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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
WESTWOOD VILLAGE III PHASE ONE SUBDIVISION**

**BY  
DJM CONTRACTORS, LTD. and LUM-TEX DEVELOPMENT, INC.**

This Declaration of Covenants, Conditions, and Restrictions is made on October 1, 2009, by DJM Contractors, Ltd. and Lum-Tex Development, Inc., a Texas Limited Partnership ("Declarant").

**Recitals**

1. Declarant is the owner of all that certain real property ("the Property") located in Hardin County, Texas, described by metes and bounds on the Plat, together with additions thereto as may be made subject to the terms of this Declaration and any Supplemental Declaration of Covenants executed and filed, from time to time, by Declarant in the Official Public Records of Hardin County Texas, for which a plat has been approved and filed, for a subdivision known as WESTWOOD Village III a subdivision in Lumberton, Hardin County, Texas. The Plat has been filed in Volume 4, page 91 AND 91 a of the Map Records of Hardin County, Texas.
2. Declarant desires to create a residential community on the Property with residential lots and improvements, including Common Property.
3. Declarant has or will form a non profit corporation known as "Westwood Village III Home Owners Association" (the "Association") under the Nonprofit Corporation Act of the State of Texas (the "Act").
4. For the benefit of Declarant and each successive Owner of the Property and to provide for the efficient preservation of the values and enjoyment of the amenities within the Property and for the maintenance of Common Property, as a part of the general plan of development Declarant desires to impose upon the Property the covenants, conditions, restrictions easements, charges, and liens contained in this Declaration and to create the Association to which will be delegated and assigned the power of maintaining and administering the Property and Common Property in accordance with the terms of this Declaration.

NOW, THEREFORE, for the benefit of, and to bind Declarant and its assigns and successors-in-interest, Declarant does hereby agree and declare that the Property, including any additions thereto as may hereafter be made, is hereby and will be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens (sometimes referred to collectively as the "Declaration" or the "Covenants") hereinafter set forth, running with the Property and binding upon Declarant and all parties having any right, title, or interest in or to any part of the Property, and their heirs, successors, grantees, representatives, and assigns, at law and in equity.

**ARTICLE I**

The following words, when used in this Declaration, have the following meanings.

"Architectural Committee" means the Architectural Committee described in Article IX of this Declaration.

"Assessment" means the regular annual assessments, special assessments, and default assessments levied by the Association as determined by the Board of Directors.

"Association" means Westwood Heights Home Owners Association, a Texas nonprofit corporation, its successors and assigns.

"Board of Directors" or "Board" means the governing body of the Association, the election and procedures of which are set forth in the articles of incorporation and the bylaws of the Association.

"Builder" means any person or entity that (1) is actively engaged in the business of building homes for sale to third parties, (2) has acquired a Lot or Lots for the purpose constructing Dwelling Unit(s) for sale to third parties, and (3) has constructed and sold at least two single family residences in the prior twelve months.

"Common Property" means the portions of the Property, including any improvements thereon and any appurtenances thereto, that is held, managed or owned by the Association for common use and enjoyment.

"Declarant" means DJM Contractors, Ltd and Lum-Tex Development, Inc., its successors and assigns.

"Dwelling Unit" means any building or portion of a building, situated upon a Lot or Lots, 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.

"Mortgage" means a bona fide voluntary agreement constituting a mortgage, security instrument, or deed of trust lien on a Lot and/or Dwelling Unit.

"Lot" means, with respect to any Property for which a subdivision map or plat (including the Plat) has been recorded in the Map Records of Hardin County, Texas, each lot shown on such recorded subdivision plat.

"Member" means each Owner as defined below and in Article II of this Declaration.

"Owner" means the record owner (including a Builder), whether one or more persons or entities, of the fee simple title of any Lot but, notwithstanding any applicable theory of mortgages or other security devices, does not mean a mortgagee or trustee under a mortgage or deed of trust unless and until such mortgagee or trustee has acquired fee simple title pursuant to foreclosure or a conveyance in lieu of foreclosure. A person or entity holding or claiming an interest in a Dwelling Unit or Lot under an executory contract, contract for deed, option to purchase, lease, or license is not considered an Owner.

"Plat" means the plat or any replat of the Property or any portion thereof filed in the Map Records of Hardin County, Texas.

"Property" has the meaning given to it in paragraph 1 of the Recitals above.

"Resident" means each person (not otherwise an Owner or Member) authorized by an Owner to reside within such Owner's Dwelling Unit.

"Two-Thirds Member Vote" means two-thirds (2/3<sup>rd</sup>) of the Members (regardless of class) at a meeting duly called at which at least 51% of all Members (regardless of class) are in attendance in person or by written proxy. If a Member wishes to use a written proxy it must be filed with the Association at least twelve (12) hours before the meeting called for purposes of the vote.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION: ADDITIONS TO THE PROPERTY

2.01 Membership. Each Owner is automatically a Member of the Association, subject to the terms of this Declaration, the Articles of Incorporation, and the bylaws of the Association and the Association's rules and regulations. Membership of an Owner in the Association is appurtenant to and may not be separated from the interest of such Owner in and to a Lot. Ownership of a Lot is the sole qualification for being a Member; however, a Member's privileges in the Common Property may be

regulated or suspended as provided in this Declaration, the bylaws of the Association, and/or the Association's rules and regulations.

2.02 Transfer. Membership in the Association may not be severed from or in any way transferred, pledged, mortgaged, or alienated except upon the sale or assignment of said Owner's interest in a Lot and then only to the purchaser or assignee. Membership cannot be severed by an encumbrance. Owners shall notify the Association of the conveyance of the fee title to a Lot. A conveyance automatically transfers the membership to the new Owner. In the event an Owner fails or refuses to provide written evidence of such conveyance, the Association will have the right to record the transfer upon the books and records of the Association.

2.03 Class of Membership. The Association has two classes of voting membership.

**CLASS A.** Class A Members are all Members with the exception of Declarant. Class A Members are entitled to one (1) vote per or for each Lot they own. When more than one (1) person or entity holds such interest or interest in any Lot all such parties are Members, and the vote for such Lot may be exercised as they, among themselves, determine, but in no event can more than one (1) vote be cast with respect to any such Lot.

**CLASS B.** The Class B Member is the Declarant. The Class B Member is entitled to eight (8) votes for each Lot owned by the Class B Member until the Class B Member owns eight (8) or fewer Lots, at which time the Class B Member will be entitled to one (1) vote per Lot.

2.04 Additions to the Property. Additional tracts of land, together with the improvements situated thereon, may become subject to the Declaration and added to the Property in any of the following manners:

- (a) Declarant may, without the consent of any Owner and at its sole option, at any time within ten (10) years from the date of recordation of this Declaration, add to the Property all or any portion of any other real property (the "Additional Property"), by filing of record one or more Supplemental Declarations of Covenants, Conditions, and Restrictions, which extend the covenants conditions, and restrictions of this Declaration to the Additional Property. Any such Supplemental Declaration may contain additions and modifications of the covenants, conditions, and restrictions contained in this Declaration as necessary to reflect the different character, if any, of the Additional Property consistent with the concept of this Declaration. In no event, however, shall such Supplemental Declaration modify or add to the covenants established by this Declaration for the Property existing prior to the filing of any such Supplemental Declaration unless such modifications and additions are approved by a Two-Third Member Vote. Declarant may make any such addition even though at the time such addition is made Declarant is not the Owner of any portion of the Property. Each Supplemental Declaration shall designate the number of separate tracts comprising the Additional Property which are to constitute lots and each lot or tract shall constitute a "Lot" within the meaning of this Declaration. All or any part of the Additional Property and improvements located thereon owned by Declarant or any interest held by Declarant in the Property may be conveyed, transferred, or assigned to the Association and designated as Common Property by the Declarant at its sole discretion and without the approval, assent, or vote of the Association or of its Members, provided that any property so conveyed must be free and clear of any and all encumbrances, taxes and assessments. Nothing contained herein requires Declarant to add Additional Property. Moreover, Declarant reserves the right to subject any Additional Property or any part thereof to one or more separate declarations of covenants, conditions, and restriction which subject the Additional Property to the jurisdiction of an association or other entity with powers and obligations similar to the Association and which may or may not be subject to the provisions of this Declaration.

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- (b) The annexation of Additional Property can be accomplished by Declarant without the joinder of any other party.

**ARTICLE III  
PROPERTY RIGHTS IN THE COMMON PROPERTY**

- 3.01 Members' Rights. Subject to the provisions of Section 3.03 of this Article, every Member and every Resident has the right to use and enjoy the Common Property and such right is an appurtenance to the Property and passes with the title to every Lot, provided, however, it does not give such person the right to make alterations, additions, or improvements to the Common Property.
- 3.02 Title to the Common Property. The Declarant shall convey to the Association, by Special Warranty Deed, fee simple title to the Common Property, or in the case where easements constitute part of the Common Property, Declarant shall assign and transfer such easements to the Association; in each case free and clear of all encumbrances, other than the lien of taxes and assessments for the current year not yet due and payable, utility easements, pipelines, setback lines, mineral interests, and other matters filed in the Official Public Records of Hardin County, Texas.
- 3.03 Extent of Members' Rights. The rights of use and enjoyment created hereby are subject to the following:
  - (a) The right of the Association to prescribe regulations governing the use, operation, and maintenance of the Common Property (including limiting the number of guests of Members);
  - (b) Following the approval by a Two-Thirds Member Vote, the right of the Association, in accordance with its Articles, to borrow money for the purpose of improving Common Property and facilities and to mortgage the Common Property to secure a loan for such purposes;
  - (c) The right of the Association, as may be also provided by its bylaws, to suspend the voting rights of any Member and to suspend the right of any individual (including Members, guests, and Residents) to use any of the Common Property for any period during which any Assessment against a Lot owned by such Member remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;
  - (d) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities (if any) on the Common Property; and
  - (e) Following approval by a Two-Thirds Member Vote, the right of an Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and upon such conditions as the Board of Directors of the Association may determine in its sole discretion.

**ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS**

- 4.01 Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned by it within the Property, hereby covenants and agrees, and each purchaser of a Lot (by acceptance of a deed, whether or not it is so expressed in any such deed or other conveyance), hereby covenants and agrees to pay to the Association (or a payee designated by the Association):
  - (a) Annual Assessments or charges, to be paid in installments as the Board of Directors of the Association may direct;

- (b) Special Assessments for capital expenditures, such assessments to be fixed, established, and collected from time to time as hereinafter provided; and
- (c) Default Assessments which may be assessed against an individual Owner to reimburse the Association for extra maintenance and repair costs incurred as a result of the willful or negligent acts or omissions of such Owner, or the Owner's family, agents, guests, and invitees, such default assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular annual Assessments, special Assessments, and default Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided (collectively "Assessments"), shall be a charge and continuing lien upon each Lot against which such Assessment is made. Each Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, also are considered the continuing personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due. The annual assessments are payable provided in this Article IV.

4.02 Purpose of Assessments. The Assessments levied by the Association are to be used:

- (a) for the purpose of paying the cost of the improvement and maintenance of property, services and facilities directly related to the use and enjoyment of the Common Property including, but not limited to, the payment of taxes on and insurance in connection with the Common Property and the construction, repair, replacement, maintenance, and additions thereto;
- (b) for paying the cost of labor, equipment (including the expense of leased equipment) and materials required for, and management and supervision of, the Common Property;
- (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article V hereafter, including, but not limited to, the payments by the Association of all charges payable in connection with electricity, gas, sewer, water, and garbage pick-up services, and installation, maintenance, and operation of lighting for the Common Property;
- (d) for determining the amount of the Assessments in accordance with this Declaration to such level as is reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including maintenance of reasonable cash reserves.

4.03 Basis and Amount of Assessments

- (a) Prior January 1, 2010, the annual Assessment for each Lot owned by an Owner shall be \$100.00; Declarant shall pay \$15.00 for each Lot owned by Declarant; and any Builder shall pay \$50.00 for each Lot.
- (b) Beginning January 1, 2011, and each year thereafter, the annual Assessment for that year shall be set at the annual meeting of the Board of Directors. The annual Assessment for each Lot owned by Declarant, at the time of annual Assessment, shall be an amount equal to fifteen (15%) of the amount assessed against a single Lot owned by a Member other than Declarant or Builder, unless a Lot owned by Declarant is improved with a Dwelling Unit that is occupied, in which event the annual Assessment for such Lot shall be equal to the annual Assessment assessed against a single Lot owned by another Member. The annual Assessment for each Lot owned by a Builder at the time of annual Assessment shall be an amount equal to fifty (50%) of the annual Assessment assessed against a single Lot owned by a Member other than Declarant or Builder, unless a Lot owned by a Builder is improved with a Dwelling Unit that is occupied, in which event the annual Assessment for such Lot shall be equal to the annual Assessment assessed against a single Lot owned by another Member;

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- (c) Provided that the Board has received approval by a Two-Thirds Member Vote, the annual assessment for each Lot may exceed the amounts set forth in Section 4.03 (a) or (b) above, but will commence on January 1 of the year following the vote.
- 4.04 Special Assessments for Capital Improvements. In addition to the annual Assessments authorized by Section 4.03 above, in any year the Association may levy a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, repair or replacement of any capital improvement upon the Common Property, including the necessary fixtures and personal property, provided that any such Assessment for capital improvements must be approved by a Two-Thirds Member Vote.
- 4.05 Date of Commencement of Assessment Due Date. The annual assessments provided for herein shall commence on the earlier of:
- (a) January 1, 2009; or
- (b) when the first Lot is sold. Assessments shall be prorated from the date of sale; with an Owner being allocated a portion of the Assessment due based on the rate charged to an Owner other than Declarant or a Builder under 4.03 above. The due date or dates, if the Board allows payment in installments, of any special Assessments under section 4.04 or of any default Assessment under Section 4.01, shall be fixed in a resolution by the Board. Unless otherwise determined by the Board, the due date for all annual Assessments shall be thirty days after notice of Assessment is mailed to Owners.
- 4.06 Duties of the Board of with Respect to Assessments
- (a) The Board shall determine the Assessment against each Lot and notify each Owner in writing at least thirty days prior to the due date, and prepare a roster of the Lots and Assessments which shall be kept in the office of the Association and shall be open to inspection by any Owner;
- (b) The Board shall, upon an Owner's written request and payment of any reasonable fee set by the Board, furnish to an Owner liable for each Assessment a certificate in writing signed by an officer of the Association setting forth whether or not such assessment has been paid. Each 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 certificates.
- 4.07 Effect of Non-Payment of Assessment; Personal Obligation of the Owner, the Lien, Remedies of Association
- (a) If any Assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and the costs of collection as hereinafter provided, be a continuing lien (the "Lien") on the applicable Lot. The Lien 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 the Assessments because of non-use of the Common Property or abandonment of the Lot.
- (b) In order to secure the full and timely payment of all Assessments and other amounts payable by each Owner hereunder, each Owner, by his acceptance of a deed or other conveyance of the Lot and regardless of whether or not such deed or other conveyance expressly contains such a provision, does hereby grant and convey unto the President (from time to time) of the Board of Directors (or its designated representative) in trust as Trustee (the "Trustee"), for the benefit of the Association, the Lot(s) owned by such Owner, subject to all easements and other encumbrances affecting such Lot, provided, that each such grant shall be subordinated to the liens of any Mortgage to the extent provided in Section 4.08; and for these purposes

the provisions of this Section 4.07(b) shall be deemed to have created a deed of trust (the "Deed of Trust") lien covering such Lot with a power of sale granted to the Trustee in accordance with the provisions of Chapter 51 of the Texas Property Code (the "Code") as it may be amended from time to time. The Deed of Trust created hereby shall be upon the same terms and conditions, and shall provide to the Association all of the rights, benefits and privileges of the Deed of Trust promulgated by the State Bar of Texas for use by Lawyers, and all amendments, modifications, and substitutions thereof, which form is hereby incorporated by reference for all purposes hereof. The Association, acting through its President or any Vice President, shall have the right in its sole discretion at anytime, and from time to time, to appoint in writing a substitute trustee who shall succeed to all rights and responsibilities of the then acting Trustee.

- (c) Without limiting the remedies available upon the occurrence of a default by any Owner in the payment of any Assessment or other amount due and payable hereunder, the Association may, at its election and by and through the Trustee, sell or offer for sale the Lot owned by the defaulting Owner to the highest bidder for cash at public auction in accordance with the provisions of the Code. The Association may, at its option, accomplish such foreclosure sale in such manner as permitted or required by the Code or by any other present or future laws relating to the same. After the sale of any Lot in accordance with the provisions of this Section 4.07(c), the Owner of such Lot shall be divested of any and all ownership interest, and the proceeds of any such sale shall be applied in the following order of priority:
  - (i) to the payment of the costs and expenses of taking possession of the Lot
  - (ii) to the payment of reasonable attorney fees and Trustee's fees
  - (iii) to the payment of costs of advertisement and sale
  - (iv) to the payment of all unpaid Assessments and other amounts payable by such Owner to the Association, and
  - (v) to the defaulting Owner or to any other party entitled thereto. The Association shall have the right to be credited on the amount of its bid all of the Assessments and any other amount due and owing by the defaulting Owner to the Association as of the date of such sale.

- (c) If any Assessment or part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the maximum legal rate of interest allowed by law and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the Lien. There shall be added to the amount of such Assessment the costs of preparing and filing the suit (including reasonable attorney's fees) in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of court.

4.08 Subordination of the Lien to Mortgages. The Lien securing the payment of the Assessments and other obligation 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) Mortgages for purchase money, home improvements, or home equity loans (and refinances thereof) shall be superior to the Association's Lien;
- (b) Liens for ad valorem taxes or other public charges shall be superior to the Association's Lien if superiority is provided by applicable law; and

- (c) Such other liens which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's Lien;

Provided, however, subordination shall apply only to the Assessments which are due and payable prior to the foreclosure sale (whether public or private) pursuant to the terms and conditions of any Mortgage or tax lien. Such sale shall not relieve the Lot and its Owner from liability for the amount of any Assessment thereafter becoming due or from the Lien of any subsequent Assessment. Furthermore, subordination shall not apply where the Mortgage 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.

- 4.09 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessment, charge, and lien created herein:
- (a) All Property dedicated to and accepted by the local public authority and devoted to public use;
- (b) All Common Property.
- 4.10 Failure to set Assessments. The failure of the Board, before the expiration of any year, to fix the Assessments hereunder for that or the next year, shall not be a waiver or modification of Assessments for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed by the Board.
- 4.11 Applicability of Texas Property Code. The foregoing provisions concerning enforcement are expressly subject to Chapter 209 of the Texas Property Code, as amended from time to time.

**ARTICLE V  
GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION**

- 5.01 Power and Duties.
- (a) The Board, for the benefit of the Property and the Owners, shall provide, and shall pay out of Assessments, to the extent appropriate, the following:
- (i) Care, preservation, and maintenance of the Common Property, including, without limitation, the purchase and upkeep of any desired personal property used in connection with the maintenance of the Common Property, maintenance of grounds, including care and replacement of trees, shrubs, and grass, lighting systems, and any installed sprinkler systems on the Common Property, provided, however, if maintenance or repair is caused by the willful or negligent act or omission of any Owner, the Owner's family, a Resident, or any of their respective guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment attributable to such Owner's respective Lot(s);
- (ii) The services of a person or firm to manage, or assist in managing, the Association or any part thereof, to the extent deemed advisable by the Board, whether such personnel are employed directly by the Board or by the manager;
- (iii) Legal and accounting services;
- (iv) If deemed appropriate by the Board, a policy or policies of insurance insuring the Association and the Board against any liability to the public or to the Owners (and/or invitees, guests, or tenants), incident to the operation of the Association, in an amount not less than \$ 250,000 per occurrence, \$ 500,000 aggregate, which policy or policies shall contain waiver of subrogation;
- (v) Worker's compensation insurance to the extent necessary to comply with any applicable laws;

- (vi) Such fidelity bonds as the Board may determine to be advisable.
- (vii) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, or other items (including taxes assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion is necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

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

- (i) To execute all replats of the Property and to execute all declarations of ownership for tax valuation purposes with regard to the Common Property on behalf of all Owners;
- (ii) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, or by a mortgage on the Common Property, if the Board sees fit;
- (iii) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks) and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (iv) To protect and defend the Common Property from loss or damage by suit or otherwise, and to provide adequate reserves for replacements;
- (v) To make reasonable rules and regulations for the maintenance and protection of the Common Property, and to amend them from time to time;
- (vi) To make available to each Owner upon written request within sixty (60) days after the end of each year an annual report
- (vii) 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 Members in proportionate amounts to cover the deficiency;
- (viii) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provision or rules.

5.02 **Board Powers, Exclusive.** The Board has the exclusive right to contract for all goods, services, and insurance, payment of which is to be made from the Assessments.

5.03 **Rules and Regulations.** The Board may make and enforce reasonable rules and regulations governing the use of the Common Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violations of this Declaration, the bylaws, or such rules and regulations may include reasonable monetary fines, suspension of the right to vote, the right to use any facilities on the Common Property, and the right to hold any office or appointed position in the Association or committee. In addition, the Association shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Dwelling Unit in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association after written notice of the violation, plus the actual costs to the Association for curing the violation. The Board shall also have the power, but not the obligation, to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the bylaws of the Association.

#### ARTICLE VI EASEMENTS

6.01 **Easement Reserved for the Association.** The Association has full rights of ingress and egress at all times over and upon each Lot and the Property to exercise its rights, functions, duties, and obligations, provided that any such entry by the Association upon any Lot shall be made with as

minimum inconvenience to the owner as practical, and any damage caused by it shall be repaired by the Association.

- 6.02 Easements and Rights Reserved by Each Declarant. Declarant hereby reserves for itself, its successors, and assigns the right to dedicate streets, sidewalks, maintenance, repair, and replacement of utilities and related facilities, which shall include, but not be limited to, sewer (sanitary and storm), gas, electric, telephone, cable television, and water lines, upon, over, under, and across the Property, as it in its sole discretion deems proper or appropriate. Further, Declarant hereby reserves temporary construction easements for the construction, repair, removal, maintenance, and reconstruction of improvements within the Property, including the right to remove, on a temporary basis, fences, driveways, sprinkler systems, landscaping, and other improvements as shall be reasonably necessary to enable Declarant to complete the development and improvement of the Property; provided that any such improvement removed by Declarant shall be replaced and/or restored upon completion of the construction activities as near as practical to their former condition. All claims for damages, if any, arising out of any such construction or other activities by Declarant are hereby waived by each Owner and the Association.
- 6.03 Rights Reserved to Governmental Authorities and Utility Companies. Declarant and any governmental authority having jurisdiction over the Property, and any utility company which provides utilities to the Property, have full rights of access at all times over any dedicated easement for the installation, operation, maintenance, repair, or removal of any utility, together with the right to remove any obstruction 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. All claims against Declarant, the Board, or the Association for damages, if any, arising out of the construction, maintenance, and repair of utilities or on account of temporary or other inconvenience caused hereby is waived by each Owner and the Association. Declarant further reserves the right to alter, redesign, or discontinue any street, avenue, or way shown on the Plat not necessary for ingress or egress to and from an Owner's Lot, subject to the written approval of the applicable governmental authority, if required.
- 6.04 Universal Easement. Each Lot and its Owner is hereby declared to have an easement, and the same is hereby granted to Declarant, over all adjoining Lots and Common Property for the purpose of accommodating any minor encroachment (other than slab or foundation encroachments which shall not be deemed minor) due to engineering errors, errors in original construction, settlement, or shifting of building or any other cause. For purposes of this section only, an encroachment is considered "minor" if it extends one foot or less onto adjoining Lots or Common Property. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of any encroachments so long as they exist. Each of the easements referred to in this section shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot. Notwithstanding the foregoing, in no event shall easement for encroachment be created in favor of an Owner or Owner if said encroachment occurred due to the willful misconduct of said Owner or Owners.
- 6.05 Electric Service. An electricity distribution system shall be installed to serve all Lots in the subdivision. The Owner of each Lot, at the Owner's cost, shall furnish, install, and maintain (all in accordance with the requirements of local governmental authorities and the National Electrical Code) a service cable and appurtenances from the meter installed on the Lot by the electric company to such point as may be designated by the company on the property line of the Lot. The company furnishing electric service shall make the necessary connection at the property line and at the meter. Each Owner, at the Owner's cost, shall install, furnish, and maintain a meter loop (in accordance with then-current standards and specifications of the electric company) for the residence constructed on the Lot. For as long as underground service is maintained, the electric service to each Lot shall be uniform in

character and exclusively of the type known as single-phase 120/240 volt, 3-wire, 60-cycle alternating current.

**ARTICLE VII  
PROTECTIVE COVENANTS**

- 7.01 **Residential Uses Only.** Each Lot and Dwelling Unit may only be used for only single-family residential purposes. No building or structure can be used for or adapted to business, commercial, or industrial purposes, and no apartment house or condominiums, duplex, triplex, lodging house, rooming house, or other multiple-family dwelling shall be erected, placed, permitted, or maintained on any Lot. Only structures approved for residential use by the Architectural Committee, , may be used on any Lot at any time as a residence, either temporarily or permanently. Specifically excluded from this provision is the right to have one (1) "garage" sale annually per residence.
- 7.02 **Rubbish, Trash and Garbage.** No Lot shall be used or maintained as a dumping ground for rubbish or trash. All garbage and other waste shall be kept in sanitary containers. There shall be no burning or incineration of trash, garbage, leaves, brush, or other debris.
- 7.03 **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that no more than four (4) in any combination of dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose. Pets are not permitted to be on the Common Property unless on a leash or completely restrained. Pet excrement on Common Property must be picked up and disposed of immediately by the owner. Reptiles and uncaged birds are expressly prohibited. The Board may establish rules from time to time concerning pet ownership so long as not in conflict with these covenants. If the Board determines that a pet is causing a nuisance or is being offensive or harmful the Board may demand that the owner remove the offending pet from the subdivision. The Board is entitled to injunctive relief to enforce this provision.
- 7.04 **Signs and Picketing.** No signs of any type shall be allowed on any Lot except one sign of not more than five square feet advertising the property for sale or rent. However, Declarant, as well as any other person engaged in the construction and sale of residences on the Property shall have the right, during the construction and sales period, to construct and maintain advertising signs exceeding five square feet with the prior approval of the Architectural Committee..
- 7.05 **Parking Vehicles.** Vehicles shall be parked in the garage or driveway of the Lot serving the Dwelling Unit, or in such other paved areas as established by the Board for parking. No on-street parking is allowed for more than 6 consecutive hours.
- 7.06 **Trucks, Buses and Trailers.** No truck, bus, or trailer (except a passenger van for personal use or truck up to one (1) ton capacity) shall be left parked in the street, except for construction and repair equipment while a Dwelling Unit is being built or repaired in the immediate vicinity. No truck or bus (except a pickup truck up to one (1) ton capacity or passenger van for personal use) or boat or trailer shall be parked on the driveway or any portion of the Lot in such manner as to be visible from the street. Trucks in excess of one (1) ton shall not be permitted to park overnight on the streets, driveways, or on any Lot.
- 7.07 [Intentionally omitted]
- 7.08 **Detached Buildings.** A detached building no larger than 750 square feet, if approved by the Architectural Committee, may be placed on the rear of a Lot.
- 7.09 **Fences, Walls, Hedges, and Utility Meters.** No fence, wall, hedge, or utility meter shall be placed, or permitted to remain, on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot, except for decorative subdivision entry fences. On all Lots wooden,

- 7.09 Fences, Walls, Hedges, and Utility Meters. No fence, wall, hedge, or utility meter shall be placed, or permitted to remain, on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot, except for decorative subdivision entry fences. On all Lots wooden, colored chain link fencing or white plastic fencing is allowed, if approved by the Architectural Committee. No barb wire, razor wire, cattle wire or plain galvanized chain link fencing is allowed
- 7.10 Poles and Antennas. Only one flag pole no more than 30 feet high, and a maximum of two (2) satellite dishes no more than 24 inches in diameter shall be installed on any Lot unless within the envelope of a building approved by the Architectural Committee.
- 7.11 Exterior Wood-Burning Stoves and Fireplaces. No exterior fireplace or wood-burning stoves shall be installed or used on any Lot unless it meets the requirements, standards, and recommendations of federal, state, and local authorities.
- 7.12 Clotheslines. No clotheslines shall be erected or installed and no clothing, linens or other material shall be aired or dried so as to be visible from the street.
- 7.13 Window Treatment. No aluminum foil, reflective film, signs, or similar treatment shall be placed on windows or glass doors.
- 7.14 Sewage Disposal and Collection. No individual sewage-disposal system shall be permitted on any lot unless the system is designed, located, and constructed in accordance with the requirements, standards, and recommendations of the Lumberton Municipal Utility District or its successor and the State of Texas. Approval of the system as installed shall be obtained from that authority.
- 7.15 Swimming Pools. All pools must be approved by the Architectural Committee.
- 7.16 Utilities. Dwelling units shall be connected to the water lines as soon as practicable after same are available at the Lot line. All telephone, electric, cable, gas, or other service lines shall be installed at Owner's expense and shall meet all requirements of the applicable governmental authority.
- 7.17 Quiet Enjoyment. No noxious or offensive activity shall be conducted on any Lot that may be or may become an annoyance or nuisance to the neighborhood ( i.e., exterior speakers, horns, whistles, bells or other sound devices), except security and fire devices used exclusively to protect the Lot and improvements situated thereon.
- 7.18 Lighting. Except for traditional holiday decorative lights, which may be displayed for (2) months prior to and one (1) months after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved by the Architectural Committee.
- 7.19 Prohibited Uses. No Lot, and no Dwelling Unit or building erected or maintained on any Lot, shall be used for manufacturing, industrial, business, commercial, institutional, or other non-residential purposes. However, leasing a Dwelling Unit for single-family residential use is not considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant, or a Builder with written approval of the Declarant, with respect to development and sale of the Property, including the operation of a timeshare or similar program.
- 7.20 Oil Development and Mining Prohibited. No oil well drilling, development, or refining, and no mineral quarrying or mining operations of any kind shall be permitted on any Lot. No oil well, tank, tunnel, mineral excavation, or shaft shall be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted on any Lot.
- 7.21 Water Supply. No individual water supply system shall be permitted on any Lot unless the system is located, constructed, and equipped in accordance with the requirements, standards, and recommendations of the Lumberton Municipal Utility District or its successor and the State of Texas. Approval of the system as installed shall be obtained from that authority.

- 7.22 Sight Distance and Intersections. No fence, wall, hedge, or plant that obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot in the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines as extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of intersections unless the foliage line is maintained to meet the sight line requirements set forth above.

## ARTICLE VIII

### ARCHITECTURAL AND CONSTRUCTION RESTRICTIONS

- 8.01 Type of Residence. All Lots shall be used for single-family residential purposes only. Single-family use consists of use as a dwelling by one or more persons who are related by marriage or kinship and by not more than four (4) persons who are not related by marriage or kinship. However, Declarant, as well as any other person engaged in the construction and sale of residences on the Property, shall have the right, during the construction and sales period, to use facilities as it deems reasonably necessary or convenient for its business purpose of constructing and selling residences on the Property.
- 8.02 Types of building permitted. No building shall be erected, altered, or permitted on any Lot other than one detached single-family dwelling not to exceed thirty - five (35) feet in height, with a private garage for not more than four (4) automobiles. However, Declarant, as well as any other person engaged in the construction and sale of Dwelling Units on the Property, with the approval of the Architectural Committee, shall have the right, during the construction and sales period, to construct and maintain such facilities as it deems reasonably necessary or convenient for its business of constructing and selling Dwelling Units on the Property, including, but not limited to, offices and storage areas
- 8.03 Designs, Minimum Floor Area. Any Dwelling Unit constructed on a Lot must have the following minimum ground floor area, exclusive of open or screened porches, terraces, patios, driveways, carports, and garages of gross square footage:
- (a) 1,000 square feet
  - (b) 1,500 square feet for two (2) to three (3) story structures.
- 8.04 Exterior Building Materials Type of Constructions. The front and side exterior walls of any residence shall consist of not less than 25 percent masonry, stone, stucco, or other natural material construction, but vinyl or aluminum siding is allowed for trim, sides and the rear exterior walls. All roofs shall be constructed of fireproof materials consisting of tile, natural slate, shingle, or artificial slate. No metal roof shall be allowed. All exterior colors, textures, and materials must be compatible not only with the specific design motif but also with adjacent and surrounding Lots, and over-all community appearance, as determined by the Architectural Committee.
- 8.05 Intentionally deleted.
- 8.06 Driveways. Each Owner shall provide and install, at their own expense, driveway approaches during construction of the Dwelling Unit in accordance to the City of Lumberton (or any other governmental unit with jurisdiction) requirements. Owner shall maintain the driveway at Owner's expense.
- 8.07 Setbacks. No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the Plat. No front building setback line

shall be less than 10 feet. No side building set back on interior (non corner) Lots shall be less than 5 feet. No side building set back on the street side of a corner lot shall be less than 10 feet. No rear building set back on any lot shall be less than 5 feet. For purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of the Dwelling Unit on any Lot to encroach upon another Lot except as provided in section 6.04. If two or more Lots, or portions of two or more Lots, are consolidated into a building site for a Dwelling Unit, these building setback requirements shall apply to the resulting building site as if it were one Lot.

- 8.08 **Lot Consolidation.** Any Owner owing two (2) or more adjoining Lots or portions of two (2) or more such Lots may, with the prior written approval of the Architectural Committee, consolidate such Lots or portions thereof into a single building site for a Dwelling Unit and such other improvements as are permitted herein, however, that no such building site shall contain less than two thousand (1,200) square feet of living area. Any consolidated Lot shall comply with all requirements of any applicable statutes, ordinances, or regulation. On application by an Owner, the Board may adjust the Assessments on a consolidated Lot to an amount not less than the full Assessment rate for a single Lot. Absent such adjustment, a consolidated Lot shall bear the full Assessment rate applicable to all Lots as if not consolidated.
- 8.09 **Garages, Carports, and Porte Cocheres.** A garage must be constructed and maintained to accommodate at least one (1) full-size passenger vehicles for each Dwelling Unit. Each driveway must accommodate two (2) vehicles in front of the garage for off-street parking requirements. Rear detached garages are permitted. No garage shall be permanently enclosed for conversion to any other use. Open carports are not permitted, unless special design circumstances warrant their use and unless approved in writing by the Architectural Committee. Porte Cocheres shall not extend more than twenty feet (20') from the front of any Dwelling Unit toward the street fronting such Lot. Lots may have one (1) or two (2) story garages.
- 8.10 **Landscaping.** Each Owner shall spend an initial sum of not less than one (1) percent of the total cost of the Lot and Dwelling Unit for ornamental plants, trees, shrubs, ground cover, lawns, and flowers within the first Eight (8) months of purchase of residence. No soil shall be removed from any Lot unless contemplated by drawings and plans submitted to and approved by the Architectural Committee. Final grades of all Lots must also conform to grading plans and elevations approved by the City of Lumberton or any other governmental unit with jurisdiction.
- 8.11 Intentionally Omitted.
- 8.12 **Utility Connections and Fees.** Owner shall construct, furnish, or install all on-site utilities extensions. Owner further agrees to pay any utility deposit or charge, including any connection, tap, or inspection fee, for water, sewer, electrical, gas, telephone, cable television, or other utility service.
- 8.13 **Care During Construction.** Owner shall take all reasonable precautions to minimize interference with traffic and to protect the general public, Owners, and the Property from injury from movement of vehicular traffic during construction of each Dwelling Unit. In addition, and without limiting the generality of the foregoing, Owner agrees to the following:
- (a) **Storage of Building Materials.** Building materials stored on a Lot will be kept in a neat condition so as not to detract from the appearance of the neighborhood and so as to give the visual impression from adjacent streets of a clean, orderly work site.
- (b) **Scrap Materials and Trash.** Owner agrees to keep scrap materials and trash produced in connection with the construction of a Dwelling Unit confined to a particular area of on the Lot, preferably to the side, or behind, the Dwelling Unit under construction. Trash will be placed in a wire mesh, or solid container within such area at the end of each workday and removed from the Lot frequently enough so that trash does not overflow from such container.
- (c) **Clean Road and Utilities.** Owner agrees to protect pavement, curbs, and gutters, swales, or drainage course, streets, utility structures, fire hydrants, manhole covers, valve boxes, and second stage inlets and other property contiguous to, in the vicinity of, or leading to same clear of

equipment, building materials, dirt, debris, and similar materials. Owner further agrees to maintain in good functional condition, storm water pollution prevention materials adequate to comply with guidelines promulgated by the Environmental Protection Agency and any other governmental authority.

(d) Initial Construction period. Unless otherwise specified in the deed of conveyance, an Owner shall complete construction of the dwelling no later than 180 days from the commencement of construction. Commencement of construction is defined for purposes of this paragraph as the first day building materials of any type are placed on the lot. Failure to complete construction within 180 days gives Developer the unilateral right, but not the obligation, to repurchase the property for the price Developer was originally paid for the lot without regard to additional costs incurred by current owner.

8.14 Intentionally Omitted

## ARTICLE IX ARCHITECTURAL STANDARDS

9.01 Architectural Committee

Declarant shall designate and appoint an Architectural Committee consisting of not less than three (3) members, but not more than five (5) members, which shall have exclusive jurisdiction over all construction until one hundred percent (100%) of the Property has been conveyed to Owners in the normal course of development and sale. The Declarant retains the right to appoint all members of the Architectural Committee, who shall serve at the discretion of the Declarant. The initial members are Joy Slaydon, Thomas F. Cormier and James McCrate. After the Declarant no longer owns any Lot, the Architectural Committee shall serve at the pleasure of the Board.

9.02 Approval Required Procedures

(a) No structure shall be placed, erected, or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no planting or removal of plants, trees, or shrubs shall take place except in strict compliance with this article, until the requirements below have been fully met, and until the written approval of the Architectural Committee has been obtained pursuant to Section 9.02 and 9.03 below. Such improvements include, but are not limited to, the construction or installation of Dwelling Units, sidewalks, driveways, decks, patios, garages, guest or servant's quarters, or other outbuilding. No such construction or exterior addition to or change or alteration in the nature, color, type, shape, height, materials, and location of the same shall be made unless plans and specifications for same have been submitted to and approved in writing by the Architectural Committee. Design guidelines may be published by the Architectural Committee from time to time, including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved" Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally approved color scheme, or to rebuild in accordance with the originally approved plans and specifications. The Architectural Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable.

(b) Following written approval of any plans and specifications by the Architectural Committee, representatives of the Architectural Committee shall have the right, but not the obligation, during reasonable hours to enter upon and inspect any Lot or Dwelling Unit under construction to determine whether the plans and specifications are being complied with. In the event the Architectural Committee determines that the plans and specifications have not been approved or

are not being complied with, the Architectural Committee is entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. The Architectural Committee shall have sixty (60) days after such plans and specifications are submitted to it to review and approve or disapprove the same, in whole or part. In the event the Architectural Committee fails to approve or disapprove in writing any proposed plans and specifications within the timeframe stated above, such plans and specifications will be deemed to have been approved, and no further approval under this Article shall be required, unless such construction has not substantially commenced (e.g., clearing of grading, pouring of footing, etc.) within six (6) months of the approval of such plans and specifications or unless such plans and specifications are materially altered or changed. Disapproval of plans and specifications by the Architectural Committee may be based upon any ground which is consistent with the objectives and purposes of this Declaration as defined in the design guidelines promulgated by the Architectural Committee from time to time, including purely aesthetic considerations.

- (c) The Board of Directors or Architectural Committee may establish reasonable fees to be charged by the committee on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application. All Dwelling Units constructed on any portion of the Property shall be designed by and built in accordance with the plans and specification

9.03 **NO LIABILITY:** NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF DESIGN GUIDELINES SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS, OR DESIGN GUIDELINES WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED IMPROVEMENTS. SUCH APPROVALS AND DESIGN GUIDELINES SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENCE OR OTHER IMPROVEMENTS BUILT IN ACCORDANCE THEREWITH WILL BE BULT IN A GOOD AND WORKMANLIKE MANNER. REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS ARTICLE IS MADE ON THE BASIS OF RETAINING THE CHARACTERISTICS OF A FIRST CLASS RESIDENTIAL SUBDIVISION AND AESTHETIC CONSIDERATIONS ONLY AND NEITHER THE ARCHITECTURAL COMMITTEE NOR THE DECLARANT SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATONS, OR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR MEMBER OF ANY OF THE FOREGOING, SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE APPROVAL OR DISAPPROVAL OF OR NON-COMPLIANCE WITH ANY PLANS OR SPECIFICATIONS, THE MANNER OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFCATIONS TO ANY DWELLING UNIT.

9.04 **Indemnification.** Each member or former member of the Architectural Committee shall be indemnified by the Association against all loss, costs, damages and expenses, including reasonable attorney's fees, incurred by or imposed in connection with any claim, action, suit, including criminal proceedings, to which such person is threatened to be made a party by reason or service as a member, except as to matters resulting in a final determination of gross negligence or willful misconduct on the part of such member. In the event of settlement of such proceeding, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct. All liability, loss, damage, costs and expenses incurred by the Association in connection with this indemnification shall be common expense.

#### ARTICLE IX GENERAL PROVISIONS

- 10.01 **Enforcement.** The Declarant or the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations imposed by this Declaration. Failure to enforce any covenant or restriction shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. All waivers must be in writing and signed by the party to be bound.
- 10.02 **Registration with the Association.** Each and every Owner, Member, and Resident shall have an affirmative duty and obligation to provide to the Association, and thereafter revise and update, within thirty (30) days after any change, such information as (a) full name and address of each owner (b) emergency contact information and (c) other information as may be reasonably requested from time to time by the Board.
- 10.03 **Notices to Resident/Member/Owner.** Any notice to be given to any Resident, Member, or Owner under the provisions of this Declaration shall be deemed to have been properly delivered if mailed by first class mail, 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.
- 10.04 **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.
- 10.05 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.
- 10.06 **Covenants Running with the Land.** These easements, restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the Property. Consequently, they shall run with the Property and shall be binding on all parties having any right, title, or interest in the Property in whole or in part, and their heirs, successors, and assigns. These easements, covenants, conditions, and restrictions shall be for the benefit of the Property, each Lot, and each Lot Owner.
- 10.07 **Disputes.** Matters of dispute or disagreement between Owners, Residents, or Members with respect to interpretation or application of the provisions of this Declaration or the Association bylaws shall be determined by the Board. These determinations (absent arbitrary or gross negligence) shall be final and binding upon all Owners, Residents, and Members.
- 10.08 **Duration and Amendment.** The covenants, conditions, and restrictions of this Declaration shall be effective for a term of 20 years from the date this Declaration is recorded, after which period the covenants, conditions, and restrictions shall be automatically extended for successive periods of 10 years subject to termination by an instrument signed by more than 75 percent of the Owners. The covenants, conditions, and restrictions of this Declaration may be amended by an instrument signed by more than 75 percent of the Owners. However, the Declarant can change or amend these covenants, conditions, and restrictions so long as Declarant owns at least 20% of the Lots, without the joinder of any other party. Neither any amendment nor any termination shall be effective until recorded in the Official Public Records of Hardin County, Texas, and all requisite governmental approvals, if any, have been obtained.
- 10.10 **Attorney's Fees.** If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.
- 10.11 **Liberal Interpretation.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Property.

VOL: 1753 PG: 0495

This Declaration is executed this 1st day of October, 2009.

DJM Contractors, Ltd., by DJM Management, LLC, its general partner

By Thomas F. Cormier  
Thomas F. Cormier, Manager

Lum-Tex, Development Inc,

By Joy Slaydon Atkins  
Joy Slaydon, Manager JSA

STATE OF TEXAS  
COUNTY OF Hardin

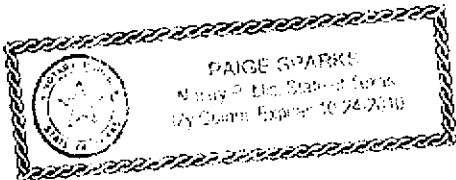
This instrument was acknowledged before me on October 1, 2009, by Thomas F. Cormier, as Manager of DJM Management, LLC, a Texas limited liability company, acting as general partner of DJM Contractors, Ltd., a Texas limited partnership, on behalf of said partnership.



STATE OF TEXAS  
COUNTY OF Hardin

Paige Sparks  
Notary Public, State of Texas

This instrument was acknowledged before me on October 1, 2009, by Joy Slaydon, as <sup>ATKINS</sup> ~~manager~~ of Lum-Tex Development, Inc, a Texas corporation, . JSA



Paige Sparks  
Notary Public, THE STATE OF TEXAS

Return to Tom Cormier

2009-8397  
GLENDA ALSTON  
COUNTY CLERK  
2009 Nov 13 at 02:58 PM  
HARDIN COUNTY, TEXAS  
By: KS, DEPUTY

(24) - 49293

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
WESTWOOD VILLAGE III PHASE ONE SUBDIVISION  
BY  
DJM CONTRACTORS, LTD. and LUM-TEX DEVELOPMENT, INC.**

This Declaration of Covenants, Conditions, and Restrictions is made on October 1, 2009, by DJM Contractors, Ltd. and Lum-Tex Development, Inc., a Texas Limited Partnership ("Declarant").

**Recitals**

1. Declarant is the owner of all that certain real property ("the Property") located in Hardin County, Texas, described by metes and bounds on the Plat, together with additions thereto as may be made subject to the terms of this Declaration and any Supplemental Declaration of Covenants executed and filed, from time to time, by Declarant in the Official Public Records of Hardin County Texas, for which a plat has been approved and filed, for a subdivision known as WESTWOOD Village III a subdivision in Lumberton, Hardin County, Texas. The Plat has been filed in Volume 4, page 91 AND 91 a of the Map Records of Hardin County, Texas.
2. Declarant desires to create a residential community on the Property with residential lots and improvements, including Common Property.
3. Declarant has or will form a non profit corporation known as "Westwood Village III Home Owners Association" (the "Association") under the Nonprofit Corporation Act of the State of Texas (the "Act").
4. For the benefit of Declarant and each successive Owner of the Property and to provide for the efficient preservation of the values and enjoyment of the amenities within the Property and for the maintenance of Common Property, as a part of the general plan of development Declarant desires to impose upon the Property the covenants, conditions, restrictions easements, charges, and liens contained in this Declaration and to create the Association to which will be delegated and assigned the power of maintaining and administering the Property and Common Property in accordance with the terms of this Declaration.

NOW, THEREFORE, for the benefit of, and to bind Declarant and its assigns and successors-in-interest, Declarant does hereby agree and declare that the Property, including any additions thereto as may hereafter be made, is hereby and will be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens (sometimes referred to collectively as the "Declaration" or the "Covenants") hereinafter set forth, running with the Property and binding upon Declarant and all parties having any right, title, or interest in or to any part of the Property, and their heirs, successors, grantees, representatives, and assigns, at law and in equity.

**ARTICLE I**

The following words, when used in this Declaration, have the following meanings.

"Architectural Committee" means the Architectural Committee described in Article IX of this Declaration.

"Assessment" means the regular annual assessments, special assessments, and default assessments levied by the Association as determined by the Board of Directors.

"Association" means Westwood Heights Home Owners Association, a Texas nonprofit corporation, its successors and assigns.

"Board of Directors" or "Board" means the governing body of the Association, the election and procedures of which are set forth in the articles of incorporation and the bylaws of the Association.

"Builder" means any person or entity that (1) is actively engaged in the business of building homes for sale to third parties, (2) has acquired a Lot or Lots for the purpose constructing Dwelling Unit(s) for sale to third parties, and (3) has constructed and sold at least two single family residences in the prior twelve months.

"Common Property" means the portions of the Property, including any improvements thereon and any appurtenances thereto, that is held, managed or owned by the Association for common use and enjoyment.

"Declarant" means DJM Contractors, Ltd and Lum-Tex Development, Inc., its successors and assigns.

"Dwelling Unit" means any building or portion of a building, situated upon a Lot or Lots, 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.

"Mortgage" means a bona fide voluntary agreement constituting a mortgage, security instrument, or deed of trust lien on a Lot and/or Dwelling Unit.

"Lot" means, with respect to any Property for which a subdivision map or plat (including the Plat) has been recorded in the Map Records of Hardin County, Texas, each lot shown on such recorded subdivision plat.

"Member" means each Owner as defined below and in Article II of this Declaration.

"Owner" means the record owner (including a Builder), whether one or more persons or entities, of the fee simple title of any Lot but, notwithstanding any applicable theory of mortgages or other security devices, does not mean a mortgagee or trustee under a mortgage or deed of trust unless and until such mortgagee or trustee has acquired fee simple title pursuant to foreclosure or a conveyance in lieu of foreclosure. A person or entity holding or claiming an interest in a Dwelling Unit or Lot under an executory contract, contract for deed, option to purchase, lease, or license is not considered an Owner.

"Plat" means the plat or any replat of the Property or any portion thereof filed in the Map Records of Hardin County, Texas.

"Property" has the meaning given to it in paragraph 1 of the Recitals above.

"Resident" means each person (not otherwise an Owner or Member) authorized by an Owner to reside within such Owner's Dwelling Unit.

"Two-Thirds Member Vote" means two-thirds (2/3<sup>rd</sup>) of the Members (regardless of class) at a meeting duly called at which at least 51% of all Members (regardless of class) are in attendance in person or by written proxy. If a Member wishes to use a written proxy it must be filed with the Association at least twelve (12) hours before the meeting called for purposes of the vote.

**ARTICLE II**

**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:  
ADDITIONS TO THE PROPERTY**

2.01 **Membership.** Each Owner is automatically a Member of the Association, subject to the terms of this Declaration, the Articles of Incorporation, and the bylaws of the Association and the Association's rules and regulations. Membership of an Owner in the Association is appurtenant to and may not be separated from the interest of such Owner in and to a Lot. Ownership of a Lot is the sole qualification for being a Member; however, a Member's privileges in the Common Property may be

regulated or suspended as provided in this Declaration, the bylaws of the Association, and/or the Association's rules and regulations.

2.02 Transfer. Membership in the Association may not be severed from or in any way transferred, pledged, mortgaged, or alienated except upon the sale or assignment of said Owner's interest in a Lot and then only to the purchaser or assignee. Membership cannot be severed by an encumbrance. Owners shall notify the Association of the conveyance of the fee title to a Lot. A conveyance automatically transfers the membership to the new Owner. In the event an Owner fails or refuses to provide written evidence of such conveyance, the Association will have the right to record the transfer upon the books and records of the Association.

2.03 Class of Membership. The Association has two classes of voting membership.

**CLASS A.** Class A Members are all Members with the exception of Declarant. Class A Members are entitled to one (1) vote per or for each Lot they own. When more than one (1) person or entity holds such interest or interest in any Lot all such parties are Members, and the vote for such Lot may be exercised as they, among themselves, determine, but in no event can more than one (1) vote be cast with respect to any such Lot.

**CLASS B.** The Class B Member is the Declarant. The Class B Member is entitled to eight (8) votes for each Lot owned by the Class B Member until the Class B Member owns eight (8) or fewer Lots, at which time the Class B Member will be entitled to one (1) vote per Lot.

2.04 Additions to the Property. Additional tracts of land, together with the improvements situated thereon, may become subject to the Declaration and added to the Property in any of the following manners:

- (a) Declarant may, without the consent of any Owner and at its sole option, at any time within ten (10) years from the date of recordation of this Declaration, add to the Property all or any portion of any other real property (the "Additional Property"), by filing of record one or more Supplemental Declarations of Covenants, Conditions, and Restrictions, which extend the covenants conditions, and restrictions of this Declaration to the Additional Property. Any such Supplemental Declaration may contain additions and modifications of the covenants, conditions, and restrictions contained in this Declaration as necessary to reflect the different character, if any, of the Additional Property consistent with the concept of this Declaration. In no event, however, shall such Supplemental Declaration modify or add to the covenants established by this Declaration for the Property existing prior to the filing of any such Supplemental Declaration unless such modifications and additions are approved by a Two-Third Member Vote. Declarant may make any such addition even though at the time such addition is made Declarant is not the Owner of any portion of the Property. Each Supplemental Declaration shall designate the number of separate tracts comprising the Additional Property which are to constitute lots and each lot or tract shall constitute a "Lot" within the meaning of this Declaration. All or any part of the Additional Property and improvements located thereon owned by Declarant or any interest held by Declarant in the Property may be conveyed, transferred, or assigned to the Association and designated as Common Property by the Declarant at its sole discretion and without the approval, assent, or vote of the Association or of its Members, provided that any property so conveyed must be free and clear of any and all encumbrances, taxes and assessments. Nothing contained herein requires Declarant to add Additional Property. Moreover, Declarant reserves the right to subject any Additional Property or any part thereof to one or more separate declarations of covenants, conditions, and restriction which subject the Additional Property to the jurisdiction of an association or other entity with powers and obligations similar to the Association and which may or may not be subject to the provisions of this Declaration.

- (b) The annexation of Additional Property can be accomplished by Declarant without the joinder of any other party.

**ARTICLE III  
PROPERTY RIGHTS IN THE COMMON PROPERTY**

- 3.01 Members' Rights. Subject to the provisions of Section 3.03 of this Article, every Member and every Resident has the right to use and enjoy the Common Property and such right is an appurtenance to the Property and passes with the title to every Lot, provided, however, it does not give such person the right to make alterations, additions, or improvements to the Common Property.
- 3.02 Title to the Common Property. The Declarant shall convey to the Association, by Special Warranty Deed, fee simple title to the Common Property, or in the case where easements constitute part of the Common Property, Declarant shall assign and transfer such easements to the Association; in each case free and clear of all encumbrances, other than the lien of taxes and assessments for the current year not yet due and payable, utility easements, pipelines, setback lines, mineral interests, and other matters filed in the Official Public Records of Hardin County, Texas.
- 3.03 Extent of Members' Rights. The rights of use and enjoyment created hereby are subject to the following:
- (a) The right of the Association to prescribe regulations governing the use, operation, and maintenance of the Common Property (including limiting the number of guests of Members);
  - (b) Following the approval by a Two-Thirds Member Vote, the right of the Association, in accordance with its Articles, to borrow money for the purpose of improving Common Property and facilities and to mortgage the Common Property to secure a loan for such purposes;
  - (c) The right of the Association, as may be also provided by its bylaws, to suspend the voting rights of any Member and to suspend the right of any individual (including Members, guests, and Residents) to use any of the Common Property for any period during which any Assessment against a Lot owned by such Member remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;
  - (d) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities (if any) on the Common Property; and
  - (e) Following approval by a Two-Thirds Member Vote, the right of an Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and upon such conditions as the Board of Directors of the Association may determine in its sole discretion.

**ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS**

- 4.01 Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned by it within the Property, hereby covenants and agrees, and each purchaser of a Lot (by acceptance of a deed, whether or not it is so expressed in any such deed or other conveyance), hereby covenants and agrees to pay to the Association (or a payee designated by the Association):
- (a) Annual Assessments or charges, to be paid in installments as the Board of Directors of the Association may direct;

- (b) Special Assessments for capital expenditures, such assessments to be fixed, established, and collected from time to time as hereinafter provided; and
- (c) Default Assessments which may be assessed against an individual Owner to reimburse the Association for extra maintenance and repair costs incurred as a result of the willful or negligent acts or omissions of such Owner, or the Owner's family, agents, guests, and invitees, such default assessments to be fixed, established, and collected from time to time as hereinafter provided. The regular annual Assessments, special Assessments, and default Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided (collectively "Assessments"), shall be a charge and continuing lien upon each Lot against which such Assessment is made. Each Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, also are considered the continuing personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due. The annual assessments are payable provided in this Article IV.

4.02 Purpose of Assessments. The Assessments levied by the Association are to be used:

- (a) for the purpose of paying the cost of the improvement and maintenance of property, services and facilities directly related to the use and enjoyment of the Common Property including, but not limited to, the payment of taxes on and insurance in connection with the Common Property and the construction, repair, replacement, maintenance, and additions thereto;
- (b) for paying the cost of labor, equipment (including the expense of leased equipment) and materials required for, and management and supervision of, the Common Property;
- (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article V hereafter, including, but not limited to, the payments by the Association of all charges payable in connection with electricity, gas, sewer, water, and garbage pick-up services, and installation, maintenance, and operation of lighting for the Common Property;
- (d) for determining the amount of the Assessments in accordance with this Declaration to such level as is reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including maintenance of reasonable cash reserves.

4.03 Basis and Amount of Assessments

- (a) Prior January 1, 2010, the annual Assessment for each Lot owned by an Owner shall be \$100.00; Declarant shall pay \$15.00 for each Lot owned by Declarant; and any Builder shall pay \$50.00 for each Lot.
- (b) Beginning January 1, 2011, and each year thereafter, the annual Assessment for that year shall be set at the annual meeting of the Board of Directors. The annual Assessment for each Lot owned by Declarant, at the time of annual Assessment, shall be an amount equal to fifteen (15%) of the amount assessed against a single Lot owned by a Member other than Declarant or Builder, unless a Lot owned by Declarant is improved with a Dwelling Unit that is occupied, in which event the annual Assessment for such Lot shall be equal to the annual Assessment assessed against a single Lot owned by another Member. The annual Assessment for each Lot owned by a Builder at the time of annual Assessment shall be an amount equal to fifty (50%) of the annual Assessment assessed against a single Lot owned by a Member other than Declarant or Builder, unless a Lot owned by a Builder is improved with a Dwelling Unit that is occupied, in which event the annual Assessment for such Lot shall be equal to the annual Assessment assessed against a single Lot owned by another Member;

- (c) Provided that the Board has received approval by a Two-Thirds Member Vote, the annual assessment for each Lot may exceed the amounts set forth in Section 4.03 (a) or (b) above, but will commence on January 1 of the year following the vote.
- 4.04 Special Assessments for Capital Improvements. In addition to the annual Assessments authorized by Section 4.03 above, in any year the Association may levy a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, repair or replacement of any capital improvement upon the Common Property, including the necessary fixtures and personal property, provided that any such Assessment for capital improvements must be approved by a Two-Thirds Member Vote.
- 4.05 Date of Commencement of Assessment Due Date. The annual assessments provided for herein shall commence on the earlier of:
- (a) January 1, 2009; or
- (b) when the first Lot is sold. Assessments shall be prorated from the date of sale; with an Owner being allocated a portion of the Assessment due based on the rate charged to an Owner other than Declarant or a Builder under 4.03 above. The due date or dates, if the Board allows payment in installments, of any special Assessments under section 4.04 or of any default Assessment under Section 4.01, shall be fixed in a resolution by the Board. Unless otherwise determined by the Board, the due date for all annual Assessments shall be thirty days after notice of Assessment is mailed to Owners.
- 4.06 Duties of the Board of with Respect to Assessments
- (a) The Board shall determine the Assessment against each Lot and notify each Owner in writing at least thirty days prior to the due date, and prepare a roster of the Lots and Assessments which shall be kept in the office of the Association and shall be open to inspection by any Owner;
- (b) The Board shall, upon an Owner's written request and payment of any reasonable fee set by the Board, furnish to an Owner liable for each Assessment a certificate in writing signed by an officer of the Association setting forth whether or not such assessment has been paid. Each 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 certificates.
- 4.07 Effect of Non-Payment of Assessment; Personal Obligation of the Owner, the Lien, Remedies of Association
- (a) If any Assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and the costs of collection as hereinafter provided, be a continuing lien (the "Lien") on the applicable Lot. The Lien 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 the Assessments because of non-use of the Common Property or abandonment of the Lot.
- (b) In order to secure the full and timely payment of all Assessments and other amounts payable by each Owner hereunder, each Owner, by his acceptance of a deed or other conveyance of the Lot and regardless of whether or not such deed or other conveyance expressly contains such a provision, does hereby grant and convey unto the President (from time to time) of the Board of Directors (or its designated representative) in trust as Trustee (the "Trustee"), for the benefit of the Association, the Lot(s) owned by such Owner, subject to all easements and other encumbrances affecting such Lot, provided, that each such grant shall be subordinated to the liens of any Mortgage to the extent provided in Section 4.08; and for these purposes

the provisions of this Section 4.07(b) shall be deemed to have created a deed of trust (the "Deed of Trust") lien covering such Lot with a power of sale granted to the Trustee in accordance with the provisions of Chapter 51 of the Texas Property Code (the "Code") as it may be amended from time to time. The Deed of Trust created hereby shall be upon the same terms and conditions, and shall provide to the Association all of the rights, benefits and privileges of the Deed of Trust promulgated by the State Bar of Texas for use by Lawyers, and all amendments, modifications, and substitutions thereof, which form is hereby incorporated by reference for all purposes hereof. The Association, acting through its President or any Vice President, shall have the right in its sole discretion, at any time, and from time to time, to appoint in writing a substitute trustee who shall succeed to all rights and responsibilities of the then acting Trustee.

- (c) Without limiting the remedies available upon the occurrence of a default by any Owner in the payment of any Assessment or other amount due and payable hereunder, the Association may, at its election and by and through the Trustee, sell or offer for sale the Lot owned by the defaulting Owner to the highest bidder for cash at public auction in accordance with the provisions of the Code. The Association may, at its option, accomplish such foreclosure sale in such manner as permitted or required by the Code or by any other present or future laws relating to the same. After the sale of any Lot in accordance with the provisions of this Section 4.07(c), the Owner of such Lot shall be divested of any and all ownership interest, and the proceeds of any such sale shall be applied in the following order of priority:
- (i) to the payment of the costs and expenses of taking possession of the Lot
  - (ii) to the payment of reasonable attorney fees and Trustee's fees
  - (iii) to the payment of costs of advertisement and sale
  - (iv) to the payment of all unpaid Assessments and other amounts payable by such Owner to the Association, and
  - (v) to the defaulting Owner or to any other party entitled thereto. The Association shall have the right to be credited on the amount of its bid all of the Assessments and any other amount due and owing by the defaulting Owner to the Association as of the date of such sale.
- (c) If any Assessment or part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the maximum legal rate of interest allowed by law and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the Lien. There shall be added to the amount of such Assessment the costs of preparing and filing the suit (including reasonable attorney's fees) in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of court.

4.08 Subordination of the Lien to Mortgages. The Lien securing the payment of the Assessments and other obligation 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) Mortgages for purchase money, home improvements, or home equity loans (and refinances thereof) shall be superior to the Association's Lien;
- (b) Liens for ad valorem taxes or other public charges shall be superior to the Association's Lien if superiority is provided by applicable law; and

- (c) Such other liens which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's Lien;

Provided, however, subordination shall apply only to the Assessments which are due and payable prior to the foreclosure sale (whether public or private) pursuant to the terms and conditions of any Mortgage or tax lien. Such sale shall not relieve the Lot and its Owner from liability for the amount of any Assessment thereafter becoming due or from the Lien of any subsequent Assessment. Furthermore, subordination shall not apply where the Mortgage 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.

- 4.09 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessment, charge, and lien created herein:
- (a) All Property dedicated to and accepted by the local public authority and devoted to public use;
  - (b) All Common Property.
- 4.10 Failure to set Assessments. The failure of the Board, before the expiration of any year, to fix the Assessments hereunder for that or the next year, shall not be a waiver or modification of Assessments for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed by the Board.
- 4.11 Applicability of Texas Property Code. The foregoing provisions concerning enforcement are expressly subject to Chapter 209 of the Texas Property Code, as amended from time to time.

#### ARTICLE V

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

- 5.01 Power and Duties.
- (a) The Board, for the benefit of the Property and the Owners, shall provide, and shall pay out of Assessments, to the extent appropriate, the following:
    - (i) Care, preservation, and maintenance of the Common Property, including, without limitation, the purchase and upkeep of any desired personal property used in connection with the maintenance of the Common Property, maintenance of grounds, including care and replacement of trees, shrubs, and grass, lighting systems, and any installed sprinkler systems on the Common Property, provided, however, if maintenance or repair is caused by the willful or negligent act or omission of any Owner, the Owner's family, a Resident, or any of their respective guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment attributable to such Owner's respective Lot(s);
    - (ii) The services of a person or firm to manage, or assist in managing, the Association or any part thereof, to the extent deemed advisable by the Board, whether such personnel are employed directly by the Board or by the manager;
    - (iii) Legal and accounting services;
    - (iv) If deemed appropriate by the Board, a policy or policies of insurance insuring the Association and the Board against any liability to the public or to the Owners (and/or invitees, guests, or tenants), incident to the operation of the Association, in an amount not less than \$ 250,000 per occurrence, \$ 500,000 aggregate, which policy or policies shall contain waiver of subrogation;
    - (v) Worker's compensation insurance to the extent necessary to comply with any applicable laws;

- (vi) Such fidelity bonds as the Board may determine to be advisable.
- (vii) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, or other items (including taxes assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion is necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

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

- (i) To execute all replats of the Property and to execute all declarations of ownership for tax valuation purposes with regard to the Common Property on behalf of all Owners;
- (ii) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, or by a mortgage on the Common Property, if the Board sees fit;
- (iii) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks) and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (iv) To protect and defend the Common Property from loss or damage by suit or otherwise, and to provide adequate reserves for replacements;
- (v) To make reasonable rules and regulations for the maintenance and protection of the Common Property, and to amend them from time to time;
- (vi) To make available to each Owner upon written request within sixty (60) days after the end of each year an annual report
- (vii) 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 Members in proportionate amounts to cover the deficiency;
- (viii) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provision or rules.

5.02 **Board Powers, Exclusive.** The Board has the exclusive right to contract for all goods, services, and insurance, payment of which is to be made from the Assessments.

5.03 **Rules and Regulations.** The Board may make and enforce reasonable rules and regulations governing the use of the Common Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violations of this Declaration, the bylaws, or such rules and regulations may include reasonable monetary fines, suspension of the right to vote, the right to use any facilities on the Common Property, and the right to hold any office or appointed position in the Association or committee. In addition, the Association shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Dwelling Unit in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association after written notice of the violation, plus the actual costs to the Association for curing the violation. The Board shall also have the power, but not the obligation, to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the bylaws of the Association.

#### ARTICLE VI EASEMENTS

6.01 **Easement Reserved for the Association.** The Association has full rights of ingress and egress at all times over and upon each Lot and the Property to exercise its rights, functions, duties, and obligations, provided that any such entry by the Association upon any Lot shall be made with as

minimum inconvenience to the owner as practical, and any damage caused by it shall be repaired by the Association.

- 6.02 Easements and Rights Reserved by Each Declarant. Declarant hereby reserves for itself, its successors, and assigns the right to dedicate streets, sidewalks, maintenance, repair, and replacement of utilities and related facilities, which shall include, but not be limited to, sewer (sanitary and storm), gas, electric, telephone, cable television, and water lines, upon, over, under, and across the Property, as it in its sole discretion deems proper or appropriate. Further, Declarant hereby reserves temporary construction easements for the construction, repair, removal, maintenance, and reconstruction of improvements within the Property, including the right to remove, on a temporary basis, fences, driveways, sprinkler systems, landscaping, and other improvements as shall be reasonably necessary to enable Declarant to complete the development and improvement of the Property; provided that any such improvement removed by Declarant shall be replaced and/or restored upon completion of the construction activities as near as practical to their former condition. All claims for damages, if any, arising out of any such construction or other activities by Declarant are hereby waived by each Owner and the Association.
- 6.03 Rights Reserved to Governmental Authorities and Utility Companies. Declarant and any governmental authority having jurisdiction over the Property, and any utility company which provides utilities to the Property, have full rights of access at all times over any dedicated easement for the installation, operation, maintenance, repair, or removal of any utility, together with the right to remove any obstruction 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. All claims against Declarant, the Board, or the Association for damages, if any, arising out of the construction, maintenance, and repair of utilities or on account of temporary or other inconvenience caused hereby is waived by each Owner and the Association. Declarant further reserves the right to alter, redesign, or discontinue any street, avenue, or way shown on the Plat not necessary for ingress or egress to and from an Owner's Lot, subject to the written approval of the applicable governmental authority, if required.
- 6.04 Universal Easement. Each Lot and its Owner is hereby declared to have an easement, and the same is hereby granted to Declarant, over all adjoining Lots and Common Property for the purpose of accommodating any minor encroachment (other than slab or foundation encroachments which shall not be deemed minor) due to engineering errors, errors in original construction, settlement, or shifting of building or any other cause. For purposes of this section only, an encroachment is considered "minor" if it extends one foot or less onto adjoining Lots or Common Property. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of any encroachments so long as they exist. Each of the easements referred to in this section shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot. Notwithstanding the forgoing, in no event shall easement for encroachment be created in favor of an Owner or Owner if said encroachment occurred due to the willful misconduct of said Owner or Owners.
- 6.05 Electric Service. An electricity distribution system shall be installed to serve all Lots in the subdivision. The Owner of each Lot, at the Owner's cost, shall furnish, install, and maintain (all in accordance with the requirements of local governmental authorities and the National Electrical Code) a service cable and appurtenances from the meter installed on the Lot by the electric company to such point as may be designated by the company on the property line of the Lot. The company furnishing electric service shall make the necessary connection at the property line and at the meter. Each Owner, at the Owner's cost, shall install, furnish, and maintain a meter loop (in accordance with then-current standards and specifications of the electric company) for the residence constructed on the Lot. For as long as underground service is maintained, the electric service to each Lot shall be uniform in

character and exclusively of the type known as single-phase 120/240 volt, 3-wire, 60-cycle alternating current.

**ARTICLE VII  
PROTECTIVE COVENANTS**

- 7.01 Residential Uses Only. Each Lot and Dwelling Unit may only be used for only single-family residential purposes. No building or structure can be used for or adapted to business, commercial, or industrial purposes, and no apartment house or condominiums, duplex, triplex, lodging house, rooming house, or other multiple-family dwelling shall be erected, placed, permitted, or maintained on any Lot. Only structures approved for residential use by the Architectural Committee, may be used on any Lot at any time as a residence, either temporarily or permanently. Specifically excluded from this provision is the right to have one (1) "garage" sale annually per residence.
- 7.02 Rubbish, Trash and Garbage. No Lot shall be used or maintained as a dumping ground for rubbish or trash. All garbage and other waste shall be kept in sanitary containers. There shall be no burning or incineration of trash, garbage, leaves, brush, or other debris.
- 7.03 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that no more than four (4) in any combination of dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose. Pets are not permitted to be on the Common Property unless on a leash or completely restrained. Pet excrement on Common Property must be picked up and disposed of immediately by the owner. Reptiles and uncaged birds are expressly prohibited. The Board may establish rules from time to time concerning pet ownership so long as not in conflict with these covenants. If the Board determines that a pet is causing a nuisance or is being offensive or harmful the Board may demand that the owner remove the offending pet from the subdivision. The Board is entitled to injunctive relief to enforce this provision.
- 7.04 Signs and Picketing. No signs of any type shall be allowed on any Lot except one sign of not more than five square feet advertising the property for sale or rent. However, Declarant, as well as any other person engaged in the construction and sale of residences on the Property shall have the right, during the construction and sales period, to construct and maintain advertising signs exceeding five square feet with the prior approval of the Architectural Committee..
- 7.05 Parking Vehicles. Vehicles shall be parked in the garage or driveway of the Lot serving the Dwelling Unit, or in such other paved areas as established by the Board for parking. No on-street parking is allowed for more than 6 consecutive hours.
- 7.06 Trucks, Buses and Trailers. No truck, bus, or trailer (except a passenger van for personal use or truck up to one (1) ton capacity) shall be left parked in the street, except for construction and repair equipment while a Dwelling Unit is being built or repaired in the immediate vicinity. No truck or bus (except a pickup truck up to one (1) ton capacity or passenger van for personal use) or boat or trailer shall be parked on the driveway or any portion of the Lot in such manner as to be visible from the street. Trucks in excess of one (1) ton shall not be permitted to park overnight on the streets, driveways, or on any Lot.
- 7.07 [Intentionally omitted]
- 7.08 Detached Buildings. A detached building no larger than 750 square feet, if approved by the Architectural Committee, may be placed on the rear of a Lot.
- 7.09 Fences, Walls, Hedges, and Utility Meters. No fence, wall, hedge, or utility meter shall be placed, or permitted to remain, on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot, except for decorative subdivision entry fences. On all Lots wooden,

- 7.09 Fences, Walls, Hedges, and Utility Meters. No fence, wall, hedge, or utility meter shall be placed, or permitted to remain, on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot, except for decorative subdivision entry fences. On all Lots wooden, colored chain link fencing or white plastic fencing is allowed, if approved by the Architectural Committee. No barb wire, razor wire, cattle wire or plain galvanized chain link fencing is allowed
- 7.10 Poles and Antennas. Only one flag pole no more than 30 feet high, and a maximum of two (2) satellite dishes no more than 24 inches in diameter shall be installed on any Lot unless within the envelope of a building approved by the Architectural Committee.
- 7.11 Exterior Wood-Burning Stoves and Fireplaces. No exterior fireplace or wood-burning stoves shall be installed or used on any Lot unless it meets the requirements, standards, and recommendations of federal, state, and local authorities.
- 7.12 Clotheslines. No clotheslines shall be erected or installed and no clothing, linens or other material shall be aired or dried so as to be visible from the street.
- 7.13 Window Treatment. No aluminum foil, reflective film, signs, or similar treatment shall be placed on windows or glass doors.
- 7.14 Sewage Disposal and Collection. No individual sewage-disposal system shall be permitted on any lot unless the system is designed, located, and constructed in accordance with the requirements, standards, and recommendations of the Lumberton Municipal Utility District or its successor and the State of Texas. Approval of the system as installed shall be obtained from that authority.
- 7.15 Swimming Pools. All pools must be approved by the Architectural Committee.
- 7.16 Utilities. Dwelling units shall be connected to the water lines as soon as practicable after same are available at the Lot line. All telephone, electric, cable, gas, or other service lines shall be installed at Owner's expense and shall meet all requirements of the applicable governmental authority.
- 7.17 Quiet Enjoyment. No noxious or offensive activity shall be conducted on any Lot that may be or may become an annoyance or nuisance to the neighborhood ( i.e., exterior speakers, horns, whistles, bells or other sound devices), except security and fire devices used exclusively to protect the Lot and improvements situated thereon.
- 7.18 Lighting. Except for traditional holiday decorative lights, which may be displayed for (2) months prior to and one (1) months after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved by the Architectural Committee.
- 7.19 Prohibited Uses. No Lot, and no Dwelling Unit or building erected or maintained on any Lot, shall be used for manufacturing, industrial, business, commercial, institutional, or other non-residential purposes. However, leasing a Dwelling Unit for single-family residential use is not considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant, or a Builder with written approval of the Declarant, with respect to development and sale of the Property, including the operation of a timeshare or similar program.
- 7.20 Oil Development and Mining Prohibited. No oil well drilling, development, or refining, and no mineral quarrying or mining operations of any kind shall be permitted on any Lot. No oil well, tank, tunnel, mineral excavation, or shaft shall be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted on any Lot.
- 7.21 Water Supply. No individual water supply system shall be permitted on any Lot unless the system is located, constructed, and equipped in accordance with the requirements, standards, and recommendations of the Lumberton Municipal Utility District or its successor and the State of Texas. Approval of the system as installed shall be obtained from that authority.

- 7.22 Sight Distance and Intersections. No fence, wall, hedge, or plant that obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot in the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines as extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of intersections unless the foliage line is maintained to meet the sight line requirements set forth above.

## ARTICLE VIII ARCHITECTURAL AND CONSTRUCTION RESTRICTIONS

- 8.01 Type of Residence. All Lots shall be used for single-family residential purposes only. Single-family use consists of use as a dwelling by one or more persons who are related by marriage or kinship and by not more than four (4) persons who are not related by marriage or kinship. However, Declarant, as well as any other person engaged in the construction and sale of residences on the Property, shall have the right, during the construction and sales period, to use facilities as it deems reasonably necessary or convenient for its business purpose of constructing and selling residences on the Property.
- 8.02 Types of building permitted. No building shall be erected, altered, or permitted on any Lot other than one detached single-family dwelling not to exceed thirty – five (35) feet in height, with a private garage for not more than four (4) automobiles. However, Declarant, as well as any other person engaged in the construction and sale of Dwelling Units on the Property, with the approval of the Architectural Committee, shall have the right, during the construction and sales period, to construct and maintain such facilities as it deems reasonably necessary or convenient for its business of constructing and selling Dwelling Units on the Property, including, but not limited to, offices and storage areas
- 8.03 Designs, Minimum Floor Area. Any Dwelling Unit constructed on a Lot must have the following minimum ground floor area, exclusive of open or screened porches, terraces, patios, driveways, carports, and garages of gross square footage:
- (a) 1,000 square feet
  - (b) 1,500 square feet for two (2) to three (3) story structures.
- 8.04 Exterior Building Materials Type of Constructions. The front and side exterior walls of any residence shall consist of not less than 25 percent masonry, stone, stucco, or other natural material construction, but vinyl or aluminum siding is allowed for trim, sides and the rear exterior walls. All roofs shall be constructed of fireproof materials consisting of tile, natural slate, shingle, or artificial slate. No metal roof shall be allowed. All exterior colors, textures, and materials must be compatible not only with the specific design motif but also with adjacent and surrounding Lots, and over-all community appearance, as determined by the Architectural Committee.
- 8.05 Intentionally deleted.
- 8.06 Driveways. Each Owner shall provide and install, at their own expense, driveway approaches during construction of the Dwelling Unit in accordance to the City of Lumberton (or any other governmental unit with jurisdiction) requirements. Owner shall maintain the driveway at Owner's expense.
- 8.07 Setbacks. No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the Plat. No front building setback line

shall be less than 10 feet. No side building set back on interior (non corner) Lots shall be less than 5 feet. No side building set back on the street side of a corner lot shall be less than 10 feet. No rear building set back on any lot shall be less than 5 feet For purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of the Dwelling Unit on any Lot to encroach upon another Lot except as provided in section 6.04. If two or more Lots, or portions of two or more Lots, are consolidated into a building site for a Dwelling Unit, these building setback requirements shall apply to the resulting building site as if it were one Lot.

- 8.08 **Lot Consolidation.** Any Owner owning two (2) or more adjoining Lots or portions of two (2) or more such Lots may, with the prior written approval of the Architectural Committee, consolidate such Lots or portions thereof into a single building site for a Dwelling Unit and such other improvements as are permitted herein, however, that no such building site shall contain less than two thousand (1,200) square feet of living area. Any consolidated Lot shall comply with all requirements of any applicable statutes, ordinances, or regulation. On application by an Owner, the Board may adjust the Assessments on a consolidated Lot to an amount not less than the full Assessment rate for a single Lot. Absent such adjustment, a consolidated Lot shall bear the full Assessment rate applicable to all Lots as if not consolidated.
- 8.09 **Garages, Carports, and Porte Cocheres.** A garage must be constructed and maintained to accommodate at least one (1) full-size passenger vehicles for each Dwelling Unit. Each driveway must accommodate two (2) vehicles in front of the garage for off-street parking requirements. Rear detached garages are permitted. No garage shall be permanently enclosed for conversion to any other use. Open carports are not permitted, unless special design circumstances warrant their use and unless approved in writing by the Architectural Committee. Porte Cocheres shall not extend more than twenty feet (20') from the front of any Dwelling Unit toward the street fronting such Lot. Lots may have one (1) or two (2) story garages.
- 8.10 **Landscaping.** Each Owner shall spend an initial sum of not less than one (1) percent of the total cost of the Lot and Dwelling Unit for ornamental plants, trees, shrubs, ground cover, lawns, and flowers within the first Eight (8) months of purchase of residence. No soil shall be removed from any Lot unless contemplated by drawings and plans submitted to and approved by the Architectural Committee. Final grades of all Lots must also conform to grading plans and elevations approved by the City of Lumberton or any other governmental unit with jurisdiction.
- 8.11 Intentionally Omitted.
- 8.12 **Utility Connections and Fees.** Owner shall construct, furnish, or install all on-site utilities extensions. Owner further agrees to pay any utility deposit or charge, including any connection, tap, or inspection fee, for water, sewer, electrical, gas, telephone, cable television, or other utility service.
- 8.13 **Care During Construction.** Owner shall take all reasonable precautions to minimize interference with traffic and to protect the general public, Owners, and the Property from injury from movement of vehicular traffic during construction of each Dwelling Unit. In addition, and without limiting the generality of the foregoing, Owner agrees to the following:
- (a) **Storage of Building Materials.** Building materials stored on a Lot will be kept in a neat condition so as not to detract from the appearance of the neighborhood and so as to give the visual impression from adjacent streets of a clean, orderly work site.
- (b) **Scrap Materials and Trash.** Owner agrees to keep scrap materials and trash produced in connection with the construction of a Dwelling Unit confined to a particular area of on the Lot, preferably to the side, or behind, the Dwelling Unit under construction. Trash will be placed in a wire mesh, or solid container within such area at the end of each workday and removed from the Lot frequently enough so that trash does not overflow from such container.
- (c) **Clean Road and Utilities.** Owner agrees to protect pavement, curbs, and gutters, swales, or drainage course, streets, utility structures, fire hydrants, manhole covers, valve boxes, and second stage inlets and other property contiguous to, in the vicinity of, or leading to same clear of

equipment, building materials, dirt, debris, and similar materials. Owner further agrees to maintain in good functional condition, storm water pollution prevention materials adequate to comply with guidelines promulgated by the Environmental Protection Agency and any other governmental authority.

(d) Initial Construction period. Unless otherwise specified in the deed of conveyance, an Owner shall complete construction of the dwelling no later than 180 days from the commencement of construction. Commencement of construction is defined for purposes of this paragraph as the first day building materials of any type are placed on the lot. Failure to complete construction within 180 days gives Developer the unilateral right, but not the obligation, to repurchase the property for the price Developer was originally paid for the lot without regard to additional costs incurred by current owner.

8.14 Intentionally Omitted

## ARTICLE IX ARCHITECTURAL STANDARDS

9.01 Architectural Committee

Declarant shall designate and appoint an Architectural Committee consisting of not less than three (3) members, but not more than five (5) members, which shall have exclusive jurisdiction over all construction until one hundred percent (100%) of the Property has been conveyed to Owners in the normal course of development and sale. The Declarant retains the right to appoint all members of the Architectural Committee, who shall serve at the discretion of the Declarant. The initial members are Joy Slaydon, Thomas F. Cormier and James McCrate. After the Declarant no longer owns any Lot, the Architectural Committee shall serve at the pleasure of the Board.

9.02 Approval Required Procedures

- (a) No structure shall be placed, erected, or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no planting or removal of plants, trees, or shrubs shall take place except in strict compliance with this article, until the requirements below have been fully met, and until the written approval of the Architectural Committee has been obtained pursuant to Section 9.02 and 9.03 below. Such improvements include, but are not limited to, the construction or installation of Dwelling Units, sidewalks, driveways, decks, patios, garages, guest or servant's quarters, or other outbuilding. No such construction or exterior addition to or change or alteration in the nature, color, type, shape, height, materials, and location of the same shall be made unless plans and specifications for same have been submitted to and approved in writing by the Architectural Committee. Design guidelines may be published by the Architectural Committee from time to time, including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved" Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally approved color scheme, or to rebuild in accordance with the originally approved plans and specifications. The Architectural Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable.
- (b) Following written approval of any plans and specifications by the Architectural Committee, representatives of the Architectural Committee shall have the right, but not the obligation, during reasonable hours to enter upon and inspect any Lot or Dwelling Unit under construction to determine whether the plans and specifications are being complied with. In the event the Architectural Committee determines that the plans and specifications have not been approved or

are not being complied with, the Architectural Committee is entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. The Architectural Committee shall have sixty (60) days after such plans and specifications are submitted to it to review and approve or disapprove the same, in whole or part. In the event the Architectural Committee fails to approve or disapprove in writing any proposed plans and specifications within the timeframe stated above, such plans and specifications will be deemed to have been approved, and no further approval under this Article shall be required, unless such construction has not substantially commenced (e.g., clearing of grading, pouring of footing, etc..) within six (6) months of the approval of such plans and specifications or unless such plans and specifications are materially altered or changed. Disapproval of plans and specifications by the Architectural Committee may be based upon any ground which is consistent with the objectives and purposes of this Declaration as defined in the design guidelines promulgated by the Architectural Committee from time to time, including purely aesthetic considerations.

- (c) The Board of Directors or Architectural Committee may establish reasonable fees to be charged by the committee on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application. All Dwelling Units constructed on any portion of the Property shall be designed by and built in accordance with the plans and specification

9.03 **NO LIABILITY:** NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF DESIGN GUIDELINES SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS, OR DESIGN GUIDELINES WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED IMPROVEMENTS. SUCH APPROVALS AND DESIGN GUIDELINES SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENCE OR OTHER IMPROVEMENTS BUILT IN ACCORDANCE THEREWITH WILL BE BULT IN A GOOD AND WORKMANLIKE MANNER. REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS ARTICLE IS MADE ON THE BASIS OF RETAINING THE CHARACTERISTICS OF A FIRST CLASS RESIDENTIAL SUBDIVISION AND AESTHETIC CONSIDERATIONS ONLY AND NEITHER THE ARCHITECTURAL COMMITTEE NOR THE DECLARANT SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFCATIONS, OR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR MEMBER OF ANY OF THE FOREGOING, SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES, OR LOSS ARISING OUT OF THE APPROVAL OR DISAPPROVAL OF NON-COMPLIANCE WITH ANY PLANS OR SPECIFICATIONS, THE MANNER OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFCATIONS TO ANY DWELLING UNIT.

9.04 **Indemnification.** Each member or former member of the Architectural Committee shall be indemnified by the Association against all loss, costs, damages and expenses, including reasonable attorney's fees, incurred by or imposed in connection with any claim, action, suit, including criminal proceedings, to which such person is threatened to be made a party by reason or service as a member, except as to matters resulting in a final determination of gross negligence or willful misconduct on the part of such member. In the event of settlement of such proceeding, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct. All liability, loss, damage, costs and expenses incurred by the Association in connection with this indemnification shall be common expense.

#### ARTICLE IX GENERAL PROVISIONS

- 10.01 Enforcement. The Declarant or the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations imposed by this Declaration. Failure to enforce any covenant or restriction shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. All waivers must be in writing and signed by the party to be bound.
- 10.02 Registration with the Association. Each and every Owner, Member, and Resident shall have an affirmative duty and obligation to provide to the Association, and thereafter revise and update, within thirty (30) days after any change, such information as (a) full name and address of each owner (b) emergency contact information and (c) other information as may be reasonably requested from time to time by the Board.
- 10.03 Notices to Resident/Member/Owner. Any notice to be given to any Resident, Member, or Owner under the provisions of this Declaration shall be deemed to have been properly delivered if mailed by first class mail, 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.
- 10.04 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.
- 10.05 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.
- 10.06 Covenants Running with the Land. These easements, restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the Property. Consequently, they shall run with the Property and shall be binding on all parties having any right, title, or interest in the Property in whole or in part, and their heirs, successors, and assigns. These easements, covenants, conditions, and restrictions shall be for the benefit of the Property, each Lot, and each Lot Owner.
- 10.07 Disputes. Matters of dispute or disagreement between Owners, Residents, or Members with respect to interpretation or application of the provisions of this Declaration or the Association bylaws shall be determined by the Board. These determinations (absent arbitrary or gross negligence) shall be final and binding upon all Owners, Residents, and Members.
- 10.08 Duration and Amendment. The covenants, conditions, and restrictions of this Declaration shall be effective for a term of 20 years from the date this Declaration is recorded, after which period the covenants, conditions, and restrictions shall be automatically extended for successive periods of 10 years subject to termination by an instrument signed by more than 75 percent of the Owners. The covenants, conditions, and restrictions of this Declaration may be amended by an instrument signed by more than 75 percent of the Owners. However, the Declarant can change or amend these covenants, conditions, and restrictions so long as Declarant owns at least 20% of the Lots, without the joinder of any other party. Neither any amendment nor any termination shall be effective until recorded in the Official Public Records of Hardin County, Texas, and all requisite governmental approvals, if any, have been obtained.
- 10.10 Attorney's Fees. If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.
- 10.11 Liberal Interpretation. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Property.

This Declaration is executed this 1st day of October, 2009.

DJM Contractors, Ltd., by DJM Management, LLC, its general partner

By Thomas F. Cormier  
Thomas F. Cormier, Manager

Lum-Tex, Development Inc,

By Joy Slaydon Atkins  
Joy Slaydon, Manager *JSA*

STATE OF TEXAS  
COUNTY OF Hardin

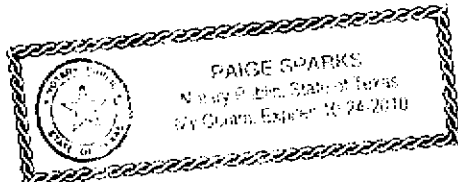
This instrument was acknowledged before me on October 1, 2009, by Thomas F. Cormier, as Manager of DJM Management, LLC, a Texas limited liability company, acting as general partner of DJM Contractors, Ltd., a Texas limited partnership, on behalf of said partnership.



Paige Sparks  
Notary Public, State of Texas

STATE OF TEXAS  
COUNTY OF Hardin

This instrument was acknowledged before me on October 1, 2009, by Joy Slaydon, as <sup>ATKINS</sup> ~~manager~~ *JSA* of Lum-Tex Development, Inc, a Texas corporation, .



Paige Sparks  
Notary Public, THE STATE OF Texas

*Return to Tom Cormier*

2009-8397  
GLENDA ALSTON  
COUNTY CLERK  
2009 Nov 13 at 02:58 PM  
HARDIN COUNTY, TEXAS  
By: KS, DEPUTY