuilder has not sold a Lot within five years from the date of purchase, the Homebuilder will pay the Initial Common Properties Assessment on the first day of January following the expiration of five years from the Homebuilder's date of purchase of the Lot.

Section 5. Special Group Assessments. In addition to the Annual Assessment authorized by Section 3 hereof, and the Initial Common Properties Assessment authorized by Section 4 hereof, the Association may levy in any Fiscal Year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto or for any unusual or emergency purpose(s) (including without limitation those matters arising out of litigation and/or judgments); provided that any such assessment shall have the affirmative approval of at least three-fourths of the individuals comprising the Board.

Section 6. Rate of Assessments. The Annual Assessments described in Section 3 and the special group assessments described in Section 5 must be fixed at a uniform rate for all Lots owned by Class A Members who are not Homebuilders, unless otherwise approved by at least three-fourths of the individuals comprising the Board.

Section 7. 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 (beginning January 1, 2002) 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 Annual Assessments and Initial Common Properties Assessments from Owners, Members or Residents; 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 8. 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 group 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 9. 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. 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 only to the extent permitted by applicable law) 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 highest lawful rate of interest 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 10. Power of Sale. The lien described within the preceding Section 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 Highland Oaks Subdivision, 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 Scott W. Sharp, whose address is 1005 15th Street, 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 Section 51.002 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, as then amended (successor to article 3810, Texas Revised Civil Statutes), and otherwise complying with that statute, 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.

Section 11. 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 12. 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;
- (c) Exempt Property; and
- (d) Unimproved Lots owned by Declarant.

ARTICLE VI.

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 1. Powers and Duties. The affairs of the Association shall be conducted by its Board. 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 above, 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 hereinabove; (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 VII 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 2. Board Powers. The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association. 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 XI, Section 1, 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 3. 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 4. 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 5. 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 VII.

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 Declarant and 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 the Declarant, and the 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 group assessment as provided for in Article V of this Declaration to cover the deficiency.

Section 4. Owner's Insurance; Security. 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 and Members (and their respective family members and guests). NEITHER THE ASSOCIATION NOR THE DECLARANT IS INSURING THE REAL OR PERSONAL PROPERTY OF THE OWNERS, RESIDENTS OR MEMBERS, AND NO SECURITY SERVICES ARE BEING PROVIDED.

Each Owner, Resident and Member 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 and Member;

(b) Each Owner, Resident and Member shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Resident's and Member'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 and Member covering his or her real and personal property and insuring against bodily injury, death or property damage, and general liabilities; however, each Owner, Resident and Member must purchase, obtain and maintain not less than an insurance policy (such as a homeowner's insurance policy) which covers all improvements on the Lot for their full insurable value as determined when the policy is issued and renewed, and which contains public liability and property damage insurance applicable to the property being insured in the amount of at least \$1,000,000.00 per person and \$3,000,000.00 per accident, and in the case of property damage, \$1,000,000.00 (or in such other amounts as may be established from time to time by the Association.)

(c) All insurance carried by each Owner, Resident and Member shall name as additional insureds, the Declarant, the Association, and such other parties as the Declarant or the Association shall designate to Owner, Resident or Member, who have an insurable interest in the Properties, the Common Properties, or any Lot. Insurance carried by each Owner, Resident and Member shall contain appropriate cross-liability endorsements denying the Owner's, Resident's or Member's insurer's rights of subrogation against the Declarant and the Association and their officers, directors, shareholders, general partners, limited partners, members, agents, employees, representatives, attorneys and other persons acting on behalf of said entities, as to risks covered by such insurance, without prejudice to any waiver or indemnity provisions applicable to the Owner, Resident or

Member and any limitation of liability provisions applicable to the Declarant and the Association as contained in this Declaration, of which provisions the Owner, Resident or Member shall notify all insurance carriers.

(d) EACH OWNER, RESIDENT AND MEMBER SHALL TAKE SUCH ACTION AS EACH OWNER, RESIDENT AND MEMBER DEEMS NECESSARY TO PROTECT AND SAFEGUARD PERSONS AND PROPERTY.

ARTICLE VIII.

ARCHITECTURAL REVIEW

Section 1. Architectural Review Committee. The Architectural Review Committee ("ARC") shall be composed of at least three (3) individuals selected and appointed by the Declarant, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a consistent approach to and construction of improvements within Highland Oaks Subdivision. In the event of the death, incapacity or resignation of any member of the ARC, the Declarant (during the Development Period) shall have full authority to designate and appoint a successor. From and after conclusion of the Development Period, the ARC members shall be appointed, and replaced in the event of death, incapacity or resignation, 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 a majority of its members, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and proper facing of main elevation with respect to nearby streets, all in accordance with this Declaration and/or the Design Guidelines and/or bulletins;
- (ii) minimum finished floor elevation and proposed footprint of the dwelling;
- (iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (iv) drainage solutions;
- (v) 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; and
- (vi) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Design Guidelines, bulletins promulgated by the 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); and
- (vi) landscaping plan.

The ARC 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 the City of Lubbock, Texas. The ARC is also authorized to coordinate with the City and County of Lubbock in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration, the Design Guidelines, and any bulletins or lot information sheets promulgated thereunder. However, the mere fact that the City of Lubbock issues a building permit with respect to a proposed structure does not automatically mean that the 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 City or County of Lubbock 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.

 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.

Section 4. Plan Submission and Approval. Within thirty (30) days following its receipt of the Plans, the ARC shall advise the submitting Owner whether or not the Plans are approved. If the ARC shall fail to approve or disapprove the Plans in writing within said 30-day period, it shall be conclusively presumed that the ARC has approved the Plans. 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 Association, nor the ARC, nor the Board 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 Association, the ARC, the Board, 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.

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 Article IX, Section 11 of these Covenants. 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.

Section 8. Variances. The ARC may authorize variance 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 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 IX.

USE OF LOTS IN THE SUBDIVISION: PROTECTIVE COVENANTS

The Subdivision (and each Lot situated therein) shall be constructed, developed, occupied and used as follows:

Section 1. Residential Lots. All Lots within the Subdivision shall be used, known and described as residential Lots, unless otherwise indicated on the Subdivision plat. 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, if any, its customary and usual accessory Structures (unless otherwise prohibited herein). 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, the Declarant or the Association. No Owner, Resident or Member 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 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 tranquillity of any one or more of the Residents within the Subdivision. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations and ordinances of the City and County of Lubbock, Texas or any other governmental authority having jurisdiction over the Subdivision. As used in this Article IX, the following words shall be deemed to have the following meanings:

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

The "front" property line shall be the property line abutting a street or county road, and the "rear" property line shall be the property line abutting an alley.

For Lots 2 and 3, the front property line will be the property line abutting FM 1730.

For Lots 15, 16 and 20, the front property line will abut County Road 1870.

For Lots 33 and 34, the front property line will abut County Road 7540.

For Lots 38, 40, 51, 64, and 71 the front property line will abut County Road 1860.

For Lots 44 and 45, the front property line will abut County Road 7550.

For Lots 56 and 57, the front property line will abut County Road 7560.

For Lots 77 and 80, the front property line will abut County Road 7560.

For Lots 65 and 70 the front property line will abut County Road 1850.

Use of all Lots within the Subdivision shall comply with the following:

(a) 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. The Association, acting through its Board of Directors, shall have exclusive right and discretion to determine what constitutes a nuisance or annoyance.

(b) Except as may be otherwise permitted herein, 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. No Dwelling Unit, garage or other Structure appurtenant thereto, shall be moved upon any Lot from another location. However, the Declarant reserves the right to erect,

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

(c) No animals of any kind shall be raised, bred, or kept on any Lot except that not more than three (3) dogs, cats, or other similar domesticated household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. The keeping of any animal or other pet shall be subject to rules and regulations adopted by the Association through its Board of Directors. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards. No animals shall be permitted which are obnoxious, offensive, vicious (e.g. pit bull terriers shall not be permitted within the Properties) or dangerous. All animals must be kept and maintained in the rear yard of the Lot, or on a leash.

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

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

(f) No antenna, tower, or other similar vertical structure shall be erected on any Lot for any purpose; however, a flagpole will be permitted where approved in writing by the ARC. No antenna or tower shall be affixed to the outside of any Dwelling Unit on any 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 and/or the Association shall the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Properties. 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.

(g) 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.

(h) 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.

Section 2. Minimum Floor Space. Each one (1) story dwelling and each one-and-one half (1.5) and two (2) story dwelling constructed on any Lot shall contain such minimum square feet of air-conditioned floor area (exclusive of all porches, garages or breezeways attached to the main dwelling) as may be specified by the Design Guidelines and/or the ARC for the first and/or second stories and/or the total; however, in no event shall any Dwelling Unit have less than the number of square feet of air conditioned floor area as shown on Exhibit "B". No Structure will be in excess of two (2) stories (however, a Dwelling Unit may have a basement and two above-ground stories).

Section 3. Garages; Parking. Each single-family residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles, unless otherwise specifically approved by the ARC. Each Owner, Member and Resident shall use their respective best efforts to park and store their automobiles within the garage. All garage doors shall be closed at all times when not in use. Carports are not encouraged but may be permitted under limited rigid circumstances if, as and when, in the absolute opinion of the Architectural Review Committee, the exterior surface and appearance will substantially compare with a garage and if absolutely no storage of items, which would otherwise be visible, will occur thereunder. Any and all proposed garage or carport plans and specifications must be submitted to the Architectural Review Committee for review

and approval. A garage will be situated on the Lot in such a manner that the garage door or entry will face not less than a ninety degree (90°) angle away from the street upon which the Lot is situated. The ARC may adjust this angle as necessary to accommodate the particular dimensions of each Lot; however, an effort must be made to face the garage doors away from the abutting street. On corner Lots, no garage will face either the front street or the side street, and no driveway will be permitted from a side street. Each Owner; Resident and Member shall use their respective best efforts to refrain from:

- (a) habitually parking any automobile or vehicle on any Lot outside of an approved garage area between any Dwelling Unit and the abutting front street or between any Dwelling Unit and an abutting side street; and
- (b) performing, permitting or allowing repair or maintenance work to any automobile or other vehicle outside the garage and visible to the abutting street(s).

Under no circumstances or conditions shall any automobile, boat or other vehicle be parked on a non-paved portion of any Lot, except that a trailer, motor home, boat or recreational vehicle may be parked at a location to the side or rear of the Dwelling Unit provided that it is concealed from view of all other Lots and from public streets which border such Lot. Any Structure designed to house, store or conceal a trailer, motor home, boat or recreational vehicle 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.

Section 4. Setback Requirements. Each Dwelling Unit will face the street which abuts the front of the Lot upon which the Dwelling Unit is to be situated; however, for all corner Lots, the ARC will determine the location of the Dwelling Unit in accordance with the Plans submitted by each Owner. No Structure shall be placed within the following setback lines:

- (a) 80 to 90 feet from the front property line of the Lot, except Lots 1 through 7, inclusive, in which case the setback will be 200 to 220 feet from the front property line;
- (b) 25 feet from any public street or right-of-way (other than a street abutting the front property line of the Lot);
- (c) 20 feet from the rear property line of the Lot;
- (d) 15 feet from any side property line of the Lot; except that 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 lot setback lines provided herein, the ARC may waive, in writing, said side lot setback line as to such Dwelling Unit, and such Lots shall be considered to be one Lot solely for purposes of determining the setback lines

The following Structures are expressly excluded from the setback restrictions:

- (i) structures below and covered by the ground;
- (ii) steps, walks, below ground-level swimming pools, uncovered patios, driveways and curbing;
- (iii) landscaping as approved by the ARC pursuant to Article VIII hereof;
- (iv) planters, walls, fences or hedges, not to exceed 8 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 VIII hereof.

In no event shall the ARC exempt from the setback restrictions, any roofed structure other than swimming pool equipment houses, cabanas, greenhouses, barns and storage sheds; and, in the case of swimming pool equipment houses, cabanas, greenhouses, barns and storage sheds, such structures may in no event be exempted from side setback restrictions, and such structures may in no event be situated within ten (10) feet of the rear property line of the Lot; and further, such structures must be situated wholly within a fence on the Lot, and must meet any other design and construction requirements as established by the ARC.

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

(a) A perimeter fence shall 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. The side perimeter fences shall be connected to the Dwelling Unit by a fence running from the front corner of such side perimeter fence to the Dwelling Unit. If not sooner constructed, all such fences must be constructed within one (1) year following the date on which construction of the Dwelling Unit is completed on the Lot. 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. Notwithstanding the foregoing, no fence shall be constructed within a twenty-five foot "visibility triangle." As used herein, a "visibility triangle" shall mean a triangle sight area, at all street and county road intersections, which shall include that portion of public right-of-way and any corner Lot within a triangle formed by a diagonal line extending through points on the two property lines twenty-five feet from the street or county road corner intersection of the property line (or that point of intersection of the property lines extended) and intersecting the curblines.

(b) Fences and walls shall not be permitted within the front yard of any Lot; provided, however, decorative fences and walls shall be allowed which do not exceed thirty inches in height and which are approved by the ARC. Notwithstanding the preceding sentence, Lots 1, 2, 3, 4, 5, 6 and 7, which abut Slide Road (FM 1730), are each required to have a fence along the front property line of the Lot (except where driveways are located) to be constructed of wrought iron, except that the fence columns shall be of the same masonry or exterior finish utilized on the Dwelling Unit; and further, the columns shall be spaced not more than 25 feet apart on center. On Lots 2 and 3, the front yard fence shall not extend along the entire front property line, but will connect to the side fence as described below in this Section 5.(b), and so as to maintain a 30 ft. visibility triangle. Gates should be set back 15 feet from the front property line of Lots 1 through 7, inclusive, and the front fence should be angled to connect to the gate or gates. In order to promote a uniform appearance, all front yard fences on Lots abutting Slide Road (Lots 1 through 7, inclusive) shall be six feet (6') in height and shall be of an architectural style and construction as will conform to the design of the Dwelling Unit, as determined and approved by the ARC. In addition to the front yard fence required by this paragraph, Lot 2 shall have a fence, set back ten feet (10') from the South property line of said Lot running from the front corner of the front yard fence (except that a 30 ft. visibility triangle shall be maintained) to the rear property line of said Lot; and, such fence shall be constructed of the same materials and be of the same design as the front yard fence. In addition to the front yard fence required by this paragraph, Lot 3 shall have a fence, set back ten feet (10') from the North property line of said Lot, running from the front corner of the front yard fence (except that a 30 ft. visibility triangle shall be maintained) to the rear property line of said Lot; and, such fence shall be constructed of the same materials and be of the same design as the front yard fence. The area of each Lot between the boundary line of the Lot and the fence shall be landscaped as approved by the ARC and maintained by the Owner or Resident of the Lot. Although Declarant or the Association may, but shall not be required, to plant or provide trees on selected Lots, each Owner will maintain, water and care for the trees located on his or her Lot, and neither Declarant nor the Association shall have any duty or obligation to maintain or replace the trees which it may have provided or planted.

(c) Except as otherwise provided in this Section 5, all perimeter fences located on a Lot which face or abut a street or county road (as shown by the recorded plat of the Subdivision) shall be constructed of brick, stone, masonry, or flat-top cedar pickets (provided that any fence constructed of flat-top cedar pickets shall incorporate brick columns spaced not more than 25 ft. apart on center), and shall be of such design and construction as conform to the design of the Dwelling Unit, and as are approved by the ARC. 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, pipe or other material not expressly permitted and approved by the ARC.

(d) Except as otherwise provided in this Declaration, and except as prohibited by City or County ordinances and regulations, no fence constructed on a Lot shall be less than six feet (6') nor more than eight feet (8') in height.

(e) 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 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.

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:** The exposed exterior wall area, exclusive of doors, windows and covered porch area, shall be at least 80 percent brick, stone, or other materials approved by the ARC. Any exposed exterior area not covered by brick or stone shall be covered by wood or siding (metal or synthetic) having the appearance of wood, and as approved by the ARC. 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 AND MATERIAL:** Flat roofs, mansard roofs and other "exotic" roof forms shall not be permitted. All roofing materials utilized on any Structure on a Lot must be approved by the 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 metal, composition or wood shingles (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.

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

(d) **GARAGES:** In addition to meeting the requirements stated in Article IX, Section 3, all garages shall be given the same architectural treatment as the Dwelling Unit located on such Lot. All garage doors shall remain closed when not in use. The interior walls of all garages must be finished (taped, floated and painted as a minimum). No garage shall be enclosed for living area or utilized for any other purpose than storage of automobiles and related normal uses.

(e) **EXTERIOR LIGHTING:** No exterior light shall be installed or situated such that neighboring Lots are unreasonably lighted by the same, and all exterior lighting to be located within the front yard or side yard of a Lot must be approved by the ARC. 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.

(f) **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 2500 psi with steel reinforcing.

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

(h) **SKYLIGHTS:** 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 V hereof, and the design, plans, and installation of skylights, and all equipment located on the roof, are subject to the approval of the ARC.

(i) **SWIMMING POOLS:** No above-ground swimming pools shall be permitted on any Lot. However, an above-ground spa or hot tub may be constructed on a Lot provided that the same is located on a porch or deck associated with the Dwelling Unit. Any in-ground swimming pool shall be located in the rear yard of the Lot, and shall be securely enclosed by a fence and gates designed to prevent children and animals from accidentally 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.

(j) **TENNIS COURTS:** No tennis court shall be constructed on any Lot unless and until the design, plans and specifications for the tennis court have been approved by the 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.

(k) **SEPTIC SYSTEMS:** No cesspool, outhouse or outside toilet shall be permitted on any Lot. Toilets located in any Structure, shall be connected to either an approved public sewage disposal system or to a septic tank located in the front yard of the Lot on which such Structure is constructed. Sewage disposal facilities and septic tanks must comply in all respects with all applicable state, county and/or other governmental laws, rules and regulations. Septic tanks on each Lot shall be restricted to the front yard of each Lot.

(l) **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 on a Lot shall be restricted to the rear yard of each Lot, and shall be located not closer than 50 feet to any side property line or the rear property line. 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, except that on Lots 1 through 7, inclusive, submersible pumps having not more than five horsepower in capacity shall be permitted. Under no circumstances shall any above-ground irrigation motors or similar devices (whether gasoline or electric) be located on a Lot and/or used in connection with providing water to that Lot for household use and watering of landscaping. All water wells shall be cased from the surface to the water formation. Owners and Residents may utilize water from a water well for domestic purposes only, and all water produced from a well shall be utilized solely on the Lot from which the water is removed. No Owner or Resident may remove or sell water from their Lot to the public, or to any person or entity.

(m) **LOTS FRONTING SLIDE ROAD (FM 1730):** All Lots fronting Slide Road (FM 1730) must receive approval from both the ARC and the Texas Department of Transportation for the location of driveways and any other access from Slide Road to the Lot, and no driveway or entranceway will be constructed unless and until written approval has first been obtained from both the ARC and the Texas Department of Transportation.

(n) **MAILBOXES:** Mailbox location and design will be subject to approval by the ARC, and all mailboxes must be harmonious with the Dwelling Unit.

(o) **APPROVED STRUCTURES OTHER THAN DWELLING UNIT:** 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, cabanas, greenhouses, barns and storage sheds; however, in no event will the ARC approve a Structure or Improvement that is not of the same architectural design as the Dwelling Unit, and constructed of the same materials as used on the Dwelling Unit. Further, such Structure or

Improvement must be of the same percentage of brick, stucco, stone or other material as required for the Dwelling Unit.

Section 7. Landscaping of Lots. Construction of each and every Dwelling Unit within the Properties shall include the installation and placement of appropriate landscaping. All landscaping shall be completed by no later than one year after final completion of the Dwelling Unit, weather permitting. Landscaping must (i) permit reasonable access to public and private utility lines and casements for installation and repair; (ii) provide an aesthetically pleasing variety of trees, shrubs, groundcover and plants; and (iii) provide for landscaping of all portion of the Lot not covered by Improvements. Landscaping shall include, groundcover, trees, shrubs, vegetation and other plant life. Landscaping shall not include gravel, concrete, timber or rocks except where used as borders, walkways, accent pieces, or as otherwise approved by the ARC. A swimming pool, where approved by the ARC, may be considered landscaping. Except for typical garden hoses having a diameter of not more than one-inch, and common portable yard sprinklers that may be attached to such hoses, no pipes, hoses, sprinklers, or other parts of any irrigation system for watering of landscaping on a Lot shall be located above the ground. An under-ground irrigation system adequate to suitably water all landscaping located in the front yard and side yard of each Lot shall be installed at the time the Dwelling Unit is constructed.

Section 8. Screening. All utility meters, equipment, air conditioning compressors, swimming pool filters, heaters and pumps and any other similar exposed mechanical devices 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.

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

Section 10. Trash Container. All dumpsters and other trash containers shall be located in the alley at the rear of each Lot. Declarant and the Association reserve the right to place dumpsters and other trash containers within any alley in the Subdivision, or on the Common Properties. Such containers shall be placed as close to the rear fence on the Lot as reasonably possible so that said container will not interfere with use of the alley. Each Owner, at Owner's expense, shall contract with a public or private trash service for the regular pickup of all trash and other debris (all of which shall be placed in the dumpsters or other trash containers, it being understood that at no time shall any Owner pile or stack trash or other debris in the alley or on a Lot).

Section 11. General.

(a) **CONSTRUCTION DEBRIS:** During the construction or installation of any Improvement or Structure on any Lot, construction debris shall be removed from the Lot on a regular basis and the Lot shall be kept as clean as possible.

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

Section 12. Easements; Utilities. Easements for the installation and maintenance of utilities and drainage facilities are reserved in this Declaration and as shown on the recorded subdivision plat. Utility service may be installed along or near the front and/or side and/or rear Lot

lines and each Lot Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the 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 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 Subdivision 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 Subdivision, 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 Association or 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 of the Owner. Each Owner agrees to provide, at the sole cost and expense of each Owner, such land and equipment and apparatus as are necessary and appropriate to install and maintain additional lighting and security-related measures which becomes technologically provident in the future.

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

- (a) Prompt removal of all 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;
- (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, during normal business hours, 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 and if not paid within thirty (30) days thereof, shall 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. The lien provided under this section will constitute a lien retained against such property with the same force and effect as the Payment and Performance Lien for assessment set forth in these Covenants.

Section 14. Use of Alley. On the south boundary of the Highland Oaks Subdivision is a fifty-foot wide alley, as more particularly shown by the Plat filed for record in Volume 6743, Page 85 of the Official Real Property Records of Lubbock County, Texas. All Owners, Residents and Members are hereby advised that within the alley, and within the fifty-foot strip of land extending east of said alley to County Road 1736, are various underground utilities including an underground pipeline for the transportation of products which may include natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product, or a hazardous substance. The location of said pipeline is further described in an easement filed for record in Volume 1925, Page 6 of the Deed Records of Lubbock County, Texas, as partially released in Volume 6735, Page 314 of the Official Real Property Records of Lubbock County, Texas. Under no circumstances, may Owners, Residents and Members, or their representatives, agents or contractors, dig, drill or conduct earth moving operations within the fifty-foot wide alley on the south boundary of the Subdivision, and vehicular access within the alley is limited to the North twenty feet (Owners, Residents and Members, and their representatives, agents and contractors, will not utilize the south thirty feet of the alley for vehicular access except where streets and alleys are constructed which crossover the alley from north to south or south to north). Owners of Lots 7 and 8, 57 through 63 (inclusive), and 79 and 80, which abut the alley, are particularly advised to use caution in the construction and development of said Lots, and all plans and specifications submitted to the ARC in relation to said Lots will disclose any digging, drilling and earth movement to be conducted. The ARC may provide additional guidelines for digging, drilling and earth movement on the Lots abutting the fifty-foot wide alley. Owners will advise their contractors, subcontractors and other persons performing construction or earth moving activities on a Lot concerning the existence of the underground pipeline and other underground utilities within the fifty-foot wide alley.

ARTICLE X

EASEMENTS AND TELECOMMUNICATION SERVICES; UTILITY SERVICES

Section 1. Utility Easements. Non-exclusive easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across an area not less than two feet (2') nor more than five foot (5') wide perimeter of each Lot are reserved by Declarant for itself, the Association, and all utility and CATV companies and their respective successors and assigns, serving the Subdivision and no Improvement or Structure shall be constructed or placed thereon without the express prior written consent of the ARC. The utility easement reserved herein, without limitation, may be used by Declarant and the Association to place dumpsters or other trash containers in any alley, for use by Declarant or the Association. Full rights of ingress and egress shall be had by Declarant, the Association, and all utility and CATV companies serving the Subdivision, and their respective successors and assigns, at all times over the Subdivision 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 the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon the front, rear and side setback areas applicable for each Lot for the carrying out by the Association of its functions, duties and obligations

hereunder; provided, however, that any such entry by the Association 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 Association at the expense of the Association's maintenance fund.

Section 3. Telecommunication Services. The Declarant and/or the Association (with the prior approval of the Board of Directors), may (but without obligation) provide, either directly or by contracting with other parties, various telecommunication services to the Lots and Common Properties within the Subdivision. The Board of Directors of the Association shall have the sole discretion to determine whether or not such telecommunication services are provided by the Association, and if the Association is to provide such services the Board shall have the sole discretion to determine the types of services to be provided, the manner in which such services will be provided, the amounts to be charged, and the method of paying for such services. The amounts charged for such services shall not exceed those authorized or required by any regulatory authority with jurisdiction over such matters.

(a) **Types of Services.** The types of telecommunication services that may be provided by or through the Declarant or the Association shall include, but not be limited to, the following: (i) local and long-distance telephone service; (ii) voice mail service; (iii) cable television service; (iv) private television channels, for education and community purposes; (v) security monitoring of streets and other Common Properties; (vi) central home security systems for fire and burglary detection; (vii) electronic utility meter reading systems; (viii) electronic mail systems; and (ix) such other similar telecommunication services the Declarant or the Board of Directors determines to be necessary or beneficial for the safety, welfare or enjoyment of the Association Members or the Subdivision.

(b) **Common Area Facilities.** The telecommunication equipment, wiring and other facilities that are necessary to provide the telecommunication services for the Common Properties in the Subdivision shall either be owned by the Association or the Association shall contract with other parties to provide such facilities on behalf of the Association. The cost and expense of constructing, installing, operating, maintaining, repairing and replacing such facilities shall be paid by the Association, and may be included as part of the annual assessments and special assessments to the Members.

Section 4. Water and/or Sewer Services. Declarant reserves for itself and for its successors and assigns, the exclusive right, but not the obligation or duty, to create, own or have an interest in, and/or operate a "retail public utility" or a "water supply or sewer service corporation" (as "retail public utility" and "water supply or sewer service corporation" are defined in the Texas Water Code, Section 13.002, as now existing or hereafter amended), for the purpose of providing "retail water or sewer utility service" (as "retail water or sewer utility service" is defined by the Texas Water Code, Section 13.002) to all Owners and Residents of the Subdivision and to any other persons or entities as desired by Declarant. "Retail public utility" and "water supply or sewer service corporation" are hereinafter sometimes collectively referred to as "the Utility." If the Utility is created under the authority herein reserved to Declarant, and if a certificate of public convenience and necessity (the "Certificate") is obtained by the Utility in accordance with the provisions of the Texas Water Code, then each Owner who thereafter purchases a Lot within an area being serviced by the Utility will purchase all water and/or sewer services (as are then being provided by the Utility) from the Utility, and no Owner will drill a water well or install a septic tank on a Lot receiving said service from the Utility. The provisions of this Section 4 shall not apply to any Owner who drills a water well and installs a septic tank prior to the Utility being created and obtaining a Certificate; however, the provisions of this Section 4 shall apply to any subsequent Owner who, after the Utility has been created and obtains a Certificate, purchases a Lot within the service area of the Utility, on which a water well or septic tank is in existence. If an Owner purchases a Lot after the Utility has been created and the Certificate obtained, and if the Lot has an existing water well and septic tank, the Owner will discontinue use of the water well if the Utility is providing water, and will discontinue use of the septic tank if sewer service is being provided by the Utility; and, at the time of the purchase of the Lot, water and/or sewer service shall be provided to the Lot on such terms and conditions as are then in effect for such service by the Utility. To the extent that the provisions of this Section 4 conflict with the provisions of Article IX, Section 6, (k) and (l), the provisions of this Section 4 shall control. Any Owner who drills a water well and installs a septic tank prior to the Utility being created and obtaining a Certificate, may elect, upon creation of the Utility, to discontinue use of the water well and/or septic tank, and instead receive water and/or sewer service (as may then be available)

from the Utility and upon such terms and conditions as are then in effect for such service by the Utility. Nothing within this Section 4 shall be construed as an obligation, duty, or representation by Declarant to create the Utility. If the Utility is created, the Utility may utilize the Common Properties and any Lot then owned by Declarant to drill and maintain water wells for use by the Utility in providing water service, and the Utility shall have such access to the Common Properties as is necessary for the purpose of drilling and maintaining the water wells, tanks, equipment and underground pipelines as are related to such water wells. The utility easements described in Article X, Section 1 may be utilized by the Utility in providing the services of the Utility. Declarant may use any Lot or other property which it owns within the Subdivision for the purpose of drilling and maintaining water wells, tanks, equipment and pipeline related to the utility.

ARTICLE XI.

GENERAL PROVISIONS

Section 1. Power of Attorney. Each and every Owner, Member and Resident hereby makes, constitutes and appoints Declarant as his/her true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her and in his/her name, place and stead and for his/her use and benefit, to do the following:

(a) to exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Properties;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Properties, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Lubbock County Clerk's Office and shall remain in full force and effect thereafter until conclusion of the Development Period.

Section 2. Further Development. During the Development Period, each and every Owner, Resident and Member waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities, and the Association shall not devote or expend any monies or personnel, 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 Subdivision.

Section 3. Duration. The Covenants of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner and Resident of any land subject to this Declaration, 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 Subdivision 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 Real Property 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 Subdivision 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 4. 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 3 of this Article, these Covenants may be amended and/or changed in part as follows:

(a) During the Development Period, for the purposes of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein (and provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration, and shall not impair or materially adversely affect the vested property or other rights of any Owner or his or her mortgagee), Declarant reserves to itself and shall have the continuing right, at any time, and from time-to-time, without the joinder or consent of any party, to amend this Declaration by any instrument in writing duly executed, acknowledged and filed for record in the Official Real Property Records of Lubbock County, Texas. Furthermore, during the Development Period, Declarant reserves the right (on application and request of the Owner of any Lot) to waive, vary or amend (by an appropriate letter to that effect, addressed and delivered to such applicant Owner by Declarant for filing in the Official Real Property Records of Lubbock County, Texas) any of these covenants and restrictions to any particular Lot, if, in the sole discretion of the Declarant, such action is necessary to relieve hardship or permit better architectural planning to be effected; provided however, these actions will not impair or materially adversely affect the vested property or other rights of any Owner or his or mortgagee.

(b) During the Development Period, and for reasons other than as stated above in Article XI, Section 4(a), Declarant may amend or change, but not terminate, these Covenants by exercising its powers under Article XI, Section 1 hereinabove; or, with the affirmative vote of Members representing a majority of the total number of votes of the Association (with the voting rights being determined as set forth in Article III, Sections 1 and 2 of this Declaration).

(c) From and after conclusion of the Development Period these Covenants may be amended or changed, but not terminated, with the affirmative vote of Members representing a majority of the total number of votes of the Association (with the voting rights being determined as set forth in Article III, Sections 1 and 2 of this Declaration).

Any and all amendments shall be recorded in the Office of the County Clerk of Lubbock County, Texas.

Section 5. Enforcement. Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s), guests and invitees. The Payment and Performance Lien shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional restraints and restrictions on the good standing qualifications of the Residents and Members of such Owner's Lot. 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. Enforcement of these Covenants may be initiated by any 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 enforcement of any lien created by these Covenants; but failure by the Association 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, Texas is 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 6. 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 or County of Lubbock, Texas (including, without limitation, the Zoning Ordinance), then such municipal or county requirement shall control.

Section 7. 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 8. 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 9. 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 10. Notices to Resident/Member/Owner. Any notice required to be given to any Resident, Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when: (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing; or when (ii) delivered by hand or by messenger to the last known address of such person within the Properties; or when (iii) posted on the Association's bulletin board for at least thirty (30) consecutive calendar days.

Section 11. Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

Section 12. Disputes. Matters of dispute or disagreement between Owners, Residents, Members, the Association, or the offices of the Association with respect to interpretation or application of the provisions (excluding Article VIII architectural matters and issues concerning substantial completion) of this Declaration or the Association Bylaws, shall be determined by the Board of Directors. Matters pertaining to Article VIII architectural matters and issues concerning substantial completion shall be determined by the Architectural Review Committee. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners, Residents and Members.

(a) **Mediation.** Except as otherwise provided herein, any controversy or claim between or among any Owner, Resident, Member, the Association, the Board of Directors, officers in 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 Subdivision, work for any of the parties, represent any of the parties, nor have any conflict of interest with any of the parties. The Board shall maintain a list of five (5) potential mediators, but the parties will be in no way limited to their choice by this list. 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 thirty (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 a 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 lien by the Association as set out in the Declaration. 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, Member, the Association 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.
- (2) 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, including any Payment and Performance Lien, 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. 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, Member, the Association or the Declarant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

Section 13. ASSUMPTION OF RISK, DISCLAIMER, RELEASE AND INDEMNITY.

(a) **Assumption of Risk.** Each Owner and Homebuilder, by his or her purchase of a Lot within the Subdivision, and each Resident and Member, by his or her residence within or use of the Subdivision, hereby expressly assumes the risk of personal injury, property damage, or other loss caused by use, maintenance, and operation of the Properties, including but not limited to the Common Properties, and any Lot, and including but not limited to: (i) noise from maintenance equipment or persons utilizing the Common Properties; (ii) view restrictions caused by maturation of trees and shrubs; (iii) reduction in privacy caused by use of the Common Properties or any portion of the Properties; and (iv) the design, development and construction of the Subdivision.

(b) **Disclaimer and Release.** Except as specifically stated in this Declaration or in any Deed, Declarant and the Association hereby specifically disclaim 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 Subdivision, the Properties, 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 Subdivision, the Properties, the Common Properties, and any Lot within the Subdivision, for any and all activities and uses which Owner, Resident, Member, or 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 Properties, the Common Properties and any Lot; (iii) except for any warranties contained in the Deed delivered from Declarant to an Owner or Homebuilder, the nature and extent of any right-of-way, possession, reservation, condition or otherwise that may affect the Properties, the Common Properties, and any Lot; and (iv) the compliance of the Properties, 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).

Declarant's sale of each Lot within the Subdivision is on an "AS IS, WHERE IS, WITH ALL FAULTS" basis, and each Owner or Homebuilder purchasing a Lot within the Subdivision expressly acknowledges that, as part of the consideration for the purchase of the 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, THE COMMON PROPERTIES OR ANY LOT WITHIN THE SUBDIVISION.

Each Owner, Homebuilder, Resident and Member hereby waives, releases, acquits and forever discharges Declarant, any successor or assign of Declarant, the Association, and the Declarant's and the Association's directors, officers, shareholders, general partners, limited partners, members, agents, employees, representatives, attorneys and any other person or entity acting on behalf of Declarant or the Association (sometimes referred to in this Section 13 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, Homebuilder, Resident, or Member 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 Subdivision, the Properties, 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 Subdivision, Properties, 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 Properties, 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 any Owner, Homebuilder, Resident, Member or Released Parties, on account of or growing out of any and all injuries or damages, including death, to persons or property relating to the use, occupancy, ownership, construction, operations, maintenance, design, repair or condition of the Subdivision, the Properties, the Common Properties, any Lot, or any improvements located thereon, prior to this date of this Declaration or after the 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 Subdivision, the Properties, the Common Properties, any Lot, or any improvement located thereon, (ii) the activities on the Subdivision, the Properties, the Common Properties, any Lot, or any improvement located thereon; (iii) the existence, now or hereafter of hazardous materials or substances on the Properties, the 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. Maintenance of any insurance as required by this Declaration shall not affect the obligations of any Owner, Homebuilder, Resident or Member under this Section.

Section 14. Joinder of Lender. American State Bank, holder of a lien of record against the Properties, joins in this Declaration for the sole purpose of showing its assent thereto and that it has no objections to the filing of this Declaration. No violation of any covenant contained within this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Properties; providing however, that any mortgagee in actual possession, or any purchaser at any mortgagee's foreclosure sale, as well as all other owners, shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Properties.

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

DECLARANT:

THE OAKS OF LUBBOCK DEVELOPMENT I,
LTD., a Texas limited partnership
BY: THE OAKS OF LUBBOCK DEVELOPMENT,
INC., General Partner

By: *Kevin Glasheen*
Kevin Glasheen, President

AMERICAN STATE BANK

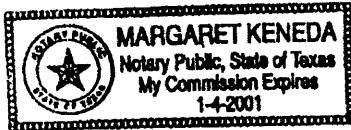
By: *Gene Maxwell*
Gene Maxwell, Vice President

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 Kevin Glasheen, known to me, or proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that Kevin Glasheen executed the instrument as the act of President, a Texas corporation, and that he executed the instrument on behalf of the corporation for the purposes and consideration expressed, and in the capacity hereinabove stated; said corporation acting as General Partner on behalf of THE OAKS OF LUBBOCK DEVELOPMENT I, LTD., a Texas limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on July 19, 2000.

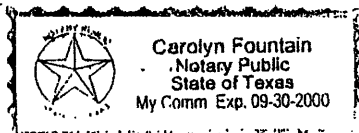


Margaret Keneda
Notary Public, State of Texas

THE STATE OF TEXAS

COUNTY OF LUBBOCK

This instrument was acknowledged before me on July 25, 2000, by GENE MAXWELL, Vice President of AMERICAN STATE BANK, a state banking association, on behalf of said association.



Carolyn Fountain
Notary Public, State of Texas

DECLARANT:

THE OAKS OF LUBBOCK DEVELOPMENT I,
LTD., a Texas limited partnership
BY: THE OAKS OF LUBBOCK DEVELOPMENT,
INC., General Partner

By: *Kevin Glasheen*
Kevin Glasheen, President

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 KEVIN T. GLASHEEN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the instrument as the act of THE OAKS OF LUBBOCK DEVELOPMENT, INC., a Texas corporation, and that he executed the instrument on behalf of the corporation for the purposes and consideration expressed, and in the capacity hereinabove stated; said corporation acting as General Partner on behalf of THE OAKS OF LUBBOCK DEVELOPMENT I, LTD., a Texas limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on August 2nd, 2000.



Shelly Taylor
Notary Public, State of Texas

SEAL

This Declaration is being refiled for the sole purpose of correcting the acknowledgment of Kevin Glasheen,* and in all other respects confirms the former Declaration. This corrected Declaration shall be effective from the date on which the former Declaration was effective.

* in the capacity stated above,

EXHIBIT "A"

PROPERTY SUBJECT TO DECLARATION

Lots 1 through 80, and Tracts A and B, HIGHLAND OAKS, a Subdivision in Section 7, Block AK, Lubbock County, Texas, according to the Map, Plat and/or Dedication Deed thereof recorded in Volume 6743, Page 85 of the Real Property Records of Lubbock County, Texas.

25821

**FIRST AMENDMENT OF DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS**

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

This First Amendment of Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "First Amendment") is made this 2nd day of August, 2000, by The Oaks of Lubbock Development I, Ltd., a Texas limited partnership (the "Declarant").

Background to this First Amendment.

A. By an instrument dated July 25, 2000, recorded in Volume 6756, Page 205 of the Real Property Records of Lubbock County, Texas, Declarant did impose certain covenants, conditions, restrictions, easements, charges and liens (herein called the "Declaration") against the following described property:

Lots 1 through 80, and Tracts A and B, Highland Oaks, a Subdivision in Section 7, Block AK, Lubbock County, Texas, according to the Map, Plat and/or Dedication Deed thereof recorded in Volume 6743, Page 85 of the Real Property Records of Lubbock County, Texas (the "Property").

B. In the Declaration, the "Declarant" is The Oaks of Lubbock Development I, Ltd. (who is also the "Declarant" in this First Amendment).

C. Article XI, Section 4(a) of the Declaration provides in pertinent part, as follows:

During the Development Period, for the purposes of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors, or omissions herein (and provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration and shall not impair or materially adversely affect the vested property or other rights of any Owner or his or her mortgagee), Declarant reserves to itself and shall have the continuing right, at any time, and from time-to-time, without the joinder or consent of any party, to amend this Declaration by any instrument in writing duly executed, acknowledged and filed for record in the Official Real Property Records of Lubbock County, Texas.

D. Article XI, Section 4(b) of the Declaration provides as follows:

During the Development Period, and for reasons other than as stated above in Article XI, Section 4(a), Declarant may amend or change, but not terminate, these Covenants by exercising its powers under Article XI, Section

1 hereinabove; or, with the affirmative vote of Members representing a majority of the total number of votes of the Association (with the voting rights being determined as set forth in Article III, Sections 1 and 2 of this Declaration.

E. Certain inadvertent misstatements and omissions, as described below, were made in regard to the Declaration, and Declarant desires, in this First Amendment, to correct the misstatements and omissions.

F. Declarant owns, on the date of this First Amendment, all Lots comprising the Property, except Lot 43; and as such, Declarant owns the majority of the total number of the votes of the Association.

**Amendment of Declaration of Covenants,
Conditions and Restrictions**

NOW, THEREFORE, because the Declaration contains certain inadvertent misstatements and omissions, the Declarant, in order to correct the misstatements and omissions, does hereby amend said Declaration as follows:

1. Name of Association. Throughout the Declaration the "Association" is referred to as the "Highland Oaks Homeowners Association, Inc.," when in fact the name of the Association is actually, "Lubbock Highland Oaks Homeowners Association," a Texas non-profit corporation. Any reference in the Declaration to the "Highland Oaks Homeowners Association, Inc." is hereby amended to refer to "Lubbock Highland Oaks Homeowners Association," a Texas non-profit corporation.

2. Addition of Curbing Requirement. Article IX, Section 6(p) of the Declaration was omitted; and the Declaration is hereby amended to include the following within Article IX, Section 6:

(p) CURBING: Along any front property line and side property line of a Lot abutting a street or county road, the Owner shall install and maintain a one foot (1') wide concrete curb which abuts the street or county road. The concrete curb shall be at least five inches thick and shall not exceed one inch in height above the surface of the street or county road. All curbing will be subject to approval of the ARC, prior to said curbing being installed.

3. Additional Restrictions on Use of Alley. Article IX, Section 14 of the Declaration omits the following restriction on the use of the alley for access to certain Lots, and the Declaration is hereby amended to add the following to Article IX, Section 14 (without deleting any existing

provision of Section 14):

No portion of the fifty-foot wide alley shall be paved, and on Lots 7, 8, 57 through 63, 79 and 80, no driveway will be permitted from the fifty-foot wide alley to any Lot. On Lots 7, 8, 57 through 63, 79 and 80, all driveways will connect to the street or county road abutting the front property line, as approved by the ARC.

4. Defined Terms. Terms and words which are defined in the Declaration shall have the same meaning when used in this First Amendment.

5. Joinder of Lender. American State Bank, holder of a lien of record against the Property owned by Declarant, joins in this First Amendment for the sole purpose of showing its assent to the amendment of the original Declaration, as set out herein, and does hereby agree to the original Declaration, as modified herein, and agrees to be bound thereby.

6. Effect of Amendment. Except as specifically set forth in this First Amendment, the Declaration as previously recorded shall remain valid and unaffected, and shall remain in full force and effect.

EXECUTED to be effective as the date first set forth above.

DECLARANT:

THE OAKS OF LUBBOCK DEVELOPMENT I, LTD., a Texas limited partnership

BY: THE OAKS OF LUBBOCK DEVELOPMENT, INC., General Partner

By: Kevin Glasheen
Kevin Glasheen, President

AMERICAN STATE BANK

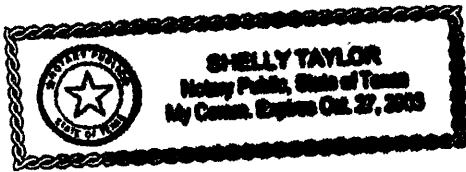
By: Gene Maxwell
Gene Maxwell, Vice President

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 KEVIN T. GLASHEEN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the instrument as the act of THE OAKS OF LUBBOCK DEVELOPMENT, INC., a Texas corporation, and that he executed the instrument on behalf of the corporation for the purposes and consideration expressed, and in the capacity hereinabove stated; said corporation acting as General Partner on behalf of THE OAKS OF LUBBOCK DEVELOPMENT I, LTD., a Texas limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on August 2, 2000.



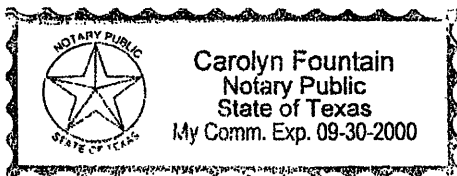
Shelly Taylor
Notary Public, State of Texas

SEAL

THE STATE OF TEXAS

COUNTY OF LUBBOCK

This instrument was acknowledged before me on 8-3-00, 2000, by GENE MAXWELL, Vice President of AMERICAN STATE BANK, a state banking association, on behalf of said association.



Carolyn Fountain
Notary Public, State of Texas

SEAL

FILED FOR RECORD

2000 AUG -3 A 11: 39

Boris Ruff

STATE OF TEXAS
COUNTY OF LUBBOCK

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the Official Real Property Records of Lubbock County, Texas as stamped hereon by me.

AUG 18 2000



Boris Ruff
COUNTY CLERK
LUBBOCK COUNTY, TEXAS

6929

**SECOND AMENDMENT OF DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS**

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

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LUBBOCK COUNTY TEXAS

This Second Amendment of Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Second Amendment") is made this 27th day of February, 2001, by The Oaks of Lubbock Development I, Ltd., a Texas limited partnership (the "Declarant").

Background to this Second Amendment.

A. By an instrument dated July 25, 2000, recorded in Volume 6756, Page 205, refiled in Volume 6769, Page 165 of the Real Property Records of Lubbock County, Texas (herein called the "Declaration"), Declarant did impose certain covenants, conditions, restrictions, easements, charges and liens (herein called the "Declaration") against the following described property:

Lots 1 through 80, and Tracts A and B, Highland Oaks, a Subdivision in Section 7, Block AK, Lubbock County, Texas, according to the Map, Plat and/of Dedication Deed thereof recorded in Volume 6743, Page 85 of the Real Property Records of Lubbock County, Texas (the "Property").

B. By instrument dated August 2, 2000, recorded in Volume 6769, Page 298 of the Real Property Records of Lubbock County, Texas, the Declaration was amended as set forth in said instrument (herein called the "First Amendment").

C. In the Declaration and the First Amendment, the "Declarant" is The Oaks of Lubbock Development I, Ltd. (who is also the "Declarant" in this Second Amendment).

D. Article XI, Section 4(a) of the Declaration provides in pertinent part, as follows:

During the Development Period, for the purposes of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors, or omissions herein (and provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration and shall not impair or materially adversely affect the vested property or other rights of any Owner or his or her mortgagee), Declarant reserves to itself and shall have the continuing right, at any time, and from time-to-time, without the joinder or consent of any party, to amend this Declaration by any instrument in writing duly executed, acknowledged and filed for record in the Official Real Property Records of Lubbock County, Texas.

E. Article XI, Section 4(b) of the Declaration provides as follows:

During the Development Period, and for reasons other than as stated above in Article XI, Section 4(a), Declarant may amend or change, but not terminate, these Covenants by exercising its powers under Article XI, Section 1 hereinabove; or, with the affirmative vote of Members representing a majority of the total number of votes of the Association (with the voting rights being determined as set forth in Article III, Sections 1 and 2 of this Declaration).

F. Certain inadvertent misstatements and omissions, as described below, were made in regard to the Declaration and the First Amendment, and Declarant desires, in this Second Amendment, to correct the misstatements and omissions.

G. Declarant owns, on the date of this Second Amendment, all Lots comprising the Property, except Lot 43 and Lot 46; and as such, Declarant owns the majority of the total number of the votes of the Association.

**Amendment of Declaration of Covenants,
Conditions and Restrictions**

NOW, THEREFORE, because the Declaration contains certain inadvertent misstatements and omissions, the Declarant, in order to correct the misstatements and omissions, does hereby amend said Declaration as follows:

1. Correction of Minimum Floor Space Requirements. Article IX, Section 2 of the Declaration contains errors in regard to the minimum floor space required for each Dwelling Unit; Article IX, Section 2, and Exhibit "B" to the Declaration are deleted in their entirety, and the following are substituted in place of the deleted provision and Exhibit:

Section 2. Minimum Floor Space. The Dwelling Unit constructed on any Lot [whether one (1), one-and-one half (1.5) or two (2) story] shall contain such minimum square feet of air-conditioned floor area (exclusive of all porches, garages, or breezeways attached to the main portion of the Dwelling Unit) as may be specified by the Design Guidelines and/or the ARC for the first and/or second stories and/or the total; however, in no event shall any Dwelling Unit have less than the number of square feet of air conditioned floor area for the first floor (ground floor) of the Dwelling Unit as shown on Exhibit "B" attached hereto and made a part hereof for all purposes. No structure will be in excess of two (2) stories (however, a Dwelling Unit may have a basement and two above-ground stories).

2. Correction of Error regarding Garages. The first sentence of Article IX, Section 3 is hereby corrected to replace "Dwelling Unit" for "single-family residential dwelling", and as corrected, the first sentence of Article IX, Section 3 shall read as follows:

Section 3. Garages; Parking. The Dwelling Unit erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles, unless otherwise specifically approved by the ARC.

The remaining portion of Article IX, Section 3, other than the first sentence corrected above, shall remain as stated in the Declaration.

3. Deletion of Curbing Requirement. Article IX, Section 6(p) of the Declaration was amended in the First Amendment to include the following within Article IX, Section 6:

- (p) **CURBING:** Along any front property line and side property line of a Lot abutting a street or county road, the Owner shall install and maintain a one foot (1') wide concrete curb which abuts the street or county road. The concrete curb shall be at least five inches thick and shall not exceed one inch in height above the surface of the street or county road. All curbing will be subject to approval of the ARC, * prior to said curbing being installed.

Article IX, Section 6 is hereby amended to delete the curbing requirement contained in Article IX, Section 6(p), and Article IX, Section 6(p) is hereby deleted in its entirety.

4. Correction of Typographical Error. In Article XI, Section 13, on page 36 of the Declaration, in the third paragraph from the top of the page, in bold print, the sentence begins, "**EACH OWNER, HOMEBUILDER, RESIDENT, AND MEMBER EXPRESSLY WAIVES THE RIGHT TO CLAIM AGAINST *HE* RELEASED PARTIES....**"; when in fact, the sentence should begin, "**EACH OWNER, HOMEBUILDER, RESIDENT, AND MEMBER EXPRESSLY WAIVES THE RIGHT TO CLAIM AGAINST *THE* RELEASED PARTIES....**". Thus, the typographical error as herein described is corrected by substituting the word "the" for the word "he", so that the sentence will read as stated above.

5. Defined Terms. Terms and words which are defined in the Declaration and the First Amendment, except as herein modified, shall have the same meaning when used in this Second Amendment.

6. Joinder of Lender. American State Bank, holder of a lien of record against the Property owned by Declarant, and the owner of Lot 43 of the Property, joins in this Second Amendment for the purpose of showing its assent to the amendment of the original Declaration, as set out herein, and does hereby agree to the original Declaration and the First Amendment, as modified herein, and agrees to be bound thereby.

7. Effect of Amendment. Except as specifically set forth in this Second Amendment, the Declaration and First Amendment as previously recorded shall remain valid and unaffected, and shall remain in full force and effect.

EXECUTED to be effective as the date first set forth above.

DECLARANT:

THE OAKS OF LUBBOCK DEVELOPMENT I, LTD., a Texas limited partnership

BY: THE OAKS OF LUBBOCK DEVELOPMENT, INC., General Partner

By: *Kevin Glasheen*
Kevin Glasheen, President

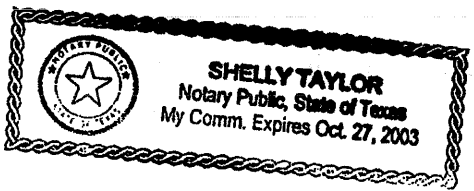
AMERICAN STATE BANK

By: *Gene Maxwell*
Gene Maxwell, Vice President

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 KEVIN T. GLASHEEN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the instrument as the act of THE OAKS OF LUBBOCK DEVELOPMENT, INC., a Texas corporation, and that he executed the instrument on behalf of the corporation for the purposes and consideration expressed, and in the capacity hereinabove stated; said corporation acting as General Partner on behalf of THE OAKS OF LUBBOCK DEVELOPMENT I, LTD., a Texas limited partnership.

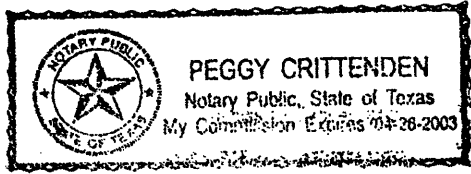
GIVEN UNDER MY HAND AND SEAL OF OFFICE on February 27, 2001.



Shelly Taylor
Notary Public/State of Texas

THE STATE OF TEXAS
COUNTY OF LUBBOCK

This instrument was acknowledged before me on March 6, 2001, by GENE MAXWELL, Vice President of AMERICAN STATE BANK, a state banking association, on behalf of said association.



Peggy Crittenden

Notary Public, State of Texas

EXHIBIT "B"

MINIMUM SQUARE FOOTAGE REQUIREMENTS

In accordance with Article IX, Section 6 of the Declaration, the air conditioned floor area of the Dwelling Unit located on each Lot, exclusive of porches and garages, shall have the minimum of square footage as set forth below:

<u>LOTS</u>	<u>MINIMUM SQUARE FOOTAGE</u>
1 - 7	3,500
8 - 45	2,500
46	2,400
47 - 80	2,500

**BYLAWS
OF
LUBBOCK HIGHLAND OAKS HOMEOWNERS ASSOCIATION,
a Texas non-profit corporation**

ARTICLE I

GENERAL

The Lubbock Highland Oaks Homeowners Association is the Association described within the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens instrument (the Declaration) pertaining to the Highland Oaks Subdivision in the County of Lubbock, Texas, such Declaration text being recorded on July 25, 2000, in Volume 6756, Page 205 of the Official Real Property Records of Lubbock County, Texas and incorporated herein by reference for all purposes. For convenience, several of the provisions of the Declaration will be repeated or summarized within these Bylaws. The remaining terms and provisions of these Bylaws are intended to complement and supplement the Declaration. In the event of any conflict or ambiguity between the Declaration (on the one hand) and these Bylaws (on the other hand) and unless otherwise required by law, the terms and conditions of the Declaration shall control and govern.

ARTICLE II

NAME, DEFINITIONS, MEMBERSHIP AND VOTING RIGHTS

Section 1. Name. The name of the Association shall be Lubbock Highland Oaks Homeowners Association (herein sometimes referred to as the "Association").

Section 2. Definitions. Certain words used in these Bylaws shall have the same meaning as set forth in the Declaration, some of which are set forth below either in their entirety or in an abridged format:

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

"Annual Assessment" shall have the meaning specified in Article V of the Declaration.

"Architectural Review Committee" (sometimes referred to herein as the "ARC") shall mean and refer to that particular committee which is described and explained within Article VIII of the Declaration.

"Articles" shall mean and refer to the Articles of Incorporation (and a amendments thereto and restatements thereof) of the Association on file in the Office of the Secretary of State of the State of Texas, Austin, Texas.

"Assessable Property" shall mean and refer to each and every lot, parcel and tract within the entire Properties which: (i) the Declarant has subjected to and imposed upon a set of restrictive covenants calling for, inter alia, the payment of an Annual Assessment to the Association; (ii) may have been or will be given a separately identifiable tax or parcel number by the Lubbock Central Appraisal District ("CAD") or a similar governmental agency; (iii) is not designated an "open space" or otherwise a portion of the Common

Properties. The Declarant proposes to cause each residential Lot within the Properties to constitute an Assessable Property. However, the Declarant reserves the right and discretion to include or exclude each non-residential Lot from the concept of "Assessable Property" and/or to prescribe a different assessment and/or valuation scheme(s) for any non-residential Lot which is subjected to covenants which require the payment of assessments to the Association.

"Association" shall mean and refer to the Lubbock Highland Oaks Homeowners Association, an existing non-profit Texas corporation.

"Board" shall mean and refer to the Board of Directors of the Association.

"Bylaws" shall mean and refer to the Bylaws of the Association, as adapted and amended from time to time in accordance with the provisions of the Texas Non-Profit Corporation Act and the Declaration.

"Central Appraisal District ("CAD")" shall mean and refer to the governmental and/or quasi-governmental agency 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 or adjacent to the Properties which are known, described or designated as common areas, parks, recreational easements, jogging trails, floodway easement areas, dams, perimeter fences and columns, off-site monuments and directional signs, landscape easements, swimming pool(s), open spaces, paths and trails, playing fields, community halls, sports pavilions and the like including without limitation those shown on any recorded subdivision plat of portions of the Properties 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 Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. 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 Highland Oaks Subdivision. The concept of Common Properties will also include: (i) any and all public right-of-way lands for which the City or County of Lubbock, Texas has required that 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. One or more portions of the Common Properties may from time to time be reasonably limited to private functions, and conversely, one or more portions of otherwise private property may be utilized for Association functions and activities. 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 the Declaration.

"Declarant" shall mean and refer to The Oaks of Lubbock Development I, Ltd. and any or a successor(s) and assign(s) of The Oaks of Lubbock Development I, Ltd., with respect to the voluntary disposition of all (or substantially all) of the assets and/or stock of The Oaks of Lubbock Development I, Ltd., and/or the voluntary disposition of all (or substantially all) of the right, title and interest of The Oaks of Lubbock Development I, Ltd. in and to the Properties. However, no person or entity merely purchasing one or more Lots from The Oaks of Lubbock Development I, Ltd. in the ordinary course of business shall be considered a Declarant

"Declaration" shall mean and refer to the particular instrument entitled "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens" on and for Highland Oaks Subdivision, filed for record in Volume 6756, Page 205 of the Official Real Property Records of Lubbock County, Texas, together with any and all amendments or supplements thereto.

"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.

"Development Period" shall mean a period commencing on the date of the recording of the Declaration in the Official Real Property Records of Lubbock County, Texas (July 25, 2000) and continuing thereafter until the date upon which the total votes outstanding in the Class A Membership equal or exceed the total votes outstanding in the Class B Membership; upon which date the Class B Membership will terminate and be converted into Class A Membership as described in Article III of the Declaration.

"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 permitted family size group of persons.

"Easement Area" shall mean and refer to those areas which may be covered by an easement specified in Article IX and in Article X of the Declaration.

"Exempt Property" shall mean and refer to the following portions of the Properties: (i) all land and Improvements owned by the United States of America, the State of Texas, Lubbock County or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental (rather than a proprietary) capacity; (ii) all land and Improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties; and (iii) such other land(s) and/or Improvement(s) and/or Lot(s) which are specifically exempted from the payment of Annual Assessments in accordance with a special resolution of the Board.

"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.

"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 Assessable 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.

"Member" shall mean and refer to each Resident who is in good standing with the Association who has complied with all directives and requirements of the Association.

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

"Payment and Performance Lien" shall mean and refer to the lien described within Sections 9 and 10 of Article V of the Declaration.

"Properties" shall mean and refer to: (i) the land described within Exhibit A of the Declaration; and (ii) other land within the Highland Oaks Subdivision.

"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 Assessable Property who is a bona-fide lessee pursuant to a written lease agreement with an Owner; and
- (c) each individual lawfully domiciled in a Dwelling Unit other than an Owner or bona-fide lessee.

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

"Subdivision" shall mean and refer to the Highland Oaks Subdivision, in accordance with the map and plat thereof filed of record in the Map, Plat and/or Dedication Deed Records of Lubbock County, Texas, as well as any and all revisions, modifications, corrections or clarifications thereto.

"Taxing Authorities" shall mean and refer to Lubbock County, the Lubbock Cooper Independent School District, the City of Lubbock and the State of Texas and any 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.

"Trustee" shall mean and refer to that certain individual(s) or entity(ies) designated or appointed from time to time and at any time by the Association to perform the duties and responsibilities described within Section 10 of Article V of the Declaration, and its successors and assigns.

Section 3. Membership. Each and every Owner of each and every Lot within the Subdivision shall automatically be, and must at all times remain, a Member of the Association in good standing. 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: Class A and Class B. The Class A 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 and maintained all registration and related requirements prescribed by the Association. The Class B Member shall be the Declarant. Upon conclusion of the Development period, the Class B membership shall terminate and the Declarant shall become a Class A Member. Membership shall terminate without any formal Association action whenever such person ceases to own a Lot, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with Lubbock Highland Oaks Homeowner's Association during the period of such ownership and membership in the Association, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner and Member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto. The membership of a Resident who is not an Owner shall automatically cease when the Resident is no longer a bona-fide lessee under a written lease agreement or no longer domiciled in a Dwelling Unit.

Section 4. Voting Rights. There shall be two (2) classes of voting Members during the Development Period:

Class A: The Owner(s) of each Lot shall be entitled to one (1) vote per Lot. Where more than one (1) Owner owns and holds a record fee interest in a Lot such Owner(s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote.

Class B: The Class B Member shall have five (5) votes for each Lot it owns.

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 Covenants, the Design Guidelines, or any rule or regulation promulgated by the Board; (b) delinquent in the full, complete and timely payment of any Annual Assessment, Initial Common Properties Assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of the Declaration, these Bylaws or any rule or regulation promulgated by the Board. The Board may make such rules and regulations, consistent with the terms of the Declaration and these Bylaws, 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.

ARTICLE III

MEMBERS: MEETINGS, QUORUM, VOTING, PROXIES

Section 1. Place of Meetings. Meetings of the Association shall be at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors, either within Lubbock, Texas or as convenient thereto as is possible and practical.

Section 2. Annual Meetings. The first meeting of the Members, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association, but not earlier than ten months from the date of incorporation. The next annual meeting shall be set by the Board so as to occur within ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the Members shall be held within ninety (90) days of the same day of the same month of each year thereafter, at a specific date and hour set by the Board.

Section 3. Special Meeting. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by at least twenty percent (20%), or 30, whichever is the lesser amount, of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to cause notices to be prepared concerning each annual or special meeting of the Association, stating the purpose of the special meeting, as well as the time and place where it is to be held. Quorum, notice and voting requirements of and pertaining to the Association shall be in accordance with permitted Texas law.

Section 5. Waiver of Notice. Waiver of notice of any meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the

adjourned meeting shall be given to Members in the manner prescribed for regular meetings. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

Section 7. Voting. The voting rights of the Members shall be as set forth in the Declaration and Section 4 of Article II above.

Section 8. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon loss of good standing by any such Member or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member or upon the expiration of eleven (11) months from the date of the proxy. A form of proxy or written ballot may provide an opportunity to specify approval or disapproval with respect to any proposal.

Section 9. Majority. As used in these Bylaws, the term majority shall mean those votes totaling more than fifty (50%) per cent of the total number of votes cast by voting Members in good standing attending any meeting (or represented by proxy) of the Association.

Section 10. Quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of twenty percent (20%), or 30, of the total votes of the Association, whichever is the lesser amount, shall constitute a quorum at all meetings of the Association.

Section 11. Conduct of Meetings. The President (or, in the absence of the President, a Vice-President) shall preside over all meetings of the Association, and the Secretary or an Assistant Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 12. Action Without a Meeting. Any action which may be taken by the vote of the voting Members at a regular or special meeting may be taken without a meeting as and to the extent permitted by applicable Texas law.

ARTICLE IV

BOARD OF DIRECTORS: NUMBER, ELECTION, POWERS, MEETINGS

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the Directors shall be Members or spouses of such Members.

Section 2. Directors During Development Period. During the Development Period, Directors need not be Members.

Section 3. Number of and Voting for Directors. The affairs of the Association shall be managed initially by a board of three (3) individuals elected by the Class B Member. However, beginning with the third annual meeting of the Members of the Association and continuing thereafter, the Board shall be

expanded to consist of five individual Directors, three of whom shall be elected by the Class B Member and two of whom shall be elected by the Class A Members. Beginning with the first year following the conclusion of the Development Period and continuing thereafter, the Board shall still consist of five individual Directors, all of whom shall be elected by the Class A Members.

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.

Unless otherwise prohibited by the Bylaws, the Board shall be entitled to have one or more private workshop meetings and to have one or more public meetings per Fiscal Year. The Board, no later than 30 days prior to the annual meeting of the Members, shall file with the Declarant and distribute to the Members (by whatever means the Board may deem reasonable and economical) a certification of the Directors to be elected by Class A Members, and the Directors to be elected by the Class B Member. The actual 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 4. Nomination of Directors. Prior to each annual meeting of Members and with respect to those Director positions for which Class A Members alone may elect, the Board shall prescribe:

- (a) the opening date and the closing date of a reasonable filing period in which each and every Member who has a bona-fide interest in serving as a Class A Director may file as a candidate for such position;
- (b) that each and every Member who has properly filed shall be included within the ballot;
- (c) that where three (3) or more candidates are vying for one position election may occur by a plurality (rather than a simple majority) of the votes cast;
- (d) such other rules and regulations which may then be appropriate to conduct the nomination and election of directors in a fair, efficient and cost-effective manner. Each candidate shall be given a reasonable, uniform opportunity to communicate their qualifications to the Members and to solicit votes.

Section 5. Election and Term of Office. The election Process shall occur by secret ballot not less than twenty (20) days before the annual meeting of the Members, in accordance with any reasonable procedure approved (from time to time) by the Board, so that the tabulated results can be announced at the annual meeting. Directors shall be elected for two (2) year terms of office and shall serve until their respective successors are elected and qualified.

Section 6. Removal of Class A Directors. This Section applies with respect to those Director(s) elected by Class A Members as envisioned by Section 3 above. At any regular or special meeting or special voting process (in lieu of a meeting) by secret written ballot of the Association duly called, where the bona-fide signatures of at least 20% or 30 (whichever is the greater number) of the Class A Members appear on an appropriate petition, any one or more of the Class A Directors may be removed, with or

without cause, by a majority vote of those Class A Members voting in person or by proxy, and a successor may then and there be elected to fill the vacancy thus created. A Class A Director whose removal has been proposed by the Class A Members shall be given at least five (5) days' notice of the calling of the meeting or the special voting process (in lieu of a meeting) and the purpose thereof and shall be given an opportunity to be heard at the meeting or to communicate his position in connection with the special voting process in lieu of a meeting. Additionally, any Class A Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than sixty (60) days may be removed by a majority Vote of the remaining Class A Directors at a regular or special Board meeting. In the event of death or resignation of a Class A Director, his or her successor shall be a Class A Member selected by a majority of the remaining Class A Members of the Board and shall serve for the unexpired term of the predecessor.

Section 7. Removal of Class B Directors. This Section applies with respect to those Director(s) elected or appointed by the Class B Member. The Class B Member may, at any time and from time to time, remove any Director theretofore elected or appointed by the Class B Member. Additionally, any Class B Director who has three (3) consecutive unexcused absences from Board meetings may be removed by a majority vote of the remaining Class B Directors. In the event of the death, removal or resignation of a Class B Director, his or her successor shall be elected by the Class B Members of the Board and shall serve for the unexpired term of the predecessor.

Section 8. Voting Procedure for Directors. The election of each Director position solely by Class A Members shall be conducted on or shortly before the next earliest applicable meeting of the Association. At such election, the Members or their proxies may cast, with respect to each such director position, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The person(s) receiving the largest number of votes (which may be a plurality and not a majority) shall be elected. Voting for Directors shall be by secret written ballot.

Section 9. Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the Membership shall be held within ninety (90) days thereafter at such time and place as shall be fixed by the Board.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but beginning with the year 2002, at least four (4) such meetings shall be held during each Fiscal Year with at least one (1) meeting per quarter. Notice of the time and place of the meeting shall be posted at a prominent place within the Properties and shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telecopy. All such notices shall be given or sent to the Director's business office and/or home address or telephone number(s) as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United

States mailbox at least seven (7) days before the time set for the meeting. Notices given by personal delivery, telephone, or teletype shall be delivered, telephoned, or faxed at least seventy-two (72) hours before the time set for the meeting. Notices should be posted at a prominent place within the Properties not less than seventy-two (72) hours prior to the scheduled time of the meeting.

Section 12. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 13. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 14. Compensation. Unless otherwise approved in advance by a majority vote of those Class A Members present (or represented by proxy) and by a majority vote of those Class B Members(s) present (or represented by proxy), at a regular or special meeting of the Association, no Director shall receive any compensation from the Association for acting as such; except however, Directors may be reimbursed for actual expenses incurred on behalf of the Association.

Section 15. Conduct of Meetings. The President (or, in the President's absence, a Vice-President shall preside over all meetings of the Board of Directors, and the Secretary or an Assistant Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

Section 16. Open Meetings. At such time that Class A Directors begin service on the Board, all meetings of the Board (excluding workshop meetings and meetings to discuss personnel, litigation and other similar confidential matters) shall to the extent possible be open to all Members, but Members other than Directors may not participate in any discussion or deliberation except as follows in accordance with a format approved by the Directors from time to time:

- (a) the Directors shall publish a meeting agenda and permit Members a reasonable opportunity to express their opinions concerning such agenda matters prior to taking any formal action; and
- (b) the Directors shall allow an "open" or "new business" portion of the meeting in which any Member can express his/her opinion concerning any new or previously non-discussed matter.

The Directors shall at all times have the right to reasonably limit the number of speakers, the time limit for each presentation and speaker, and to adopt other rules of efficiency and decorum.

Section 17. Executive Session and Workshops. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and other business of a similar confidential nature. The nature of any and all business to be considered in executive session shall first be announced in open session. The Board may also attend "workshop" meetings or sessions to discuss long-range concepts, receive educational assistance and training and the like, provided no official action of any sort is taken.

Section 18. Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Directors.

Section 19. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the Members. The Board of Directors may delegate to one or more of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of, and/or matters directly or indirectly pertaining to the Managing Agent, if any, which might arise between meetings of the Board of Directors. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the Annual Assessment rate charge;
- (b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of any installment payments of the Annual Assessment;
- (c) providing for the care, upkeep, operation, and maintenance of all the Common Properties;
- (d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Properties and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations;
- (g) opening of bank accounts and/or banking-type accounts on behalf of the Association (giving, at all times, first preference to the Declarant) and designating the signatories required;

- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Properties in accordance with the other provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;
- (i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association;
- (j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (k) paying the cost of all services rendered to the Association or its Members; and
- (l) keeping books with reasonably detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Members and bona-fide mortgagees, their respective duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Members; and
- (m) filing all requisite forms, documents and information with Taxing Authorities; and
- (n) permit utility suppliers to use portions of the Common Properties reasonably necessary to the ongoing development or operation of the Highland Oaks Subdivision.

Section 20. Management Agent. The Board of Directors may employ for the Association a professional management agent(s) or executive manager (each and all of whom will be sometimes referred to herein as the "Managing Agent") at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Managing Agent shall provide the Board and the officers with reasonable reports concerning the affairs of the Association. The Managing Agent shall provide the Board with reports regarding the financial data discussed in Section 21(f) below. The Board may delegate to the Managing Agent some of the powers granted to the Board for the routine operation of the Association. While the Managing Agent may formulate data and make recommendations to the Board, the final powers envisioned by subparagraphs (a), (b), (f), (g) and (i) in Section 19 of this Article shall be exclusively exercised by the Board. The Declarant, or an affiliate of the Declarant, may be employed as Managing Agent. No management contract may have a term in excess of three (3) years and, where the Declarant or an affiliate of the Declarant is the Managing Agent, the Management Contract must permit termination by either party without cause and without any materially adverse termination fee upon at least ninety (90) days advance written notice of such termination.

Section 21. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

- (a) cash or accrual accounting (as determined by the Board from time to time) shall be employed;

- (b) accounting and controls should generally conform with established American Institute of Certified Public Accountants (AICPA) guidelines and principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) excluding the regular business activities of the Declarant, no remuneration shall be accepted by the Managing Agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
- (e) any financial or other interest which the Managing Agent (excluding the Declarant and its affiliates) may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and
- (f) commencing at the end of 2001, annual financial reports shall be prepared for the Association containing:
 - (i) an Income Statement reflecting all income and expense activity for the preceding twelve (12) months on a cash or accrual basis, as the Board may prescribe;
 - (ii) an Expense and Disbursement Statement reflecting all receipt and disbursement activity for the preceding twelve (12) months on a cash or accrual basis, as the Board may prescribe; and
 - (iii) such other information as the Board shall require.

The Managing Agent shall prepare reports, generally containing the data and information described above, for submission to the Board, at such intervals as determined by the Board.

Section 22. Borrowing. The Board of Directors shall have the power to borrow money, without the specific approval of the Members of the Association, for the purpose(s) of:

- (a) operations, capital improvements, repair, replacement or restoration of Common Properties where such proposed borrowing has been theretofore reflected in an annual budget of the Association (except that in the years 2000 and 2001, money may be borrowed without having been reflected in an annual budget of the Association); and
- (b) modifying, improving or adding amenities, where the total amount of such borrowing would not exceed twenty-five percent (25%) of the budgeted gross expenses of the Association for that Fiscal Year provided that any such borrowing proposal shall have the affirmative approval of at least three-fourths ($\frac{3}{4}$) of the individuals comprising the Board.

Section 23. Rights of the Association. With respect to the Common Properties, and in accordance with the Declaration and to the maximum extent permitted by applicable law, the Association shall have the right to contract with any person or entity for the performance of various duties and functions.

Section 24. Hearing Procedure. The Board shall, from time to time and at all times, have the right to prescribe the procedures for the conduct of a hearing and other similar "due process" matters. Until and unless further amended, modified, revised, clarified or /repealed and replaced by the Board, the following provisions shall be applicable. The Board shall not impose a fine, suspend voting, initiate a legal proceeding (unless extraordinary circumstances exist) or infringe upon any other rights of a Member or Resident for violations of rules unless and until the following procedure is followed (except however, these procedures shall not be applicable to the non-payment of any assessment as described within the Declaration; and, the remedies of the Association for non-payment of an assessment may be exercised as set forth in the Declaration, without the Association or the Board being required to follow the "due process" procedures hereinafter set forth):

- (a) **Demand.** Written demand to cease and desist from an alleged violations be given to the alleged violator specifying:
 - (i) the alleged violation;
 - (ii) the action required to abate the violation; and
 - (iii) a time period, not less than five (5) days, during which the violation must be abated without incurring further sanctions, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a sanction if the violation is not a continuing one.

- (b) **Notice.** At any time within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its delegate shall furnish the violator with written notice of a hearing to be held by the Board (in executive session) or its delegate. The notice shall contain:
 - (i) the nature of the alleged violation;
 - (ii) the time and place of the hearing, which time shall not be less than five (5) days from the giving of the notice;
 - (iii) an invitation to attend the hearing and produce any statement, evidence, or witness on behalf of the alleged violator; and
 - (iv) the proposed sanction to be imposed.

- (c) **Hearing.** The hearing shall be held in executive session pursuant to notice and afford the Member or Resident a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

- (d) Delegation. The Board may, at any time and from time to time, appoint a "Covenants Committee" and delegate to that Committee the powers, duties and responsibilities described within subparagraphs (a) , (b) and (c) above. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision of the Covenants Committee to the Board in accordance with procedures then prescribed by the Board.

ARTICLE V

OFFICERS

Section 1. Officers. The officers of the Association may include a President, Vice President, Secretary, Treasurer and such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as the Board shall deem desirable, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. Any member of the Board, or of the Managing Agent or of the Declarant may serve as an officer.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the affirmative vote on a majority of the Board of Directors whenever in their judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the annual budget as provided for hereinabove and may delegate all or part of the preparation and notification duties to a finance committee, Managing Agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least one (1) officer or by such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE VI

COMMITTEES

Section 1. General. Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum

is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. The Board shall appoint the chairperson for each committee who shall preside at its meetings and who shall be responsible for transmitting any and all communications to the Board of Directors.

Section 2. Architectural Review Committee. After the Development Period, the Board of Directors shall appoint an Architectural Review Committee consisting of at least three (3) individuals to act in accordance with the provisions of the Declaration and the Design Guidelines. An individual selected by Declarant and serving on the Architectural Review Committee at the end of the Development Period may continue to serve on the Committee after the Development Period unless the Board determines to replace the serving individual.

ARTICLE VII

INDEMNIFICATION

The Association shall indemnify a director, officer, committee member, employee, or agent of the Association who was, is, or may be named defendant or respondent in any proceeding as a result of his or her actions or omissions within the scope of his or her official capacity in the Association. For the purposes of this article, an agent includes one who is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, partnership, joint venture, sole proprietorship, trust, or other enterprise. However, the Association shall indemnify a person only if he or she acted in good faith and reasonably believed that the conduct was in the Association's best interests. In a case of a criminal proceeding, the person may be indemnified only if he or she had no reasonable cause to believe that the conduct was unlawful. The Association shall not indemnify a person who is found liable to the Association or is found liable to another on the basis of improperly receiving a personal benefit. A person is conclusively considered to have been found liable in relation to any claim, issue, or matter if the person has been adjudged liable by a court of competent jurisdiction and all appeals have been exhausted.

The termination of a proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent does not necessarily preclude indemnification by the Association.

The Association shall pay or reimburse expenses incurred by a director, officer, member, committee member, employee, or agent of the Association in connection with the person's appearance as a witness or other participation in a proceeding involving or affecting the Association when the person is not a named defendant or respondent in the proceeding.

In addition to the situations otherwise described in this paragraph, the Association may indemnify a director, officer, member, committee member, employee, or agent of the Association to the extent permitted by law. However, the Association shall not indemnify any person in any situation in which indemnification is prohibited as specified above.

Before the final disposition of a proceeding, the Association may pay indemnification expenses permitted by the By-Laws and authorized by the Association. However, the Association shall not pay indemnification expenses to a person before the final disposition of a proceeding if: the person is a named defendant or respondent in any proceeding brought by the Association; or the person is alleged to have improperly received a personal benefit or committed other wilful or intentional misconduct.

If the Association may indemnify a person under the By-Laws, the person may be indemnified against judgments, penalties, including excise and similar taxes, fines, settlements, and reasonable expenses (including attorney's fees) actually incurred in connection with the proceeding. However, if the proceeding was brought by or on behalf of the Association, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

Before the Association may pay any indemnification expenses (including attorney's fees), the Association shall specifically determine that indemnification is permissible, authorize indemnification, and determine that expenses to be reimbursed are reasonable. The Association may make these determinations and decisions by any one of the following procedures:

- (i) Majority vote of a quorum consisting of Directors who, at the time of the vote, are not named defendants or respondents in the proceeding;
- (ii) If such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all Directors, consisting solely of two or more Directors who at the time of the vote are not named defendants or respondents in the proceeding;
- (iii) Determination by special legal counsel selected by the Board of Directors by vote as provided in subparagraphs (i) or (ii), or if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors;
- (iv) Majority vote of members, excluding Directors who are named defendants or respondents in the proceeding.

The Association shall authorize indemnification and determine that expenses to be reimbursed are reasonable in the same manner that it determines whether indemnification is permissible. If the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination of reasonableness of expenses shall be made in the manner specified by subparagraph (iii) above, governing the selection of special legal counsel. A provision contained in the Articles of Incorporation, the By-Laws, or a resolution of members or the Board of Directors that requires the indemnification permitted above, constitutes sufficient authorization of indemnification even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

The Association shall pay indemnification expenses before final disposition of a proceeding only after the Association determines that the facts then known would not preclude indemnification and the Association receives a written affirmation and undertaking from the person to be indemnified. The determination that the facts then known to those making the determination would not preclude indemnification and authorization of payment shall be made in the same manner as a determination that indemnification is permissible. The person's written affirmation shall state that he or she has met the standard of conduct necessary for indemnification under the By-Laws. The written undertaking shall provide for repayment of the amount paid or reimbursed by the Association if it is ultimately determined that the person has not met the requirements for indemnification. The undertaking shall be an unlimited general obligation of the person, but it need not be secured and it may be accepted without reference to financial ability to make repayment.

Any indemnification or advance of expenses shall be reported in writing to the Members of the Association. The report shall be made with or before the notice or waiver of notice of the next membership meeting, or with or before the next submission to Members of a consent to action without a meeting. In any case, the report shall be sent within the 12-month period immediately following the date of the indemnification or advance.

ARTICLE VIII

OBLIGATIONS OF THE OWNERS

1. ASSESSMENTS. All Owners shall be obligated to pay assessments imposed by the Association and as described more fully in the Declaration, to meet the common expenses. A member shall be deemed to be in good standing and entitled to vote at any annual or special meeting of Members, within the meaning of these By-Laws, if, and only if, he shall have fully paid all assessments made or levied against him or her and the Lot owned by him or her, and satisfied such other requirements for good standing as set forth more fully in the Declaration.

2. GENERAL.

(a) Each Owner shall comply strictly with the provisions of the Declaration, the Articles of Incorporation and these By-Laws, and amendments and supplements thereto;

(b) Each Owner shall always endeavor to observe and promote the cooperative purposes for which this Association was established.

3. USE OF GENERAL COMMON ELEMENTS. Each Owner may use the Common Properties in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Owners, provided that such use shall be in accordance with the provisions of the Declaration.

ARTICLE IX

LIMITATION OF DIRECTOR'S LIABILITY

As provided more fully in the Articles of Incorporation for the Corporation, a Director of the Corporation will not be liable to the Corporation or its Members for monetary damages for an act or omission in the Director's capacity as a Director, except to the extent otherwise provided by the Texas Miscellaneous Corporation Laws Act or the Texas Non-Profit Corporation Act, as such statutes now exist or may hereafter be amended.

ARTICLE X

MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of the Association

proceedings when not in conflict with Texas law, the Articles of Incorporation, the Declaration, or these Bylaws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Texas law, the Articles of Incorporation, the Declaration, and these Bylaws, then the provisions of Texas law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

Section 4. Books and Records.

- (a) Inspection by Members. The membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Member of the Association or by his or her duly appointed representative at any reasonable time and for a proper purpose reasonably related to his or her interest as a Member, at the office of the Association or at such other place as the Board shall prescribe.
- (b) Rules for Inspection. The Board may establish reasonable rules with respect to:
 - (i) notice to be given to the custodian of the records by the Member desiring to make the inspection;
 - (ii) hours and days of the week when such an inspection may be made;
 - (iii) payment (or prepayment) of the cost of reproducing copies of documents requested by a Member; and
 - (iv) maintenance of confidentiality with respect to records.
- (c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make reasonable extracts and copies of documents at the expense of the Association.

Section 5. Amendments. The power and authority to alter, amend or repeal the Bylaws, or to adopt new Bylaws, has been delegated by the Members to the Board of Directors.

We, the undersigned, being all the existing Directors of the Lubbock Highland Oaks Homeowners Association, do hereby certify that we hereby assent to the foregoing Bylaws and hereby adopt the same as the Bylaws of said Association.

IN WITNESS WHEREOF, we have hereunto subscribed our names to be effective as of the 25th
day of July, 2000

DIRECTORS:

KEVIN GLASHEEN

ELAINE GLASHEEN

LEE PRICE