

AMENDED AND RESTATED BYLAWS OF WILSHIRE ESTATES HOMEOWNERS

ASSOCIATION

ARTICLE I

INTRODUCTION

The name of the corporation is Wilshire Estates Homeowners Association., hereinafter referred to as the "Association." The principal office of the Association shall be located initially in Lubbock County, Texas, but meetings of Members and Directors may be held at such places within the State of Texas, County of Lubbock, as may be designated by the Board of Directors as provided in these Amended and Restated Bylaws. These Bylaws amend and restate in their entirety any Bylaws previously adopted by the then Board of Directors of Wilshire Estates Homeowners Association such that any prior versions are hereby null and void.

The Association is organized to be a nonprofit corporation.

Notwithstanding anything to the contrary in these Amended and Restated Bylaws (the "Bylaws"), a number of provisions are modified by the Declarant's reservations in that certain Declaration of Covenants, Conditions and Restrictions For Wilshire Estates Subdivision Unit 1 Planned Unit Development, as amended, recorded in the Official Public Records of Lubbock County, Texas, including the number, qualification, appointment, removal, and replacement of Directors.

ARTICLE II

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in these Bylaws shall have the meanings hereinafter specified:

Section 2.1. Assessment. "Assessment" or "Assessments" shall mean assessment(s) levied by the Association under the terms and provisions of the Declaration.

Section 2.2. Association. "Association" shall mean and refer Wilshire Estates Homeowners Association, a Texas non-profit corporation.

Section 2.3. Association Property. "Association Property" shall mean all real or personal property now or hereafter owned by the Association, including without limitation, all easement estates, licenses, leasehold estates and other interests of any kind in and to real or personal property which are now or hereafter owned or held by the Association.

Section 2.4. Association Rules. "Association Rules" shall mean the rules and regulations adopted by the Board pursuant to the Declaration, as the same may be amended from time to time.

Section 2.5. Board. "Board" shall mean the Board of Directors of the Association.

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Section 2.6. Bylaws. "Bylaws" shall mean the Bylaws of the Association which may be adopted by the Board and as from time to time amended.

Section 2.7. Certificate. "Certificate" shall mean the Articles of Incorporation of Wilshire Estates Homeowners Association, filed in the office of the Secretary of State of the State of Texas, as the same may from time to time be amended.

Section 2.8. Intentionally Omitted.

Section 2.9. Declarant. "Declarant" shall mean **CANTERRA LUBBOCK, LLC.**, a Texas limited liability company, d/b/a Cantera Lubbock, its successors or assigns; provided that any assignment(s) of the rights of **Canterra Lubbock, LLC**, a Texas limited liability company, as Declarant must be expressly set forth in writing and recorded in the Official Public Records of Lubbock County, Texas.

Section 2.10. Declaration. "Declaration" shall mean the "Declaration of Covenants, Conditions and Restrictions For Wilshire Estates Subdivision Unit 1 Planned Unit Development" recorded in the Official Public Records of Lubbock County, Texas, as the same may be amended from time to time.

Section 2.11. Majority. "Majority" shall mean more than half.

Section 2.12. Manager. "Manager" shall mean the person, firm, or corporation, if any, employed by the Association and delegated the duties, powers, or functions of the Association.

Section 2.13. Member. "Member" or "Members" shall mean any person(s), entity or entities holding membership privileges in the Association as provided in the Declaration. This includes Class A and Class B Members.

Section 2.14. Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage(s) or deed(s) of trust covering any portion of the Property given to secure the payment of a debt.

Section 2.15. Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any lien or liens upon any portion of the Property.

Section 2.16. Owner. "Owner" or "Owners" shall mean the person(s), entity or entities, including Declarant, holding a fee simple interest in any Lot, but shall not include the Mortgagee of a Mortgage.

Section 2.17. Property. "Property" shall mean and refer to the property subject to the terms and provisions of the Declaration.

Section 2.18. Restrictions. "Restrictions" means, singularly or collectively as the case may be the Declaration, the Certificate, Bylaws, the Design Guidelines, if any, and any rules and regulations promulgated by the Association pursuant to the Declaration, as adopted and amended from time to time. An appendix, exhibit, schedule, or certification accompanying

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a Restriction is part of a Restriction.

Section 2.19. Verified Mail. "Verified Mail" means any method of mailing for which evidence of mailing is provided by the United States Postal Service.

ARTICLE III

MEMBERSHIP, MEETINGS, QUORUM, VOTING AND PROXIES

Section 3.01. Membership. Each Owner of a Lot is a mandatory Member of the Association, as more fully set forth in the Declaration.

Section 3.02. Place of Meetings. Meetings of the Association shall be held where designated by the Board, either within the Property or as convenient as reasonably possible and practical.

Section 3.03. Annual Meetings. There shall be an annual meeting of the Members of the Association for the purposes of Association-wide elections or votes and for such other Association business at such reasonable place, date and time as set by the Board.

Section 3.04. Special Meetings. Special meetings of Members may be called in accordance with Section 22.155 of the Texas Business Organizations Code or any successor statute.

Section 3.05. Notice.

(a) **Notice of Meeting.** Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting or by publication in a newspaper of general circulation, not less than ten (10) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President, the Secretary, or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage prepaid.

(b) **Notice of Election or Vote Outside of Meeting.** For an election or vote of Members not taken at a meeting, the Association shall give notice of the election or vote to all Members entitled to vote on any matter under consideration. The notice shall be given not later than the twentieth (20th) day before the latest date on which a ballot may be submitted to be counted.

Section 3.06. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called

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to order. Attendance at a special meeting by a Member shall be deemed a waiver of notice of all business transacted at such meeting unless an objection by a Member on the basis of lack of proper notice is raised before the business is put to a vote.

Section 3.07. Quorum. Except as provided in these Bylaws or in the Declaration, the presence of the Members representing twenty (20%) of the total votes in the Association shall constitute a quorum at all Association meetings. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members to leave less than a quorum, provided that Members representing at least ten percent (10%) of the total votes in the Association remain in attendance, and provided that any action taken is approved by at least a Majority of the votes present at such adjourned meeting, unless otherwise provided in the Declaration.

Section 3.08. Conduct of Meetings. The President or any other person appointed by the Board shall preside over all Association meetings, and the Secretary, or the Secretary's designee, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 3.09. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated by reference. Except as otherwise provided in the Declaration, action may be taken at any legally convened meeting of the Members upon the affirmative vote of the Members having a Majority of the total votes present at such meeting in person or proxy or by absentee ballot or electronic voting, if such votes are considered present at the meeting as further set forth herein. Cumulative voting shall not be allowed. The person holding legal title to a Lot shall be entitled to cast the vote allocated to such Lot and not the person merely holding beneficial title to the same unless such right is expressly delegated to the beneficial Owner thereof in writing. **Any provision in the Association's governing documents that would disqualify an Owner from voting in an Association election of Board Members or on any matter concerning the rights or responsibilities of the Owner is void.**

Section 3.10. Methods of Voting: In Person; Proxies; Absentee Ballots; Electronically. The voting rights of a Member may be cast or given (i) in person or by proxy at a meeting of the Association, (ii) by absentee ballot, or (iii) by electronic ballot. Any vote cast by a Member of the Association must be in writing and signed by the Member. Electronic votes constitute written and signed ballots. In an Association-wide election, written and signed ballots are not required for uncontested races. Votes shall be cast as provided in this section:

(a) **Proxies.** Any Member may give a revocable written proxy in the form as prescribed by the Board from time to time to any person authorizing such person to cast the Member's vote on any matter. A Member's vote by proxy is subject to any limitations of Texas law relating to the use of general proxies and subject to any specific provision to the contrary in the Declaration or these Bylaws. No proxy shall be valid unless signed by the Member for which it is given or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Proxies shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall a proxy be valid more than eleven (11) months after the effective date of the proxy.

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Every proxy shall be revocable and shall automatically cease upon conveyance of the Lot for which it was given.

(b) Absentee and Electronic Ballots. An absentee or electronic ballot: (i) may be counted as a Member present and voting for the purpose of establishing a quorum only for items appearing on the ballot; (ii) may not be counted, even if properly delivered, if the Member attends any meeting to vote in person, so that any vote cast at a meeting by a Member supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and (iii) may not be counted on the final vote of a proposal if the proposal was amended at the meeting to be different from the exact language on the absentee or electronic ballot. For purposes of this *Section 3.10(b)*, a nomination taken from the floor in a Board member election shall not be considered an amendment to the proposal for the election.

(i) *Absentee Ballots.* No absentee ballot shall be valid unless it is in writing, signed by the Member for which it is given or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Absentee ballots shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall an absentee ballot be valid after the specific meeting or lawful adjournment of such meeting at which such ballot is counted or upon conveyance of the Lot which it was given. Any solicitation for votes by absentee ballot must include:

- a. an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;
- b. instructions for delivery of the completed absentee ballot, including the delivery location; and
- c. the following language: *"By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."*

(ii) *Electronic Ballots.* "Electronic ballot" means a ballot: (a) given by email, facsimile or posting on a website; (b) for which the identity of the Member submitting the ballot can be confirmed; and (c) for which the Member may receive a receipt of the electronic transmission and receipt of the Member's ballot. If an electronic ballot is posted on a website, a notice of the posting shall be sent to each

Member that contains instructions on obtaining access to the posting on the website.

Section 3.11. Tabulation of and Access to Ballots. A person who is a candidate in an Association election or who is otherwise the subject of an Association vote, or a person related to that person within the third degree by consanguinity or affinity, may not tabulate or otherwise be given access to the ballots cast in that election or vote. A person tabulating votes in an Association election or vote, or who performs a recount pursuant to *Section 3.12(a)* below, may not disclose to any other person how an individual voted. This *Section 3.11* may not be construed to affect a person's obligation to comply with a court order for the release of ballots or other voting records.

Section 3.12. Recount of Votes. Any Member may, not later than the fifteenth (15th) day after the date of any meeting at which the election or vote was held or the date of the announcement of the results of the election or vote, require a recount of the votes. A demand for a recount must be submitted in writing either: (i) by Verified Mail or by delivery by the U.S. Postal Service with signature confirmation service to the Association's mailing address as reflected on the latest management certificate; or (ii) in person to the Association's managing agent as reflected on the latest management certificate or to the address to which absentee and proxy ballots are mailed. The Association must estimate the costs for performance of the recount by a person qualified to tabulate votes under Section 209.0057 of the Texas Residential Property Owners Protection Act (the "Act") and must send an invoice for the estimated costs to the requesting Member at the Member's last known address according to the Association's records not later than the twentieth (20th) day after the date the Association receives the Member's demand for the recount. The Member requesting the recount will be required to pay such invoice in full to the Association on or before the thirtieth (30th) day after the date the invoice is sent to the Member. If such invoice is not paid on or before the thirtieth (30th) day after the date the invoice is sent to the Member, the Member's demand for a recount is considered withdrawn and a recount is not required. If the estimated costs for performance of the recount of votes are lesser or greater than the actual costs, the Association must send a final invoice to the Member on or before the thirtieth (30th) business day after the date the results of the recount are provided. If the final invoice includes additional amounts owed by the Member, any additional amounts not paid to the Association before the thirtieth (30th) business day after the date the final invoice is sent to the Member may be added to the Member's account as an Individual Assessment (as defined in the Declaration). If the estimated costs exceed the final invoice amount, the Association shall refund the overpayment to the Member at the time the final invoice is sent to the Member.

(a) **Vote Tabulator.** Following receipt of payment under Section 209.0057 of the Texas Property Code, at the expense of the Member requesting the recount, the Association shall retain, for the purpose of performing the recount, the services of a person qualified to tabulate votes; namely, the Association shall enter into a contract for the services of a person who: (i) is not a Member of the Association or related to a member of the Board within the third degree by consanguinity or affinity; and (ii) is

either a person agreed on by the Association and each person requesting a recount or is a current or former county judge, county elections administrator, justice of the peace or county voter registrar.

(b) Completion of Recount: Reimbursement for Recount Expenses. On or before the thirtieth (30th) day after the Association has received payment for the recount in accordance with this *Section 3.12*, the recount must be completed and the Association must provide notice of the results of the recount to each Member who requested the recount. If the recount changes the results of the election, the Association shall, not later than the thirtieth (30th) day after the results of the recount have been provided, reimburse the requesting Member for the cost of the recount to the extent such costs were previously paid by such Member to the Association.

(c) Board Action. Any action taken by the Board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

Section 3.13. Action Without a Meeting . Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated, and delivered to the Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.1. Authority: Number of Directors.

(a) The affairs of the Association shall be governed by the Board. The number of Directors shall be fixed by the Board from time to time. The initial Directors shall be three (3) in number and shall be those Directors named in the Certificate. The initial Directors shall serve until their successors are elected and qualified.

(b) Intentionally Omitted.

(c) At a time designated by Declarant, but no later than when Declarant no longer owns Lots, the Declarant will thereupon call a meeting of the Members of the Association

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where the Declarant-appointed Directors will resign and the Members will elect three (3) new directors (to replace all Declarant appointed Directors) (the "**Member Election Meeting**"), one (1) Director for a three (3) year term, one (1) Director for a two (2) year term, and one (1) Director for a one (1) year term (with the individual receiving the highest number of votes to serve the three (3) year term, the individual receiving the next highest number of votes to serve the two (2) year term, and the individual receiving the third highest number of votes to serve a one (1) year term). Upon expiration of the term of a Director elected by the Members pursuant to this *Section 4.1(c)*, his or her successor will be elected for a term of two (2) years.

(d) A Director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

(e) Each Director, other than Directors appointed by Declarant, shall be a Member, or in the case of corporate, partnership, or other entity ownership of a Lot, a duly authorized agent or representative of the corporation, the partnership, or other entity which owns the Lot. The corporate, partnership, or other entity Owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors.

Section 4.2. Compensation. The Directors shall serve without compensation for such service. As determined by the Board, Directors may be reimbursed for any reasonable and necessary out-of-pocket expenses.

Section 4.3. Nominations to Board of Directors. Members may be nominated for election to the Board of Directors in either of the following ways:

(a) A Member who is not a Director and who desires to run for election to that position shall be deemed to have been nominated for election upon his filing with the Board of Directors a written petition of nomination; or

(b) A Director who is eligible to be re-elected shall be deemed to have been nominated for re-election to the position he holds by signifying his intention to seek reelection in a writing addressed to the Board of Directors.

Section 4.4. Removal of Directors. Subject to the right of Declarant to nominate and appoint Directors as set forth in *Section 4.1* of these Bylaws: (a) an elected Director may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast in the Association; and (b) if a Director breaches such Director's duties hereunder or violates the terms of the Restrictions, such Director may be removed by a Majority vote of the remaining Directors.

Section 4.5. Vacancies on Board of Directors. At such time as Declarant's right to appoint and remove Directors has expired or been terminated, if the office of any elected Director shall become vacant by reason of death, resignation, or disability, the remaining Directors, at a special meeting duly called for this purpose, shall choose a successor who shall fill the unexpired term of the directorship being vacated. If there is a deadlock in the voting for a

successor by the remaining Directors, the one Director with the longest continuous term on the Board shall select the successor. At the expiration of the term of his position on the Board of Directors, the successor Director shall be re-elected or his successor shall be elected in accordance with these Bylaws. Except with respect to Directors appointed by the Declarant, any Board Member whose term has expired or who has been removed from the Board must be elected by the Members.

Section 4.6. Eligibility for Board Membership. With the exception of Board member positions appointed by the Declarant as permitted by the Declaration, the Association may not restrict an Owner's right to run for a position on the Board, except as provided by Section 209.00591 of the Texas Property Code.

ARTICLE V

MEETINGS OF DIRECTORS

Section 5.1. Definition of Board Meetings. A meeting of the Board means a deliberation between a quorum of the Board, or between a quorum of the Board and another person, during which Association business is considered and the Board takes formal action.

Section 5.2. Regular Meetings. Regular meetings of the Board shall be held annually or such other frequency as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board.

Section 5.3. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director.

Section 5.4. Quorum. A Majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a Majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.

Section 5.5. Open Board Meetings. All regular and special Board meetings must be open to Owners, subject to the right of the Board to adjourn a meeting and reconvene in a closed executive session to consider actions involving: (a) personnel; (b) pending or threatened litigation; (c) contract negotiations; (d) enforcement actions; (e) confidential communications with the Association's attorney; (f) matters involving the invasion of privacy of individual Owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made by the Board in executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual Owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

Section 5.6. Location. Except if otherwise held by electronic or telephonic means, a Board meeting must be held in the county in which all or a part of the property in the subdivision

is located or in a county adjacent to that county, as determined in the discretion of the Board.

Section 5.7. Record: Minutes. The Board shall keep a record of each regular or special Board meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

Section 5.8. Notices. Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be: (a) mailed to each Member not later than the tenth (10th) day or earlier than the sixtieth (60th) day before the date of the meeting; **or** (b) provided at least seventy-two (72) hours before the start of the meeting by: (i) posting the notice in a conspicuous manner reasonably designed to provide notice to Members in a place located on the Association's common area or on any website maintained by the Association; and (ii) sending the notice by e-mail to each Member who has registered an e-mail address with the Association. It is the Member's duty to keep an updated e-mail address registered with the Association. The Board may establish a procedure for registration of email addresses, which procedure may be required for the purpose of receiving notice of Board meetings. If the Board recesses a regular or special Board meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special Board meeting is continued to the following regular business day, and on that following day the Board continues the meeting to another day, the Board shall give notice of the continuation in at least one manner as set forth above within two (2) hours after adjourning the meeting being continued.

Section 5.9. Action without Prior Notice. The Board may take action outside of a meeting, including by electronic or telephonic means, without prior notice to the Members if each Board member is given a reasonable opportunity to express the Board member's opinion to all other Board members and to vote. Any action taken without notice to Members must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting. The Board may not, unless done in an open meeting for which prior notice was given to Members pursuant to *Section 5.8* above, consider or vote on: (a) fines; (b) damage assessments; (c) initiation of foreclosure actions; (d) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; (e) increases in Assessments; (f) levying of Special Assessments; (g) appeals from a denial of architectural control approval; (h) a suspension of a right of a particular Member before the Member has an opportunity to attend a Board meeting to present the Member's position, including any defense, on the issue; (i) lending or borrowing money; (j) the adoption or amendment of a dedicatory instrument (as defined in Section 209.002 of the Texas Property Code) of the Association; (k) the approval of an annual budget or an annual budget that increases the budget by more than ten percent (10%); (l) the sale or purchase of real

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property; (m) the filling of a vacancy on the Board; (n) the construction of capital improvements other than the repair, replacement or enhancement of existing capital improvements; or (o) the election of an officer.

Section 5.10. Telephone and Electronic Meetings. A regular or special meeting of the Board may be held by electronic or telephonic means provided that: (a) each Board member may hear and be heard by every other Board member; (b) except for any portion of the meeting conducted in executive session as provided in *Section 5.5* above, (i) all Members in attendance at the meeting may hear all Board members and (ii) Members are allowed to listen using any electronic or telephonic communication method used or expected to be used by a Board member to participate; and (c) the notice of the meeting includes instructions for Members to access any communication method to be used or expected to be used by a Board member to participate in the meeting. Participation in such a meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.11. Consent in Writing. To the extent permitted by the Act and these Bylaws, any action required to be taken at a meeting of the Directors or a committee, or any action that may be taken at a meeting of the Directors or a committee, may be taken without a meeting if a written consent, stating the action to be taken, is signed by the number of Directors or committee members necessary to take that action at a meeting at which all of the Directors or committee members are present and voting. The consent must state the date of each Director's or committee member's signature. Prompt notice of the taking of an action by Directors or a committee without a meeting by less than the unanimous written consent shall be given to each Director or committee member who did not consent in writing to the action. The written consent must be filed with the minutes of Board meetings. Action by written consent shall be in lieu of a regular or special meeting of the Board and has the same force and effect as a duly called and convened special or regular meeting of the Board at which a quorum is present.

Section 5.12. Development Period. The provisions of this *Article V* do not apply to Board meetings during the time the Declarant elected Board members are in place unless the meeting is conducted for the purpose of: (a) adopting or amending the Restrictions; (b) increasing the amount of Regular Assessments of the Association or adopting or increasing a Special Assessment; (c) electing non-developer Board members or establishing a process by which those members are elected; or (d) changing the voting rights of Members. For the avoidance of doubt, during this time, the Board may take action by written consent in lieu of a meeting with respect to any matter other than those described in (a) - (d) of this *Section 5.12*.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD

Section 6.1. Powers. The Board shall have power and duty to undertake any of the following actions, in addition to those actions to which the Association is authorized to take in accordance with the Declaration:

- (a) Adopt and publish the Association Rules, including regulations governing the use

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of the Association Property and facilities , and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

- (b) Suspend the right of a Member to use of the Association Property during any period in which such Member shall be in default in the payment of any Assessment levied by the Association, or after notice and hearing, for any period during which an infraction of the Association Rules by such Member exists;
- (c) Exercise for the Association all powers, duties and authority vested in or related to the Association and not reserved to the membership by other provisions of the Declaration;
- (d) To enter into any contract or agreement with a municipal agency or utility company to provide electric utility service to all or any portion of the Property;
- (e) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;
- (f) Employ such employees as they deem necessary, and to prescribe their duties;
- (g) As more fully provided in the Declaration, to:
 - i. Fix the amount of the Assessments against each Lot in advance of each annual assessment period and any other Assessments provided by the Declaration; and
 - ii. Foreclose the lien against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;
- (h) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid and to levy a reasonable charge for the issuance of these certificates (it being understood that if a certificate states that an Assessment has been paid, such certificate shall be conclusive evidence of such payment);
- (i) Procure and maintain adequate liability and hazard insurance on Association Property;

- (j) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and
- (k) Exercise such other and further powers or duties as provided in the Declaration or by law.

ARTICLE VII

OFFICERS AND THEIR DUTIES

Section 7.1. Enumeration of Offices. The officers of the Association shall be a President and one or more Vice-Presidents, who shall at all times be members of the Board, a Secretary, and such other officers as the Board may from time to time create by resolution. Any two (2) or more offices, other than the offices of president and secretary, may be held by the same person.

Section 7.2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 7.3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he resigns sooner, or shall be removed or otherwise disqualified to serve.

Section 7.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 7.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.6. Vacancies. A vacancy in any office may be filled through appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to *Section 7.4.*

Section 7.8. Duties. The duties of the officers are as follows:

- (a) **President.** The President shall preside at all meetings of the Board; shall see that

orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

- (b) Vice President. The Vice President, if any, shall generally assist the President and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him by the President or the Board.
- (c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.
- (d) Assistant Secretaries. Each Assistant Secretary shall generally assist the Secretary and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him or her by the Secretary, the President, the Board or any committee established by the Board.
- (e) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account in appropriate form such that they could be audited by a public accountant whenever ordered by the Board or the membership; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular meeting, and deliver a copy of each to the Members.

Section 7.9. Execution of Instruments. Except when the Restrictions require execution of certain instruments by certain individuals, the Board may authorize any person to execute instruments on behalf of the Association, including without limitation checks from the Association's bank account. In the absence of Board designation, and unless otherwise provided herein, the President and the Secretary are the only persons authorized to execute instruments on behalf of the Association.

ARTICLE VIII

OTHER COMMITTEES OF THE BOARD OF DIRECTORS

The Board may, by resolution adopted by affirmative vote of a Majority of the number of Directors fixed by these Bylaws, designate two or more Directors (with such alternates, if any, as may be deemed desirable) to constitute another committee or committees for any purpose; provided, that any such other committee or committees shall have and may exercise only the power of recommending action to the Board of Directors and of carrying out and implementing any instructions or any policies, plans, programs and rules theretofore approved, authorized and adopted by the Board.

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ARTICLE IX

BOOKS AND RECORDS

Section 9.1. Availability. The Association shall make the books and records of the Association, including financial records, open to and reasonably available for examination and copying by an Owner, or a person designated in a writing signed by the owner as the Owner's agent, attorney, or certified public accountant, subject to restrictions permitted by Texas Property Code Section 209.005 and to the Records Retention, Inspection and Copying Policy promulgated by the Board in accordance with Texas Property Code Section 209.005(i) and recorded in the Official Public Records of Collin County, as same may be amended from time to time by the Board.

ARTICLE X

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association Assessments which are secured by a continuing lien upon the property against which the Assessments are made. Assessments shall be due and payable in accordance with the Declaration.

ARTICLE XI

CORPORATE SEAL

The Association may, but shall have no obligation to, have a seal in a form adopted by the Board.

ARTICLE XII

AMENDMENTS

These Bylaws may be amended by: (a) the Declarant until such time as Declarant no longer owns any Lots; (b) a Majority vote of the Board with the advance written consent of the Declarant, if Declarant still owns Lots; or (c) a Majority vote of the Board (only when Declarant no longer owns Lots), provided such amendment does not conflict with the Declaration.

ARTICLE XIII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify every Director and officer of the Association and every member of any committee (each a "Committee Member"), and reimburse and advance to every Director, officer and Committee Member for, all liabilities, costs and expenses incurred in

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connection with such directorship or office and any actions taken or omitted in such capacity (INCLUDING ALL LIABILITIES, COSTS AND EXPENSES ARISING FROM THE NEGLIGENCE OF ANY DIRECTOR, OFFICER OR COMMITTEE MEMBER) to the greatest extent permitted under the Texas Business Organizations Code and all other applicable laws at the time of such indemnification, reimbursement or advance payment; provided, however, no Director, officer or Committee Member shall be indemnified for: (a) a breach of duty of loyalty to the Association or its Members; (b) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law; (c) a transaction from which such Director, officer or Committee Member received an improper benefit, whether or not the benefit resulted from an action taken within the scope of directorship or office; or (d) an act or omission for which the liability of such Director, officer or Committee Member is expressly provided for by statute.

ARTICLE XIV

MISCELLANEOUS

Section 14.1. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 14.2. Users of these Bylaws should also review statutes and court rulings that may modify or nullify provisions of this document or its enforcement, or may create rights or duties not anticipated by these Bylaws.

Section 14.3. In the case of any conflict between the Certificate and these Bylaws, the Certificate shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control. In the case of any conflict between these Bylaws and any provision of the applicable laws of the State of Texas, the conflicting aspect of the Bylaws provision is null and void, but all other provisions of these Bylaws remain in full force and effect.


Section 14.4. The effect of a general statement is not limited by the enumerations of specific matters similar to the general. The captions or articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. The singular is construed to mean the plural, when applicable, and the use of masculine or neuter pronouns includes the feminine.

Section 14.5. No restriction, condition, obligation, or covenant contained in these Bylaws may be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

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CERTIFICATION

I, the undersigned, the duly elected and acting Secretary of Wilshire Estates Homeowners Association, a Texas non-profit corporation, do hereby certify that the foregoing Amended and Restated Bylaws were adopted by the Board of Directors of the Association as the Bylaws of said Association as of the 4th day of February, 2019.



Dusti Carter Secretary