

4. The exterior walls of homes that face East Woodrow Road, CR 3100 and East FM 41 shall be constructed with a minimum of 50% brick, rock, stucco, or EIFS. Side exterior walls shall have a minimum of four feet (4') of brick, rock, stucco, or EIFS, excluding back of home. Rear exterior walls of homes shall have no materials requirement.
5. The construction of homes shall be completed within twenty-four (24) months after the date that construction is started. If construction is not completed within twenty-four (24) months, an extension may be given by Declarant alone, if Declarant then owns more that 50% of the Lots, otherwise each owner of a Lot must also join in any extension. If no extension is made, Declarant and/or any owner of any Lot, may seek redress in any court of law or equity. Damages from the failure to complete construction, being difficult in their nature to assess, shall be liquidated to \$100.00 a day for each day past the twenty-four (24) month deadline. Any owner, other than Declarant, that accepts a deed to any Lot, agrees to be bounds by this provision.
6. Homes built on tracts facing East Woodrow Road shall be placed no closer than one hundred fifty feet (150') from the northern property line. Homes shall be constructed no closer than fifty feet (50') from all other property lines, except that Lot 4 may be adjusted either East or West to accommodate for the 30' Gas Pipeline ROW Easement.
7. Homes built on tracts facing CR 3100 shall be placed no closer than one hundred fifty feet (150') from the eastern property line. Homes shall be constructed no closer than fifty feet (50') from all other property lines.
8. Commercial businesses of any kind are not allowed. Alcohol sales and adult oriented businesses are prohibited. Home offices for personal businesses are allowed.
9. Commercial feed lots, hog farms, chicken houses, turkey farms, goat farms, dog kennels and the like are prohibited. Exotic animal boarding and breeding is prohibited, and shall include but is not limited to ostrich, emu, reptiles, and large cats. It is intended to make provisions for privately raised animals at a rate of no more than one (1) per acre. Commercial plant crops are allowed.
10. Wood, PVC, or colored metal fencing is permitted, but is limited to the immediate back yard area for privacy purposes. A painted pipe fence with gate shall be allowed along the perimeter of the Lots. All fencing must be properly maintained by the property owner. Barbed wire fences shall not be allowed to be placed beyond the front set back line of the Lot.
11. Outbuildings, barns, well houses and RV storage shall be constructed with new materials. All exterior buildings shall be located beside or behind the main residence, but no closer to the main road than the main building. Residential RV living while new home is being constructed is limited to no more than twenty-four (24) months.
12. Commercial wind generation farms are prohibited. However, energy generated by wind and solar sources may be constructed by property owners for their own personal use.
13. Inoperable vehicles and equipment shall not be kept on property. Vehicles under repair must be stored within a shop area and out of sight from the roads and adjoining property owners.
14. Property owners shall maintain their property in a reasonable fashion in order to keep their property clear of weeds and debris.
15. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers, which are not visible from the front of any residence.

16. All utilities must be installed underground.

17. Each Lot is allowed a maximum of three (3) new water wells. The new water wells (residential wells) will have a maximum production of 17.5 gpm each. High Plains Water District does not require a permit for water wells producing less than 17.5 gpm.

18. No violation of these deed restrictions shall affect or impair the rights of any mortgagee, trustee, or lien holder under any mortgage or deed of trust or the rights of any assignee of any mortgagee, trustee, or lien holder under any such mortgage or deed of trust.

19. No dwelling, buildings, or other improvements, shall be erected or altered on any Lot until the building plans, specifications, and plat plan showing the locations of all such improvements have been approved in writing as to the locations, conformity, and harmony of external design by the Architectural Review Committee. The operation and control of the Architectural Review Committee is subject to the following provisions:

A. *Architectural Review Committee.*

(i). *Architectural Review During Development Period.* During the Development Period, as “Development Period” is defined in Paragraph 23 of these Restrictive Covenants, the Developer shall be the sole member of the Architectural Review Committee (“ARC”); or, the Developer may at any time during the Development Period delegate such duties as provided below. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Developer has a substantial interest in ensuring that the improvements within the Property enhance Developer’s reputation as a community developer and do not impair Developer’s ability to market the Property or the ability of homebuilders to sell homes in the Property. Accordingly, each Owner agrees that during the Development Period, no improvements will be commenced on an Owner’s Lot without the prior written approval of Developer, which approval may be granted or withheld at Developer’s sole discretion. In reviewing and acting on an application for approval, Developer may act solely in its self-interest and owes no duty to any other person or organization. Developer may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications. During the Development Period, the Developer may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (i) a modifications or architectural review committee appointed by Developer; (ii) a modifications or architectural review committee elected by the Owners; or (iii) a committee comprised of architects, engineers or other persons who may or may not be Owners of Lots. Any such delegation is subject to the unilateral right of the Developer to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated. References in this document to the ARC shall refer to Developer, when Developer is acting as the sole member of the ARC during the Development Period.

(ii). *Developer’s Right to Name Successor ARC Members.* At any time prior to the expiration of the Development Period, the Developer may resign as the sole member of the ARC and appoint a committee to be composed of at least three (3) individuals selected and appointed by the Developer, each generally familiar with residential and community development design matters and knowledgeable about the Developer's concern for a consistent approach to and construction of improvements within the subdivision. At such time that Developer terminates its right to act as sole member of the ARC, Developer will evidence such termination by written notice to such effect recorded in the Lubbock County Clerk’s Office in Lubbock County, Texas; and, such notice shall state the names and addresses of the persons who will serve on the ARC in place of

Developer. The ARC appointed by Developer may include an entity in which the Developer has an ownership interest. The ARC may utilize the services of an architect and/or other professionals to assist in reviewing and approving Plans. In the event Developer elects to terminate its right to appoint and remove the members of the ARC and fill any vacancy thereon, such rights thereafter shall be exercised by the then-serving members of the ARC, acting by majority vote. If at any time there should be no then-surviving members of the ARC, the then-current Owners of the Lots within the Subdivision, acting by majority vote (fifty-one percent), shall appoint three members to the ARC, and the members so appointed thereafter shall exercise all rights, powers and authority granted to the ARC herein. If, as provided herein, the Owners of the Lots are entitled to appoint members to the ARC, the Owners of each Lot within the Subdivision will be entitled to one vote per Lot owned. Where more than one Owner holds record fee interest in a Lot, such Owners may divide and cast portions of the one vote as they decide, but in no event shall any one Lot yield more than one vote. A meeting of the Lot Owners may be called for the purpose of electing members of the ARC by any Owner or Owners, by providing written notice to all other then-Owners, not less than 20 days prior to the date of the proposed meeting; with said notice to be given to each Owner at the address shown for each Owner in the office of the Lubbock Central Appraisal District. Owners may waive notice by signing a written waiver or attending the meeting and registering their attendance at the meeting. The meeting for electing members of the ARC shall be conducted at a location that is not more distant than one mile from the subdivision and not earlier than 7:00 o'clock p.m. or later than 9:00 p.m., CST. At any meeting called for the purpose of electing members to the ARC, three ARC members shall be elected by the majority vote of those present at a meeting called for such purpose. No member of the ARC shall be entitled to any compensation for his or her services on the ARC; except however, an architect or other professional may charge a fee for services rendered in said person's professional capacity.

B. *ARC Jurisdiction.* No building, structure, fence, wall, residential dwelling, or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications (the "Plans") have been submitted to and approved in writing by the ARC, or a majority of its members, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and proper facing of main elevation with respect to nearby streets, all in accordance with these Restrictive Covenants and/or the Design Guidelines and/or bulletins;
- (ii) minimum finished floor elevation and proposed footprint of the dwelling;
- (iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (iv) drainage solutions;
- (v) the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors; and
- (vi) the other standards set forth within these Restrictive Covenants (and any amendments hereto) or as may be set forth within the Design Guidelines, bulletins promulgated by the ARC, or matters in which the ARC has been vested with the authority to render a final interpretation and decision.

The "Plans" to be submitted to the ARC will include: (i) a site plan showing the location, description of materials and architectural treatment of all walks, driveways, fences, walls, the primary residential dwelling and any other structures and improvements; (ii) floor plan showing the exact window and door locations, exterior wall treatment and materials, and the total square feet of air conditioned living area; (iii) exterior elevations of all sides of any structure must be included, the type of roofing materials must be indicated, and the type, use and color of exterior wall materials must be clearly indicated throughout; (iv) front, rear, and side elevations must show all ornamental and decorative details; (v) specifications of materials may be attached separately to the plans or written on the plans themselves (plans will not be approved without specifications - specifications must include type, grade of all exterior materials, and color of all exposed materials); and (vi) landscaping plan, (all of which are herein collectively referred to as the "Plans").

The ARC is authorized and empowered to consider and review any and all aspects of construction, location and landscaping, which may, in the reasonable opinion of the ARC, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Property. Also, the ARC is permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the ARC.

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

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

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

D. *Plan Submission and Approval.* Within ten (10) business days ("business days" being days other than Saturday, Sunday or legal holidays) following its receipt of the Plans, the ARC shall advise the submitting Owner whether or not the Plans are approved. If the ARC shall fail to approve or disapprove the Plans in writing within said ten-day period, it shall be conclusively presumed that the ARC has approved the Plans. Plans

shall not be deemed to have been received by the ARC until the Plans are received and a written receipt is signed by the ARC (during the Development Period, when the Developer is serving as the ARC, the written receipt must be signed by Developer). If the Plans are not sufficiently complete or are otherwise inadequate, the ARC may reject them as being inadequate or may approve or disapprove certain portions of the same, whether conditionally or unconditionally. The ARC shall not approve any Plans unless it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding Lots, that the appearance of any structures affected thereby will be in harmony with surrounding structures and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the subdivision or the enjoyment thereof by the Owners. Approval shall be based, among other things, on adequacy of site dimensions, structural design, proximity with and relation to existing neighboring structures and sites, as well as proposed and future neighboring structures and sites, relation of finished grades and elevations and elevations to existing neighboring site and conformity to both specific and general intent of the terms of these Restrictive Covenants. The ARC may adopt rules or guidelines setting forth procedures for the submission of Plans and may require a reasonable fee to accompany each application for approval in order to defray the costs of having the same reviewed. The ARC may require such details in Plans submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARC of the Plans and any other information or materials requested by the ARC, the ARC shall not be deemed to have received such Plans or be obligated to review the same.

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

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

G. *Construction.* Upon approval of the Plans by the ARC, the Owner submitting such Plans for approval promptly shall commence construction of all improvements and structures described therein and shall cause the same to be completed in compliance in all

material respects with the approved Plans, and in compliance with these Restrictive Covenants. If an Owner shall vary materially from the approved Plans in the construction of any improvements and structures, the ARC shall have the right to order such Owner to cease construction and to correct such variance so that the improvements will conform in all material respects to the Plans as approved. If an Owner shall refuse to abide by the ARC's request, the ARC shall have the right to take appropriate action to restrain and enjoin any further construction on a Lot that is not in accordance with approved Plans. The ARC shall have the right, but not the obligation, to inspect the improvements during construction to insure compliance with the Plans and compliance with City of Lubbock, the City of Slaton and County of Lubbock code requirements (to the extent that such requirements are applicable to the Property).

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

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

20. These restrictive covenants shall remain in effect for a period of twenty (20) years from the date of this instrument, after which time they shall be automatically extended for successive periods of ten (10) years. These restrictions may be amended in whole or in part, at any time, by an instrument signed by Declarant or Declarant's, successors and assigns, along with the owners of not less than 80% of the Lots. All amendments must be recorded.

21. These covenants may be amended by an instrument signed by the Owners of not less than seventy-five (75) percent of the Lots comprising the Bednarz Addition (with each Lot representing one vote). In the event that one individual or entity holds record title to more than one Lot, such individual or entity will be entitled to one vote for each Lot owned.

22. Invalidation of any one or more of these covenants, conditions, or restrictions by judgment or court order shall not affect any of the other provisions, which shall remain in full force and effect.

23. These Restrictive Covenants are subject to the following rights and reservations for the benefit of the Developer:

Definition of "Development Period." "Development Period," for purposes of these Restrictive Covenants, means the period during which the Developer reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape, and composition of the Property, pursuant to the rights and reservations contained in these Restrictive Covenants, to the full extent permitted by applicable law. If applicable law requires a stated term for the Development Period, the Development Period shall mean a period commencing on the date of the recording of this Declaration in the Official Public Records of Lubbock County, Texas and continuing thereafter until the earliest of the following events: (i) five (5) years after the date on which these Restrictive Covenants are publicly recorded, or (ii) the date on which every Lot in the Property has been conveyed to Owners other than Developer. Developer may terminate the Development Period at any earlier time by publicly recording a notice of termination. The Development Period is for a term of years or until the stated status is attained.

A. *General Reservation of Rights During Development Period.* Developer hereby reserves for itself the Development Period (as "Development Period" is defined above), with each and every right, reservation, privilege, and exception available or permissible under applicable law for developers of residential subdivisions, if and to the full extent that such right, reservation, privilege, or exception is beneficial to or protective of Developer.

B. *General Provisions During the Development Period.* The Developer hereby reserves certain rights to (i) ensure a complete and orderly build out and sell out of the Property, (ii) to facilitate the development, construction, and marketing of the Property, and (iii) to direct the size, shape, and composition of the Property, all of which is ultimately for the benefit and protection of Owners and mortgagees. Developer may not use its control of the Architectural Control Committee (the "ARC") and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the ARC. Because this Paragraph 23 benefits Developer's interest in the Property it may not be amended without Developer's written approval as evidenced by Developer's acknowledged signature on the instrument of amendment that purports to amend this Paragraph 23. Notwithstanding other provisions of the Restrictive Covenants to the contrary, nothing contained herein may be construed to, nor may any mortgagee, other Owner, or the ARC prevent or interfere with the rights contained in this Paragraph 23 which Developer hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between the provisions of this Paragraph 23 and any other provisions of the Restrictive Covenants, the provisions of this Paragraph 23 control. This Paragraph 23 may not be amended without the prior written consent of the Developer. The terms and provisions of this Paragraph 23 must be construed liberally to give effect to Developer's intent to protect Developer's interests in the Property. As used throughout this Paragraph 23, "unilaterally" means that the Developer may take the authorized action without the consent, approval, vote or joinder of any other person, such as Owners, mortgagees, homebuilders, and the ARC. Certain provisions in this Paragraph 23 and elsewhere in the Restrictive Covenants authorize the Developer to act unilaterally. Unilateral action by Developer is favored for purposes of efficiency and to protect the interests of Developer.

C. *Development Period Reservations.* Developer reserves the following easements and rights, exercisable at Developer's sole discretion at anytime during the Development Period:

(i) *Architectural Control.* During the Development Period, Developer reserves the absolute right to serve as the sole member of the Architectural Review Committee (ARC). Developer may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under the Restrictive Covenants and this Paragraph 23 to an Architectural Control Committee appointed by Developer or the ARC or a committee comprised of architects, engineers, or other persons who may or may not be members of the Committee, as further described in Paragraph 20 of these Restrictive Covenants. Any such delegation must be in writing and must specify the scope of the delegated responsibilities, any such delegation is at all times subject to the unilateral rights of Developer (i) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) to veto any decision which Developer in its sole discretion determines to be inappropriate or inadvisable for any reason.

(ii) *Amendment.* During the Development Period, Developer may amend and/or restate these Restrictive Covenants unilaterally, for any purpose including without limitation the following purposes:

(a). To add real property to the Property. Additional land(s) (the “Additional Property”) may become subject to these Restrictive Covenants, or the general scheme envisioned by these Restrictive Covenants, in the following manner: The Developer may (without the joinder and consent of any person or entity) add or annex Additional Property to the scheme of these Restrictive Covenants within the Development Period by filing of record an appropriate enabling declaration, generally similar to these Restrictive Covenants or incorporating these Restrictive Covenants, which may extend the Restrictive Covenants to such Additional Property. Provided further; however, such other declaration(s) may contain such complementary additions and modifications of these Restrictive Covenants as may be necessary to reflect the different character, if any, of the Additional Property as are not materially inconsistent with the concept and purpose of these Restrictive Covenants. *However, nothing contained in or inferable from these Restrictive Covenants shall ever be deemed to impose upon any other land owned or to be owned by the Developer, or any entity in which the Developer owns an interest, any covenants, restrictions, easements, or liens, or to create any servitudes, negative reciprocal easements or other interests in any such land in favor of any person or entity other than Developer.*

(b). To withdraw real property from the Property.

(c). To create lots, easements, and common areas within the Property.

(d). To subdivide, combine, or reconfigure lots.

(e). To convert lots into common areas.

(f). To modify - even to increase - Developer’s rights and reservations.

(g). To change or modify any aspect of the building specifications stated in the Restrictive Covenants and to add provisions to address changes, improvements and innovations in building and construction materials and designs.

(h). To merge the ARC with another property owner’s association or architectural review committee;

(i). To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in these Restrictive Covenants.

(j). To qualify the Property or the ARC for mortgage underwriting, tax exemption, insurance coverage, and any public or quasi-public program or benefit.

- (k). To enable a reputable company to issue title insurance coverage on the Lots.
- (l). To change the name or entity of Developer, or to assign Developer's rights and obligations hereunder to any person or entity.
- (m). To change the name of the addition in which the Property is located.
- (n). To change the name of the ARC or to incorporate the ARC as a Texas nonprofit corporation.
- (o). For any other purpose not prohibited by applicable law.

(iii) *Completion.* During the Development Period, Developer has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any Lot or unplatted tract of land owned by Developer; and (3) an easement and right to erect, construct, and maintain on the Lots and unplatted tracts of land owned or leased by Developer whatever Developer determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

(iv) *Easement to Inspect & Right to Correct.* During the Development Period, Developer reserves for itself and homebuilders, and their respective architects, engineers, other design professionals, materials manufacturers, and general contractors, the right, but not the duty, to inspect, monitor, test, redesign, correct, relocate, and replace any improvement, material, or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Developer or homebuilders, as applicable, will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, location of a screening wall located on a Lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Developer, a homebuilder, or the ARC.

(v) *Promotion.* During the Development Period, Developer reserves for itself an easement and right to place or install signs, banners, flags, display lighting, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners, for purposes of promoting, identifying, and marketing the Property. Developer reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Developer also reserves the right to sponsor marketing events - such as open houses, MLS tours, and broker's parties - at the Property to promote the sale of Lots.

(vi) *Access.* During the Development Period, Developer has an easement and right of ingress and egress over and upon the front, rear and side setback areas applicable to each Lot for the carrying out by the Developer of its development plans, functions, duties and obligations hereunder, and for purposes of constructing, maintaining, managing, and marketing the Property; provided, however, that any such entry by the Developer upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Developer at the expense of the Developer.

(vii) *Utility Easements.* During the Development Period, Developer may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Developer reserves the right to make changes in and additions to the easements on any Lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, cable, internet service, and security. To exercise this right as to land that is not owned by Developer, Developer must have the prior written consent of the Owner of the Lot.

D. *Notice of Possible Changes.* During the Development Period, Developer reserves the following exclusive rights which Developer may exercise unilaterally from time to time when circumstances warrant:

(i) *Changes in Development Plan.* Developer may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the owner of the land or Lots to which the change would directly apply (if other than Developer), Developer may (a) change the sizes, dimensions, and configurations of Lots and streets; (b) change the minimum floor space requirements; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

(ii) *Change of Architectural Styles.* Developer reserves the right to periodically change the types of architectural styles, building materials, and elevations that are eligible for approval by the ARC.

(iii) *Change of Construction Specifications.* Developer has the right to establish specifications for the construction of all initial improvements in the Property, to establish different specifications of or each phase of the Property, and to grant variances or waivers from community-wide standards to certain phases of the Property.

24. **ASSUMPTION OF RISK, DISCLAIMER, RELEASE AND INDEMNITY.**

A. **Assumption of Risk.** Each Owner and any homebuilder, by his or her purchase of each Lot within the Property, hereby expressly assumes the risk of personal injury, property damage, or other loss caused by use, maintenance, and operation of the Property and any Lot, including but not limited to the design, development and construction of the subdivision.

B. **Disclaimer and Release.** Except as specifically stated in these Restrictive Covenants or in any deed (the "Deeds") from Developer to an Owner, and to the maximum extent permitted by applicable law, Developer hereby specifically disclaims any warranty, guaranty, or representation, oral or written, expressed or implied, past, present or future, of, as to, or concerning:

(i) the nature and condition of the property known as the "Bednarz Addition" (the "Subdivision") and any Lot within the Subdivision, including but not by way of limitation, the water (either quantity or quality), soil, subsurface, and geology, and the suitability thereof and of the Subdivision and any Lot within the Subdivision, for any and all activities and uses which Owner or any homebuilder may elect to conduct thereon;

(ii) *the manner, construction, design, condition, and state of repair or lack of repair of any improvements located on the Subdivision and any Lot located within the Subdivision;*

(iii) *except for any warranties contained in the Deeds to be delivered from Developer to an Owner or any homebuilder, the nature and extent of any right-of-way, possession, reservation, condition or otherwise that may affect the Subdivision and any Lot; and*

(iv) *the compliance of the Subdivision and any Lot with any laws, rules, ordinances or regulations of any governmental or quasi-governmental body (including without limitation, zoning, environmental and land use laws and regulations).*

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

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

Each Owner and homebuilder waives and releases the Released Parties from any liability to said Owner and homebuilder, and to said Owner's and homebuilder's respective heirs, successors and assigns, for the design and/or condition of the Subdivision or any Lot, known or unknown, present and future, including liabilities, if any, due to the existence, now or hereafter, of any hazardous materials or hazardous substances, on or under the Subdivision or any Lot, and due to the existence, now or hereafter, of a violation, if any, of any environmental laws, rules, regulations or ordinances.

EACH OWNER AND HOMEBUILDER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXPRESSLY WAIVES THE RIGHT TO CLAIM AGAINST THE RELEASED PARTIES BY REASON OF, AND RELEASES THE RELEASED PARTIES FROM ANY LIABILITY WITH RESPECT TO, ANY INJURY TO PERSON OR DAMAGE TO OR LOSS OF PROPERTY (INCLUDING CONSEQUENTIAL DAMAGES) RESULTING

FROM ANY CAUSE WHATSOEVER (EXPRESSLY INCLUDING THE RELEASED PARTIES OWN NEGLIGENCE).

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

- (i) the design, maintenance, operation or supervision of the Subdivision, any Lot, or any improvement located thereon;
- (ii) the Owner's or homebuilder's activities on the Subdivision, any Lot, or any improvement located thereon;
- (iii) the existence, now or hereafter of hazardous materials or substances on or under the Subdivision or any Lot; or
- (iv) due to a violation, now or hereafter, of any environmental laws, rules, regulations or ordinances, or otherwise. Each Owner and homebuilder does assume on behalf of the Released Parties and will conduct with due diligence and in good faith the defense of all Claims against any of the Released Parties.

- 25. Other than Developer, the undersigned confirm and ratify this Declaration to the fullest extent possible, such that this Declaration is to be understood and enforced as if it had been executed and recorded as of the date each received their interest.
- 26. PEOPLE'S BANK, holder of liens of record against the Property, joins in this Declaration for the sole purpose of showing its assent thereto and that it has no objections to the filing of this Declaration. No violation of any covenant contained within this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; providing however, that any mortgagee in actual possession, or any purchaser at any mortgagee's foreclosure sale, as well as all other owners, shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Property.

Executed this _____ day of _____, 2021.

[signatures and acknowledgements to follow]

DEVELOPER AND DECLARANT:

TWOBRO LAND, LLC, a Texas limited liability company

By: _____
Christopher Wayne Bednarz, Manager

By: _____
Nathan Wade Bednarz, Manager

THE STATE OF TEXAS

COUNTY OF LUBBOCK

BEFORE ME, the undersigned, being a Notary Public in and for the State of Texas, on this day personally appeared Christopher Wayne Bednarz and Nathan Wade Bendarz and they acknowledged to me that they executed the instrument as the act of **TWOBRO LAND, LLC, a Texas limited liability company**, and that they executed the instrument on behalf of the limited liability company for the purposes and consideration expressed, and in the capacity hereinabove stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2021.

Notary Public, State of Texas

LENDER:

PEOPLES BANK

By: _____
Name:
Title:

THE STATE OF TEXAS

COUNTY OF LUBBOCK

This instrument was acknowledged before me on this ____ day of _____, 2021, by _____ of PEOPLES BANK, a state banking association, on behalf of said association.

Notary Public, State of Texas