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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND  
EASEMENTS FOR PRIVADA, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA  
(Residential)**

This Declaration of Covenants, Conditions, Restrictions, and Easements at Privada (this "Declaration") is made this 11th day of February, 2020, by Wish In One Hand Enterprises, LLC, a Nebraska limited liability company, hereinafter referred to as "Declarant".

WHEREAS, Declarant and Ms. Barbara DiGiovanni ("DiGiovanni") own certain land located in Douglas County, Nebraska and legally described in Exhibit "A" attached hereto as a part hereof, said land together with such additional lands as shall be subjected to this Declaration being referred to as the "Property"; and

WHEREAS, the Declarant and DiGiovanni wish to establish and assure a uniform plan for the development of the Property and to enhance and protect the economic and aesthetic value and desirability of the Property and the health, safety and welfare of the residents of the Property;

NOW, THEREFORE, Declarant and DiGiovanni hereby declare that the Property and any other real estate hereinafter made subject to this Declaration shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value and desirability of the Property and the enjoyment of the Residents and Owners thereof, and which shall run with the real estate and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

Return to:  
James D. Buser  
Pansing Hogan Ernst & Bachman, LLP  
10250 Regency Circle, Suite 300  
Omaha, Nebraska 68114

## **Article I: Definitions**

The terms used above or hereafter in this Declaration which begin with capital letters (other than words which would be normally capitalized) shall have the meanings assigned to them in Article I of this Declaration.

**1.01 "Acreage Lots"** shall mean the Lots so designated on the Lot Designation Schedule.

**1.02 "Annual General Assessment"** shall mean and refer to the annual charge shared by all Class "A" members established pursuant to Article IV of this Declaration.

**1.03 "Assessable Property"** shall mean and refer to all of the Property except such part or parts thereof as may from time to time constitute Exempt Property.

**1.02 "Assessments"** shall mean and refer to the Annual General Assessment and Special Assessments which may be levied by the Association in each of its fiscal years pursuant to Article IV of this Declaration.

**1.05 "Association"** shall mean and refer to the Privada Residential Owners Association, a Nebraska not-for-profit corporation, its successors and assigns.

**1.06 "Board of Directors" or "Board" or "Directors"** shall mean and refer to the Board of Directors of the Association and any board, group or entity of the successor or assign to the Association serving in a comparable capacity to the Board of Directors of the Association.

**1.07 "Class A Members"** shall mean and refer to all Owners other than the Class B Member and Class C Members.

**1.08 "Class B Member"** shall mean and refer to the Declarant.

**1.09 "Class C Member(s)"** shall mean and refer to any Designated Builder.

**1.10 "Common Area(s)"** shall mean and refer to all real property and the improvements thereon from time to time owned or leased by the Association for the common use and enjoyment of the Members. Such property may (but need not) include any Outlots benefiting the Property, recreational facilities, green spaces, entryways, monument, feature, and entryway signs and the associated areas surrounding the signs, parks and other open space land, lakes and streams, Maintenance Areas, storm water management and drainage facilities, private streets not dedicated to Douglas County, Nebraska or State of Nebraska, pathway and bikeway systems, and fencing on Common Area.

**1.11 "Custom Lots"** shall mean the Lots so designated on the Lot Designation Schedule.

**1.12 "Declarant"** shall mean and refer to Wish In One Hand Enterprise, LLC, a Nebraska

limited liability company, its successors and assigns. No successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in an instrument of succession or assignment designating a party as the Declarant hereunder or which pass by operation of law.

**1.13 “Declaration”** shall mean and refer to this Residential Declaration of Covenants, Conditions, and Restrictions for Privada as it may be amended from time to time or supplemented in the manner provided herein.

**1.14 “Designated Builder”** shall mean those Persons set forth on Exhibit “B”.

**1.15 “Design Guidelines”** shall mean any Design Guidelines adopted by Declarant or the Architectural Committee that set forth standards for the construction of Dwelling Units and other Improvements, which Design Guidelines may vary between Custom Lots, Estate Lots, Acreage Lots, and Villa Lots.

**1.16 “Development Period”** shall mean and refer to the period commencing on the date of this Declaration first set forth above and terminating on the earlier of: (a) the date the last Lot in each and every phase of the Property is conveyed to a purchaser other than Declarant; or (b) any earlier date specified by the Declarant in a written notice to the Association that the Development Period is to terminate on that date.

**1.17 “Dwelling Unit”** shall mean any portion of the Property, as improved, intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) patio, single family detached, or zero lot line homes, as may be used and defined as herein provided or as provided in subsequent Declarations covering all or part of the Property.

**1.18 “Estate Lots”** shall mean the Lots so designated on the Lot Designation Schedule.

**1.19 “Exempt Property”** shall mean and refer to all land and Improvements and Common Area owned by the Association for so long as the Association shall be the Owner thereof.

**1.20 “Homebuilder”** shall mean the general contractor charged with constructing a Dwelling Unit on a Lot.

**1.21 “Improvement” or “Improvements”** Shall mean and include any and all man-made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all Dwelling Units and other buildings (including any exterior devices attached to or separate from buildings); storage sheds or areas; roofed structures; parking areas; fences, “invisible” pet fencing; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings; poles; driveways; streets; changes in grade or slope; site preparation; swimming pools; hot tubs; jacuzzis; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later modifications, reconstruction, renovation or other change to Improvements, provided, however, the definition of Improvements does not include the

replacement or repair of Improvements previously approved by Declarant, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by Declarant.

**1.22 “Land Development Activity”** shall mean and refer to any building, construction, reconstruction, or repair of Improvements, roadways, curbing, sidewalks, utility services, or any other structure on a Lot or any other portion of the Property by the Declarant.

**1.23 “Lot”** shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property, or any subdivided portion thereof, which has been subjected to this Declaration and upon which a Dwelling Unit or other Improvements could be constructed in accordance with applicable zoning ordinances and applicable laws of the State of Nebraska in effect from time to time, and shall include without limitation, all Custom Lots, Estate Lots, Villa Lots, and Acreage Lots. “Lot” shall not mean, include or refer to an Outlot or any Common Area.

**1.24 “Lot Designation Schedule”** shall mean the Lot Designation Schedule attached to this Declaration as Exhibit “C”.

**1.25 “Maintenance Areas”** shall mean the Common Areas that are owned by or subject to easements in favor of the Association and require periodic maintenance, repair and replacement, including, and not by way of limitation, entryways and entrance monuments to the Property, green spaces, and landscaping and landscaping amenities (including feature and signage, lighting, monuments and irrigation systems) hard surface or soft surface sidewalks, walking or jogging paths, or similar pathways over and under any Outlot.

**1.26 “Master Association”** shall mean and refer to the Privada Master Owner’s Association, a Nebraska not-for-profit corporation, which is the Master Association for Privada under the Master Declaration.

**1.27 “Master Association Assessment”** shall mean any and all dues, assessments, fees, or fines charged to the Association by the Master Association pursuant to the terms of the Master Declaration.

**1.28 “Master Declaration”** shall mean: (i) the Master Declaration of Covenants, Conditions, Restrictions and Easements for Privada dated August 21, 2019, and recorded with the Register of Deeds of Douglas County, Nebraska, on August 26, 2019, in the Miscellaneous Records as Instrument No. 2019068330; and (ii) any declarations recorded against subsequent residential phases of Privada, all as may be amended from time to time. The Master Declaration of Covenants are by this reference incorporated herein.

**1.26 “Member”** shall mean the Class A Members, the Class B Member and Class C Members of the Association.

**1.28 “Mortgagee”** shall mean the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more of the Lots. “Mortgage,” as used herein, shall include deeds of trust. “First Mortgagee” as used herein, shall mean a holder of

a mortgage with priority over other mortgages. As used in this Declaration, the term "Mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall include banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, all corporations and any agency or department of the United States Government or of any state or municipal government. As used in this Declaration, the term "holder" or "mortgagee" shall include the parties secured by any deed of trust or any beneficiary thereof.

**1.29 "Outlot"** shall mean the Outlots as so designated on the Plat.

**1.30 "Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of any Lots which is part of the Property but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

**1.31 "Plat"** shall mean the final plat of Privada, recorded with the Register of Deeds on July 31, 2019, as Instrument No. 2019059008.

**1.32 "Person"** shall mean and refer to any individual, corporation, joint venture, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, or any other separate legal entity.

**1.33 "Project"** shall mean and refer to the residential development being developed by Declarant on the Property commonly referred to as "Privada".

**1.34 "Property"** shall mean and refer to that certain real property located in Douglas County, Nebraska, as legally described in Exhibit "A" attached hereto, together with such additional lands as may be subjected to this Declaration.

**1.35 "Resident"** shall mean and refer to:

(a) Each individual occupying any Dwelling Unit pursuant to a lease agreement with the Owner thereof who, if requested by the Board of Directors, has delivered proof of such lease agreement to the Board of Directors;

(b) Members of the immediate family of such individual Resident or of an Owner who actually resides within the Property and in the same household with each such individual or Owner; and

(c) Any person who has a fixed place of habitation at a Dwelling Unit of any such individual or Owner to which, whenever he is absent, he has the intention of returning.

**1.36 "SID"** shall mean Sanitary and Improvement District No. 595 of Douglas County, Nebraska.

1.37 “**Special Assessment**” shall mean and refer to any special charge established pursuant to Article IV of this Declaration.

1.38 “**Undeveloped Lot**” shall mean a Lot that has not been improved with a completed Dwelling Unit.

1.39 “**Villa Lot**” shall mean a Lot so designated on the Lot Designation Schedule.

## **Article II: Property Rights of Common Area**

**2.01 Rights of Enjoyment of Common Area.** Each Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to his Lot. Each Owner is bound by the terms of the governing documents of the Association. Each Resident shall have a nontransferable right to use and enjoy the Common Area, which right shall terminate when such person ceases to have the status of a Resident. Such easements and rights shall be subject to the provisions below.

(a) The right of the Board of Directors to adopt, promulgate, enforce, and from time to time amend, reasonable rules and regulations pertaining to the use of the Common Area which shall enhance the preservation of such facilities and the safety and convenience of the users thereof. Such rules and regulations may include limitations on the number of guests of Owners and Residents who may use the Common Area at any one time.

(b) The right of the Board of Directors to establish and charge reasonable admission and any other fees for certain types of extraordinary uses of the Common Area.

(c) The right of the Board of Directors to suspend the voting rights and the right of any Owner or Resident to use all or any portion of the Common Area (with the exception of any streets or access ways) for a violation of this Declaration or for an infraction of the Board’s rules and regulations for period(s) not to exceed 60 days or until such violation is cured.

(d) The right of the Board of Directors to suspend the voting rights and the right of any Owner or Resident to use the Common Area (with the exception of any streets or access ways but including parking areas) for so long as any Annual General Assessment or Special Assessment for such Lot remains unpaid and overdue.

(e) The Association may at any time mortgage, dedicate, or transfer all or a part of the Common Area to any public agency, authority, or other entity upon such terms and conditions as shall be agreed upon by such agency, authority, entity, or organization and the Board of Directors, including, without limitation, terms and conditions providing for the use of such Common Area by the public in general and terms and conditions pertaining to the maintenance and repair of such Common Area and the assessments of Owners and/or Residents for the costs of such maintenance and repair. No such dedication or transfer shall be effective unless approved by the Declarant, or following the Development Period by approval of at least 66 2/3% of Class A Members at a meeting of the Association at which a voting quorum is present as determined by the Bylaws of the Association, except for the following which shall not

require any Class A Members' consent:

- (i) Granting easements which do not interfere with the intended Common Area use;
- (ii) Dedicating Common Area to a public authority;
- (iii) Conveying Common Area as part of boundary line adjustments with Lots; or
- (iv) Transferring Common Area pursuant to a merger or consolidation with a non-profit entity.

### **Article III: Association Membership, Voting Rights, Board of Directors**

**3.01 Organization of the Association.** Declarant has caused or will cause the incorporation of PRIVADA RESIDENTIAL OWNERS ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the Residents of the Property including:

(a) The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Areas and other amenities and Improvements constructed on Common Areas for the general use, benefit and enjoyment of the Members. Common Areas may, but need not, include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks, dedicated and nondedicated roads, paths, ways and green areas (including landscaping); decorative street lights and signs and entrances for the benefit of the Property. Common Areas may be situated on property owned or leased by the Association within the Property, on private property subject to an easement in favor of the Association or on public property.

(b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Areas, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Areas by Residents, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Areas.

(c) The exercise, promotion, enhancement and protection of the privileges and interests of the Residents of the Privada Subdivision; and the protection and maintenance of the residential character of the Privada Subdivision.

**3.02 Membership in the Association.** The Association shall have the following classes of membership:

(a) **Class A.** Class A Members shall be all Owners (with the exception of the Declarant as provided in Section 3.03(b) or any Designated Builder as provided in Section 3.03(c), below). A

Person shall automatically become a Class A Member upon becoming an Owner and shall remain a Class A Member for so long as he or she is an Owner; and

(b) **Class B.** The Declarant shall be a Class B Member as to Lots owned by Declarant. Except for the Master Association Assessment, the Class B Member shall be exempt from paying any dues and assessments as to Lots owned by a Class B Member.

(c) **Class C.** The Class C Member(s) shall be any Designated Builder(s). The Class C membership shall cease and be converted to a Class A membership upon transfer of title to a Lot to a Person other than a Designated Builder or at any time a Dwelling Unit on a Lot owned by a Designated Builder is occupied as a residence (other than as a model). Except for the Master Association Assessment, the Class C Members shall be exempt from paying any dues and assessments as to Lots owned by a Designated Builder unless and until converted to Class A membership.

**3.03 Voting Rights of Members.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(a) Class A Members shall be entitled to one (1) vote for each Lot owned by such Class A Member. Any Class A Member who is in violation of this Declaration, as determined by the Board of Directors in accordance with the provisions hereof and regulations established hereunder, shall not be entitled to vote during any period in which such violation continues.

(b) The Class B Member shall be entitled to one hundred (100) votes for each Lot owned by such Class B Member.

(c) Class C Members shall be entitled to one (1) vote for each Lot owned by such Class C Member.

(d) Any vote of the Members shall be taken without regard to class of membership except in those instances requiring the affirmative vote or approval of each class of membership in accordance with this Declaration and the Articles of Incorporation or Bylaws of the Association. If a Lot shall be owned by more than one Owner, such Owners shall be deemed to constitute a single Member as to such Lot.

**3.04 Purposes and Responsibilities.** The Association shall have the powers conferred upon not-for-profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors of the Association, as further provided for in the Bylaws shall include, but not be limited to, the following:

(a) The acquisition, development, maintenance, repair, replacement, operation and administration of Common Areas and Maintenance Areas in good and neat condition, and the adoption and enforcement of rules and regulations relating to the Common Areas.



(b) The landscaping, mowing, watering, maintenance, repair and replacement of Common Areas and Maintenance Areas and improvements on green space, Common Areas and Maintenance Areas, within or near the Property.

(c) To the extent not maintained by the SID, the City of Omaha, Nebraska, or other governmental entity, as the case may be, the Association shall maintain or cause to be maintained the medians and associated landscaping and related improvements along and within the streets serving the Property and any Outlots owned or controlled by the SID or the City of Omaha, Nebraska.

(d) The Common Areas and Maintenance Areas shall be kept clean and free from debris and maintained in a safe and orderly condition, together with the landscaping thereof, in accordance with the highest standards for first-class residential developments.

(e) Except for portions of Common Areas and Maintenance Areas located within a Lot (if any), the Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the improvements within the boundaries thereof.

(f) The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration, including, but not limited to any dues or assessments incurred pursuant to the Master Declaration.

(g) The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment of the Master Association Assessment, purchase of insurance covering any Common Area or against property damage and casualty, and purchase of liability insurance coverage and directors' and officers' liability coverage for the Association, the Board of Directors of the Association and the Members.

(h) The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

(i) The acquisition by purchase or otherwise, holding or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

(j) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

(k) The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

(l) General administration and management of the Association and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

(m) The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

(n) The enactment and enforcement of rules and regulations consistent with this Declaration.

### **3.05 Duties of the Association.**

(a) The Association shall maintain and repair the Common Areas and Maintenance Areas in good repair and neat condition.

(b) Represent and vote the "Residential Tract", as such term is defined in the Master Declaration, interests under the Master Declaration.

(c) The Association shall assess the Lots for the Master Association Assessments and any other Assessments owed under this Declaration.

(d) In the event any Owner of a Lot shall fail to perform and fulfill their obligations and responsibilities of this Declaration, including, without limitation those prescribed in Article VI, Sections 6.10 through 6.17, inclusive, and 6.24, the Association may, in its sole discretion, perform or have performed such obligation or responsibility. If the Association undertakes to perform or have performed the responsibilities of the Owner, the cost of such performance plus a fifteen percent (15%) administrative charge shall be assessed against the Owner, and the Owner shall be obligated to promptly pay such sums to the Association. Assessment of such costs shall be made by written demand from the Association for payment by the Owner. If such assessment is not paid within thirty (0) days after written demand from the Association, such assessment shall constitute a lien on the Lot, which lien shall attach, have the priority and be enforceable by the Association in the same manner as liens for assessments and dues as provided in this Declaration. The Association shall have the right, but not the obligation, to file of record a Notice of Lien Liability.

**3.06 Board of Directors.** The business and affairs of the Association shall be managed by a Board of Directors. Board of Directors shall be elected by the Members in accordance with the Bylaws of the Association. The number of Board of Directors shall be determined in accordance with the provisions of the Bylaws of the Association, however, the number of Board of Directors shall always be an odd number and shall in no instance be less than three (3) Directors and no more than nine (9) Directors.

**3.07 Adoption of Further Rules and Regulations.** The Board of Directors may make such rules and regulations consistent with the terms of this Declaration and the Association's Articles of Incorporation and Bylaws as it deems advisable with respect to any meeting of Members, proof of membership in the Association, evidence of right to vote, appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy, and other matters concerning the Association's operations. If the Board of Directors shall so determine and if permitted under applicable law, voting on elections and any other matters requiring approval of the Members, may be conducted by mail, ballot, or reliable electronic means, to the extent and

as permitted by the Bylaws or Nebraska law.

**3.08 Limitation of Liability.** Neither the Association, nor the Declarant, nor the Board of Directors shall be liable for any failure of any services to be obtained by the Association or paid for out of the common expense funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any Lot or portion of the Common Area or its facilities, or from any wire, pipe, drain, conduit, or the like. Neither the Association, nor the Board of Directors, nor the Declarant, or its members, employees or agents, shall be liable to any Members for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Area or its facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or its facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

#### **Article IV: Covenant for Assessments**

**4.01 Creation of the Lien and Personal Obligation of Assessments.** The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association such Annual General Assessments, Special Assessments and the Master Association Assessment (the "Assessment" or collectively the "Assessments") as are established and are to be paid and collected as hereinafter provided. The Assessments, together with interest thereon, late fees, and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest thereon, late charges, and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessments fell due. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by the successors, but all successors shall take title subject to the lien for such Assessments. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot or any Dwelling Unit thereon.

**4.02 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to carry out the business, purposes, duties and responsibilities of the Association.

#### **4.03 Establishment of Annual General Assessment.**

(a) The Association shall levy in each of its fiscal years an Annual General Assessment against each Lot owned by Class A Members, which is not Exempt Property. The amounts of such Annual General Assessment shall be established by the Board of Directors, subject to the limitations imposed by Section 4.04, at least thirty (30) days in advance of each Annual Assessment Period. The first Annual Assessments on each Lot imposed pursuant to this Section 4.03(a) shall be prorated from the date of conveyance to the end of the fiscal year of the Association.

(b) The amount of the Annual General Assessment shall be determined by the Board of Directors according to its budgeted estimates for the general operation of the Association, which may include in the discretion of the Board of Directors, a repair and replacement reserve.

**4.04 Special Assessments.** In addition to the Annual General Assessment, the Association may levy in any fiscal year of the Association, a Special Assessment against Lots owned by Class A Members for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of the Common Area including fixtures and personal property related thereto, or for any other purpose for which the Association is responsible. Such Special Assessment may be rescinded if, at a meeting called within sixty (60) days of notice of the Special Assessment, the majority of the votes of each class of membership who are voting in person or proxy agrees. Special Assessments shall be imposed against Lots which are not Exempt Property in the same proportions as Annual General Assessments.

**4.05 Master Association Assessment.** In addition to the Annual General Assessment and the Special Assessment, the Association shall levy in each of its fiscal years the Master Association Assessment against each Lot owned by Class A, Class B and Class C Members, which is not classified as Exempt Property. The amount of the Master Association Assessment shall be as determined and set forth in the Master Declaration. The Residential Association's lien of the Master Association Assessment shall take priority unless otherwise required by law or set forth herein.

**4.06 Date of Commencement of Assessments.** The Annual General Assessment provided for in this Article IV shall commence for each Lot owned by a Class A Member and subjected to this Declaration on the first day of the month following the date of conveyance of the Lot to a Class A Member. The Annual General Assessments on each Lot imposed pursuant to this Section 4.03(a) shall be prorated from the date of conveyance to the end of the fiscal year of the Association. The Master Association Assessments shall commence for all Lots which are not Exempt Property as determined by the Board of Directors of the Master Association.

**4.06 Initial Working Fund.** The Association, upon direction from the Board of Directors, may collect a working capital contribution from the initial Owner of a Lot (other than the Declarant or any Designated Builder purchasing from Declarant) at the time of closing on the Lot. Such contribution, if collected, shall not exceed two (2) months of the Annual General Assessments and shall be utilized for commencing business of the Association and providing the necessary working fund for the Association.

**4.07 Notice and Due Dates.** Written notice specifying (a) the amount of each Annual General Assessment and Special Assessment, and (b) the number and amounts of the installments by which each such Assessment is to be paid, shall be given to the Class A Members of each Lot subject thereto. Each installment of an Annual General Assessment or Special Assessment shall be due on the first day of each assessment period as defined by the Board of Directors.

**4.08 Effect on Nonpayment of Assessments: Remedies of the Association.** Any installment of Assessments that is not paid within ten (10) days of when due shall be subject to a late payment fee equal to \$25. Any installment of Assessments which is not paid within thirty

(30) days of when due shall be delinquent. Delinquent Assessments shall bear interest from the due date at the lower of the highest legal rate permitted under Nebraska law or sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by non-use of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

**4.09 Liens and Personal Obligations for Dues and Assessments.** The Association may fix, levy and charge the Owner of each Lot with dues and Assessments under the terms of this Declaration. Except as otherwise specifically provided, the dues and Assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board of Directors. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot.

**4.10 Certificate of Payment.** The Association shall, upon written request by an Owner, and for a reasonable charge not to exceed \$25.00, furnish a certificate signed by an officer of the Association setting forth whether the Annual General Assessments and Special Assessments, if any, on a specified Lot have been paid, or if not paid, the amount the due. The Association shall furnish said certificate within ten (10) days of receipt of the written request. A properly executed certificate of the Association as to the status of Assessments on a Lot shall be binding upon the Association as of the date of its issuance.

**4.11 Subordination of the Lien to Mortgages.** The lien of the Annual General Assessments and Special Assessments provided for herein shall be subordinate only to the lien of any First Mortgage. The sale or transfer of any Lot shall not affect the lien of such Assessments. However, the sale or transfer of any Lot pursuant to Mortgage foreclosure or trustee's sale under a deed of trust for the benefit of any Mortgagee shall extinguish the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer shall relieve such Lot from liability as to any Assessments thereafter becoming due or from the lien thereof. Notwithstanding the foregoing no sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof for the benefit of any Mortgagee shall be deemed to extinguish any Mortgage or lien which the Association has itself placed upon any property owned by the Association.

## **Article V: Architectural Review and Architectural Committee**

**5.01 Composition and Appointment.** An Architectural Review and Covenants Committee (the "Architectural Committee") may be appointed and/or removed only by the Declarant during the Development Period and thereafter by the Board of Directors of the Association. The Architectural Committee shall initially consist of five (5) members, which shall include, but not

be limited to, one representative from each Tract, but may thereafter be modified, increased or decreased in size by the Declarant during the period it has the exclusive right to appoint the Architectural Committee and by the Board of Directors thereafter. Members of the Architectural Committee shall serve for a term of one (1) year, or until their successors are elected and qualified. Any vacancy in the membership of the Architectural Committee shall be filled by the Declarant during the period it has the exclusive right to appoint the Architectural Committee and by the Board of Directors to serve for the remaining portion of the term of the originally appointed member. If any vacancy shall occur, the remaining members of the Architectural Committee may continue to act until the vacancy has been filled. Except for members who have been designated by the Declarant during the period it has the exclusive right to appoint the Architectural Committee, any member may be removed with or without cause by the Board of Directors. In the event that the Board of Directors shall fail to designate an Architectural Committee after the expiration of the period it has the exclusive right to appoint the Architectural Committee, the Board of Directors shall serve as the Architectural Committee.

#### **5.02 Powers and Duties.**

(a) The Architectural Committee shall serve as an architectural review board and shall have the right and authority to adopt Design Guidelines and to otherwise regulate the external design, appearance, and location of the Lots and Improvements thereon so as to enforce the architectural provisions of this Declaration, enforce the requirements of the recorded subdivision plats, deeds of subdivision, and to preserve and enhance values and to maintain a harmonious relationship among Improvements and the Property.

(b) The Architectural Committee shall serve in such other capacities as may be determined, from time to time, by the Board of Directors in enforcing the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association. Any decision or determination of the Architectural Committee may be appealed by a Member affected thereby to the Board of Directors.

(c) The Architectural Committee may upon the approval of the Declarant, or thereafter the Board, hire an independent third party to assist in the review of and provide recommendation on any plans and specifications submitted to the Architectural Committee.

**5.03 Submission of Plans to Architectural Committee for Approval.** Except for such Improvements as may be constructed by the Declarant or Improvements constructed by any Designated Builder, pursuant to plans which have first been approved by the Declarant, no Improvements of any kind whatsoever shall be commenced, erected, placed, moved onto, or permitted on any Lot, nor shall any existing Improvements upon any Lot be removed or altered in any way which materially changes the exterior appearance thereof (including change of exterior color) until plans and specifications therefore shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as the Architectural Committee may reasonably require, but shall in all cases include:

(a) A site plan showing the location of all proposed and existing Improvements on the Lot;

- (b) Exterior elevations for the proposed Improvements;
- (c) Specifications of materials, color scheme and other details affecting the exterior appearance of the proposed buildings;
- (d) Description of the plans or provisions for landscaping or grading; and
- (e) Any other requirements set forth in the Design Guidelines.

**5.04 Approvals/Disapprovals.** The Architectural Committee shall review such plans in light of the conditions and restrictions in this Declaration, any Design Guidelines then in effect and in relation to the type and exterior of improvements which have been constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as a residential community with homes constructed of high-quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Architectural Committee in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within the Privada subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. By way of illustration, and not of limitation, it is intended that the architecture of the residential structures constructed on: (i) Custom Lots shall be consistent with the architecture of the houses constructed in the Bluestem and Coneflower areas of The Prairies subdivision in Douglas County, Nebraska; (ii) Estate Lots shall be consistent with the architecture of the houses constructed in the Bluestem and Coneflower areas of The Prairies subdivision in Douglas County, Nebraska (iii) Acreage Lots shall be consistent with the architecture of the houses constructed in the Sanctuary and the Estate area of The Prairies subdivisions in Douglas County, Nebraska; and (iv) Villa Lots shall be consistent with the architecture of the houses constructed in the Windgate subdivision in Douglas County, Nebraska. Atypical improvements and home designs, such as dome houses, A-frame houses and log cabins, will not be approved unless the Architectural Committee determines that construction of these improvements will not be materially inconsistent with the scheme of development contemplated by this Declaration. If the Architectural Committee determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the Design Guidelines, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots and neighboring Lots, if any, as a quality residential community, the Architectural Committee may refuse approval of the proposed Improvement. Any approval or disapproval of a requested action by the Architectural Committee shall be in writing. In denying any application, the Architectural Committee shall specify the reasons for such denial.

**5.05 Failure of the Architectural Committee to Act.** If the Architectural Committee shall fail to act upon any request submitted to it within thirty (30) days after a complete submission thereof in a form acceptable to the Architectural Committee, such request shall be deemed to have been approved as submitted, and no further action shall be required. Submission of incomplete plans shall not be considered valid submissions triggering the deadlines stated above and shall not be recognized by the Architectural Committee or the Board of Directors. Additionally, if any additional information is requested by the Architectural Committee, the approval time may be extended so as to allow for additional information and documentation to

be presented to the Architectural Committee.

**5.06 Rules, Regulations, and Policy Statements.** The Architectural Committee may recommend, from time to time, subject to the approval and adoption of the Declarant during the Development Period and thereafter the Board of Directors, reasonable rules and regulations pertaining to its authorized duties and activities under this Declaration and may from time to time issue statements of policy with respect to architectural standards and such other matters as it is authorized to act on. The Architectural Committee shall adopt rules of procedure, subject to the prior approval and adoption of the Board of Directors, which rules of procedure shall include provisions substantially to the following effect:

(a) The Architectural Committee shall hold regular meetings as necessary. Meetings of the Architectural Committee may be called by any one of the members of the Architectural Committee;

(b) A majority of the members of the Architectural Committee present at any meeting shall constitute a quorum;

(c) The Architectural Committee shall maintain minutes of its meetings and a record of the votes taken thereat;

(d) A copy of all minutes, rules, regulations, and policy statements of the Architectural Committee shall be filed with the records of the Association and shall be maintained by the Association. Except for copyrighted plans, documents, drawings, renderings, photographs and any other materials owned by a Designated Builder, architect, or the like, the Association shall make copies thereof available to any interested Member at a reasonable cost or shall make such minutes, rules, regulations, and policy statements available to any Member for copying; provided, however, unless otherwise required by law, the Association may dispose of any and all records that are no longer deemed reasonably necessary to be kept or maintained in the Board of Directors sole discretion.

**5.07 Expenses of the Architectural Committee.** The Architectural Committee may charge reasonable fees for the processing of any requests, plans, and specifications including consultation with a professional or other third party. The Association shall pay all ordinary and necessary expenses of the Architectural Committee; provided, however no member of the Architectural Committee shall be paid any salary or receive any other form of compensation, at the expense of the Association except upon authorization by the Board of Directors of the Association.

**5.08 Right of Entry.** The Association and the Architectural Committee through their authorized officers, employees, and agents shall have the right, but not the obligation, to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Improvement thereon is in compliance with the provisions of this Article V without the Association or the Architectural Committee or such officer, employee, or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.



**5.09 Land Development Activity.** Notwithstanding any other provisions of this Declaration, any Land Development Activity shall not require the approval of or be subject to review by the Architectural Committee. This provision shall not be construed in any manner as a limitation upon the right of the Declarant to review and approve any plan or modification thereof of any Homebuilder.

## **Article VI: General Restrictions on the Use of Lots and Improvements to be Made Thereon**

**6.01 Zoning Regulations.** The Property shall not be used for any purpose other than as permitted in the applicable zoning ordinances or the laws, rules, or regulations of any governmental authority in force and effect on the date of recording of this Declaration as the same may be hereafter from time to time amended. No building shall be erected, altered, placed, or permitted to remain on any such Lot other than one used as a single-family dwelling. This restriction shall not apply to any use for which a special exception under local government zoning ordinances or other governing regulations, as the same may be hereafter from time to time amended, is finally granted provided such use is approved in writing by the Architectural Committee. The right, however, to further limit or restrict the use of a particular Lot is reserved under the provisions hereof.

**6.02 Improvements.** The architectural character of all Improvements, or alterations, additions, or improvements thereof (other than interior alterations not affecting the external appearance of Improvements) when visually related to each other and the surrounding natural environment shall be, in the opinion of the Architectural Committee, harmonious in terms of type, size, scale, form, color, and material. The repair, replacement, repainting, resurfacing, or restoration of any Improvements originally approved by the Architectural Committee or the Declarant shall not be subject to the review or approval of the Architectural Committee provided that, following any such repair, replacement, repainting, resurfacing, or restoration of any such Improvements, the external appearance of such Improvements shall be substantially identical with the appearance of said Improvements as originally approved. Except as otherwise herein provided, no Improvements shall be painted, surfaced, or resurfaced with any material unless and until approved in writing in accordance with the Design Guidelines or other objective guidelines established by the Architectural Committee.

**6.03 Screens and Fences.** In addition to the restrictions contained elsewhere in this Declaration, only fences or walls (including, without limitation, densely planted hedges or similar landscape barriers) approved in advance by Declarant, in their sole and absolute discretion, shall be used, installed and/or constructed on each Lot. All fences and walls shall be maintained in a structurally sound and attractive manner. In all events, installed fences or walls must comply with applicable set back requirements imposed by the City of Omaha or other governmental agencies with zoning jurisdiction. No fence or wall shall be erected on any Lot until the Architectural Review Committee has given prior written approval of the color, size, design, materials and location for such fence or wall. The Architectural Review Committee may, in its sole and absolute discretion, refuse to allow any fences or walls on a Lot, even if fences or walls are allowed on other Lots. The fence types which may receive consideration are fences composed of wrought iron or black aluminum and as otherwise set forth in the Design

Guidelines. Any fencing which may be installed by the Declarant or the Association in the Common Area shall be maintained by the Association.

**6.04 Signs and Lighting.** The location, color, nature, size, design, and construction of all private signs or private outdoor lights shall be approved in writing by the Architectural Committee before the installation thereof.

**6.05 Vehicles and Parking.** No commercial truck, construction equipment, commercial bus, taxicabs, or other commercial vehicle of any kind, boats, trailers, campers, recreational vehicles, motorcycles, or motor homes shall be parked in any visible location on the Property without the prior written approval of the Architectural Committee. Commercial vehicles shall be deemed to include cars and vans in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names exceeding five (5) square feet per side or containing visible commercial materials, cargo, tools, or equipment on the exterior of the vehicle or that extend beyond the length or width of the vehicle. No visually offensive vehicle as determined of the Architectural Committee or disabled vehicle or vehicle on which current registration plates or other required permits such as inspection stickers are not displayed shall be visibly parked on any Lot or on Common Area. The light repair or routine maintenance of vehicles, boats, motorcycles, campers, trailers, or similar vehicles shall not be carried out in a manner that is visible from any Lot for longer than twenty-four (24) hours, and may never be carried out on the Common Area. The heavy repair or extraordinary maintenance shall not be carried out in a manner that is visible from any Lot or from any Common Area. The Association may enforce the provisions of this Section by towing any non-complying vehicle at the vehicle owner's sole risk and expense. This provision shall not preclude commercial vehicles located on the property temporarily (less than 24 hours) to provide services to the Association or a resident or to trucks, construction equipment, commercial vehicles which are necessary for the construction of Improvements during the period of construction.

**6.06 Animals and Animal Shelters.** The maintenance, keeping, boarding, or raising of animals, livestock, or poultry regardless of number, is prohibited on any Lot or upon the Common Area, except for the keeping of guide animals and reasonable number of orderly domestic pets (e.g. fish, nonpoisonous reptiles, dogs, cats, or caged birds), not to exceed three properly licensed (3) pets which can regularly leave the Lot, subject to the rules and regulations adopted by the Board of Directors. Such pets or animals shall be permitted subject to the condition that they are not allowed to reasonably annoy and/or disturb the normal residential occupancy of the neighborhood or constitute a hazard to public health or safety. Such pets or animals shall not be kept or maintained for commercial purposes or for breeding. Animals shall not be permitted upon the Common Area except for orderly domestic pets accompanied by someone who can control the animal and unless carried, leashed, or under other positive control. Animal droppings shall be cleaned up by the Resident responsible for the animal being on the Property. If an animal's owner fails to clean up after his or her pet or fails to comply with leash laws or the requirements of the rules and regulations of the Association charges may be levied against the responsible party as allowed by law. Any Resident who keeps or maintains any animal upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association and each Owner free and harmless from any loss, claim, or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Property. All animals shall be registered and inoculated as required by law. The appropriate

governmental authorities shall have an easement and right of access across the Property to enforce local animal control laws and ordinances. No shelters for animals shall be erected, placed or permitted to remain on any Lot. The Association shall have the authority to establish further rules and regulations regarding pets, and to include the levy of fines and assessments against Owners that violate such rules and regulations.

**6.07 Garages.** No garage shall be utilized for other than the purpose of parking and storage of vehicles and other types of items normally stored in garages in first-class residential neighborhoods. No garage may be converted into or used for living or commercial space. All primary Dwelling Units, except for those Dwelling Units constructed within the Villa Tract, shall be constructed with an attached and enclosed garage that will accommodate a minimum of three (3) cars. For the Dwelling Units located on the Estate Tract and Acreage Tract, the garage shall not occupy more than fifty percent (50%) of the width of the front façade of the house, as measured along any building line that faces the street. The Architectural Review Committee shall have the right, but not the obligation, because of restrictive topography, lot shape, dimensions or unusual site related conditions or other reasons, to allow variances from the garage requirements set forth herein by granting a specific written variance.

**6.08 Air, Water and Other Pollution.** No use of any Lot will be permitted which emits pollutants into the atmosphere, or discharges liquid or solid wastes or other harmful matter into any waterway in excess of environmental standards, which standards shall at a minimum meet the requirements of federal and state law and any regulations thereunder applicable to the Property, to be established by the Architectural Committee, and approved by the Board of Directors. No waste or any substance or materials of any kind shall be discharged into any private or public sewer serving the Property, or any part thereof, in violation of any regulations of any private or public body having jurisdiction. No person shall dump garbage, trash, yard waste or other refuse, or any polluting and/or harmful gaseous, liquid or solid waste into any waterway or onto any Common Area or Lot owned by Owner, another Owner, the Declarant or any Designated Builder within the Property.

**6.09 Leases.** No Owner of a Lot or Dwelling Unit shall lease to another any such Lot or part thereof or any such Dwelling Unit unless such lease shall be in writing for an initial term of not less than six (6) months and shall expressly provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation, Bylaws, and rules and regulations of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under such lease. The Board of the Association shall be provided with copies of leases on request.

**6.10 Landscaping.** The land area not occupied by Improvements, hard-surfacing, vehicular driveways, or pedestrian paths, shall be kept planted with grass, trees, or shrubs or other ground covering or landscaping in conformance with the standards set by the Architectural Committee and approved by the Board of Directors. Such standards will take into consideration the need for providing effective site development to:

- (a) Enhance the site and building;
- (b) Screen undesirable areas or views;

- (c) Establish acceptable relationships between buildings and adjacent properties; and
- (d) Control drainage and erosion.

As required by the Architectural Committee, existing trees shall be retained, buffer areas maintained, and the natural contour of the land respected. The Architectural Committee reserves the right to require special treatment of slopes, and construction of retaining walls. Notwithstanding the foregoing, any clearing, grading, or other development work performed pursuant to any site development plan by the Declarant and approved by all appropriate governmental authorities for Declarant or for any Participating Builder shall not be subject to the review or approval of the Architectural Committee. All landscaping should be installed during the first available planting season following substantial completion of the Dwelling Unit and no later than one year from commencement of construction of the Dwelling Unit.

**6.11 Sidewalks.** Each Owner does hereby assume any and all responsibility for the construction, installation and maintenance, at Owner's expense, of public sidewalks parallel to each street which abuts the Lot or Lots owned by such Owner. Sidewalks shall be constructed in accordance with City standards, rules and regulations. Each Owner shall make every attempt to make the construction of the sidewalks consistent with the overall development. Such sidewalks shall be constructed within thirty (30) days of substantial completion of the Dwelling Unit on the Lot, or within one year following purchase of a Lot that remains unimproved.

**6.12 Maintenance and Use of Premises and Improvements.** Each Owner or Resident shall at all times keep the Lot, Improvements, and appurtenances in a safe, clean, neat, and sanitary condition. Appropriate maintenance shall include, but not be limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements all in a manner and with such frequency as is consistent with good property management, with the exception of those Lots on which the Association may provide maintenance of landscaping. All Owners of Lots on which stormwater management or storm drainage easements exist must keep such area free of debris, landscaping, or fences so as not to impede drainage. The Owner or Resident shall comply with all laws, ordinances, and regulations pertaining to health, safety, and pollution, and shall provide for storage and removal of trash and rubbish from his premises in a manner to be approved by the Architectural Committee. No noxious or offensive activity shall be carried on or upon any Lot, nor shall anything be done on any Lot which may be or may become an annoyance or nuisance to the neighborhood or which endangers the health or unreasonably disturbs the quiet enjoyment of other Owners or Residents of the Lots.

**6.13 Maintenance During Construction.** During construction it shall be the responsibility of each Owner, Home Builder, and Designated Builder to ensure that construction sites are kept free of unsightly accumulation of rubbish and scrap materials, and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner. No burning of any trash and no accumulation or storage of litter or trash of any kind shall be permitted on any Lot. During construction on Lots, Owners of Lots shall install and maintain siltation fences, straw waddles, or other means of erosion control approved by the Declarant (hereinafter referred to as "Erosion Control Measures") until their Lots are sodded, which Erosion Control Measures shall be installed in a manner which will eliminate or substantially reduce erosion and run-off of soil and

in all events as required by regulatory authorities. Declarant and the Association shall have the right to require the owners of Lots to install and maintain the Erosion Control Measures in such locations, configurations, and designs as the Declarant or the Association may determine appropriate in its sole and absolute discretion. Owner shall indemnify and hold the Association and the Declarant harmless from any and all liabilities, costs, expenses, causes of action, attorney fees, fines, penalties or assessments with respect to Owner's construction and grading activities, including, without limitation, Owner's failure to comply with governmental requirements during and following construction.

**6.14 Tree Removal.** No tree situated upon any Lot may be moved, removed, cut or destroyed unless complete plans describing the exact tree or trees to be moved, removed, cut or destroyed and the reason therefore, shall have been submitted to and approved in writing by the Association. For purposes of this Section, "tree" shall mean and refer to a tree of any type with a diameter larger than one (1) inch at a height of five (5) feet. Unless waived in writing by the Association, each Owner shall repair and maintain in good condition any and all trees, shrubs, and bushes placed in and along the public easement areas on their Lot. Should any of such trees, shrubs or bushes be removed, die, or deteriorate into a poor condition, the Owner of the Lot shall, at its expense, replace such trees, bushes or shrubs with trees, bushes or shrubs of the same or similar quality. In the event such replacement does not occur upon thirty (30) days written notice from either the Declarant or the Association, then either the Declarant or the Association may cause such replacement to occur and charge the Owner of the Lot for such replacement as provided in this Declaration. Each Lot must be landscaped with: (i) no fewer than two (2) trees, each no less than three (3) caliper inches in diameter at eight (8) feet of height at least one (1) of which shall be planted in the front yard; and (ii) trees required and to be planted in conformance with the approved street tree plan which is part of the Design Guidelines. Each Lot with a street side yard shall plant additional street trees in the street side yard per the approved street tree plan which is part of the Design Guidelines.

**6.15 Waste.** No Lot, street or road shall be used or maintained as a dumping ground for rubbish, trash or garbage. During construction of Improvements on a Lot, all rubbish and debris shall be stored and disposed in a manner satisfactory to Declarant and the Association.

All Owner's shall use and comply with the trash rules and regulations set forth in the Design Guidelines including the Declarants designation of the same day services for all of the Lots and the selection of a preferred trash hauling and recycling company. Unless otherwise prescribed, the Owner shall be responsible for providing and contracting with a single trash hauling and recycling company.

**6.16 Nuisances.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No Lot shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No incinerator, trash burner or fuel tank shall be permitted on any Lot. No grass, weeds or other vegetation will be grown or

otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance.

Trash containers, recycle bins and garbage cans shall be hidden from view until the day of disposal or pick-up and shall be removed from the front of house within twenty-four (24) hours of trash pickup. Outdoor storage areas for trash containers, recycle bins and garbage cans must be approved by the Architectural Review Committee and shall be consistent with the Design Guidelines.

**6.17 Construction.** All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and partially completed Dwelling Units or other Improvements shall not be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. Construction of the Dwelling Unit, including landscaping, must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by Declarant. Grading plans must be submitted to and approved by Declarant prior to commencement of Improvements to any Lot. Any damage to the streets, roads or any part of any Common Area, Maintenance Area, or any utility system caused by an Owner or Owner's builder or such builder's subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and such builder's subcontractors on any portion of the Property shall keep such portion of the Property free of unsightly construction debris and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. No materials, debris or objects are to be stored or placed, temporarily or permanently, along with no construction activities or machinery of any sort, on the exterior of this perimeter. The Owner of such Lot is responsible for costs associated with the clean-up resulting from construction activities.

In addition, the perimeter of the Lot or as otherwise set forth by the Declarant must be enclosed with silt fencing prior to commencement of construction in such a manner to keep the exterior of such perimeter free from silt or other forms of run-off. All silt fencing which is damaged or not effective in preventing run-off shall be immediately repaired. The Declarant has the right, but not obligation, without notice to Owner of such Lot, to repair all silt fencing which remains damaged and/or not effective in preventing run-off, after twenty-four (24) hours notice to Owner at the expense of the Owner of such Lot. The foregoing restrictions shall be supplemental to the requirement of Article VII, Section 6.13 of this Declaration.

**6.18 Recreational Improvements.** No tennis courts shall be allowed on a Lot. Swimming pools must have the prior approval of Declarant, and may not extend more than one (1) foot above ground level and comply with all other elements of this Declaration.

**6.19 Flags.** The Board of Directors of the Association is authorized and reserves the right to regulate the size and type of flags which may be displayed on the property, including the right to prohibit the display of flags on the Property or the right to require the removal of flags, banners or the like that the Board of Directors deems controversial or inappropriate in its sole discretion. The Board of Directors is also authorized to regulate, restrict or prohibit the erection and

placement of flag poles on the Property and reserves the right to do so in its sole discretion.

**6.20 Temporary Structures.** No residence or building of a temporary nature, including a construction trailer, shall be erected or allowed to remain on any Lot, and no barn, carport, trailer, open basement, storage building, outbuilding, or utility building shall be erected on any Lot or attached to any Dwelling Unit unless approved by the Architectural Review Committee. Provided, however, nothing herein shall prohibit Declarant or a builder (subject to the prior approval of Declarant) from erecting or moving temporary buildings onto Lots owned by Declarant or such builders, or Lots which Owner has contracted with such builders, to be used for storage, or for construction or during construction of a Dwelling Unit. No permanent structure or dwelling shall be moved from outside the Project to any Lot without written approval of the Architectural Review Committee.

**6.21 Exterior Lighting.** Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

**6.22 Fencing.** All fences must be constructed of wrought iron or all black aluminum or other type of material approved by Declarant, provided that no fence may be installed without the prior approval of the Declarant, and no fences or walls shall exceed a height of six (6) feet unless otherwise approved by Declarant.

**6.23 Conflicts with Master Declaration.** This Declaration is a "Supplemental Declaration" as such term is defined and used in the Master Declaration. In no event shall any term or provision in this Declaration revoke or modify the covenants, conditions, restrictions and easements provided for in the Master Declaration, the intent being that this Declaration shall be supplemental and subordinate to the Master Declaration. In the event of conflict between the covenants, conditions, restrictions and easements of the Master Declaration and this Declaration, the covenants, conditions, restrictions and easements in the Master Declaration shall control and take priority unless the provisions of this Declaration are more restrictive or impose additional requirements, in which event this Declaration shall control.

**6.24 Master Association Dues.** Each Owner shall be responsible for paying its portion of the Master Association Assessment. Such dues shall be paid to the Association on an annual, quarterly or monthly basis as from time to time determined by the Board of Directors of the Master Association.

**6.25 Duty of Maintenance.** Except for those portions, if any, of a Lot which the Association may elect to maintain to repair hereunder, the Owner of any Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) owned by such Owner, including Improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in the Master Declaration, and otherwise in a well-maintained, safe, clean and attractive condition at all times

## **Article VII: Easements and Other Rights**

Declarant, in addition to any other easements granted herein, hereby reserves unto itself, its successors and assigns, and grants to the Association and any other persons or entities hereinafter set forth, easements on, upon, over, across, through and under the Property as described in this Article VIII. In addition, Declarant hereby reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Project, including, but not limited to, easements in favor of Declarant, the Association, the Master Association, the Owners, and all their family members, guests, invitees and tenants and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified. Unless otherwise specified in this Article VIII, all easements reserved and granted herein shall be non-exclusive and shall be perpetual in duration notwithstanding the termination or expiration of the term of this Declaration.

**7.01 Use of Common Areas.** Subject to any rules, regulations and restrictions on use as set forth in this Declaration or in rules and regulations hereafter imposed by the Association, Declarant grants and reserves an easement in favor of Declarant, the Association, the Owners and all their family members, guests, invitees and tenants for ingress and egress and to otherwise travel across and use the Common Areas on a non-exclusive basis.

**7.02 Right of the Association and Declarant to Enter Upon the Common Areas and Maintenance Areas.** Declarant hereby reserves for the benefit of itself, and grants to the Association and all agents, contractors, employees or other designees of Declarant or the Association, an easement for ingress, egress and access to enter upon or over the Common Areas and Maintenance Areas for the purposes of inspecting any construction, proposed construction, or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of the Common Areas and Maintenance Areas. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas and Maintenance Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited.

**7.03 Maintenance Areas.** Declarant hereby reserves, for the benefits of itself, its agents, contractors and employees, and grants to the Association, its agents, contractors and employees, easements as follows:

(a) An Easement for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monument(s) and signs for the Project, including the right to erect and maintain entrance monument(s) and signs thereon bearing the name of the Project, and to erect and maintain lighting for such monument(s), plantings, landscaping, irrigation systems and other Improvements typically used for entryways.

(b) An Easement for the installation, maintenance, repair and removal of Improvements in Outlots and easement areas within of the Project.



**7.04 Declarant's Right to Assign Easements and Maintenance of Easement Areas.**

Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot.

**7.05 Easement Reserved for the Association and Declarant.** An easement for access, ingress and egress over upon and across the Lots is hereby reserved by Declarant for itself and granted to the Association to perform their respective rights, duties and obligations under this Declaration.

**7.06 Other Easements.** Other easements are provided for in the Plat.

**Article XIII: Mailboxes**

**8.01 Mailboxes.** Mailboxes for all Lots will be constructed by Declarant and located as directed by the United States Postal Service. Each Lot Owner shall pay a \$500 mailbox fee to Declarant not later than thirty (30) days following completion and occupancy of a Dwelling Unit.

**Article IX: Insurance**

**9.01 Insurance.** The Association's Board of Directors or its duly authorized agent shall obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and if reasonably available, directors' and officers' liability insurance, fidelity bond coverage and such other insurance as may be deemed reasonable and necessary by the Board of Directors of the Association. Cost of insurance coverage obtained for the Common Area shall be included in the Annual General Assessment. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties.

**Article X: Condemnation**

**10.01 Notice.** Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on its behalf or on the written direction of all Owners subject to the taking, if any), by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to

participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed in accordance with the direction of the Board of Directors or retained as working capital of the Association.

**10.02 Replacement Improvements.** If the condemnation or eminent domain involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such condemnation or eminent domain the Declarant and at least seventy-five percent (75%) of the Class A Members shall otherwise agree, the Association shall restore or replace such improvements so condemned on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association.

## **Article XI: General Provisions**

**11.01 Powers.** Except for the authority and powers specifically granted to the Declarant, the Declarant, the Association, or any Owner shall have the right, but not the obligation, to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions, and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages due to such violation. Failure by the Declarant, Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**11.02 Duration.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period ending on the earlier of: (i) the end of the Development Period; or (ii) of ten (10) years from the date of recording of this Declaration. Thereafter this Declaration may be amended, modified or terminated by an instrument signed by the Owners of not less than seventy percent (70%) of the Lots covered by this Declaration.

**11.03 Changes and Amendments.** By written consent of the Declarant for a period ending on the earlier of: (i) the end of the Development Period; or (ii) ten (10) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to a Lot may be waived, modified, or amended for any Lot, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Property and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section 12.03, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification, or amendment.

**11.04 Termination of Status.** Declarant, or its successors or assigns, may terminate its status as Declarant under this Declaration, at any time, by filing a written notice of termination of status as Declarant. Upon and with such filing, the Declarant may appoint a successor, or in the absence of such appointment, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

**11.05 Notices.** Any notices required herein to be delivered to an Owner shall be deemed sufficient if personally delivered to an Owner or if deposited in the United States Mail, by certified or registered mail, prepaid and addressed to the Owner at the residential address assigned to the Owners Lot. The effective date of notices shall be the date of delivery if personally delivered or the date of mailing if mailed.

**11.06 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions hereof, which provisions shall remain in full force and effect.

**11.07 Construction.** The Association shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding on all persons and entities benefited or bound by the provisions of this Declaration.

**11.08 Declarant's Disclaimer.** Declarant makes no warranties or representations that any plans regarding any future phases will be carried out, or that any Lot within any such phase or future phase will be committed to or developed for any particular use. In addition, while Declarant has no reason to believe that any of the provisions of this Declaration are or may be unenforceable, Declarant makes no representations as to enforceability. Declarant shall have no liability for the development of the Property or the enforcement of this Declaration.

**11.09 Headings.** The headings of the Articles and Sections of this Declaration are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

**11.10 Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa.

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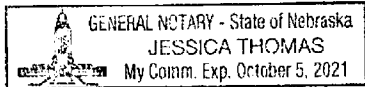
IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the year and day first above written.

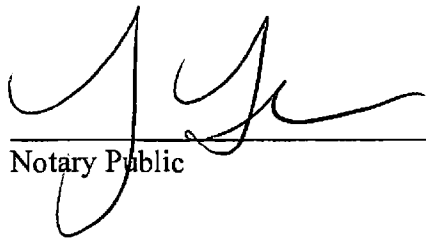
**WISH IN ONE HAND ENTERPRISES, a**  
Nebraska limited liability company

By:   
Carlo Skrupa, Manager

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of February, 2020, by Carlo Skrupa, Manager of WISH IN ONE HAND ENTERPRISES, LLC, a Nebraska limited liability company, on behalf of the company.



  
Notary Public

IN WITNESS WHEREOF, the undersigned has executed this instrument effective as of the date first above written.

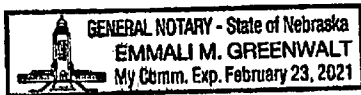
OWNER OF LOT 3:

*Barbara DiGiovanni*

Barbara DiGiovanni

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 11 day of February, 2020, by Barbara DiGiovanni.



*Emmali M. Greenwalt*  
Notary Public

**LENDER'S CONSENT AND SUBORDINATION**

The undersigned, Security National Bank of Omaha, a national banking association ("**Lender**"), being a lien holder in the real estate encumbered by the instruments to which this consent is attached by virtue of one or more Deeds of Trust or other documents ("**Lien Instruments**"), hereby consents to the execution of and recording of such instrument, provided, that by consenting to such instruments (i) such consent does not modify or amend the terms and conditions of the Lien Instruments and related loan documents, and (ii) such Lien Instruments shall remain a lien on the property described therein, provided, that such Lien Instruments shall be bound and subject to such instruments.

Dated effective as of February 2, 2020.

Security National Bank of Omaha, a national banking association

By: James K. Sterling

Print Name: James K Sterling

Its: Sr Vice President

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF Douglas    )

The foregoing instrument was acknowledged before me this 3rd day of February, 2020, by James K. Sterling, the Senior Vice President of Security National Bank of Omaha, a national banking association, on behalf of the association.



Elizabeth G. Jensen  
Notary Public

**EXHIBIT "A"**

**Legal Description**

Lots Lots 1 through 169, inclusive, in Privada, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

## **EXHIBIT "B"**

### **Designated Builder List**

1. Custom Lots:
  - Callaway Homes
  - Fireside Homes
  - Frontier Builders
  - Laid Back Lifestyle Homes
  - Landmark Performance Homes
  - Malibu Homes
  - Sierra Homes
  - VCI Homes
  
2. Estate Lots:
  - Arjay Builders
  - Falcone Homes
  - Frontier Builders
  - Landmark Performance Homes
  - Malibu Homes
  - Nathan Homes
  - R&A Builders
  - Sierra Homes
  - Thomas David Fine Homes
  
3. Villa Lots:
  - Nathan Homes
  - Thomas David Fine Homes
  
4. Acreage Lots:
  - Arjay Builders
  - Falcone Homes
  - Frontier Builders
  - Malibu Homes
  - R&A Builders



**EXHIBIT "C"**

**Lot Designation Schedule**

Custom Lots:	Lots 1 thru 67
Estate Lots:	Lots 68 thru 123
Acreage Lots:	Lots 124 thru 136
Villas Lots:	Lots 137 thru 169