

**Grayson County  
Deana Patterson  
County Clerk  
Sherman, TX 75090**

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**Instrument Number:** 2023 - 22962

ERecordings-RP

**Recorded On:** August 29, 2023 02:17 PM

**Number of Pages:** 77

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**" Examined and Charged as Follows: "**

Total Recording: \$316.00

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**File Information:**

**Document Number:** 22962  
**Receipt Number:** 20230829000113  
**Recorded Date/Time:** August 29, 2023 02:17 PM  
**User:** Linda D  
**Station:** CC18

**Record and Return To:**

Simplifile  
100 W. Houston Ste. 17  
  
Sherman TX 75090



STATE OF TEXAS  
COUNTY OF GRAYSON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Grayson County, Texas.

Deana Patterson  
County Clerk  
Grayson County, TX

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LINCOLN POINTE**

STATE OF TEXAS           §  
  §           KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF GRAYSON   §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LINCOLN POINTE (as may be amended, modified and/or supplemented from time to time, the "Declaration") is made by LINCOLN POINTE DEVELOPMENT, LLC, a Texas limited liability company ("Declarant").

**WITNESSETH:**

Declarant, as the owner of the real property described in **Exhibit A**, intends by recording this Declaration in the Official Public Records of Grayson County, Texas, to create a general plan of development for a single-family home planned community known or to be known as the "Lincoln Pointe Homeowner's Association" (the "Subdivision") which shall consist of approximately 86± single family Lots consisting of approximately 35.465± Acres which shall make up the real property subject to this Declaration. This Declaration provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the Property (as hereinafter defined). An integral part of the development plan is the creation of a non-profit Homeowners Association or other named non-profit corporation formed to perform the duties of the "Association" hereunder, whose members shall be all owners of real property subject to this Declaration, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce the covenants, conditions, restrictions, and easements set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the property described in **Exhibit A**, and any additional property which is subjected to this Declaration in the future in accordance with this Declaration, shall be owned, conveyed, used, occupied, and otherwise encumbered subject to this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

**ARTICLE I  
DEFINITIONS**

The terms used in this Declaration are intended to have their normal, commonly understood definitions, unless otherwise specified. To minimize repetition, avoid confusion, and explain key concepts, some terms are capitalized to indicate they have special definitions. Whenever used in capitalized form, those terms have the following meanings:

- (a) “Architectural Control Committee” may also be referred to as “ACC” or “Architectural Review Committee” (“ARC”) any variation of which may be used interchangeably throughout this Declaration and its Construction and Design Guidelines and shall mean and refer to the architectural review body for the Property, as described in Article III. During the Development Period (as defined below), Declarant reserves the right to appoint and remove members of the architectural review body or to exercise the approval rights of the ACC directly or through its designee, as more specifically set forth in Article III hereof.
- (b) “Assessments” shall have the meaning ascribed to such terms in Section 10.1 below.
- (c) “Association” shall mean and refer to Lincoln Pointe Homeowner’s Association, Inc., a Texas non-profit corporation, whose Certificate of Formation and Organizational Consent including Bylaws are attached hereto as Exhibit D, and which shall have the right to enforce this Declaration.
- (d) “Board of Directors” or “Board” shall mean and refer to the body selected as provided in the Bylaws, being responsible for the general governance and administration of the Association and this Declaration. The initial Board shall be those individuals set forth in the Certificate of Formation of the Association. ***The Board shall consist of only three (3) people. Declarant has the sole right to appoint and remove all Directors to the Board,*** provided that prior to the date which is the earlier of (i) one hundred-twenty (120) days after seventy-five (75%) of the Lots have been sold to non-Declarant Owners, or (ii) ten (10) years from the date on which the Declaration is recorded, at least 1/3 of the directors serving on the Board shall be person(s) elected by a majority vote of Class A Members at a meeting of the members at which quorum is present, in person or by proxy, as set forth in the Bylaws of the Association. Each Director, other than Directors appointed by Declarant, shall be a Member and resident, or in the case of corporate or partnership ownership of a Lot, a duly authorized agent or representative of the corporate or partnership Owner. The corporate, or partnership Owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors. The duties of the Board during the Declarant Control Period may be limited by the Declarant.
- (e) “Builder” shall mean and refer to any person or entity who has acquired a Lot or Lots for the purpose of constructing a residence thereon for later sale to consumers.
- (f) “Bylaws” shall mean and refer to the Bylaws of Lincoln Pointe Homeowner’s Association, Inc., approved by Declarant and Board of Directors and attached hereto as Exhibit D, as may be amended from time to time.
- (g) “City” Lincoln Pointe is an addition to the city of Van Alstyne, Texas.
- (h) “Common Properties” shall mean all real property (including improvements thereon) now or hereafter owned, leased or controlled by the Association, or to which the Association holds possessory or use rights, for the common use and enjoyment of the Owners (hereinafter defined) including, but not limited to such property which may be: (i) conveyed to the Association in fee simple title, (ii) leased to the Association, (iii) landscape or maintenance easements granted or dedicated to the Association by plat or other written instrument, (iv) owned or leased by the

Association and restricted or dedicated for use as retention ponds within the Property or for surface drainage in support of the Subdivision and improvements therein, and (vi) any other real property or improvement the Association, at the sole discretion of the Board, decides to maintain. The Common Properties shall include all fixtures and improvements on the land constituting common areas, including, without limitation, landscaping, buffering, screening, irrigation, and associated improvements that are Common Properties next to public thoroughfares. Declarant is under no obligation to construct or provide common elements or amenities and any such common areas, elements, amenities, or other improvements installed, constructed by the Declarant shall become the property of the Association and the Association shall accept all such property in its "AS IS" condition. Membership in the Association and payment of Assessments are not contingent upon the provision of or construction of any common element or amenity. Membership for all Lot Owners and payment of Assessments is mandatory.

(i) "County" shall mean and refer to Grayson County, Texas.

(j) "Declarant" shall mean and refer to Lincoln Pointe Development, LLC, a Texas limited liability company, but also any successor, alternate or additional Declarant as appointed by Declarant as successor, alternate or additional Declarant by written instrument, filed of record in the office of the County Clerk, specifically setting forth that such successor, alternate or additional Declarant is to have, in whole or in part, together with Lincoln Pointe Development, LLC, Declarant's rights, duties, obligations and responsibilities for all or a specific portion of the Property. The term "Declarant" shall not include any person or entity that purchases a Lot from Declarant unless such purchaser is specifically assigned, by a separate recorded instrument, some, or all of Declarant's rights under this Declaration as to the conveyed property.

(k) "Declarant Control Period" means the period of time commencing on the date of this Declaration and continuing through and including the earlier of (i) the date on which Declarant owns at least one (1) Lot held for the purpose of sale, or (ii) the date which is twenty (20) years after recordation of this Declaration in the Official Public Records of Grayson County, Texas, or (iii) the date of recording in the Official Public Records of Grayson County, Texas, of a notice signed by Declarant terminating the Declarant Control Period.

(l) "Design Guidelines" shall mean and refer to the **Construction and Design Guidelines standards set forth in Exhibit C** and those guidelines adopted by Declarant, as may be amended in accordance with Article III, representing in whole or in part, along with further or additional guidelines as they may be set forth in this Declaration, the minimum specifications for the construction of all residences, additions to such residences, and other improvements associated with each residence including, without limitation, other structures or improvements located, installed, or placed on a residential Lot, and the minimum requirements for landscaping to be installed and maintained on each Lot. The Construction and Design Guidelines are an integral part of this Declaration and the development plan of Lincoln Pointe. The initial Construction and Design Guidelines are attached hereto as **Exhibit C**. All Builders and prospective Owners or those desirous of constructing a residence on a Lot are strongly encouraged to obtain a current copy of the Construction and Design Guidelines prior to preparing plans and specifications for submission to the Reviewer for approval.

(m) “Development Period” shall be the period commencing on the date of this Declaration and ending on the earlier of (i) Fifty (50) years after recordation of this Declaration in the Official Public Records of Grayson County, Texas, or (ii) the date of recording in the Official Public Records of Grayson County, Texas, of a notice signed by Declarant terminating the Development Period.

(n) “Final Plat” shall mean, initially, the map or plat of Lincoln Pointe, filed or to be filed in the Official Public Records of the Grayson County Texas, and recorded in the Plat Records of Grayson County, Texas, and any future recorded subdivision maps or plats covering any portion of the Property or additional real property made subject to this Declaration, as such Final Plats may be amended from time to time.

(o) “Governing Documents” shall mean and refer to, singly or collectively as the case may be, this Declaration, the Final Plat, the Bylaws, the Association's certificate of formation and/or Articles of Incorporation, and the rules of the Association, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Governing Document is a part of that Governing Document. All Governing Documents are to be recorded in every county in which all or a portion of the Property is located. The Governing Documents are Dedicatory Instruments as defined in Texas Property Code Section 202. Copies of the Association's Certificate of Formation, organizational consent of the initial directors, Bylaws and Association Policies are attached hereto as Exhibit D.

(p) “Lot” shall mean and refer to any one (1) of the enumerated plots or tracts of land shown upon a Final Plat, and “Lots” shall mean and refer to more than one (1) of same; provided, however, Common Properties shall in no event be treated as a Lot or Lots for purposes of this Declaration and are hereby specifically excluded from the term “Lot” as used hereunder.

(q) “Member” shall mean and refer to a member of the Association, as described in Article VIII.

(r) “Owner” shall mean and refer to each and every person or business entity (whether one or more), including Declarant (so long as applicable), that is a record owner of a fee or undivided fee interest in any Lot; provided, however, that (i) the term “Owner” or “Owners” shall not include any person or entity who holds a bona fide lien or interest in a Lot as security merely for the performance of an obligation (specifically including, but not limited to, any mortgagee or trustee under a mortgage or deed of trust) unless and until such mortgagee, beneficiary or trustee has acquired title to such Lot pursuant to foreclosure or any proceeding in lieu thereof; and (ii) with respect to any matter requiring the vote, consent, approval or other action of an Owner, each Lot shall be entitled to only one (1) vote except as provided for Declarant and/or Class B Member in Section 8.2 and Section 15.6 herein.

(s) “Phase” shall mean and refer to each separately developed residential area or addition as set forth and more fully described on a Final Plat depicting real property that has been subjected to the Declaration.

(t) “Property” shall mean and refer to the real property described on Exhibit A, any improvements now or hereafter situated thereon, and all additional real property (and the improvements thereon) which Declarant hereafter subjects to this Declaration, in accordance with Article XIV hereof.

(u) “Reviewer” shall mean the architectural reviewer(s) and refer to the persons or entity having jurisdiction in a particular case to approve plans and/or specifications under Article III of this Declaration, whether Declarant or its designee or the ACC.

(v) “Supplemental Declaration” shall mean a recorded instrument which accomplishes one or more of the following purposes: (i) subjects’ additional real property to this Declaration, or (ii) imposes, expressly or by reference, additional restrictions, covenants, easements and/or rights and obligations on the land described.

## ARTICLE II

### CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

#### Section 2.1 Residential Use.

The Property shall be used for single-family residential purposes; a living quarter for the family and family units which shall be always the primary purpose and use of a residence. Small home office type businesses are allowed however, they must be undetectable with no signs or advertisement of any kind allowed. Home offices or businesses may not generate traffic or excessive visits to the residence, nor shall it generate noise, odor, or otherwise be a nuisance of any kind. Residences are for the purpose of single-family living, and this shall be the primary use and focus of all residences within the Association. The Board has the sole authority to determine what home-based business will be allowed. No building or other structure shall be erected, altered, placed, or permitted to remain upon any Lot other than one (1) detached single-family residence per Lot. Any building or structure to be placed or constructed on a Lot is subject to approval in writing by the Reviewer under Article III.

#### Section 2.2 Single-Family Use.

##### Section 2.2.1 Generally.

Except as provided in Section 2.2.2 below, (a) each residence may be occupied only by persons living and cooking together as a single housekeeping unit, together with any household employees, and (ii) except for families consisting of persons related by blood, adoption, or marriage (a “Family Unit”), no more than two persons per bedroom may occupy the same residence on a regular and consistent basis.

##### Section 2.2.2 Leasing, Conduct, and Responsibility.

During the Declarant Control Period no leasing of a residence or leasing restrictions may be adopted or enforced without the express written consent of the Declarant. No Lot

sold by the Declarant to a Builder or a Builder to the "initial purchaser" shall be subject to leasing restrictions. Any Lot sold by the Declarant, or a Builder during the Declarant Control Period may not be counted by the Association as part of the percentage of leases or rental allowed under this Section 2.2.2. Notwithstanding, if the initial purchaser (excluding Builders) later sells the Lot, the Association shall be able to enforce leasing restrictions against the property. Regardless of who is purchasing the Lot absolutely no VRBO's, Air B-and-B's, Vacation Rentals, Home Swapping, or any other form of short-term rentals are allowed. After the Declarant Control Period, the Association shall have the right to enforce leasing restrictions and limits. As a rule, unless the Association, acting through its Board, determines a different percentage, no more than fifteen percent (15%) of the residences within Lincoln Pointe shall be eligible for lease or rent.

Homeowners who rent or lease their residence are required to execute a written lease agreement, signed by the tenant, and must return at least two forms; an updated homeowner and a new tenant information sheet. The Board is under no obligation to approve a lease without submission of the forms listed above. After the Declarant Control Period, the Board of Directors shall have sole authority to determine when a circumstance warrants, any variance or exception to the rules outlined in this Section 2.2.2. All leases shall be reviewed and considered on a case-by-case basis. Owners should screen their prospective tenants and diligently seek persons who will conduct themselves with respect and comply with the restrictions, rules, and regulations as an Owner of a residence would.

Although this Section is designed to address leasing and the responsibility of tenants, occupants, guests, and invitees and the responsibility of an Owner to ensure tenants are conducting themselves properly, the restrictions and rules outlined herein are for all Owners, residents, occupants, guests, or invitees regardless of whether a residence is leased or not and may be enforced any time circumstances would warrant. For the preservation of the community and the right of all Owners to peaceful living inside their residence and to enjoy activities outside their home all persons have a measure of responsibility to conduct themselves and keep their surroundings in a manner that does not interfere with that right. No Owner, resident, tenant, occupant, guest, or invitee should conduct themselves in a manner that is disorderly, disrespectful or causes disruptions which threaten the enjoyment and harmonious living among the neighborhoods as well as enjoyable use of the common areas, elements, or amenities. Destruction of property or harm to any person, animal, or thing is subject to immediate notice of violation and fine. Such conduct from the tenant and other occupants within a leased home will be reported to the Owner and the Owner will be responsible for gaining the compliance of his tenant. Failure of the Owner to comply may result in the Board requesting the Owner to exercise the eviction rights under the lease agreement.

Owners leasing their homes to tenants who conduct themselves in any such manner is subject to an immediate fine (after notice of fine is placed in the U.S. mail for delivery by certified mail) of \$1,000.00, depending upon the severity of the violation or infraction, and an additional \$500.00 for every month the tenants or occupants responsible for such conduct, remain in the residence.

**The lease shall contain, at minimum, the following:**

- (a) Term of Lease. The initial term of the lease shall not be less than one (1) year without the express written consent of the Board.
- (b) Entire Residence. The property leased includes the entire residence.
- (c) Single Family. Lease is restricted to single family per Section 2.2.1 above. Owner shall provide to the Association or its managing agent the names and contact information for the tenants.
- (d) Abide by Rules. The Owner must make available to the tenant copies of the CCR's, Rules and Regulations, and all amendments thereto. The tenant must agree to abide by all the Association's rules and must acknowledge that failure to do so may constitute a default under the lease terms and agreement. The owner must obtain a signed acknowledgment from the tenant that this section of the CCR's has been explained in detail. The Tenant shall not be allowed access to any secured areas of the Association's website or other official social media platforms. Owner shall not allow tenant to use their secure log in information to access information on any secured platform established for homeowner use only or owned and/or operated by the Association or its managing agent.
- (e) Restrictions on Subleasing or Assignment. No assignment or sub leasing is allowed.
- (f) Renters Insurance Required. Tenants must carry renter's insurance.
- (g) Maintenance. The owner shall always be responsible for his tenant and the maintenance and upkeep of the home and lot. Should the tenant violate a rule and a violation notice is sent, the Owner shall be responsible for ensuring the tenant complies with the rules and the violation noted is immediately abated. Should a fine for non-compliance result, the Owner shall be responsible for payment to the Association for all fines or any monetary expense the Association may incur for the enforcement and abatement of a violation.
- (h) Association's Rights to certain Lease and Tenant Information. The Association has the right to request each Owner leasing a residence on a Lot in the Subdivision subject to this Declaration provide the Association with the following regarding the lease or tenant thereunder: (i) the contact information, including name, mailing address, phone number, and e-mail address of each person who will reside on the Owner's residence on a Lot under the terms of such lease; and (ii) the commencement date and term of such lease.

In the interpretation and enforcement of Sections 2.2.1 and 2.2.2 above or other similar Sections throughout this Declaration, all persons, Owners, residents, occupants, guests, and invitees are hereby noticed that any problem that arises within a residence, whether a leased residence or not, must be something the Owner or the Association legitimately can control or enforce against. The Association is not law enforcement and should not, for any reason, be expected to act in such a capacity. Any matters requiring the interaction of law enforcement or local authorities should be reported to and overseen only by those persons authorized to perform such actions or duties. Additionally, at times, matters may arise that involve person to person or homeowner to homeowner issues or disputes which are considered personal or outside the jurisdictional realm of the Association's authority to address. The Association, the Board, its Managing Agent, or any authorized representative, cannot be held responsible in matters interfering with the peaceful enjoyment of another when the circumstances surrounding the matter



are viewed by the Declarant or the Board as ones that fall outside the Association's jurisdiction and/or cannot readily be addressed, fixed, or abated.

### Section 2.3 Garage Required.

Each residence shall have an enclosed garage and shall conform to the requirements set forth in the Construction and Design Guidelines. The garage shall conform in design and materials with the main structure. No garage shall not be used for a living quarter or for business purposes (other than as a sales office in a model home operated by a Builder within the Subdivision, which shall be permitted hereunder provided that such garage is restored to its intended use and design prior to the sale of a Builder of such model home an end-use homebuyer). Garage doors should always remain closed when not in use. No Screening or other apparatus may be attached to or hung from a garage door at any time and no barrier or other object may be placed at the bottom of the garage door preventing the door from closing properly. Garages should be used for the parking and storage of vehicles. Any other use shall not be permitted or considered an approved use of garage space.

### Section 2.4 Driveways.

All driveways shall be surfaced with concrete. No designs, painting or staining of driveways are allowed without the express written consent of the ACC. No driveway extension or widening of the driveway shall be allowed without the prior written approval of the ACC under Article III.

### Section 2.5 Uses Specifically Prohibited.

(a) No permanent or temporary dwelling, shop, storage building, trailer or mobile home of any kind or any improvement of a permanent or temporary character shall be permitted on any Lot without the express written consent of the ACC. No structure may be placed on a Lot until written approval from the Reviewer in accordance with Article III has been obtained. As a rule, no structure may be placed where it is visible from the front of the home or in some instances, the street. Exceptions will be considered on a case-by-case basis and the approval of one application or request for exception does not obligate the ACC to approve the same or any similar project for another Owner. Most structures will be limited to no more than two feet (2') over the top of the fence line, however, the Reviewer has the final authority regarding placement and height of any structure. Portable basketball goals may be allowed by written consent of the ACC Reviewer only. Requests for permanent basketball goals will be reviewed and considered on a case-by-case basis. Goals must always be kept in good repair and may not use unsightly weights such as tires, sandbags, or rocks unless the Owner can provide written proof from the manufacturer that such weights are the recommended means of weighing down the goal. Portable basketball goals and other play equipment may not be played, placed or kept in an easement or right of way, the street, may not block a sidewalk at any time, and may not be played in the grass area located between the sidewalk and street. Portable goals out of compliance with the rules are subject to violation, fines, self-help action to remove the goal at the sole expense of the Owner.

(b) Builders or contractors may have temporary improvements (such as a sales office and/or construction trailer) on a given Lot during construction of the residence on that Lot or on a different Lot as agreed to between the Builder or contractor and Declarant and/or as otherwise set out in the Construction and Design Guidelines. No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected.

(c) Except as otherwise provided in this Section, no vehicle may be parked or left upon any portion of a Lot except in a garage or on a driveway. Except as provided below, the following vehicles may not be parked on any street within Lincoln Pointe except for occasions of twenty-four hours or less and no more than one time per month for the purpose of cleaning or loading and unloading: recreational vehicles, mobile homes, trailers, and campers. Trucks with tonnage in excess of one (1) ton including semi-trucks and/or trailers, tow trucks, car haulers, commercial vehicles (including all vehicles with commercial lettering or logos), unlicensed or inoperable vehicles, trailers, boats, and jet skis are prohibited; provided however, notwithstanding the foregoing, boats and jet skis may be parked for a period not to exceed twenty-four hours so long as they are on a trailer and attached to the vehicle and are present for cleaning or loading and unloading only. "Sports utility vehicles" and "mini-vans" (as such vehicles are commonly referred to, as determined in the Board's discretion) and pick-up trucks without commercial writing or logos shall be treated as automobiles and may be parked outside of enclosed garages. Vehicles with advertisements and logos that can be parked within a garage when not in use will be allowed.

This Section shall not apply to parking, for purposes of emergency vehicle repairs or to construction, service, and delivery vehicles for periods necessary to perform the services or make a delivery. Declarant and the Board of Directors expressly reserve the right to review, and consider parking requests, restrictions, and violations within the community on a case-by-case basis. Excessive on street parking or parking abused by an owner which causes a nuisance to another owner or creates a safety hazard on the street or to residents, may result in vehicles being towed and/or fines for non-compliance being assessed. Owners should not park their vehicles at the end of their driveways if doing so will block a pedestrian's ability to safely cross the driveway to where the sidewalk continues especially if doing so will result in the pedestrian being forced to go around by walking in the street. As used in this Section, the term "vehicles" includes, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

(d) No vehicle of any size which transports flammable or explosive cargo may be kept or parked on the Property at any time, except for use by or on behalf of Declarant in connection with the development of the Property or by a builder or contractor in connection with the construction of improvements on a Lot.

(e) No animals or livestock including but, not limited to pigs, potbellied pigs, chickens, snakes, rats, or skunks shall be raised, bred, or kept on the Property for commercial purposes or for food. Domesticated animals such as dogs, cats or other small, domesticated household pets may be kept for the purpose of providing companionship for the private family; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, constitute a nuisance or safety concern to the occupants of other Lots shall be removed upon request of the Board. If the pet owner

fails to honor such a request, the Board may, at its sole discretion, remove or otherwise provide for the removal of the pet. Notwithstanding anything contained herein to the contrary, the Board in its sole discretion and without incurring any further duty or obligation to owners and occupants within the Property may decide to take no action and refer complaining parties to the appropriate municipal or governmental authorities for handling and final disposition. Opting to turn matters over to the appropriate municipal or governmental authorities or the refusal or failure of an Owner to comply with violation notices and/or requests made regarding reported problems or issues with their pets may not be construed in any way as the Association failing to take proper or appropriate measures. Pets shall be kept on a leash or otherwise confined inside a fenced area whenever outside the residence. Pets shall be registered, licensed, and inoculated as required by law and must be properly tagged for identification. It is the Owner's responsibility to keep the front of their Lot clean and free of pet debris and to pick up and properly dispose of their pet's waste wherever deposited. Notwithstanding anything seemingly herein to the contrary, no more than three (3) household pets will be permitted on each Lot. **EACH OWNER BY ACCEPTANCE OF TITLE TO ITS LOT HEREBY RELEASES AND WAIVES THE ASSOCIATION, DECLARANT, THE BOARD AND/OR ITS MANAGING AGENT AND THEIR RESPECTIVE MEMBERS, EMPLOYEES, DESIGNEES, ADMINISTRATORS, INSPECTORS, CONTRACTORS, AND AGENTS, AND AGREES TO INDEMNIFY AND DEFEND SAME AND HOLD THEM HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, LOSS, DAMAGE, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF ANY ACTIONS OR ATTACK BY OWNER'S PET OR BY ANY PET RESIDING ON AN OWNER'S LOT WITHIN THE SUBDIVISION.**

(f) No Lot or other area on the Property shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation broken or rusty equipment, disassembled or inoperative cars, other vehicles or discarded appliances and furniture. Trash, garbage, or other waste shall be kept in sanitary containers and stored out of public view except for reasonable times the day before a scheduled pickup and Owners must return all containers to an area out of public view within ten (10) hours after containers are emptied. Owners may, with prior written approval of the ACC install cement pads on the side of the home upon which containers may be stored, notwithstanding, such storage will only be approved if sufficient screening of the containers is also installed after receiving written consent of the ACC. Screening may be live screening tall enough to conceal the containers at time of planting or wood fencing installed in an "L" shape to screen the containers from the front and side. No plastic or other screening materials of any kind allowed. Owners shall not allow their lots to be littered with trash or debris of any kind. All incinerators or other equipment for the storage or other disposal of such material shall be kept in clean and sanitary condition. Materials incident to the construction of improvements may be stored on Lots during construction so long as construction progresses without undue delay. Builders and Owners as well as any contractors shall place a commercial trash bin capable of holding construction and other debris during initial construction of the home and shall promptly empty the container when full. Do not allow trash or debris to overflow the bin or to remain on the ground of the Lot. Failure to comply will result in a notice of violation, fines, and/or self-help actions. Trash, debris, and other forms of litter shall be considered a health and/or safety hazard and may subject to Self-Help actions by the Association in addition to monetary fines.

(g) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any wall or window of a residence. All air-conditioning equipment must be installed in the rear yard or in the side yard.

(h) The erection, construction, placement or installation of any television, radio or other electronic tower, serial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcast signals or other means of communication upon a Lot or upon any improvement thereon is prohibited, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Board shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location, and maintenance of antennae. To the extent that reception of an acceptable signal would not be impaired, or the cost of installation would not be unreasonably increased, an antenna permissible pursuant to the Declaration or the rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the residence and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land-use and building regulations.

(i) No Lot or improvement thereon shall be used for commercial or manufacturing purposes of any kind other than a small home office. Nothing in this subparagraph shall prohibit a builder's use of a residence as a sales office until such builder's last residence on the Property is sold and closed. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as a small home office, tutoring or giving lessons such as art or music, so long as such activities are consistent with the residential character of the Property, do not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Property, as determined in the Board's discretion, and do not materially increase the number of cars parked on the street.

(j) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and six feet (6') above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within ten (10) feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. The ACC may establish greater setbacks when it is deemed in the best interest to protect line of sight and ensure clear visibility on corner Lots or areas where visibility or line of sight may be hindered or impaired in any way. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(k) No building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.

(l) No sign of any kind shall be displayed to the public view on any Lot, except: (i) political signs which may be placed on the Lot no earlier than ninety (90) days prior to an election and which must be removed within ten (10) days after the election for which such sign is displayed and otherwise displayed in accordance with Section 259.002 of the Texas Election Code; (ii) one (1) professional security service sign of not more than one square foot; (iii) one (1) sign of not more than five square feet advertising the property for rent or sale during any period that the Lot actually is for rent or sale; (iv) signs used by a Builder to advertise the Property during the construction and

sales period, or (v) school spirit signs or other similar signs displaying school related activities, each of which shall, in any event, comply with all statutes, laws or ordinances governing same. The Board of Directors or its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or otherwise in connection with such removal.

- (m) The drying of clothes in public view is prohibited. Clothes lines are prohibited.
- (n) Wood used for fireplace, barbeque, or other use must be stacked neatly and screened from public view. The Owner is responsible for ensuring that such wood stack is kept free of rodents.
- (o) RULES AND REGULATIONS WILL BE STRICTLY ENFORCED. No Owner shall perform, fail to perform, or permit anything to be done or not done on such Owner's Lot which would violate any laws, statutes, ordinances or regulations of any kind or character. No Owner shall perform or permit anything to be done that can be considered a nuisance or safety hazard to the surrounding neighbors or the community. If an Owner leases his home, the occupant / tenant shall be required to adhere to all governing documents, rules, and regulations. It shall be the responsibility of the Owner to ensure the occupant / tenant is aware of all restrictions, rules, and regulations. Violation infractions committed by an occupant / tenant, resident, guest, or invitee will be the responsibility of the Owner to cure / abate. If a fine for non-compliance is levied, the Owner will be responsible for the payment in full of all fines, self-help remedies, or cost of repairs which may be incurred by the Association.
- (p) Hunting and shooting are not permitted anywhere on or from the Property. No toys, weapons, or firearms, including, without limitation, air rifles, BB guns, slingshots or other item that is designed to cause harm to any person, animal or property may be used in a manner to cause such harm (whether intentionally, negligently, or otherwise) to any person, animal, or property. Violation of this restriction is subject to an immediate fine of up to \$1,000 per occurrence after the first notification (which may be given in writing or verbally, to the extent permitted under applicable law). Fireworks are strictly prohibited. Use of fireworks in the Subdivision is subject to a monetary fine of \$1,000.00 for each violation. An affidavit signed by a witness with legal capacity made under penalty of perjury attesting to the violation and specifying the date of approximate time of such violation which is received by the Association shall be sufficient evidence of such violation.

#### Section 2.6 Fences and Walls.

Any fence or wall must be constructed of masonry, brick, wood, ornamental metal, or other material approved by Declarant or the ACC. No vinyl or chain link fences are permitted except on the Common Properties or any school property which may be located within the subdivision. No fence or wall shall be permitted to extend nearer to any street than five feet (5') setback behind the front of any residence. However, all side yard fencing on corner Lots shall run parallel to the curb and may be placed no nearer than five feet (5') inside the side Lot line and shall not extend beyond a point of five feet (5') behind the front of the residence on that side. Fences or walls erected by Declarant shall become the property of the Association for all fences or walls located on or within common area boundaries. The Association shall be responsible for the maintenance of the screening wall only along Lincoln Park Road and FM-121. The Association assumes no

responsibility for fencing or walls otherwise located on an Owner's Lot or located on the common boundary of the Common Properties and an Owner's Lot, for which fencing, and walls shall be maintained by the Lot Owner. Each Owner shall be responsible for all fencing located on their Lot unless otherwise stipulated or described herein. All fencing shall be constructed so that all structural members and posts will be on the side of the fence facing inside. No portion of any fence shall extend more than six feet (6') in height measured from grade without the express written consent of the ACC. No fence may extend into or enclose the front portion of an Owner's Lot without the prior written consent of the ACC. Front yard fencing, if allowed, may be installed for security purposes and must be of a material approved by the ACC. Refer to the Association's Security Measures Policy for details. The ACC shall be the sole discerner of what is allowable for front yard fencing.

#### Section 2.8 Building Materials.

The building materials to be used for each residence and other structure must conform to the requirements set out in the Construction and Design Guidelines and the city of Van Alstyne building and zoning ordinance. Allowed roofing materials shall be set forth exclusively in the Construction and Design Guidelines. The color of roofing shall be consistent throughout the subdivision and shall otherwise conform to the Construction and Design Guidelines.

#### Section 2.9 Mailboxes.

Mailboxes shall be cluster mailboxes of a standardized design used throughout the subdivision. See the Construction and Design Guidelines for additional information. In the event that any cluster mailbox installed in the subdivision requires maintenance, replacement or repairs, such maintenance, replacement and/or repairs shall be performed by the Association and the costs and expenses incurred by the Association in connection therewith shall be charged on a pro rata basis (based on the total number of mailbox units within such cluster mailbox) as a Special Individual Assessment to the Owners with mailbox units within the cluster mailbox that has been maintained, repaired and/or replaced.

#### Section 2.10 Landscaping.

Each Builder of a residence upon each Lot shall, before the first occupancy of a house, sod grass in the front, side, and rear yards, plant the minimum size and number of trees and shrubs in the front yard against the foundation of the house as required by the Construction and Design Guidelines. Thereafter, each Owner of a Lot shall have the responsibility to properly maintain such trees and landscaping and, if necessary, shall replace such trees or landscaping. Declarant and/or the Association shall have the right but not the obligation, to be exercised at its sole option, to remove and replace dead trees and landscaping and charge the costs thereof to the Owner's account as a Special Individual Assessment under Section 10.6 below.

#### Section 2.11 Construction and Design Guidelines.

In addition to any requirements set forth in this Declaration, all Owners are required to comply with the Construction and Design Guidelines in the construction of improvements within

the Property with respect to the installation, maintenance and replacement of trees and landscaping within the Property. Builders and Owners must always comply with the city of Van Alstyne building and zoning regulations, including landscaping, whether such regulations are named or listed in this Declaration.

Section 2.12 Drones and Unmanned Aircraft.

Any Owner operating or using a drone or unmanned aircraft within the Property and related airspace must register such drone or unmanned aircraft with the Federal Aviation Administration ("FAA"), to the extent required under applicable FAA rules and regulations, and mark such drone or unmanned aircraft prominently with the serial number or registration number on the drone or unmanned aircraft for identification purposes. BY ACCEPTANCE OF TITLE TO ANY PORTION OF THE PROPERTY, EACH OWNER ACKNOWLEDGES THAT USE OF A DRONE OR UNMANNED AIRCRAFT TO TAKE IMAGES OF PRIVATE PROPERTY OR PERSONS WITHOUT CONSENT MAY BE A VIOLATION OF TEXAS LAW AND CLASS C MISDEMEANOR SUBJECT TO LEGAL ACTION AND FINES UP TO \$10,000. IT IS YOUR RESPONSIBILITY TO KNOW AND COMPLY WITH ALL LAWS APPLICABLE TO YOUR DRONE AND/OR UNMANNED AIRCRAFT USE.

Section 2.13 Lightning Rods.

An Owner may not construct a lightning rod and related systems ("Lightning Rod") on a residence except in compliance with the following: (a) the Lightning Rod must meet standards of the National Fire Protection Association ("NFPA") equal to or greater than NFPA's lightning Protection Standard NFPA 780, Underwriters Laboratories ("UL") UL 96A, and Lightning Protection Institute ("LPI") LPI-175, (b) any Lightning Rod must be installed by a contractor licensed in the State in which the residence is located, and (c) any part of the Lightning Rod that becomes non-functional must be immediately repaired, replaced, or removed from the residence by the Owner at such Owner's costs and expense. Each Owner acknowledges and agrees that an Owner is solely liable and responsible for the safety, upkeep, and use of the Lightning Rods. Furthermore, each Owner acknowledges that the installation of a Lightning Rod on a residence may void or adversely affect warranties on such Owner's residence, including without limitation, any roof warranties. EACH OWNER BY ACCEPTANCE OF TITLE TO ITS LOT HEREBY RELEASES AND WAIVES THE ASSOCIATION, DECLARANT, THE BOARD AND/OR ITS MANAGING AGENT AND THEIR RESPECTIVE MEMBERS, EMPLOYEES, DESIGNEES, ADMINISTRATORS, INSPECTORS, CONTRACTORS, AND AGENTS, AND AGREES TO INDEMNIFY AND DEFEND SAME AND HOLD THEM HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, LOSS, DAMAGE, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF THE INSTALLATION, OPERATION, LOCATION, REPAIR, MAINTENANCE, AND/OR REMOVAL OF ANY LIGHTNING ROD OR RELATED SYSTEMS ON AN OWNER'S RESIDENCE.

## ARTICLE III ARCHITECTURAL CONTROL

### Section 3.1 Review Authority.

(a) General. The Property is located within the jurisdiction of the City. In addition to any inspection process implemented by the city in connection with the City's permit process, the Declarant and the Association may engage the services of third-party professionals including architects, engineers, or other persons to perform and administer the submission, review and inspection process which may be required or necessary under this Article. Declarant reserves the right to implement and enforce additional application, permitting, review, testing and inspection requirements and procedures not contained herein relating to national or uniform codes pertaining to building, electrical, plumbing and any other aspect of construction or development as deemed necessary by Declarant.

(b) Declarant as ACC During Development Period. Declarant, as provided below, shall have exclusive authority to act as the Reviewer and administer, review and act upon all applications for architectural and other improvements within the Property during the Development Period, unless Declarant earlier terminates its rights under a recorded instrument. Declarant may designate or engage one or more persons or entities to act on its behalf with respect to some or all matters coming within the purview of this Article III. In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and owe no duty to any other person. Declarant is not required to hold meetings or keep minutes relating to its review under this Article. Declarant may, at its sole discretion, issue variances when doing so seems to agree with the continued aesthetic harmony of the community or for any other reason.

Additionally, Declarant may from time-to-time delegate or assign all or any portion of its rights under this Article as Reviewer for a Phase to any other person, entity, or committee, including the Architectural Control Committee. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant, specifically delegates.

(c) Architectural Control Committee. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ACC, shall assume jurisdiction over architectural matters as the "Reviewer" hereunder. The ACC shall consist of at least three (3) people. Members of the ACC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Declarant or the Board may establish. The ACC members shall be designated, shall serve, and may be removed and replaced at the Board's discretion only after the Declarant Control Period expires. Notwithstanding, so long as a Builder owns a Lot for the purpose of constructing a residence, only the Declarant or its delegated reviewers shall have the right to review and approve.



(i) For so long as Declarant owns any portion of the Property, and unless Declarant notifies the ACC in writing to the contrary, the ACC shall notify Declarant in writing, no less than thirteen (13) business days prior to communicating any action (*i.e.*, approval, partial approval, or disapproval) it intends to take under this Article. A copy of the application and any additional information that Declarant may require shall accompany the notice. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto such ACC action; provided, Declarant's right to veto must be exercised within ten (10) business days after it receives notice of the ACC's proposed action and may only be exercised with respect to its applicable portion of the Property. The party submitting the plans for approval shall not be notified of the ACC's proposed action until after Declarant's right to veto has expired.

(ii) The Board may create and appoint subcommittees of the ACC. Subcommittees may be established to preside over areas of review (e.g., landscape plans) and shall be governed by procedures the Board or the ACC may establish. Any subcommittee's actions are subject to review and approval by Declarant, for as long as Declarant may review the ACC's decisions, and the ACC. Notwithstanding the above, neither the ACC nor Declarant shall be obligated to review all actions of any subcommittee, and the failure to act in any instance shall not be a waiver of the right to act in the future.

(iii) Unless and until such time as Declarant delegates any of its reserved rights to the ACC or Declarant's rights under this Article expire or terminate, the Association shall have no jurisdiction over architectural matters.

(iv) After the period of Declarant control, a person may not be appointed or elected to serve on the ACC if the person is (a) a current Board member, (b) a current Board member's spouse; or (3) a person residing in a current Board member's household.

(d) Reviewer. The entity having jurisdiction in a particular case, whether Declarant or its designee or the ACC, shall be referred to as the "Reviewer."

(e) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications, including option to pay rush fees, and shall require that such fees be paid in advance. If such fees or charges, including those set forth under Section 3.3 below, are not paid in advance, the Reviewer shall have no obligation whatsoever to review any such related application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board may include the compensation of such people in the Association's annual operating budget.

### Section 3.2 Review Requirements.

No building, wall, pool, or structure shall be commenced, erected, installed, placed, or substantially altered on any Lot, nor shall any exterior painting other than repainting in the same color gutters, house trim, window trims, etc., of any exterior portion of the residence or any fence or any addition to, or substantial alteration of, such items. All plans and specifications must be submitted to and approved in writing by the ACC prior to any modification, alteration, addition, or other change. Above ground pools are prohibited without variance approval. No ACC or Board

may approve a variance for an above-ground pool during the Declarant Control Period without the Declarant's express written consent.

The Reviewer is authorized and empowered to consider and review all aspects of construction and landscaping which may, in the reasonable opinion of the Reviewer, adversely affect the living enjoyment of one (1) or more Owners or the general value of the Property or any Common Property. The Reviewer shall have the right to render decisions based solely on aesthetic considerations or based on the Community Wide Standard. In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to judicial review so long as they are made in good faith and in accordance with the required procedures.

### Section 3.3 Procedure for Approval.

PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION BY ANY PERSON OR ENTITY, THE BUILDER OR OWNER SHALL OBTAIN FROM THE CITY AND THE REVIEWER A BUILDING PERMIT AND SHALL PAY, IN ADVANCE, ANY RELATED INSPECTION FEES AND FEES OWING OR TO BE OWED TO THE CITY OF VAN ALSTYNE, AND/OR GRAYSON COUNTY ZONING DISTRICT AND THE REQUIREMENTS OF THE SUBDIVISION ORDINANCE. THIS REQUIREMENT NOT ONLY APPLIES TO ORIGINAL CONSTRUCTION BUT TO POOL INSTALLATIONS, MODIFICATIONS, ALTERATIONS, OR ADDITIONS TO EXISTING STRUCTURES OF IMPROVEMENTS. FAILURE TO OBTAIN SUCH PERMITS FROM THE CITY AND/OR THE REVIEWER OR PAY SUCH FEES PRIOR TO INITIATION OF CONSTRUCTION SHALL BE CAUSE FOR THE REVIEWER ON BEHALF OF THE ASSOCIATION AND/OR THE CITY PERMITS DEPARTMENT OR OTHER GOVERNING AUTHORITY TO ISSUE OR CAUSED TO BE ISSUED EMERGENCY TEMPORARY RELIEF TO RESTRAIN ALL ASPECTS OF CONSTRUCTION (a "CEASE CONSTRUCTION").

In addition to the foregoing requirement, final plans and specifications shall be submitted via an online submission system if applicable, via e-mail, or by hand delivery to the Reviewer. The plans and specifications shall show the nature, kind, shape, height, materials and location of all landscaping and improvements. The applicant shall specify in writing any requested variances from the requirements set forth in this Declaration, the Construction and Design Guidelines, or any Community-Wide Standard. The Declarant, during the Declarant Control Period, shall be the sole authority for issuing variances. The Reviewer is authorized to request the submission of samples of proposed construction materials and such other information as they reasonably deem necessary to make their determination. The Reviewer may require greater setbacks than those requirements set forth by plat or by a city or county zoning ordinance. Failure of an Owner or Builder to submit the requested information in a timely manner will result in the automatic denial of an application. When the plans and specifications meet the approval of the Reviewer, the Association will retain one complete set of plans and specifications, for up to four (4) years and the ACC shall notify the Owner

or Builder of their approval along with any variances or conditions. If an application is disapproved the ACC shall notify the Owner or Builder of the disapproval accompanied by a reasonable statement of the reasons for disapproval. No Owner or Builder may modify an approved set of plans and specifications. Any change desired to plans and specifications after they have received an approval must be submitted to the ACC for review and additional approval or disapproval. All approvals or disapprovals of the ACC shall be in writing. NO verbal approvals or disapprovals are ever allowed. Any reliance upon verbal approval of any plans by the Reviewer shall be wholly unjustified, at the risk of the Lot Owner and subject to any subsequent or otherwise conflicting written response by the Reviewer. At no time is the Declarant, Board, ACC, Reviewer, or the Agent responsible for drainage, erosion, grading, or any other related Lot requirements. It shall be the sole responsibility of the Owner and/or the Builder to ensure the proper grading and drainage exists on a Lot prior to construction and after construction is completed.

The Reviewer will return one set of plans and specifications to the applicant marked with the Reviewer's response, such as "Approved," "Denied," or "More Information Required" within thirty (30) business days' after the date of submission of all information the Reviewer requires. Written notice of the determination of the Reviewer shall be provided to an applying Owner via certified mail, hand delivery or electronic delivery to the contact address of such Owner registered with the Association. Denials of the Reviewer must describe the basis for denial in reasonable detail and changes, if any, in the application or improvements required as a condition to approval and inform the Owner that the Owner may request a hearing under Section 209.00505(e) of the Texas Property Code on or before the 30th day after the date the notice was delivered by the Reviewer to the Owner. A request for more information by the Reviewer shall provide the Owner with ten (10) days to return the requested information. Failure to return the requested information within the time given will result in automatic denial of the request. A determination of the Reviewer may be appealed to the Board of the Association in accordance with Section 209.00505 of the Texas Property Code, and the Board shall hold a hearing within 30 days after the Owner's request for a hearing is received. Any Builder who is constructing residences on multiple Lots shall have the option of submitting a master set of final plans and specifications for all the residences it intends to construct within the Property to the Reviewer in accordance with the provisions of this paragraph. Once the master set of plans has been approved, the Builder shall be allowed to construct residences in accordance with such approved plans notwithstanding, prior to commencing construction the Builder shall submit a plot plan providing the Lot, Block, and Physical Address and the Reviewer shall return an Approval Letter to the Builder for construction on the Lot and Block indicated. The Reviewer may, but is not obligated to, permit, or require that plans be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. Construction or modification for any structure other than the main residence must be completed within six (6) months of commencement of construction.

As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work for new construction shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or the Construction and

Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action including fines. Also, as a part of the review process, the Reviewer may require that the construction of any improvement be inspected, without notice to the Owner or Builder, on a periodic basis prior to completion for compliance with the plans, codes adopted by Declarant and other matters relating to the quality or method of construction. The Association may conduct such inspections, or, alternatively, it may contract with third parties for such purposes. The Owner on whose Lot the construction is taking place shall be responsible for the payment of costs relating to any such inspection. Notwithstanding the foregoing, upon approval of Declarant, as evidenced in writing delivered to a Builder, of the residential home plan set submitted by such Builder for construction of residences, structures or improvements of any type on Lots owned by such Builder and to be acquired from Declarant, no additional review or approval of such Builder's residential home plan set is required by the Reviewer or otherwise under this Declaration, and Declarant hereby waives any such requirement.

#### Section 3.4 Standards.

The Reviewer shall have sole discretion with respect to taste, design and all standards specified herein. One objective of the Reviewer is to prevent unusual, radical, curious, odd, bizarre, peculiar, or irregular structures from being built on the Property. The Reviewer shall have the authority to interpret and amend the Construction and Design Guidelines, subject to Declarant's approval for so long as Declarant or any Builder owns any portion of the Property and, thereafter, subject to the approval of the Board. The Reviewer may from time to time publish and promulgate bulletins regarding architectural standards, which shall be fair, reasonable, and uniformly applied and shall carry forward the spirit and intention of this Declaration. To the extent that the Construction and Design Guidelines conflict with any development standards of the City, the development standards of the City shall govern and control unless the standards of the Association are higher. In all instances, the higher standard shall prevail.

#### Section 3.5 Requests for Variance.

Upon submission of a written narrative request for same, the Reviewer may, from time to time, in its sole discretion, permit Owners and Builders to construct, erect or install improvements which are in variance from the requirements of this Declaration, or which may be contained in the Construction and Design Guidelines. In any case, however, such variances shall be in basic conformity and shall blend effectively with the general architectural style and design of the community. No member of the ACC or the Board, or the Association or Declarant shall be liable to any Owner or other person claiming by, through, or on behalf of any Owner, for any claims, causes of action, or damages arising out of the granting or denial of, or other action or failure to act upon, any variance request by any Owner or any person acting for or on behalf of any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Reviewer's right to strictly enforce the Declaration or the Construction and Design Guidelines against any other Owner. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Reviewer must be in writing

and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted. The City shall be the sole authority for issuing variances for any City zoning, building codes or other development or construction requirements applicable to the Property and/or any Lot or improvements constructed therein, and no action or variance granted by the Reviewer, the ACC and/or the Board hereunder shall modify or substitute any requirement under any applicable zoning, building codes or development or construction requirements of the City

### Section 3.6 Liability of Reviewer.

Neither Declarant, the Board of Directors, the Architectural Control Committee, nor any of their respective members, officers, employees, designees, contractors, administrators, inspectors, and agents, shall have any liability whatsoever for decisions made in accordance with this Article so long as such decisions are made in good faith and are not arbitrary or capricious. By submitting any plan for approval, the submitting party expressly acknowledges that, whether the Reviewer is an engineer, architect, or builder, that for purposes of plan review by the Reviewer, any approval or disapproval of any plans expressly excludes any opinion on the suitability of the plans on an engineering, architectural, or construction basis. The plans or the site plan submitted to the Reviewer shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Reviewer shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, or any codes, ordinances, regulations or other laws, whether statutory or not, and whether the same relate to Lot lines, building lines, easements, grading, drainage, or any other issue. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that every residence is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

**THE ASSOCIATION HEREBY UNCONDITIONALLY AND PERPETUALLY INDEMNIFIES AND HOLDS DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, AND THEIR RESPECTIVE MEMBERS, EMPLOYEES, DESIGNEEES, ADMINISTRATORS, INSPECTORS, CONTRACTORS, AND AGENTS HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, LOSS, DAMAGE, COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF ANY ACTIONS OR INACTIONS TAKEN HEREUNDER BY THE REVIEWER, IRRESPECTIVE OF WHETHER OR NOT THE REVIEWER, ITS EMPLOYEES, CONTRACTORS, AGENTS AND OTHER INDIVIDUALS OR ENTITIES TO OR EMPLOYED BY THE REVIEWER ACTED NEGLIGENTLY OR WITH WILLFUL MISCONDUCT.**

### Section 3.7 Special Rights of Declarant.

Notwithstanding anything to the contrary contained herein, any Lot owned by Declarant shall not be subject to the provisions of this Article III and Declarant shall not be required to submit plans and specifications, etc. to the Architectural Control Committee or to obtain the consent, permission or approval of the Architectural Control Committee for the matters otherwise required pursuant to this Article III, and the consent, permission or approval of the Architectural

Control Committee shall be deemed given for plans and specifications, plot plans and the like to be used by Declarant, or Declarant's assigns, in the construction of any residence on any Lot owned or sold to a Builder by Declarant. **DECLARANT ALSO RETAINS SPECIAL AND UNIQUE RIGHTS AND PRIVILEGES IN ARTICLE XII THAT TAKE PRECEDENCE OVER ALL OTHER ARTICLES OR SECTIONS IN THIS DECLARATION.** The provisions of this Section 3.7 may not be modified or amended without the prior written consent of the Declarant.

#### ARTICLE IV SPECIAL FENCING AND LANDSCAPING

##### Section 4.1 Fences, Walls, and Screening Landscaping.

Declarant and/or the Association shall have the right, but not the obligation, to erect, install, maintain, repair and/or replace fences, walls and/or screening landscaping within that portion of any Lot situated along the perimeter of the Property or on Lots adjacent to Common Properties, as shown on a Final Plat, including, without limitation, open space area for screening or buffering. As described in Article II, Section 2.7, the Association shall only be responsible for the maintenance of the wall situated along Lincoln Park Road and FM-121. Any such fence, wall or sprinkler system on Owner's Lots shall be the responsibility of the Owner and shall be subject to the easements and rights of Declarant and the Association set forth below. With respect to any fencing installed within a Lot that is adjacent to a thoroughfare, if applicable, the Association shall have the exclusive right to stain or otherwise maintain the exterior of such fence facing the thoroughfare whenever, in the Board's sole and absolute discretion, it deems necessary, and the cost thereof shall be applied to the Lot Owner's account as an individual assessment. The Association may include costs for maintenance, repairs and/or replacement required by this Section 4.1 in the expenses of the Association to be paid by levying Assessments hereunder.

##### Section 4.2 Landscaping and Detention..

Declarant and/or the Association shall have the right to grade, plant and/or landscape and maintain, repair, replace and/or change such grading, planting and landscaping on any portion of the Property not comprising any portion of a Lot and to maintain all landscaping, buffering, screening, irrigation, detention areas, and associated improvements adjacent to the Property along public rights-of-way as may be required by the City (and including, without limitation, open space area for detention, screening or buffering), without limitation whatsoever, to do all things necessary within the Property to obtain full compliance with any applicable ordinances, laws, rules or regulations promulgated by the City or other applicable governmental authority. The Association may include costs for maintenance, repairs and/or replacement required by Section 4.2 in the expenses of the Association to be paid by levying Assessments hereunder.

##### Section 4.3 Easement.

Declarant and the Association shall have, and hereby reserve, the right and easement to enter upon the Common Properties and those Lots which are situated along the perimeter of the

Property and/or the Common Properties, as shown on a Final Plat, or the Lots adjacent to a thoroughfare, for the purpose of exercising the discretionary rights set forth in this Article IV. Furthermore, certain public use, non-exclusive public utility easements, pedestrian and bicycle access easements storm drainage easements, water main easements, sanitary sewer easements, and other easements as shown on the final recorded plat may and probably will apply.

Section 4.4 Declarant's and the Association's Discretion.

Notwithstanding any provisions herein to the contrary, after construction or installation by Declarant of any fence, wall, sprinkler system, grading, planting, or landscaping on the Property shall be the responsibility of the Association or property Owner to maintain.

Section 4.5 Development Period Limitation.

The provisions of this Article IV regarding Declarant's rights shall terminate and be of no further force and effect from and after the expiration of the Development Period. The rights of the Association shall continue throughout the term hereof. The provisions of this Article IV may not be modified or amended without the express written consent of the Declarant.

## ARTICLE V LOT MAINTENANCE BY OWNERS

Section 5.1 Lot Maintenance.

The Association will strictly enforce Lot maintenance and maintenance to the exterior of the Residence. After the installation of the landscaping on a Lot by a Builder, the Owner of the Lot shall thereafter always maintain the yard in a sanitary and attractive manner, including adequate watering and immediate replacement of dead vegetation and trees (provided, however, the Owner may receive an extension for the replacement of trees and shrubs if favorable planting conditions do not exist), and shall edge the street curbs that run along the Lot boundary lines as well as along driveways and sidewalks. Yards must be kept mowed and trimmed at regular intervals to maintain the Lot in a neat and attractive manner. All yards are to receive routine treatment for weeds to help discourage the growth and spread of weeds. Periodic tree and shrub trimming, and pruning is required. No tree that overhangs a sidewalk or pedestrian pathway of any kind shall have branches that hang lower than eight (8) feet from the ground to the branch itself. No vegetables shall be grown in any portion of a Lot yard that faces a street or is not screened by fencing built in accordance with the terms hereof. Grass shall not be permitted to grow to a height of greater than six (6) inches upon any Lot.

Section 5.2 Maintenance of Improvements.

Each Owner shall be responsible for the maintenance on the exterior of all buildings, fences, walls, including retaining walls situated on an Owner's Lot abutting a Common Area or

any Open Space, and other improvements on his Lot in good condition and repair always, and shall replace worn and rotten parts, and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, down spouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate in an unattractive manner. All fences and walls, including retaining walls, shall be kept neat, clean and in good repair. Any fence or wall which is broken or in any form of disrepair shall be immediately repaired. No partial fencing or walls are allowed. Failure of an Owner to maintain fencing and walls located upon their Lots or failure by Owners to make repairs could result in the Association initiating Self-Help action and all costs associated with the action shall be billed to the Owner's account and shall be the sole responsibility of the Owner to pay. Exterior lighting installed or located on any residence or dwelling or otherwise on a Lot must be white (other than seasonal holiday lighting expressly permitted under the terms of this Declaration or the Documents).

## ARTICLE VI ENFORCEMENT

### Section 6.1 Special Enforcement Rights of the Board of the Association.

In the event an Owner or such Owner's guest, invitee, or tenant, fails to comply with any provision of this Declaration or the Construction and Design Guidelines, Policies and Rules and Regulations, including but not limited to any requirement contained in Article V, then, prior to the Board or the Association enforcing the compliance of such failure or seeking against such Owner remedies in accordance with this Declaration (or such other remedies as may be available to the Board and/or the Association at law or in equity), the Board shall first be obligated to give such Owner a minimum of one (1) notice of such failure and a reasonable time of not less than five (5) days after the date of such notice in which to cure such violation or failure unless such violation or failure constitutes an emergency, safety or health hazard or is deemed a non-curable violation. In such cases, depending upon the nature of the violation or failure, the Association may act immediately without the benefit of notice. Notwithstanding, when possible, attempts to notify the Owner by phone, e-mail, or by posting a notice on the door of the residence should be made. If the Owner shall not have corrected such failure within the time given, the Board of Directors shall have the right but not the obligation, to assess monetary fines and enter upon the Lot and to bring the Lot, and any improvements thereon, into full compliance with this Declaration, the Construction and Design Guidelines, Policies and Rules and Regulations. All costs and expenses incurred by the Association in connection with correcting any such failure shall be borne by the Owner. If any Owner does not promptly reimburse the Association for all such costs, expenses and violation fines assessed after receipt of written request for same, the Board shall have the right to assess the Owner for same plus interest, such Assessment, interest, and fines being a Special Individual Assessment under the provisions of Section 10.6 below. Monetary fines may be levied in lump sums or in increments. Notwithstanding, there shall be a maximum fine of \$1,000.00 levied for each individual violation regardless of whether the fine is levied in a lump sum or in increments. Each occurrence shall constitute a new violation regardless of whether it is a repeat violation or not.

### Section 6.2 Enforcement.



In addition to but not in lieu of the enforcement rights set forth in Section 6.1, the Board of Directors may impose sanctions for violation of this Declaration (including any rules, guidelines or standards adopted pursuant to the Declaration) in accordance with the applicable procedures set forth in any policy or procedure adopted by the Board. Such sanctions may include all remedies available at law and/or in equity and all remedies herein, including, without limitation, the following:

- (a) Fines. The Board of Directors may impose monetary fines up to \$1,000.00 per violation occurrence which shall constitute a lien upon the Owner of the Lot related to or connected with the alleged violation. The Owner shall be liable for the actions of any occupant, guest, or invitee of the Owner of such Lot which shall include any violation, failure, and/or damages caused while on Common Properties and while visiting any portion of the Association's amenities or grounds. The Board may send a violation notice to an Occupant or Tenant if they deem it in the best interest to do so and may impose monetary fines upon an Occupant or Tenant notwithstanding, if the Occupant or Tenant does not pay the fine within thirty (30) days of notice of fine, the Owner will be responsible for the payment of the fine imposed upon its Occupant or Tenant.
- (b) Suspension of Voting Rights. The Board of Directors may suspend an Owner's right to vote to the maximum extent permitted under applicable law. The Association may not prevent an Owner from exercising their rights to Vote when a duly called election of a Member or Members to the Board of Directors is held.
- (c) Suspension of Rights to Use Common Properties. The Board of Directors may suspend any person's or entity's right to use any recreational facilities within the Common Properties; provided, however, nothing herein shall authorize the Board of Directors to limit ingress or egress to or from a Lot.
- (d) Right to Require Removal. The Board of Directors may require an Owner, at the Owner's expense, to remove any dead tree or landscaping from an Owner's Lot and to restore or install the necessary trees or landscaping and, upon failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the Lot, remove and cure the violation without such action being deemed a trespass and charge the costs thereof to the Owner's account as a Special Individual Assessment in accordance with Section 10.6 below.
- (e) Levy Special Individual Assessment. The Board of Directors may levy a Special Individual Assessment (may also be referred to as Individual Assessment) in accordance with Section 10.6 as a violation fine and/or to cover costs incurred by the Association in bringing a Lot into compliance with this Declaration or the Construction and Design Guidelines. Owners leasing or renting their residences shall be responsible for their occupants/tenants. All fines shall be the responsibility of the Owner to pay.
- (f) Lawsuit; Injunction or Damages. The Board of Directors may bring a suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

- (g) Prior to levying any fine or charges against an Owner, or suspending an Owner's right to use Common Properties, the Association must notice such Owner via certified mail.

Failure by Declarant or the Board of Directors to enforce any covenant, condition, agreement, or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to the Association's enforcement rights, this Declaration may be enforced by any aggrieved Owner. The decision to pursue enforcement action in any case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

## ARTICLE VII AMENDMENT AND TERMINATION

### Section 7.1 Amendment.

This Declaration may be amended by the Declarant at any time during the Development Period, for any reason, without the consent or joinder the Board, the Association, the other Owners, or any other party, and without the need to call a meeting of the Association. In addition to the foregoing, the Declaration may be amended by an instrument containing such amendment(s) and recorded in the Official Public Records of the County, provided, that (i) during the period Declarant owns at least one Lot, no such amendment shall be valid or effective without the joinder and consent of Declarant and (ii) such amendment shall first be approved by the affirmative vote or written consent of the Association's Members representing at least sixty-seven percent (67%) of the votes in the Association voting, in person or by proxy, at a duly convened meeting of the Association. Furthermore, Declarant or the Board may, at its sole discretion and without a vote or the consent of any other party, modify, amend, or repeal this Declaration:

- (a) as necessary to bring any provision into compliance with or to satisfy the requirements of any applicable statute, governmental rule, regulation, or judicial determination;
- (b) to enable a reputable title insurance company to issue title insurance coverage on the Lots;
- (c) as necessary to comply with the requirements of VA, or HUD (Federal Housing Administration), FHLMC or FNMA or any other applicable governmental agency or secondary mortgage market entity; or

- (d) as necessary for clarification or to correct technical, typographical or scrivener's errors or for any reason as is deemed necessary and appropriate;

provided, however, any amendment pursuant to clause (a), (b) and/or (c) immediately above must not have a material adverse effect upon any right of any Owner unless the consent of such adversely affected Owner(s) is obtained in writing. Any amendment to this Declaration must be recorded in the Real Property Records of the County.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class B Member without the written consent of Declarant or the Class B Members, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

#### Section 7.2 Termination.

At any time, the Owners may terminate and extinguish this Declaration in its entirety by executing an instrument terminating this Declaration and recording same in the Official Public Records of the County, provided, however, that (i) for the period in which Declarant owns at least one Lot, no such termination shall be valid or effective without the joinder and consent of Declarant and (ii) such termination and extinguishment shall first be approved by the affirmative vote or written consent of the Association's Members representing at least seventy-five percent (75%) of the votes of all Class A Members in the Association.

## **ARTICLE VIII MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

#### Section 8.1 Membership.

Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to each Lot, shall run with title to each Lot, and may not be separated from ownership of any Lot which is subject to Assessment hereunder. Membership is mandatory and is not contingent upon the existence of or construction of any common element or amenity.

#### Section 8.2 Classes of Membership.

The Association shall have two (2) classes of voting membership:

- (a) CLASS A. Class A Members shall be all Members except for the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership; provided, however, that in the event that more than one (1) person holds such interest or interests in any Lot, even though all such persons shall be Members, there shall be only one (1) vote for such Lot, which shall be exercised as they,

among themselves, determine (but in no event shall more than one (1) vote be cast with respect to any such Lot).

(b) CLASS B. The Class B Member shall be Declarant. Until such time as 99% of the maximum number of Lots planned or approved for the Property have been conveyed to Class A Members other than Declarant or Builders who purchase Lots for development and sale, the Class B Members shall determine or may limit the responsibilities of the Board and Class B Member shall have twenty (20) votes for each Lot such Class B Member owns until such time as control of the Association vests in the Class A Members. Class B Members shall convert into Class A Members upon the sale of the last Lot of the maximum number of Lots planned or approved for the Property to Owners other than Declarant. After such time, the Class B Members shall be a Class A Member entitled to one (1) vote for each Lot it owns. In determining the number of Lots owned by Declarant for the purpose of Class B membership status hereunder, the total number of Lots covered by this Declaration, including all Lots added to the Property as additional land in accordance with Article XIV hereof shall be considered. In the event the Class B membership has previously lapsed as provided above, but inclusion of additional property into the Property subject to this Declaration restores the ratio of Lots owned by Declarant to the number required for Class B membership status, such Class B membership shall be reinstated until it expires pursuant to the terms hereof.

### Section 8.3 Quorum and Notice Requirements.

(a) Except as expressly provided herein to the contrary, any action of the Members shall require the assent of a majority of the votes of those Association Members who are present at a meeting, in person or by proxy (both classes together), written notice of which shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of such meeting.

(b) A quorum is required for any action referred to in Section 8.3(a) and, unless otherwise provided, for any action for which a percentage vote at a meeting is required. A quorum shall be determined as set forth in this Section 8.3(b). Whether regular or special, the presence at the meeting of Members, in person or by proxies, entitled to cast at least ten percent (10%) of all the votes of the Association's Members, without regard to class, shall constitute a quorum. If the required quorum is not present at the initial meeting, additional meetings may be called, subject to the notice requirement hereinabove set forth, and the required quorum at such subsequent meeting(s) shall be one-half (1/2) of the quorum requirement for such prior meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum (although the quorum requirement shall be reduced for each such meeting, in no event shall a quorum be less than one-tenth (1/10) of the aggregate number of votes of Members, both classes taken together, of the Association). At such adjourned or subsequent meetings at which a quorum shall be present or represented, any business may be transacted which may have been transacted at the meeting as originally notified.

(c) Except as specifically set forth in this Declaration, notice, voting and quorum requirements of any action to be taken by the Association shall be set forth in its Bylaws, as same may be amended from time to time.

#### Section 8.4 Right of Inspection.

Each Owner shall have the right to inspect the financial records and books of the Association, during normal business hours and at the place where such books are kept, upon reasonable prior written notice to the Association stating a proper purpose in accordance with Section 209.005 of the Texas Property Code, as amended, and pursuant to any open records policy established by the Association.

### ARTICLE IX THE COMMON PROPERTIES

#### Section 9.1 Initial Common Properties.

The Common Properties may include but are not limited to, and by way of illustration only, all aspects of the entry features, entry monuments and walls, landscaping, irrigation for same and the land on which such entry features are situated, detention / retention ponds, screening walls, gates, fences, fountains and other structures, whether or not shown on a Final Plat, or as deemed necessary by Declarant, each as may be leased, maintained or owned by the Association. The foregoing list is intended to illustrate examples of Common Properties only and under no circumstance shall such list impose any obligation on Declarant or the Association to purchase, install or construct any such features or amenities. The Common Properties may hereafter include any neighborhood parks or other improvements, or land conveyed to or leased by the Association for the use and benefit of the Owners, notwithstanding, the Association shall not have maintenance responsibility for the Sanitary Lift Station which shall be owned and maintained by the City of Van Alstyne. Membership in the Association and payment of Assessments are not contingent upon the existence of or the building or supplying of Common Properties by Declarant or the Association. After initial construction or installation, the Association is responsible for all maintenance and repairs of Common Properties.

#### Section 9.2 Additional Common Properties.

Additional property may be added to the Common Properties hereunder upon the sole discretion of Declarant during such time as Declarant owns at least one (1) Lot. Thereafter, additional property may be added to the Common Properties hereunder upon the affirmative vote of sixty-seven percent (67%) of the votes of those Association Members who are voting, in person or by proxy, at a meeting duly called for such purpose, all classes taken together.

#### Section 9.3 Acceptance and Control of Common Properties.

Declarant, or any third-party at the request of Declarant, may transfer to the Association, and the Association shall accept as Common Properties in its then "as is" condition, upon such conveyance and/or transfer from Declarant, personal property and/or fee title or other property interests in any improved or unimproved real property included within the property described in **Exhibit A** or any other real property made subject to this Declaration and included in the Property

now or in the future. Transfer of Common Properties shall be considered a ministerial task and does not require the consent of the Association or its Board. Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved real property originally conveyed to the Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

#### Section 9.4 Extent of Members' Easement in the Common Properties.

Each Member shall have a right and easement of access, use and enjoyment in and to the Common Properties which is subject to the following:

- (a) The right of the Association to prescribe regulations governing the use, operation, and maintenance of the Common Properties;
- (b) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;
- (c) The right of the Association to (i) suspend the voting rights of any Member to the maximum extent permitted under applicable law, and/or (ii) to suspend the right of any individual to use any of the Common Properties and/or common facilities/amenities, for any period during which any Assessment against a Lot resided upon or owned by such individual remains unpaid, and for any period for an infraction of the rules and regulations of the Association, the Declaration, the Construction and Design Guidelines and/or other Governing Documents. Owners, occupants, tenants, guests, and invitees who show disregard for Association rules or the Association's property and amenities risk suspension of use of any Common Property or Amenity for up to six (6) months or more at the sole discretion of the Board; and
- (d) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities on the Common Properties, if any such recreational facilities are ever constructed.

#### Section 9.5 Dedication of the Common Properties.

The Board of Directors shall have the right at any time to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and upon such conditions as the Board of Directors may determine.

#### Section 9.6 Maintenance of Common Properties.

The Association shall be obligated to maintain the Common Properties and other amenities and improvements thereon and which are a part thereof in accordance with the terms of this Declaration and/or the Governing Documents. In no event shall Declarant be obligated to erect, install, maintain, repair, or replace any Common Properties and other amenities and improvements thereon and which are a part thereof after initial construction thereof by Declarant.

## ARTICLE X COVENANT FOR ASSESSMENTS

### Section 10.1 Creation of the Lien and Personal Obligation of Assessments.

Each Owner hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association) the following: (a) annual assessments or charges (the "Annual Assessments"); (b) acquisition assessments levied and charged upon the acquisition of a Lot by an Owner, other than Declarant, for working capital reserves (the "Working Capital Contributions"); (c) special assessments for capital improvements or other uses (the "Special Assessments"); (d) deficiency assessments to help meet any shortfall between the assessments collected and the expenses being incurred by the Association; (e) individual special assessments (including, without limitation interest and fines) levied against individual Owners for violations of the Declaration, Construction and Design Guidelines or the Community-Wide Standard or to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner, his tenant(s) occupying his Lot, if applicable, and their respective family, agents, guests and invitees, or for costs incurred by the Association resulting from any Owner failing to comply with the terms and provisions hereof ("Individual Special Assessments"), and (e) insurance assessments for the payment of insurance down payments, premiums, and deductibles ("Insurance Assessment").

The Annual Assessments, Working Capital Contributions, Special Assessments, Deficiency Assessment, Individual Special Assessments and Insurance Assessments are herein generally referred to as an "Assessment" and collectively (whether two or more) as the "Assessments." All such Assessments shall be fixed, established, and collected as hereinafter provided. Furthermore, each Owner hereby covenants and agrees to pay the Association (or to a mortgage company or other collection agency designated by the Association) the Assessments due or owing hereunder, and the payment of such Assessments is not contingent upon the existence of or the building or promise of amenities or common elements. The Assessments, together with such interest thereon, from time to time, and at the sole discretion of the Board, and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such Assessment is made. Each such Assessment, together with late charges, collection costs, such interest thereon and cost of collection thereof, including attorneys' fees, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the Assessment fell due.

Fines, not to exceed \$1,000.00 per violation occurrence, shall be assessed upon the expiration of a reasonable time after the date notice of such violation was sent to the violating Owner. In all instances of violations, the Owner shall be responsible for correcting such violation within the time allotted in the notice notwithstanding, the Board or the Association's managing agent may extend additional time on a case-by-case basis, depending on the nature and/or extremity of the violation. Such notice, regardless as to whether the residence is occupied by the Owner, or a tenant shall be sent by regular U.S. Mail to the address on file. *It is the Owners*

*responsibility to ensure the Association is always provided with up-to-date mailing address information.* Once a notice is placed in the U.S. mail or with any mailing system designed to process, apply appropriate postage, and send out notices, the Owner shall have been deemed to have been duly noticed. The lien provided for herein shall secure payment of fines not timely paid and the Owner shall also have personal liability for the payment of same.

#### Section 10.2 Purpose of Assessments.

The Assessments levied by the Association shall be used as follows: (a) for the purpose of promoting the interests of the Association and the recreation, health and welfare of the residents of the Property, and in particular for the improvement and maintenance of all Common Properties, and/or amenities or common elements which are a part thereof, including but, not limited to: the entry ways or any other properties, services and facilities devoted to this purpose and comprising or directly relating to the use and enjoyment of the Common Properties, including, but not limited, to the payment of taxes on and insurance in connection with the Common Properties, and the repair, replacement and additions thereto; (b) for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article XI hereafter including, but not limited to, the payment by the Association of all Assessments and charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting (if any) of the Common Properties; (d) for paying the cost of maintenance of the monument sign for the Property, if any, in the event the appropriate governmental authority refuses to maintain the same; or (e) for carrying out the purposes of the Association as stated in its Certificate of Formation. *The list above is not intended to be construed as an all-inclusive list but is provided for informational purposes based on the most common expenses incurred by property owners' associations.*

#### Section 10.3 Basis and Amount of Annual Assessments.

(a) The Board will prepare and approve an estimated annual budget for each fiscal year at an open meeting of the Board held in accordance with requirements under Section 209.0051 of the Texas Property Code and the Bylaws. For each calendar year or a part thereof during the term of this Declaration, the Board shall establish an estimated budget of the expenses to be incurred by the Association for the forthcoming year in performing and satisfying its rights, duties and obligations, which expenses may include, without limitation, amounts due from Owners, and which budget adopted by the Board may include one or more line items to establish reserve accounts (on a restricted, non-restricted, or other basis). Based upon such a budget, the Association shall then assess each Lot an Annual Assessment which shall be paid by each Owner in advance in accordance with Section 10.3(b) hereof. The Association shall notify each Owner of the Annual Assessment for the ensuing year by December 31st of the preceding year, but failure to give such notice shall not relieve any Owner from its obligation to pay Assessments.

(b) The Board of Directors may fix the Annual Assessment at any amount equal to or less than the maximum Annual Assessment for that year, as herein below provided. The maximum Annual Assessment for each Lot beginning the year 2023 the Annual Assessment shall be **Eight Hundred Fifty and No/100 Dollars (\$850.00)** and shall be paid annually, every January 1st



Commencing with the year 2023 and each year thereafter, the Board of Directors may set the amount of the maximum Annual Assessment for that year (and for following years) for each Lot based on the approved annual budget, provided that the maximum Annual Assessment may not be increased more than fifty percent (50%) above the maximum Annual Assessment for the previous year without a vote of the membership taken in accordance with the provisions of Section 10.3(b).

(c) Commencing with the year 2023, and in each year thereafter, the Board of Directors may set the maximum annual assessment for the following year for each Lot at an amount more than fifty percent (50%) above the maximum Annual Assessment for the previous year; provided that any such increase is based on budget and shall be approved by the majority vote of the Board and is levied only one time per year.

#### Section 10.4 Working Capital Contributions; Transfer Fees.

At any time, record title is transferred to an Owner other than Declarant or a Builder, a Working Capital Contribution shall be paid to the Association by such Owner at closing in the amount of **Three Hundred Fifty and No Dollars (\$350.00)** for each Lot acquired. Working Capital Contributions shall be in addition to, not in lieu of, any other Assessment provided for herein. Working Capital Contributions are not refundable and shall be available for all necessary expenditures of the Association as determined by the Board, including, without limitation, operating expenses of the Association and/or capital expenses. Each year the Board of Directors may review the Working Capital Contribution and may increase the amount of Working Capital Contribution provided that the maximum increase may not exceed thirty-five percent (35%) above the amount of Working Capital Contribution for the previous year.

In addition to the foregoing Working Capital Contribution, and as part of and an additional Assessment hereunder, the Association or its managing agent may charge Resale Certificate and Transfer Fees which combined may not exceed Five Hundred and No/100 Dollars (\$500.00) per Lot being transferred and/or conveyed. Notwithstanding, Builders purchasing initial Lot from Declarant shall pay a discounted transfer fee of Two Hundred, and No/100 Dollars (\$200.00) per Lot. Resale Certificate and Transfer Fees are in addition to the Working Capital Contribution and any Assessments owed. The production of a Resale Certificate and the transfer of an estate from one Owner to another is a time consuming and tedious process; therefore; the Association or its managing agent may, and probably will, charge fees. Fee amounts for the issuance of a Resale Certificate (not including transfer fee) is allowed to cover its administrative costs or otherwise to assemble, copy and deliver the Resale Certificate, but may not exceed that allowed by Texas Property Code, if such limitations apply. At the time of recording of this Declaration, the maximum Resale Certificate Fee *(not including transfer fees which are a separate charge that may be added to a Resale Certificate and collected by the Association or its managing agent)* the Association or its managing agent may charge is \$375.00 per Resale Certificate for the first issuance of every Resale Certificate and \$75.00 for a second request or update to a Resale Certificate. Any fees for a Resale Certificate or update thereof, as applicable, and other Transfer Related fees must be paid upon the earlier of (i) delivery of the Resale Certificate to an Owner, or (ii) the Owner's closing of the sale or transfer of his/her residence or Lot. Declarant is exempt from all Resale Certificate fees. Resale Certificates shall be delivered by the Association or managing agent and for second requests, said certificate shall be delivered within five (5) days after the second request delivered by an Owner to the Association or

the managing agent is received via certified mail, return receipt requested, or via hand delivery with evidence of receipt by the Association. Requests from Title Companies may be accepted via electronic means at the sole discretion of the Association or its managing agent. The Association or its managing agent shall not be required to issue a Resale Certificate until payment of the applicable resale certificate and transfer fees has been received by the Association or its managing agent, as applicable, or earlier date required under applicable. If the Association employs a managing agent, the Association does not pay the managing agent for transfer fees to produce a resale certificate, and these fees shall be due and owing to the managing agent by each transferring Owner. Fees owed to the Managing Agent for the sale or transfer of a Lot may not be waived or withdrawn without the express written consent of the managing agent. Transfer fees are not refundable and may not be regarded as a prepayment of credit against any other Assessments and are in addition to the Working Capital Contribution due under Section 10.4(a) above.

#### Section 10.5 Special Assessments.

The Association may also levy in any calendar year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, maintenance, unexpected repair or replacement of Association property or any described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto; provided that during the Declarant Control Period, no Member may veto any Special Assessment levied by the Board, and from and after the expiration of the Declarant Control Period, any such Special Assessment in excess of the then current Annual Assessment shall be approved by the affirmative vote of fifty-one percent (51%) of the votes of those Association Members who are voting, in person or by proxy, at a meeting duly called for such purpose.

#### Section 10.6 Special Individual Assessments, Interest and Fines.

In the event that any Owner fails to comply with the provisions of this Declaration, the Construction and Design Guidelines or the Community-Wide Standard and/or the Association incurs any cost or expense in either enforcing said provisions against any such Owner or in carrying out the obligations of any such Owner, the Association shall have the right to assess against such Owner and the Lot of such Owner a Special Individual Assessment (sometimes also known as Individual Assessment) in the amount of all such costs incurred by the Association plus interest and/or in the amount of any violation fine(s) levied by the Board. Special Individual Assessment, interest which may be charged from time to time and at the sole discretion of the Board, and fines charged hereunder are to be paid by the applicable Owner upon demand by the Association.

#### Section 10.7 Uniform Rate of Assessments.

Both Annual Assessments and Special Assessments (excepting therefrom Special Individual Assessments) shall be fixed at a uniform rate for all Lots.

### Section 10.8 Date of Commencement and Due Dates of Assessments.

The obligation to pay Assessments commences as to each Lot: (a) upon acquisition of record title to a Lot by any Owner thereof other than Declarant. The initial Annual Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot. Annual Assessments shall be payable in advance on the first (1st) business day of each January and shall be delinquent if not paid by the last day of the month in which the Assessment is due; provided, if the Board so elects, annual assessments may be paid in monthly, quarterly, or semi-annual installments. The Board may require advance payment of all or any portion of the Annual Assessment at closing of the transfer of title to a Lot. The due date or dates, if it is to be paid in installments, of any Special Assessment under Section 10.5 shall be fixed in the respective resolution authorizing such Special Assessment.

### Section 10.9 Duties of the Board of Directors with Respect to Assessments.

(a) The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

(b) Only if such Assessment is an amount different from that charged for the previous year, written notice of the Assessment shall thereupon be delivered or mailed to every Owner subject thereto (according to the Association's then current records).

(c) The Board of Directors shall, upon demand, cause to be furnished to any Owner liable for said Assessments a certificate in writing signed by an officer or agent of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board or the Association's managing agent for the issuance of such certificates.

### Section 10.10 Assessment Lien to Secure Charges and Assessments.

All Assessments, interest, which may be charged from time to time, at the sole discretion of the Board, late charges, collection fees and attorneys' fees, as provided for herein, shall constitute and be secured by a separate and valid and subsisting assessment lien, hereby created and fixed, and which shall exist upon and against each Lot and all improvements and fixtures thereon, for the benefit of the Association. Notwithstanding any other provision hereof, the lien to secure the payment of Assessments or any other sums due hereunder and any other lien which the Association may have on any Lot pursuant to this Declaration shall be subordinate to the lien or equivalent security interest of any first lien mortgage or deed of trust on any Lot. Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the liens securing maintenance charges or Assessments or any other sums due hereunder which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing Assessments thereafter becoming due and

payable, nor shall the liability of any Member personally obligated to pay maintenance charges or Assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future Assessments or charges be affected in any manner.

#### Section 10.11 Effect of Nonpayment of Assessment.

If any Assessment is not paid by the last day of the month in which it is due, the same shall bear interest from time to time, at the sole discretion of the Board, from the due date until paid at the highest nonusurious rate allowed under the laws of the State of Texas, or other applicable law, or if no such limitation imposed then at the rate of fifteen percent (15%) per annum, and if placed in the hands of an attorney for collection or if collected through probate or other judicial proceedings, there shall be reimbursed to the Association its reasonable attorneys' fees. Should any Assessment provided for herein be payable in installments, the Association may accelerate the entire Assessment and demand immediate payment thereof. In addition, a late charge shall be assessed against the non-paying Owner for each month that any Assessment remains unpaid. The late charge shall be in the amount of **Twenty-Five and No/100 Dollars (\$25.00)** per month and shall serve to reimburse the Association for administrative expenses and time involved in collecting and processing delinquent Assessments. The Association's managing agent shall be entitled to charge an Owner a monthly collection fee to compensate managing agent for its efforts in collecting delinquent Assessments. Bank fees charged to the Association for insufficient funds or for any other reason shall be billed back to the Owner's account in full and shall be payable to the Association immediately upon request. The Association, in the Board's sole discretion, shall have the right to waive any part of or all such interest and/or fees owed only to the Association. Late charges, collection fees and other costs of collections may be reviewed by the Board and are subject to increase and/or change periodically based on the costs involved with such collection efforts. The Association through Declarant or its Board, or any managing agent, may report delinquent Owners to any credit reporting agency subject to prior written notice delivered to the delinquent Owner via certified mail. The Association or its managing agent shall be entitled to reimbursement for collection efforts such as but not limited to demand letters, routine monthly collection actions, payment plan set up and monthly monitoring, processing, and handling of certified or certified, return receipt mailings, and credit reporting, but may not otherwise charge a fee (See Section 10.12 below). The Association, in the Board's discretion, shall have the right to waive any part of or all such interest and/or fees owed only to the Association.

#### Section 10.12 Collection and Enforcement.

The Association shall have a lien on each Lot securing payment of any Assessment, together with interest thereon as provided herein, reasonable attorneys' fees, late charges, collection fees and costs incurred in the collection of same and the enforcement of said lien. The Board of Directors shall take such action as it deems necessary to collect Assessments and may settle and compromise the same if deemed appropriate in the exercise of the Board's business judgment. Such liens shall be effective as and, in the manner provided for herein and shall have the priorities established in this Declaration. The Board of Directors may bring an action at law against any Owner personally obligated to pay an Assessment or foreclose the lien against such Owner's Lot, or both, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such Assessment. Each Owner, by his acceptance of a deed to a Lot, hereby

expressly vests in the Board of Directors of the Association or its agent the right and power to bring all actions against such Owner personally for the collection of such Assessments as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including, but not limited to, nonjudicial foreclosure pursuant to Texas Property Code Section 51.002 in force and effect on the date of this Declaration, or in accordance with the prescribed manner for foreclosure of deed of trust liens provided by any future amendment to such Section 51.002 or any other statute or article enacted in substitution therefore, and such Owner hereby expressly grants to the Board of Directors a private power of sale in connection with said lien.

The Board is hereby appointed trustee, unless and until the Board of Directors designates a substitute or successor trustee, as hereinafter provided, to post the required notices as provided by law and conduct such foreclosure sale. The lien provided for in this Section shall be in favor of the Association and shall have the same effect as though each Owner had expressly granted to the Association a deed of trust lien as well as a security interest in said Lot to secure the payment of the Assessments provided for herein. In addition to such notices as required by the aforesaid statute, the trustee shall mail to the Owner of a Lot for which the Assessment has not been paid, a copy of the notice of Assessment lien prior to the date any notice of sale is posted, by certified, return receipt requested, at the Lot or such other address as the Board has been advised in writing for receipt of notices under this Declaration. Notwithstanding the foregoing, any mandatory foreclosure requirements of Section 209 of the Texas Property Code shall be adhered to by the foreclosing entity. At any foreclosure, judicial or nonjudicial, the Association shall be entitled to bid up to the amount of its lien, together with costs and attorneys' fees, and to apply as cash credit against its bid all sums due the Association covered by the lien foreclosed. All foreclosure sales provided for herein shall be subject to any then existing statutory right of redemption in favor of the former Owner. From and after any such foreclosure, the former Owner or Owners, their heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the purchaser at such sale, and in the event of their failure to surrender possession of said property upon demand, the purchaser, or his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such Lot, or any part thereof, is situated. The Board of Directors in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act in the place of the trustee without any formality other than the designation in writing of a substitute or successor trustee; and the authority hereby conferred by the Board of Directors shall extend to the appointment of other successor and substitute trustees successively until the delinquent Assessment or Assessments have been paid in full, or until said property is sold, and each substitute and successor trustee shall succeed to all the rights and powers of the original trustee appointed by the Board of Directors or its agents.

The Association through its Board, or any managing agent of the Association, may report an Owner delinquent in the payment of Assessments to any credit reporting agency only if:

- (1) The delinquency is not the subject of a pending dispute between the Owner and the Association; and
- (2) at least thirty (30) business days before reporting to a credit reporting service, the Association sends, via certified mail, hand delivery, electronic delivery, or by other

delivery means acceptable between the delinquent Owner and the Association, a detailed report of all delinquent charges owed; and

(3) the delinquent Owner has been given the opportunity to enter a payment plan.

The Association may not charge a fee for the reporting of an Owner to any credit reporting agency of the delinquent payment history of assessments, fines, and fees of such Owner to a credit reporting service.

#### Section 10.13 Homestead.

By acceptance of a deed thereto, the Owner and spouse thereof, if married at the time of the conveyance or subsequently married, of a Lot shall be deemed to have waived any exemption from liens created by this Declaration or the enforcement thereof by foreclosure or otherwise, which may other be available by reason of the homestead exemption provisions of Texas law, if for any reason such are applicable. This Section is not intended to limit or restrict in any way the lien or rights granted to the Association by this Declaration but construed in its favor.

#### Section 10.14 Omission of Assessments.

The omission of the Board of Directors, before the expiration of any calendar period, to fix the Assessments hereunder for that or the next calendar period, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent calendar period, but the Assessment fixed for the preceding calendar period shall continue until a new Assessment is fixed or levied by the Board.

#### Section 10.15 Restricted or Non-Restricted Reserve.

(a) The Association may, but is not obligated to, establish, and maintain a restricted or non-restricted reserve fund for the periodic maintenance of the Common Properties. Notwithstanding, during the Declarant Control Period any reserve established by the Declarant, or the Board shall be non-restricted.

(b) Subject to the provisions of Section 10.3 above, the Board may at any time ratably increase or decrease the amounts of regular Annual Assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including provisions for reasonable reserves. So long as the Board exercises business judgment in determining the amount or necessity of the reserve fund, the amount held in reserves shall be considered adequate. Notwithstanding anything to the contrary contained in this Declaration, the establishment of reserves or a reserve fund during the Development Period is not required, however, from and after the expiration of the Development Period, the Board shall establish a reserve fund to be funded from Annual Assessments or by way of Special Assessments should the circumstances warrant.

### Section 10.16 Exempt Property.

The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All properties within the Property dedicated and accepted by the local public authority and devoted to public use; and
- (b) During the Development Period, all Lots and other portions of the Property owned by Declarant; and
- (c) All Common Properties.

### Section 10.17 Declarant Subsidy.

Declarant may, but shall not be obligated to, pay a subsidy to the Association to reduce or meet the expenses of the Association. Notwithstanding the foregoing, any such subsidy shall be disclosed as a line item in the income portion of the budget. The subsidy may be treated by the Declarant, in its sole discretion, as a loan from Declarant to the Association or as an advance against future Assessments due or as a contribution. Declarant has the right to demand, and the Association has the obligation to use funds available to the Association from other sources such as, but not limited to, the reserve fund or Working Capital Contributions collected to repay or reimburse Declarant for any such loans or subsidies made upon written demand from the Declarant.

### Section 10.18 Declarant's Assessment.

Notwithstanding any provision of this Declaration or the Certificate of Formation, Bylaws, or other Governing Documents to the contrary, during the Development Period Declarant does not pay Assessments on Declarant's unsold Lots.

## ARTICLE XI GENERAL POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

### Section 11.1 Power and Duties.

During the Declarant Control Period the Declarant may limit the powers and duties of the Board. Except as provided in Article XII below, the Board, for the benefit of the Association, the Property and the Owners shall have the right to do all things which are necessary or advisable in connection with enforcing the provisions of this Declaration. Such powers shall include, but shall not be limited to, the following:

- (a) Paying assessments and charges for sewer, water, and garbage pickup services for the Properties, if any, the installation, and maintenance charges for street lighting for the Property,

if any, and taxes, assessments and other charges which shall properly be assessed or charged against the Common Properties.

(b) Performing maintenance on the Common Properties which may include, without limitation, the following: (i) maintenance of any driveways, private roadways, jogging paths, walkways and sidewalks; (ii) maintenance of grounds, including care of trees, shrubs and grass, lighting systems, sprinkler systems (if installed) and similar facilities on the Common Properties; and (iii) maintenance of the entry monument(s) and any screening walls or fences constructed around the perimeter of the Property; provided, further, that in the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family, his guests or invitees, or tenants or occupants, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

(c) Managing and maintaining the Common Properties and full maintenance of a utility service for the Common Properties; the furnishing and upkeep of any desired personal property for use in the Common Properties.

(d) Purchasing a policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association, in an amount not less than \$250,000.00 to indemnify against the claim of one person, \$500,000.00 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$50,000.00 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insured's; provided, that under no circumstances shall the Board be authorized to provide or pay for fire, casualty, or other insurance insuring the interest of any Owner in his Lot. Declarant and the Association's managing agent, if any, shall be named as "additional insured" on any policies of insurance obtained by the Association.

(e) Executing all replats of the Property and all declarations of ownership for tax assessment purposes regarding the Common Properties on behalf of all Owners.

(f) Borrowing funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(g) Entering contracts, maintaining one or more bank accounts, and generally exercising all the powers necessary or incidental to the operation and management of the Association, expressly including the power to enter management and maintenance contracts. To ensure the smooth and orderly buildout of the development, contracts entered by Declarant during the Declarant Control Period may have extended terms and may not be subject to termination by the Board during the Declarant Control Period without the express written consent of Declarant.

(h) Protecting or defending Common Properties from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

(i) Making reasonable rules and regulations for the operation of the Common Properties and amend them from time to time, provided that any rule or regulation may be amended



or repealed by a majority vote of those Members present, in person or by proxy, at a meeting called for such purpose (without limiting the generality of the foregoing language, the rules and regulations may provide for limitations on use of the Common Properties during certain periods by youthful persons, visitors or otherwise).

(j) Adjusting the amount, collecting, and using any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, assessing the Members in proportionate amounts to cover the deficiency.

(k) Enforcing the provisions of this Declaration, the Construction and Design Guidelines, any Community-Wide Standard, and any rules made hereunder, including any supplement or amendment hereto, and to enjoining and seeking damages from any Owner for violation of such provisions or rules.

(l) Exercising the rights granted to the Association in this Declaration, including, without limitation, all rights of the Board, the Association, and the ACC relating to architecture, design, and construction review and inspections under Article III.

The Association may exercise any right or privilege given to it expressly or by reasonable implication by this Declaration, the Bylaws, or the Certificate of Formation, and may act reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in such documents or by law, the Board of Directors may exercise all rights and powers of the Association without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Properties, enforcement of this Declaration, or any other civil claim or action. However, the Board shall exercise business judgment in determining whether to take any such action under certain circumstances and shall have no legal duty to institute litigation under any circumstances on behalf of or in the name of the Association or the Members.

#### Section 11.2 Board Power, Exclusive.

The Board shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the maintenance fund, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein. Declarant may choose to limit the duties of the Board during the Declarant Control Period. Declarant and the Association's managing agent, if any, shall be named as "additional insured" on any policies of insurance obtained by the Board on behalf of the Association.

#### Section 11.3 Owner's Obligations to Repair.

Except for those portions of each Lot constituting the Common Properties, each Owner shall at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair. In the event that any Owner shall fail to maintain and repair his Lot and such improvements as required hereunder, the Association, in

addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right but not the obligation, subject to the notice and cure provisions of Section 6.1 above, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any Assessments hereunder when due.

#### Section 11.4 Maintenance Contracts with Owners.

The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by or for the Association of services pursuant to the terms hereof (including, but not limited to, the maintenance and repair of fences owned by any such Owner), such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and to the best interest of the Association; provided, however, that same must be commercially reasonable in all circumstances.

#### Section 11.5 Liability of the Board of Directors and other Persons.

**The Association shall indemnify every officer, director, and committee member, Declarant, and any managing agent of the Association, for from and against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding if approved by the Board of Directors at the time of such settlement) to which he or she may be a party by reason of being or having been an officer, director, or committee member, Declarant or managing agent. OFFICERS, DIRECTORS, AND COMMITTEE MEMBERS SHALL NOT BE LIABLE FOR ANY MISTAKE OF JUDGMENT, NEGLIGENCE OR OTHERWISE, EXCEPT FOR THEIR OWN INDIVIDUAL WILLFUL MISFEASANCE, MALFEASANCE, MISCONDUCT, OR BAD FAITH. The Association's officers, directors, committee members, and managing agents, and Declarant, and its officers, directors, managers, members, or other constituent parties (the "Indemnified Parties") shall have no personal liability with respect to any contract or other commitment made or action taken or not taken in good faith on behalf of the Association. The Association, as a common expense of the Association, shall indemnify and forever hold each such Indemnified Party harmless for, from and against all liability to others on account of any such contract, commitment, inaction, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former Indemnified Party may be entitled. The Association shall, as an Association expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available. Declarant and the Association's managing agent, if any, shall be named as "additional insured" on any such policies of insurance obtained by the Association. The provisions of Section 11.5 may not be modified or amended without the express written consent of the Declarant.**

Section 11.6 Notice and Hearing Procedures Prior to the Initiation of Certain Types of Actions by the Association.

Except as set forth in paragraph (c) below, prior to filing suit to enforce the provisions of this Declaration, the Construction and Design Guidelines, any Community-Wide Standard or rules promulgated hereunder, the Association shall comply with the notice and hearing procedures set forth in subsections (a) and (b) below:

(a) Notice. The Association shall serve the alleged violator with a minimum of one (1) notice of not more than ten (10) days describing (i) the nature of the alleged violation, (ii) the action which the Association proposes or intends to take unless the violation is corrected within a reasonable time from the date of the written notice, and (iii) a period of not less than thirty (30) calendar days within which the alleged violator may present a written request for a hearing. Before the Association may exercise its remedies for a violation of the Documents or damage to the Property, the Association must give an Owner written notice and an opportunity for a hearing, according to the requirements and procedures in this Declaration, the Bylaws and in Applicable Law, such as Chapter 209 of the Texas Property Code, as amended from time to time. Not later than ten (10) days before the Association holds a hearing under Chapter 209 of the Texas Property Code, the Association shall provide to an Owner a packet containing all documents, photographs, and communications relating to the matter the Association intends to introduce at the hearing; failing which the Owner is entitled to a fifteen (15) day postponement of the hearing. During the hearing, the Association (through a member of the Board of designated representatives) shall first present the Association's case against the Owner. An Owner or its designated representative is then entitled to present the Owner's information and issues relevant to the appeal or dispute.

The Association may proceed with the action which may include the Association's right to initiate self-help actions wherein the Association shall make the necessary repairs to correct the violation and all charges incurred by the Association in abating the violation shall be assessed to the Owner's account. Notwithstanding the foregoing, if Owner presents a request for a hearing within the thirty (30) daytime allotted, all fines for non-compliance shall be placed on hold and any further enforcement action shall be placed on hold until after the hearing date and the rendering of decision. Non-Payment of fines for non-compliance or charges assessed by the Association for self-help remedies will be collected according to applicable law and per current Texas Property Code regulations.

(b) Charges will be subject to possible late and/or collection charges when applicable. If the violation is abated within the period set forth in the written notice, the Association shall suspend the proposed action unless a similar violation occurs within six (6) months from the date of the written notice. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Owner. Recurring violations within a six (6) month period will not require the Association to issue again notices previously sent. If the required one (1) notice was previously sent, the Association may, at its discretion, send an immediate notice of fine warning to the Owner which must allow the Owner not less than five (5) days to correct the violation. If Owner does not make the necessary corrections, the Association may begin fines or initiate self-help action without further notice required. In the event of any violation or failure of an Owner or Occupant, tenant, guest, or invitee is considered an emergency, or threatens the health, welfare, or safety of a person, property, animal, or thing or the violation or

failure is of a non-curable nature, the notice requirements above shall not apply, and the Association may act immediately to abate or avert any violation or situation. When possible, the Association shall attempt to contact Owner by phone, e-mail or by posting a notice to the door of the residence.

(c) Hearing. If a hearing is requested within the allotted thirty (30) day period, the hearing, at the Board's sole discretion, may be held before a committee appointed by the Board consisting of at least three (3) persons, all of whom shall be Owners or residents except that during the Declarant Control Period the committee may consist of non-owners appointed by the Declarant or representatives of Declarant. A representative of the Association shall be afforded a reasonable opportunity to make a statement describing the alleged violation and to present any evidence or witnesses to support its statement. The alleged violator shall also be afforded a reasonable opportunity to be heard and to present any evidence or witnesses on his or her behalf. At the conclusion of all statements and presentations, the committee may close the hearing and may retire to discuss the evidence and to render a judgment as to whether, in fact, a violation has occurred, or the committee may adjourn the hearing and send written notice of the committee's decision to the Owner within ten (10) business days. The committee shall notify the Association of the outcome of the hearing and the Association shall proceed with all remedies described in its original notice of the violation unless alternate instructions from the committee are received. The alleged violator shall have the opportunity to appeal the decision of the committee to the Board in accordance with Section 209.007 of the Texas Residential Property Owners Act, Texas Property Code, as it may be amended, and the Board's decision shall be final. In the absence of a Committee, the Board shall reside at the hearing and the Board's decision shall be final.

(d) Applicability. The notice and hearing procedures set forth in this Section shall not apply to any claim: (i) upon which the Board deems it necessary to obtain emergency injunctive relief; (ii) pertaining to the collection of Assessments; or (iii) where the Association decides to exercise its right of self-help to cure the violation after written notice to the Owner and an opportunity to cure.

## ARTICLE XII AUTHORITY AND CONTROL BY DECLARANT

### Section 12.1 Declarant Rights.

In addition to the reservations made by Declarant and set forth in **Exhibit B** attached hereto and incorporated herein by this reference, and notwithstanding anything herein to the contrary, during the Development Period, Declarant shall have the sole right, but not the obligation, in its sole discretion, at any time, effective as of the date hereof, to control, perform and/or conduct the following:

- (1) amend this Declaration, the Construction and Design Guidelines and the Community-Wide Standard, or any other Policies and Governing Documents, in whole or

in part for any reason as Declarant in its discretion, deems necessary for the completion of the development, without consent or joinder of the Board or any Owner;

- (2) enforce the provisions of this Declaration;
- (3) enter contracts;
- (4) review, determine and enforce the architectural control of the Lots; and
- (5) assign its rights and obligations under this Declaration to any entity at any time, in whole or in part.

Declarant's rights set forth above are absolute in its sole discretion and do not require the approval, consent, or joinder of (i) any Owner, (ii) the Association, (iii) the Board of Directors, or (iv) any committees or other parties which may be established with respect hereto. When Declarant no longer owns a Lot within the Property, all such rights of enforcement shall be automatically vested in the Board of Directors of the Association. Declarant may, but is not obligated to, limit the powers of the Board during the Development Period. In the event any other provision in this Declaration is in contradiction to this Article XII, in whole or in part, this Article XII shall prevail; provided however, in this event the terms of this Article XII and Exhibit B conflict, the terms of Exhibit B shall control.

#### Section 12.2 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, including Lots, and a nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a residence or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned, or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repairs or damage relating to defective workmanship or materials. The provisions of this Section 12.2 may not be modified or amended without the express written consent of Declarant

#### Section 12.3 Right to Develop.

During the Development Period, Declarant and its respective employees, agents, and designees shall have a right of access and use and an easement over and upon all the Property for the purpose of making, constructing, and installing such improvements to the Property, as Declarant deems appropriate in its discretion, and otherwise as reasonably necessary to affect Declarant's rights hereunder. The provisions of this Section 12.3 may not be modified or amended without the express written consent of Declarant

#### Section 12.4 Construction Activities.

All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, and/or its agents, contractors, subcontractors, licensees, and other designees, shall conduct development and construction activities within the Property and that such activities shall be

conducted in phases and may cause disturbance and disruption which impact the use and enjoyment of a Lot. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Property generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree: (a) that such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other persons under their control or direction to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant and all of its agents, contractors, subcontractors, licensees, and other designees, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of Lots within the Property.

#### Section 12.5 Changes in Master Plan; Replatting.

(a) Each Owner acknowledges that Lincoln Pointe is a planned community, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support any protest, challenge, or other form of objection to (a) changes in uses or density of property within the Property, or (b) changes in the master plan of Lincoln Pointe, including, without limitation, the enlargement of the master plan and the acquisition or revision of regulatory approvals to reflect the annexation of real property, without Declarant's prior written consent, which consent may be granted or withheld in Declarant's discretion.

(b) From time to time, Declarant reserves the right to replat its Property or to amend or modify any Final Plat to assure harmonious and orderly development of the Property as herein provided. Declarant may exercise such rights at any time during the Development Period and no joinder of any other Owner shall be required to give effect to such rights, each Owner consenting to Declarant's execution of any replat on such Owner's behalf, provided that in no circumstance may the replat adversely affect a Lot without the Owner's prior consent, which may be granted or denied in such Owner's sole and absolute discretion. Furthermore, any such replatting or amendment of a Final Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for compliance with any applicable governmental regulation. Declarant's rights under this Section 12.5 shall expire upon expiration of the Development Period.

(c) Further, and without regard to whether or not Declarant has been released from obligations and duties to the Association, during the Development Period or so long as Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor its Board, nor any member of the Association shall take any action that will impair or adversely affect the rights of Declarant or cause Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the

sale of Lots. In the event there is a breach of this Section, it is acknowledged that any monetary award which may be available would be an insufficient remedy and therefore, in addition to all other remedies, Declarant shall be entitled to injunctive relief restraining the Association, its Board or any member of the Association from further breach of this Section.

(d) Each Owner acknowledges and agrees that the present plans and themes for the Property's development may change and that it has not relied on any representation, warranty, or assurance by any person: (a) that any Lots, or other property or facilities will or will not be added, modified, or eliminated within the Property; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to: (a) the design, construction, completion, development, use, benefits, or value of the Property; or (b) the number, types, sizes, prices, or designs of any residential structures or improvements built or to be built in any part of the Property.

#### Section 12.6 Dispute Resolution Involving Declarant.

(a) Right to Correct. Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

(b) Alternative Method for Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all persons subject to this Declaration; any Builder, its officers, directors, employees and agents; and any person not otherwise subject to this Declaration who agrees to submit to this Section 12.6 (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 12.6(c) (collectively, the "Claims") to the mandatory procedures set forth in Section 12.6(e).

(c) Claims. Those Claims between any of the Bound Parties, regardless of how the same might have arisen, relating to the quality of design or construction of improvements within the Property including the Common Properties or based upon any statements, representations, promises, or warranties made by or on behalf of any Bound Party, shall be subject to the provisions of this Section 12.6. A Claimant, whether Owner or the Association, may not consolidate any Claims or bring a Claim on behalf of any class; provided however, a Respondent may join or add additional parties to a Claim as may be allegedly responsible in whole or in any part for matters which are the subject of such Claims. Notwithstanding anything to the contrary contained herein or in any Governing Documents, the Association shall not have the power to institute, defend, intervene in, settle or compromise litigation, arbitration, or administrative proceedings: (1) in the name of or on behalf of or against any Owner (whether one or more); or (2) pertaining to a Claim relating to the design or construction of improvements on a Lot (whether one or more), including residences.

(d) Common Properties Claims. In the event the Association or an Owner asserts a Claim related to the Common Properties, as a precondition to providing the Notice defined in Section 12.6(e), initiating the mandatory dispute resolution procedures set forth in this Section 12.6, or taking any other action to prosecute a Claim related to the Common Properties, the Association or Owner, as applicable, must:

(i) Independent Report on the Condition of the Common Properties. Obtain an independent third-party report (the "Common Properties Report") from a licensed professional engineer which: (1) identifies the Common Properties subject to the Claim including the present physical condition of the Common Properties; (2) describes any modification, maintenance, or repairs to the Common Properties performed by the Owner(s) and/or the Association; (3) provides specific and detailed recommendations regarding remediation and/or repair of the Common Properties subject to the Claim. For the purposes of this Section, an independent third-party report is a report obtained directly by the Association or an Owner and paid for by the Association or Owner, as applicable, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or Owner in the Claim. As a precondition to providing the Notice described in Section 16.5, the Association or Owner must provide at least ten (10) days prior written notice of the inspection, calculated from the date or receipt of such notice to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Common Properties Report, the specific Common Properties to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Common Properties Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in Section 16.5, the Association, or the Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Common Properties Report.

(ii) Claim by the Association - Owner Meeting and Approval. If the Claim is prosecuted by the Association, the Association must first obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in Section 16.5, initiate the mandatory dispute resolution procedures set forth in this Article 16, or take any other action to prosecute a Claim, which approval from Members must be obtained at a special meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (1) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (2) a copy of the Common Properties Report; (3) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the claim (the "Engagement Letter"); (4) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not proceed with the Claim; (5) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (6) an estimate of the impact on the value of each residence if the Claim is prosecuted and an estimate of the impact on the value of each residence after resolution of the Claim; (7) an estimate of the impact on the marketability of each residence if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on



the value of each residence during and after resolution of the Claim; (8) the manner in which the Association proposes to fund the cost of prosecuting the Claim; and (9) the impact on the finances of the Association, including the impact on present and projected reserves, in the event the Association is not the prevailing party. The notice required by this paragraph must be prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association or Owner, as applicable, in the Claim. In the event Members approve providing the Notice described in Section 16.5, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

Notwithstanding anything contained herein or in the Governing Documents, paragraph may not be amended or modified without Declarant's written and acknowledged consent, and Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, which must be part of the recorded amendment instrument.

(e) Mandatory Procedures.

(i) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (a) the nature of the Claim, including the persons involved and Respondent's role in the Claim;
- (b) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (c) the proposed remedy; and
- (d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(ii) Negotiations and Mediation.

- (a) The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (b) If the parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have two (2) days to submit the Claim to mediation under the auspices of the

American Arbitration Association (“AAA”) in accordance with the AAA’s Commercial or Construction Industry Mediation Rules, as appropriate.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation Notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys’ fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiations or mediation in accordance with this Section and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement, without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys’ fees, and court costs.

(iii) Binding Arbitration.

(a) Upon Termination of Mediation, Claimant shall thereafter be entitled to initial final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA’s Commercial or Construction Industry Arbitration Rules, as appropriate. Such Claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three (3) arbitrators. Otherwise, unless mutually agreed to by the Parties, there shall be one (1) arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(b) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees or arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

### **ARTICLE XIII OBLIGATIONS OF BOARD OF DIRECTORS**

#### Section 13.1 Obligations of Board of Directors.

Notwithstanding anything herein to the contrary, and so long as Declarant is acting on behalf of the Board of Directors as further described in Section 13.2 below, the sole responsibility and obligation of the Board of Directors shall be to maintain the corporation books of the Association and maintain the Association in good corporate standing with Secretary of State of the State of Texas and in good standing with the Office of the Comptroller of Public Accounts of the State of Texas.

#### Section 13.2 Liability for Association Operations.

**The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant and any managing agent of the Association (including their respective officers, directors, managers, member or other constituent parties, and their respective successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Properties and the collection of Assessments.**

#### Section 13.3 No Liability for Acts of Third Party.

**OWNERS AND OCCUPANTS OF LOTS, AND THEIR RESPECTIVE GUESTS AND INVITEES, OCCUPANTS, OR TENANTS, ARE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND FOR THEIR PROPERTY WITHIN PROPERTY. THE ASSOCIATION MAY BUT IS NOT OBLIGATED TO MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTY WHICH PROMOTE OR ENHANCE SAFETY OR SECURITY WITHIN THE**

PROPERTY. HOWEVER, THE ASSOCIATION, AND DECLARANT SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PROPERTY, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING FIRE PROTECTION, BURGLAR ALARM, OR OTHER SECURITY MONITORING SYSTEMS, OR ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTY, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND SHALL BE RESPONSIBLE FOR INFORMING ITS TENANTS AND ALL OCCUPANTS OF ITS LOT THAT THE ASSOCIATION, THE BOARD AND ITS COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PROPERTY ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS OF LOTS, RESULTING FROM ACTS OF THIRD PARTIES.

The provisions of Section 13.3 may not be modified or amended without the express written consent of Declarant.

#### ARTICLE XIV EXPANSION OF THE PROPERTY

##### Section 14.1 Expansion of the Property.

Declarant, in its sole discretion and without the approval of any other party, may from time-to-time subject additional real property to this Declaration by recording in the Real Property Records of the County, a Supplemental Declaration describing the additional real property to be subjected to this Declaration. Any such Supplemental Declaration which is executed by Declarant and the owner of such additional property, if other than Declarant, and recorded in the Real Property Records of the County shall not require the consent or approval of any other Owner or other person to be fully enforceable and effective to cause such additional real property to be incorporated herein. Nothing in this Declaration shall be construed to require Declarant to subject additional real property to this Declaration.

##### Section 14.2 Additional Covenants and Easements.

Declarant, in its sole discretion and without the approval of any other party, may from time to time subject the Property, whether now or hereafter a part of this Declaration, to additional covenants and easements, including, without limitation, covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through the Assessments, as described in Article X hereof. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the Property, whether now or hereafter a part of this Declaration, to reflect the different character and intended use of such Property. Any such

Supplemental Declaration which is executed by Declarant and recorded in the Real Property Records of the County shall not require the consent or approval of any other Owner or other person to be fully enforceable and effective to cause such additional covenants and easements to be incorporated herein. The provisions of this Section 14.2 may not be modified or amended without the express written consent of Declarant

Section 14.3 Effect of Recording Supplemental Declaration.

A Supplemental Declaration shall be effective upon the recording of same in the Real Property Records of the County unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and Assessment liability in accordance with the provisions of this Declaration.

**ARTICLE XV  
GENERAL PROVISIONS**

Section 15.1 Mortgages.

It is expressly provided that the breach of any of the conditions contained herein shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, as to the same premises or any part thereof encumbered by such mortgage or deed of trust, but said conditions shall be binding thereto as to Lots acquired by foreclosure, trustee's sale or otherwise, as to any breach occurring after such acquisition of title.

Section 15.2 Term.

This Declaration shall be enforceable by Declarant, the Association, any aggrieved Owner, and their respective legal representatives, heirs, successors, and assigns until December 31, 2050, after which time this Declaration shall extend automatically for successive 10-year periods unless at least sixty-seven percent (67%) of the then Owners have signed, within a six month period preceding the end of the initial term or any extension, an instrument which terminates this Declaration and such instrument is recorded in the Real Property Records of the County prior to the end of the term.

Section 15.3 Severability.

If any provision herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final (*i.e.*, non-appealable) judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

#### Section 15.4 Binding Effect.

This Declaration is for the mutual benefit of, and shall be binding upon, every person acquiring any part of the Property, it being understood that the covenants, conditions, restrictions, easements, and other provisions contained in this Declaration are not for the benefit of the owner of any land except that which is a part of the Property. This Declaration, when executed, shall be filed of record in the Real Property Records of the County, so that every Owner or purchaser of any portion of the Property is on notice of the covenants, conditions, restrictions, easements, and other provisions herein contained.

#### Section 15.5 Notices.

Any notices or correspondence to an Owner shall be addressed to the street address of the Lot or to such other address as is specified by any such Owner in writing to the Association. The burden shall be on the Owner to prove that such written notification was duly given and delivered to the Association as provided below. Any notices or correspondence to the Association shall be addressed to the registered office of the Association as shown by the records of the Secretary of State for the State of Texas or to such other address as is specified by the Association in writing to the Owners. Except as this Declaration or the Bylaws otherwise provide, all notices, demands, bills, statements, or other communications under this Declaration or the Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or by private carrier; if sent by United States mail; or, if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

Notices sent in accordance with this Declaration shall be deemed to have been duly given and effective:

- (i) sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class postage prepaid;
- (ii) if delivered personally or by private carrier, when delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or
- (iii) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation.

#### Section 15.6 Transfer Under Deed of Trust.

Upon any transfer of Declarant's interest in and to the Property, or any part thereof, under the terms of any deed of trust lien upon the Property, whether voluntary or involuntary, by foreclosure, deed in lieu of foreclosure or otherwise, all rights, title, and interests of Declarant under this Declaration, shall be transferred to and devolve upon the party to whom the Property or any part thereof, is thereby conveyed.

Section 15.7 Notice of Transfer.

If at any time a Lot is sold, the new Owner shall have the sole obligation to promptly notify the Association of the name and address of the new Owner and shall be responsible for any cost, charge or expense added to the account of such Owner which may have otherwise been avoided if the above information was promptly delivered to the Association.

Section 15.8 No Liability for Trespass.

Whenever the Association or its authorized Agents or Representatives, the Board of Directors or Declarant exercises any right hereunder and in connection therewith enters upon any Lot, such parties shall not be liable for trespassing upon such Lot.

Section 15.9 Lien Priority.

Notwithstanding any other provision of the Declaration, the lien to secure the payment of Assessments and any other lien which the Association may have on any Lot pursuant to the Declaration for (a) Assessments or other charges becoming payable on or after the date of recordation of the first mortgage or deed of trust on any Lot, or (b) any fees, late charges, fines or interest that may be levied by the Association in connection with unpaid Assessments, shall be subordinate to the lien or equivalent security interest of any legitimate third-party first lien mortgage or deed of trust on any Lot, if any. Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the liens securing maintenance charges or Assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing Assessments thereafter becoming due and payable, nor shall the liability of any Owner personally obligated to pay maintenance charges or Assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future Assessments or charges be affected in any manner. Any such maintenance charges or Assessments which are extinguished pursuant to the foregoing provision shall be reallocated and assessed to all Lots as a common expense.

Section 15.10 Use of Recreational Facilities and Other Common Properties.

The property made subject to this Declaration may contain common recreational facilities available for the use and enjoyment of Owners of Lot or any other portion of the Property, including lots and homes, within Lincoln Pointe, their families, tenants and other occupants of their property, and the guests of any such persons. **EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY PORTION OF THE PROPERTY MADE SUBJECT TO THIS DECLARATION, ACKNOWLEDGES THAT THE USE AND PROPERTY MADE SUBJECT TO THIS DECLARATION, ACKNOWLEDGES THAT THE USE AND ENJOYMENT OF ANY RECREATIONAL FACILITY OR ANY OTHER PORTION OF THE COMMON PROPERTIES INVOLVES RISK OF PERSONAL INJURY OR DAMAGE TO PROPERTY.** Each Owner acknowledges, understands, and covenants to inform his or her family members, and tenants and other occupants of Owner's property that Declarant, the Association, the Board and any committees, and Builders constructing homes and other improvements within Lincoln Pointe are not insurers of personal safety. **EACH PERSON USING SUCH RECREATIONAL FACILITIES OR ANY OTHER PORTION OF THE COMMON PROPERTIES**

**ASSUMES ALL RISKS OF PERSONAL INJURY, DEATH, AND LOSS OR DAMAGE TO PROPERTY, RESULTING FROM THE USE AND ENJOYMENT OF ANY RECREATIONAL FACILITY OR OTHER PORTION OF THE COMMON PROPERTIES.** Each Owner agrees that Declarant, the Association, the Board and committees, or its agents, and Builders within the Property shall not be liable to any person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury or death, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the use of any recreational facility or other portions of the Common Properties, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the Association, or any Builder within the Property.

**THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE. EACH OWNER ACKNOWLEDGES AND AGREES THAT THE ABOVE RELEASE FROM LIABILITY IS CONSIDERATION FOR, AND A CONDITION TO, THE USE AND ENJOYMENT OF THE RECREATIONAL FACILITIES AND OTHER COMMON PROPERTIES WITHIN LINCOLN POINTE AND THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT AND BUILDERS TO SELL, CONVEY, LEASE, AND/OR ALLOW THE USE OF LOTS WITHIN LINCOLN POINTE. ANY VIOLATION OF THIS RELEASE AGREEMENT BY AN OWNER, OR ANY OF OWNER'S FAMILY MEMBERS, TENANTS AND OTHER OCCUPANTS OF OWNER'S PROPERTY, OR THEIR RESPECTIVE GUESTS SHALL BE GROUNDS FOR THE SUSPENSION OR TERMINATION OF ALL OF SUCH PERSONS' USE PRIVILEGES IN SUCH FACILITIES.**

**Section 15.11 Construction of Declaration and All Association Documents.**

The provisions of this Declaration and all other documents of the Association shall be liberally construed to give effect to its intended purpose. All doubts regarding the meaning, significance, or effect of a provision in this Declaration or other documents of the Association, shall be resolved in favor of the operation of the Association and its enforcement of the Declaration.

**[SIGNATURE PAGE FOLLOWS THIS PAGE]**



EXECUTED this 29<sup>th</sup> day of August, 2023.

**DECLARANT:**

**LINCOLN POINTE DEVELOPMENT, LLC,  
A Texas limited liability company**

**By:** \_\_\_\_\_

**Name:** Steve H. Lenart

**Title:** Manager

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

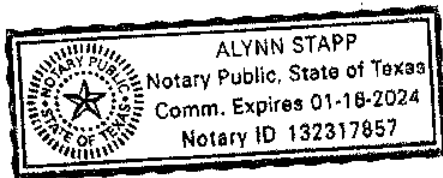
Before me, Alynn Stapp, a Notary Public, on this day personally appeared Steve H. Lenart, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act of Manager, of Lincoln Pointe Development, LLC, a Texas limited liability company, for the purposes and consideration therein expressed.

Given under my hand and seal of office this 29 day of August, 2023.

[SEAL]

Alynn Stapp  
Notary Public  
Alynn Stapp  
Printed name of Notary

My Commission Expires: 1-16-2024



**EXHIBIT A**

Legal Description

[See attached]

WHEREAS LINCOLN POINTE DEVELOPMENT, LLC, a Texas limited liability company, is the owner of the 35.465 acre tract of land situated in the JAMES MCKINNEY SURVEY, ABSTRACT NUMBER 770 and the CHARLES FOX SURVEY, ABSTRACT NUMBER 413, in the City of Van Alstyne, Grayson County, Texas, and being the same tract of land described as 35.465 acres in Special Warranty Deed to LINCOLN POINTE DEVELOPMENT, LLC, as filed for record in Clerk's File Number 2021-27577 of the Land Records of Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a PK & Disc set for corner at the northwest corner of the remaining portion of said LINCOLN POINTE tract, said corner also being the southwest corner a called 4.94 acres described in General Warranty Deed with Vendor's Lien to TAYLOR LEWIS CHANDLER and ASHTEN CHANDLER, as filed for record in Clerk's File Number 2021-29939 of the Land Records of Grayson County, Texas, said corner also being in the center of a public road locally known as LINCOLN PARK ROAD, said corner also being in the east line of a called 12.50 acres described in Special Warranty Deed to SHARRON O. EVANS, as filed for record in Volume 4946, Page 343 of the Land Records of Grayson County, Texas;

THENCE S 89°22'46" E along the north boundary of the LINCOLN POINTE tract and the south boundary of said CHANDLER tract, a distance of 1148.76 feet to a 1/2" capped iron rebar (RICHEY ENG.) set for corner at an angle point;

THENCE N 46°34'14" E, continuing along the north boundary of said LINCOLN POINTE tract and the south boundary of said CHANDLER tract, a distance of 53.81 feet to a 5/8" iron rebar found for corner at the northeast corner of said LINCOLN POINTE tract, also being the southeast corner of said CHANDLER tract, also being on the east boundary of a called 4.69 acre described in General Warranty Deed to BENJAMIN SIMMONS and CHANTAE SIMMONS, as filed for record in Volume 5867, Page 299 of the Land Records of Grayson County, Texas;

THENCE S 2°08'57" E, along the east boundary of said LINCOLN POINTE tract and the west boundary of said SIMMONS tract, a distance of 47.60 feet to an X-cut at the base of a fence corner post found for corner at an angle point;

THENCE S 00°41'13" W, continuing along the east boundary of said LINCOLN POINTE tract and the west boundary of said SIMMONS tract, a distance of 1018.07 feet to a 1/2" iron rebar found for corner at the southeast corner of said LINCOLN POINTE tract, also being the southwest corner of said SIMMONS tract, also being on the north Right-of-Way line of F. M. HIGHWAY 121 (A.K.A. East Jefferson Street), also being on the arc of a curve having a radius of 1105.98 feet, a central angle of 23°03'19", and a chord of S 61°17'40" W, a distance of 442.04 feet;

Thence southwesterly, along the southerly boundary of said LINCOLN POINT tract and the north Right-of-Way of said F. M. HIGHWAY 121 and the arc of said curve, an arc distance of 445.03 feet to a wood monument found for corner at the point of tangency of said curve;

THENCE S 72°49'18" W, continuing along the southerly boundary said LINCOLN POINTE tract and the north Right-of-WAY of said F. M. HIGHWAY 121, a distance of 833.54 feet to a PK & Disc (RICHEY ENG.) set for corner at the southwest corner of said LINCOLN POINTE tract, also being on the centerline of the aforesaid LINCOLN PARK ROAD;

THENCE N 00°05'43" E, along the west boundary of said LINCOLN POINTE tract and the centerline of said LINCOLN PARK ROAD, a distance of 1348.74 feet to a PK & Disc (RICHEY ENG.) set for corner at an angle point, said corner also being the northeast corner of land conveyed Muniment of Title to JUNE JEANETTE TRAMMELL as recorded in Clerk's File Number 2021-185P of the Probate Records of Grayson County, Texas, said corner also being the southeast corner of aforesaid EVANS tract;

THENCE N 1°41'55" E, along the west boundary of LINCOLN POINTE tract, the east boundary of said EVANS tract and the centerline of said LINCOLN PARK ROAD, a distance of 150.84 feet back to the POINT OF BEGINNING and containing 35.465 Acres (1,544,875 Square Feet) of land, MORE OR LESS.

## EXHIBIT B

### DECLARANT REPRESENTATIONS & RESERVATIONS

#### B.1. GENERAL PROVISIONS.

B.1.1. Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete upon expiration of the Development Period. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Exhibit. The terms of Exhibit B may not be modified or amended without the express written consent of Declarant.

B.1.2. General Reservation & Construction. Notwithstanding other provisions of the Declaration or Governing Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Exhibit which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Exhibit and any other Governing Document or this Declaration, this Exhibit controls. This Exhibit may not be amended without the prior written consent of Declarant. To the extent any proposed amendment is for the purpose of either amending the provisions of this Declaration or the Association's agreements pertaining to the use, operation, maintenance and/or supervision of any facilities, structures, improvements, systems, Common Properties, private Streets, or grounds that are the responsibility of the Association, prior written consent of the City may be required. The terms and provisions of this Exhibit must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

B.1.3. Purpose of Development and Declarant Control Periods. This Exhibit gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly build out and sellout of the Property, which is ultimately for the benefit and protection of Owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with ninety days' notice.

B.1.4. Definitions. As used in this Exhibit and elsewhere in the Declaration or Governing Documents, the following words, and phrases, when capitalized, have the following specified meanings:

a. "Builder" means a person or entity which purchases, or contracts to purchase, a Lot from Declarant or from a Builder for the purpose of constructing a Residence for resale or under contract to an Owner other than Declarant. As used in this Declaration, Builder does not refer to Declarant or to any home building or home marketing company that is an affiliate of Declarant.

b. "Declarant Control Period" means that period during which Declarant controls the operation of this Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of:

- (1) fifty (50) years from date this Declaration is recorded, or
- (2) the date title to the Lots and all other portions of the Property has been conveyed to Owners other than Builders or Declarant.

B.1.5. Builders. Declarant intends to sell some or all the Lots to one or more Builders to improve the Lots with Residences to be sold and occupied.

B.2. DECLARANT CONTROL PERIOD RESERVATIONS. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

B.2.1. Officers & Directors. During the Declarant Control Period, the Board may consist of three people. **During the Declarant Control Period, Declarant appoints, remove, and replace any officer or director of the Association, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a "Leader;" provided, however,** that on or before the date which is the earlier of (i) one hundred twenty (120) days after Declarant has sold seventy five percent (75%) of the Lots that may be developed within the Property, or (ii) ten (10) years after the date of recordation of this Declaration, at least one-third (1/3) of the directors on the Board shall be elected by non-Declarant Owners.

B.2.2. Weighted Votes. During the Declarant Control Period, Declarant shall hold Class B Member status and the vote appurtenant to each Lot owned by Declarant is weighted twenty (20) times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Declarant Control Period, Declarant may cast the equivalent of twenty (20) votes for each Lot owned by Declarant on any issue before the Association. On termination of the Declarant Control Period, Declarant's Class B Member status shall expire (subject to Section B.7.4 of this Exhibit B below) and thereafter, the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes.

B.2.3. Budget Funding. Declarant is not responsible for the difference between the Association's operating expenses and the Annual Assessments received from Owners other than Declarant notwithstanding, at the Declarant's sole discretion, funds may be provided for the purpose of offsetting a deficit and may be treated as a loan by the Declarant. On termination of the Declarant Control Period or prior to if sufficient funds are available, Declarant may make demand for payment of any deficit provided and may enter a promissory note at any time with the Association which the board of directors shall sign without delay. Declarant is not responsible for funding the reserve fund, payment of any special assessment, regardless of the type, and may, at its sole discretion, require the Association to use reserve funds and funds available from other sources when available to pay operating expenses prior to the Declarant funding any deficit.

B.2.4. Declarant Assessments. During the Declarant Control Period, any real property owned by Declarant is not subject to Assessments by the Association.

B.2.5. Commencement of Assessments. During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of Annual Assessments until a certain number of Lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies Annual Assessments against the Lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association; however, Declarant may elect to treat any advance made by the Declarant to cover operating or other expenses of the Association as a loan to the Association subject to reimbursement and repayment by the Association.

B.2.6. Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

B.2.7. Budget Control and Termination of Association Contracts. During the Declarant Control Period, the right of Owners to veto Assessment increases or Special Assessments is not effective and may not be exercised. During the Declarant Control Period, any contracts entered by the Association may not be terminated without the prior written consent of Declarant.

B.2.8. Organizational Meeting. Within one hundred twenty (120) days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant or Board President will call an election meeting of the Members for the purpose of electing, by vote of the Owners, the required number of directors to the Board. Written notice of the meeting must be given to the Owner of each Lot at least ten days but not more than sixty (60) days before the meeting. Prior to this meeting, the Declarant will transfer control over all utilities related to the Common Properties owned by the Association and Declarant will provide information to the Association, if not already done so, relating to the total costs to date related to the operation and maintenance of the Common Properties.

B.3. DEVELOPMENT PERIOD RESERVATIONS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

B.3.1. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the Owner of the land or Lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of Lots and Streets; (b) change the minimum Residence size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

B.3.2. Builder Limitations. Declarant may require its approval (which may not be unreasonably withheld) of all documents and materials used by a Builder in connection with the development and sale of Lots, including without limitation promotional materials; deed restrictions; forms for deeds, Lot sales, and Lot closings. Without Declarant's prior written approval, a Builder may not use a sales office or model in the Property to market residences, Lots, or other products located outside the Property.

B.3.3. Architectural Control. **During the Development Period, Declarant has the absolute right to serve as the Reviewer pursuant to Article III.** Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under Article III and this Exhibit to (1) an ACC appointed by the Board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation is always subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant also has the unilateral right to exercise architectural control over vacant Lots in the Property. **Neither the Association, the Board of directors, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of new Residences and related improvements on vacant Lots.**

B.3.4. Amendment. During the Development Period, Declarant may amend this Declaration and the other Governing Documents to include Bylaws, without consent of the Board, other Owners or mortgagee, or Members for any purpose, including without limitation the following purposes:

- (a) To create Lots, easements, and Common Properties within the Property.
- (b) To subdivide, combine, or reconfigure Lots.
- (c) To convert Lots into Common Properties and Common Properties back to Lots.
- (d) To modify the construction and use restrictions of this Declaration.
- (e) To merge the Association with another property owners association.
- (f) To comply with the requirements of an underwriting lender.
- (g) To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Governing Documents.

- (h) To enable any reputable title insurance company to issue title insurance coverage on the Lots.
- (i) To enable an institutional or governmental lender to make or purchase mortgage loans on the Lots.
- (j) To change the name or entity of Declarant.
- (k) To change the name of the addition in which the Property is located.
- (l) To change the name of the Association.
- (m) For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.

**B.3.5. Completion.** During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the Plat; (2) the right to sell or lease any Lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the Common Properties, and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

**B.3.6. Easement to Inspect & Right to Correct.** During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a Lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

**B.3.7. Promotion.** During the Development Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and Residents, for purposes of promoting, identifying, and marketing the Property and/or Declarant's Residences, Lots, developments, or other products located outside the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events – such as open houses, MLS tours, and broker's parties – at the Property to promote the sale of Lots. During the Development Period, Declarant also reserves (1) the right to permit Builders to place signs and promotional materials on the Property and (2) the right to exempt Builders from the sign restriction in this Declaration.

**B.3.8. Offices.** During the Development Period, Declarant reserves for itself the right to use Residences owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to Lots and Residences used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

B.3.9. Access. During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property and the Property Subject to Annexation (as hereinafter defined), and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the home buying public through any existing or future gate that restricts vehicular access to the Property in connection with the active marketing of Lots and Residences by Declarant or Builders, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

B.3.10. Utility Easements. During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any Lot, as shown on the Plat, to install utilities or other improvements more efficiently or economically. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, cable, internet service, and security. To exercise this right as to land that is not a Common Properties or not owned by Declarant, Declarant must have the prior written consent of the Owner.

B.3.11. Assessments. For the duration of the Development Period, any Lot owned by Declarant is not subject to mandatory assessment by the Association until the date Declarant transfers title to an Owner other than Declarant. If Declarant owns a Lot on the expiration or termination of the Development Period, from that day forward Declarant is liable for Assessments on each Lot owned by Declarant in the same manner as any Owner.

B.3.12. Land Transfers. During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Governing Documents, including without limitation on an obligation for transfer or Resale Certificate fees, and the transfer-related provisions of this Declaration. The application of this provision includes without limitation Declarant's Lot takedowns, Declarant's sale of Lots to Builders, and Declarant's sale of Lots to homebuyers.

B.4. COMMON PROPERTIES. Declarant will convey title to the Common Properties, including all facilities, structures, improvements, and systems of the Common Properties owned by Declarant, to the Association by one or more deeds – with or without warranty. Any initial Common Properties improvements will be installed, constructed, or authorized by Declarant, the cost of which is not a Common Expense of the Association. At the time of conveyance to the Association, the Common Properties will be free to encumbrance except for the property taxes accruing for the year of conveyance the terms of this Declaration and matters reflected on the Plat. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of Common Properties requiring inspection, evaluation, acceptance, or approval of Common Properties improvements by the Owners. Declarant is under no contractual or other obligation to provide amenities of any kind or type.

B.5. WORKING CAPITAL FUND. Declarant may establish a separate working capital fund for the Association which may be different from the Working Capital Contribution set forth in Section 10.4 of the Declaration, by requiring purchasers of Lots to make a one-time contribution to this fund. Declarant may, in its sole discretion, require the Working Capital Contribution to be paid by Builders on the closing of the sale of the Lot from the Declarant to a Builder.

a. Subject to the foregoing, each Lot's contribution should be collected at closing upon sale of Lot. Declarant acknowledges that this condition may create an inequity among the Owners but deems it a necessary response to the diversification of marketing and closing Lot sales.



b. Working Capital Contributions are not advance payments of any Assessments or made in lieu of other reserve fund payments or amounts to be collected or due hereunder in the event of a transfer of a Lot and are not refundable to the contributor by the Association or by Declarant. This may not be construed to prevent a selling Owner from negotiating reimbursement of the contribution from a purchaser. Funds may be used for any operating, administrative and/or maintenance needs of the Association, including, without limitation, funding for the Association's operating needs during the Declarant Control Period in the event of a deficit in the Association's operating budget.

B.6. SUCCESSOR DECLARANT. Declarant may designate one or more successor Declarants (herein so called) for specified designated purposes and/or for specified portions of the Property, or for all purposes and all the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and successor Declarant, and recorded in the Real Property Records of Grayson County, Texas. Declarant (or Successor Declarant) may subject the designation of successor Declarant to limitations and reservations. Unless the designation of successor Declarant provides otherwise, a successor Declarant has the rights of Declarant under this Section and may designate further successor Declarants.

B.7. Declarant's Right to Annex Adjacent Property. Declarant hereby reserves for itself and its affiliates and/or any of their respective successors and assigns the right to annex any real property in the vicinity of the Property (the "Property Subject to Annexation") into the scheme of this Declaration as provided in this Declaration. Notwithstanding anything herein or otherwise to the contrary, Declarant and/or such affiliates, successors and/or assigns, subject to annexation of same into the real property, shall have the exclusive unilateral right, privilege and option (but never an obligation), from time to time, for as long as Declarant owns any portion of the Property or Property Subject to Annexation, to annex (a) all or any portion of the Property Subject to Annexation owned by Declarant, and (b) subject to the provisions of this Declaration and the jurisdiction of the Association, any additional property located adjacent to or in the immediate vicinity of the Property (collectively, the "Annexed Land"), by filing in the Official Public Records of Grayson County, Texas, a Supplemental Declaration expressly annexing any such Annexed Land. Such Supplemental Declaration shall not require the vote of the Owners, the Members of the Association, or approval by the Board or other action of the Association or any other person or entity, subject to the prior annexation of such Annexed Land into the real property. Any such annexation shall be effective upon the filing of such Supplemental Declaration in the Official Public Records of Grayson County, Texas (with consent of Owner(s) of the Annexed Land, if not Declarant). Declarant shall also have the unilateral right to transfer to any successor Declarant, Declarant's right, privilege, and option to annex Annexed Land, provided that such successor Declarant shall be the developer of at least a portion of the Annexed Land and shall be expressly designated by Declarant in writing to be the successor or assignee to all or any part of Declarant's rights hereunder.

B.7.1. Procedure for Annexation. Any such annexation shall be accomplished by the execution by Declarant, and the filing for record by Declarant (or the other Owner of the property being added or annexed, to the extent such other Owner has received a written assignment from Declarant of the right to annex hereunder) of a Supplemental Declaration which must set out and provide for the following:

- (i) A legally sufficient description of the Annexed Land being added or annexed, which Annexed Land must as a condition precedent to such annexation be included in the real property;
- (ii) That the Annexed Land is being annexed in accordance with and subject to the provisions of this Declaration, and that the Annexed Land being annexed shall be developed, held,

used, sold and conveyed in accordance with, and subject to, the provisions of this Declaration as theretofore and thereafter amended; provided, however, that if any Lots or portions thereof being so annexed are to be treated differently than any of the other Lots (whether such difference is applicable to other Lots included therein or to the Lots now subject to this Declaration), the Supplemental Declaration should specify the details of such differential treatment and a general statement of the rationale and reasons for the difference in treatment, and if applicable, any other special or unique covenants, conditions, restrictions, easements or other requirements as may be applicable to all or any of the Lots or other portions of Annexed Land being annexed;

- (iii) That all the provisions of this Declaration, as amended, shall apply to the Annexed Land being added or annexed with the same force and effect as if said Annexed Land were originally included in this Declaration as part of the initial Property subject to this Declaration, with the total number of Lots increased accordingly;
- (iv) That an Assessment Lien is therein created and reserved in favor of the Association to secure collection of the Assessments as provided in this Declaration, and as provided for, authorized, or contemplated in the Supplemental Declaration, and setting forth the first year Annual Assessments and the amount of any other then applicable Assessments (if any) for the Lots within the Annexed Land being made subject to this Declaration; and
- (v) Such other provisions as the Declarant therein shall deem appropriate.

B.7.2. Amendment. The provisions of this Section B.7, or its sub-sections may not be amended without the express written consent of Declarant (and Declarant's successors and assigns in accordance with the terms hereof).

B.7.3. No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any Member to annex any property to this Declaration and no Owner of the property excluded from this Declaration shall have any right to have such property annexed thereto.

B.7.4. Effect of Annexation on Class B Membership. In determining the number of Lots owned by the Declarant for the purpose of Class B Membership status the total number of Lots covered by this Declaration and located in such Declarant's portion of the Property, including all Lots acquired by the Declarant and annexed thereto, shall be considered. If Class B Membership has previously lapsed but annexation of additional property restores the ratio of Lots owned by the Declarant to the number required by Class B Membership, such Class B Membership shall be reinstated until it expires pursuant to the terms of the Declaration.

*[End of Exhibit B]*

EXHIBIT C**CONSTRUCTION AND DESIGN GUIDELINES****PART ONE: EXTERIOR ELEMENTS**

**In the event the City of Van Alstyne has a Building and Zoning Ordinance specific to Lincoln Pointe and that Ordinance contains requirements that are of a higher standard than those set forth in this Declaration or its Construction and Design Guidelines, the higher standard shall always prevail.**

**SECTION 1.1 LANDSCAPING:**

Upon completion of each residence, the following landscape elements shall be installed prior to occupancy of the residence:

1.1.1 Sod: Each residence shall have full sod installed for the entire Lot with the exception of sidewalks, driveways, and landscaping beds. . Each dwelling shall have an automatic irrigation system installed covering the entire Lot.

1.1.2 Trees and Shrubs: Each Lot shall include the required number and type of trees and number of shrubs as set forth by the City of Van Alstyne zoning and/or landscape ordinance. Large Trees shall have a minimum caliper of four inches (4") measured at a point twelve (12) inches above ground level. Each homeowner shall be responsible for maintenance and preservation of landscape located on their property and shall promptly replace dead trees and shrubs within thirty (30) days when favorable planting weather exists and ninety (90) days of loss occurrences when unfavorable planting weather exists. The ACC may request the removal of dead trees and shrubs even if replacement will be delayed.

1.1.3 Planting Beds: Each Residence shall have a planting bed along the full width of the foundation in the front of the home excluding areas covered by driveway, walkways, and porches. Each Residence shall have a minimum of thirty (30) five (5) gallon shrubs and four (4) ten (10) gallon shrubs/accent trees. A mulched planting bed with edging to separate the sod and bed mulch areas is required. The homeowner shall be responsible for the maintenance and preservation of the shrubs and planting beds, and shall promptly replace dead shrubbery within thirty (30) days of loss occurrence when favorable planting weather exists or sixty (60) days unless otherwise noticed by the ACC or compliance division.

**SECTION 1.2 FENCES:**

**FENCING NOTES:** Any Fencing requirements from the City of Van Alstyne which may have application or jurisdiction in this sub-division shall apply. At all times, a higher standard is required to help ensure the overall aesthetic appeal and beauty of the community. All wood fencing shall be stained and preserved with a quality brown stain in the light to medium brown color scheme. Any other color stain must receive the prior written consent

of the ACC prior to application. Fencing should have a CAP and Ledger strip and step ups and step downs to adjust for grade and a minimum height of six feet (6'). Eight-foot (8') fencing shall be allowed only upon written consent of the ACC. Increasing fence height on some Lots may be restricted or denied. A space of at least one inch should be kept between the ground and the bottom of the fence to help prevent rust and/or decay. All wood fencing is required to have metal poles mounted on the inside. Poles should be spaced to allow for maximum support and durability.

1.2.1 Variances for fences located on Lots 4 – 10, Block A may have the option of using wrought iron fencing in lieu of wood. Builders must notify the Reviewer of the desire to use wrought iron fencing at the time of submission of plan review. Wrought iron fencing must meet the requirements shown in 1.2.4 below. Lots 4 – 10, Block A contain a 15-foot drainage easement existing along the rear Lot line. The Association shall be responsible to maintain the grounds only in the easement area behind the fences of Lots 4 – 10, Block A. It is intended that this area is to remain in a “natural state” without excess tree or brush clearing nor landscaped or irrigated vegetation. The area serves as a drainage area and a “living screen” to the adjacent property. **No fencing may extend into the easement area.** Owners are responsible for all fence maintenance upon their Lot, notwithstanding, the Association reserves the right, but not the obligation, to inspect the fencing along the easement and to conduct maintenance or repairs as the Association may deem necessary and appropriate. Maintenance performed by the Association may be billed back to the Owner(s) of the Lot as an individual or group assessment. Any fencing found extending into the easement area is subject to removal.

1.2.2 Corner Lots: All fencing adjacent to any street or on a Corner Lot will require board-to-board fencing with a CAP and ledger strip.

1.2.3 Standard Side and Rear Yard Fences —All interior lot portions may be board-to-board with a CAP and Ledger Strip. If a Lot requires wrought iron fencing across the rear portion of the Lot, Builder and Owners must comply with requirements in 1.2.4 below.

1.2.4 Wrought Iron Fencing: Certain Lots within the subdivision may be subject to restricted fencing requiring ornamental wrought iron or tubular steel fencing across the rear portion of the Lot only. Builders agree to comply with the fencing rules when advised by the Declarant or ACC that wrought iron or tubular steel fencing shall be required. The remaining side fencing and front returns on the Lot may be wood fencing meeting the requirements in Section 1.2, 1.2.2, and 1.2.3 above, whichever applies. Only a written variance from the Declarant or the ACC may serve to provide an exception to this rule.

- Fencing should consist of top and bottom tube of at least one inch (1”) square and pickets shall be at least one-half inch (1/2”) square with a space of four inches (4”) between pickets.
- Support poles should be at least seventy-two inches (72”) tall (for typical 48-inch-high fences), two-inch (2”) square tubes set in a concrete footing per manufacturer requirements. Spacing of support poles should be ninety-six inches (96”) for the typical 48-inch-high iron or tubular steel fence.

- The minimum height of fence shall be forty-eight inches (48"). Taller fences may be allowed upon written consent of the ACC and specs for taller fences shall be followed based on manufacturer requirements.

**All Fences shall generally have the same or similar design. No variation of design or color shall be permitted without the express written consent of the ACC. No screening or other materials may be used unless specifically approved in writing by the ACC.**

### **SECTION 1.3 MAILBOXES:**

1.3.1 Standard Mailboxes: Mailboxes shall be cluster mailboxes of decorative metal on a matching support pole. A standardized design for cluster mailboxes shall be used throughout the subdivision and shall be constructed in accordance with the U. S. Postal Service standards and Developer standards. Cluster mailboxes utilized by the Lots shall be located as and where required by the U. S. Postal Service or as otherwise approved by the Developer. Maintenance, repairs and/or replacement of cluster mailboxes shall be the responsibility of the Association and all costs and expenses incurred by the Association shall be billed back to those Owners who receive mail service from the cluster mailbox receiving the maintenance, repair, or replacement. The Association may levy a "Special Group Assessment" upon the affected Owners.

1.3.2 Address Blocks: An address block shall be installed on the front facade of each residence. No address block may be obstructed at any time and must be visible clearly from the street. Placement under an outside light or a back light to illuminate the address numbers at night is encouraged.

## **PART TWO: RESIDENCES**

### **SECTION 2.1 MINIMUM FLOOR AREA AND HEIGHT RESTRICTIONS**

The total air-conditioned living area of the main residential structure constructed on each Lot, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be not less than 2,000 square feet.

2.1.1 Height Restrictions: Maximum height for any residence shall meet the City of Van Alstyne's maximum height requirements.

2.1.2 Residences shall have a minimum of a nine foot (9') plate line.

### **SECTION 2.2 DOORS**

2.2.1 Initial front entry doors on first floor elevations must install an eight foot (8') entry door and shall be of a material, design, and color that will complement the residence. Exceptions to this rule require the prior written consent of the Declarant and the ACC. Enhancements such as glass or panels to add aesthetic charm or beauty are encouraged. Earth

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tone colors of muted shades is preferred. No loud, bright, neon or other colors are allowed. No owner or resident is authorized to use a material or color for an entry door or door frame of the owner's Lot or residence or make an alteration to the entry door or door frame that is not authorized in writing by the ACC. Storm doors are permissible upon written consent of the ACC if they are glass or metal or wrought iron of quality materials and designed to enhance the overall aesthetics of the residence. No symbols or writings (Texas star permissible) allowed without the express written consent of the ACC. Filigree's and other ornate designs are permissible. No aluminum or loose screens or roll up screens are allowed on the front or side door of any residence.

## **SECTION 2.3 ROOFS**

2.3.1 Roof Pitch: All roof pitches shall have a minimum of 8-in-12 slopes. Lower roof pitches over doors, garages, porches, and patios may be allowed upon written consent of the City and ACC. Variances to roof pitches are at the sole discretion of the ACC. No roof pitch shall be less than any city building, or zoning ordinance may require. The City of Van Alstyne has mandatory architectural features ("gifts to the street") which each residence must include. A higher roof pitch, cupulas, turrets, dormers, or gables and roof accent upgrades may be used to meet some of the gifts to the street required.

2.3.2 Roofing Materials: Roofing materials shall be asphalt shingles with a 30-year rated warranty having a minimum weight of 220 pounds per square (100 square feet) and shall be in the light to medium shades of brown or gray color family. Other roofing materials and colors must receive the prior written consent of the ACC prior to installation or use.

2.3.3 Dormers & Above Roof Chimneys: Dormers and Chimney Chases, above roof structure and roofing materials, may be finished with an approved exterior grade siding material or masonry product to match and blend with the aesthetic exterior of the home. All fireplace flues shall be enclosed and finished; exposed prefabricated metal flue piping is prohibited. Brick or stone chimney on exterior wall may qualify as gift to the street.

## **SECTION 2.4 CERTAIN ROOFING MATERIALS**

2.4.1 Roofing shingles covered by this Section are exclusively those designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles.

2.4.2 Roofing Shingles allowed under these Guidelines shall:

- (1) resemble the shingles used or otherwise authorized for use in the subdivision;
- (2) be more durable than and are of equal or superior quality to the shingles used or otherwise authorized for use in the subdivision; and
- (3) match the aesthetics of the property surrounding the property of the owner requesting permission to install the Roofing Shingles.

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2.4.3 The owner requesting permission to install the Roofing Shingles will be solely responsible for accrediting, certifying, and demonstrating to the Reviewer that the proposed installation is in full compliance with paragraphs a and b above.

2.4.4 Roofing Shingles shall be installed after receiving the written approval of the Reviewer which shall include any roof repair or replacement.

2.4.5 Owners are hereby placed on notice that the installation of roofing materials may void or adversely affect other warranties.

## SECTION 2.5 AIR-CONDITION AND HEATING SYSTEMS

2.5.1 All ground mounted air-conditioning and heating equipment must be screened within wood fencing or in the absence of wood fencing, screened with live screening tall enough at time of planting to properly conceal the front and side views of the equipment.

## SECTION 2.6 EXTERIOR WALLS

**All builder plans submitted must contain a masonry table. Any plans submitted without a table may be returned without review until the required table is provided.**

2.6.1 Exterior Wall Materials: Allowed masonry product shall include stone, stone veneer, cultured stone, brick, brick veneer, and stucco in conformance with zoning requirements.

2.6.1.1 Every front façade of a residence shall require 100% masonry. Masonry requirements for front facades may receive exceptions subject to exceptions allowed by the City. All requests for exceptions must receive the approval of the City, Declarant and ACC. The Sides and Rear of Residential structures shall consist of at least eighty percent (80%) or greater mason overall. Masonry should be applied in a variety of patterns to vary the architectural appeal of the streetscape. Other materials of equal or similar characteristics permitted under applicable zoning may be allowed with the express written consent of the ACC. Residences consisting primarily of stucco shall require a variation of color and design to minimize visual monotony.

2.6.1.2 Architectural Features (Gifts to the Street): The City of Van Alstyne requires all primary residential structures to include at least four (4) design features on the front façade or portion of the residence visible from the front or a side street. The size and scale of the architectural feature is subject to City approval:

- 1) Garage doors not facing the street (J-swing garage style);
- 2) Carriage style garage doors with decorative hardware;
- 3) Decorative brick patterning;
- 4) Architectural pillars or posts;

- 5) Bay window facing street;
- 6) Brick or stone chimney on exterior wall;
- 7) Stone accents;
- 8) Covered front porches (minimum of sixty square feet (60') covered by main roof or an architectural extension);
- 9) Cupulas or turrets;
- 10) Dormers or gables;
- 11) Roof accent upgrades (e.g. metal, tile, slate, solar tiles);
- 12) Recessed entries a minimum of three feet (3') deeper than the main front façade;
- 13) Greater than 8:12 primary roof pitch, or variable roof pitches;
- 14) Transom windows;
- 15) Shutters;
- 16) Masonry arches;
- 17) Mixed masonry patterns;
- 18) Coach lights at entrances;
- 19) Decorative attic or gable feature, minimum two square feet (2') in size (e.g. vent, window, brick detail);
- 20) Decorative driveway paving (e.g. salt finish, exposed aggregate, or other treatments approved by the City Building Official);

## **SECTION 2.7 ELEVATION AND BRICK USAGE**

2.7.1 Any residential plan and elevation shall not be repeated on the Lot most directly across the street, nor shall it be repeated on two (2) Lots in either direction on the same side of the street. A wide variety of plans and elevations is desired to strengthen the character of the subdivision and reduce monotony of design. When stucco is the predominant exterior material used on a residence on any particular street a variation of colors and design are required by the City of Van Alstyne to minimize visual monotony.

2.7.1.1 Painted brick is prohibited without the express written consent of the ACC. If painted brick is allowed, the ACC may limit the paint color to prevent monotony. Under no circumstance is the ACC required to allow painted brick at any time. The ACC reserves the right to require Builder or Owner to obtain prior consent from the City before presenting a request to the ACC for consideration.

2.7.2 Exterior Material Area Calculations: All residence submittals shall calculate the percentage coverage for each material as follows:

2.7.2.1 Calculation Method: Calculations for material coverage percentages shall include all exposed areas of the wall surface, excluding window and door openings.

2.7.2.2 Calculation Format: Calculations shall indicate the area coverage for front, side, and rear wall areas.



## SECTION 2.8 WINDOWS

2.8.1 Windows shall be constructed of vinyl or similar quality type and style. Reflective glass is prohibited. Bay windows facing the street and transom windows may be used and may aid in meeting the mandatory gifts to the street required by the City of Van Alstyne. In the event any Lot is considered a zero Lot additional restrictions or prohibitions for installation of windows may apply. A variety of aesthetically pleasing shapes and sizes of windows is encouraged. For two-story homes, frosted glass of other forms of glass designed to let light in but serves to block visual views into and out of the windows is encouraged.

## SECTION 2.9 GARAGE

### 2.9.1 Garage Doors:

Front facades and front-facing garage placement **ONE STORY RESIDENCES**: The face of garage doors shall not extend beyond the front façade of any residential structure unless one or both of the following conditions apply:

- 1) A front porch extending a minimum of fifty percent (50%) of the front façade is provided; or
- 2) A bay window is provided on the longest wall facing the front façade.
- 3) Should 1) or 2) above apply the face of the garage door may extend up to a maximum of eight feet (8') beyond the main front façade.

### 2.9.2 Garage Doors:

Front facades and front-facing garage placement **TWO STORY RESIDENCES**: The face of the garage doors may extend beyond the front façade of any residential structure up to a maximum of eight feet (8') beyond the main front façade.

2.9.3 Garage Doors: Side facades with **J-SWING GARAGES** shall have a minimum of twenty feet (20') from the door face of the garage to the side property line for maneuvering and tandem parking.

2.9.4 Garage Doors: Front entry garage doors shall consist of lightweight but durable materials, such as painted metal, and include materials that have a wood appearance and are approved by the City of Van Alstyne. Garage door windows are permitted. All garage doors must be approved by the ACC and City prior to installation. Any variation or deviation from the requirements for garage doors may result in a request to the Builder or Owner to remove the garage door and replace it with one approved for use. Do not paint or replace a garage door without the

prior written consent of the ACC. No screens or other apparatuses may be attached to a garage door. Garages may not be used as a living quarters or business and should be kept clear to accommodate vehicle parking and storage as intended.

### **SECTION 2.10 DRIVEWAY:**

2.10.1 Driveways shall be concrete and have a minimum width of ten feet (10') and may match the width at the garage door at the property line. Garage doors can be enhanced to meet the City of Van Alstyne's gifts to the street as outlined in Section 2.5.1.2. Builders or owners who plan to use a salt finish, exposed aggregate, or other treatment approved by the City must notify the ACC reviewer at the time of plan submission.

## **PART THREE: MISCELLANEOUS PROVISIONS**

### **SECTION 3.1 SOLAR PANELS**

3.1.1 Solar energy devices, including any related equipment or system components (collectively, "Solar Panels") may only be installed after receiving the prior written approval of the Reviewer.

3.1.2 Solar Panels may not be installed upon or within Common Properties or any area which is maintained by the Association.

3.1.3 Solar Panels may only be installed on designated locations on the roof of a home, on any structure allowed under any Association dedicatory instrument, or within any fenced rear-yard or fenced-in patio of the owner's property, but only as allowed by the Reviewer. **Solar Panels may not be installed on the front elevation of the home and may not be installed to cover the entire roof.**

3.1.4 If located on the roof of a home, Solar Panels shall:

- (1) not extend higher than or beyond the roofline;
- (2) conform to the slope of the roof;
- (3) have a top edge that is parallel to the roofline; and
- (4) have a frame, support bracket, or wiring that is black or painted to match the color of the roof tiles or shingles of the roof. Piping must be painted to match the surface to which it is attached, i.e. the soffit and wall. Panels must blend with the color of the roof to the greatest extent possible.

3.1.5 If located in the fenced rear-yard or patio, Solar Panels shall not be taller than the fence line or visible from a Lot, Common Properties, or street.

3.1.6 The ACC may deny a request for the installation of Solar Panels if it determines that the placement of the Solar Panels, as proposed by the property owner, will create an interference with the use and enjoyment of land of neighboring owners.

3.1.7 Owners are hereby placed on notice that the installation of Solar Panels may void or adversely affect roof warranties. Any installation of Solar Panels which voids material warranties is not permitted and is cause for the Solar Panels to be removed by the owner.

3.1.8 Solar Panels must be properly always maintained or removed by the owner.

3.1.9 Solar Panels which become non-functioning or inoperable must be removed by the owner of the property.

## **SECTION 3.2 FLAGS AND FLAGPOLES**

3.2.1 The only flags which may be displayed are: (i) the flag of the United States of America; (ii) the flag of the State of Texas; and (iii) an official or replica flag of any branch of the United States armed forces. No other types of flags, pennants, banners, kits, or similar types of displays are permitted on a Lot if the display is visible from a street or Common Properties.

3.2.2 The flag of the United States must be displayed in accordance with 4 U.S.C. Sections 5-10.

3.2.3 The flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code.

3.2.4 Any freestanding flagpole, or flagpole attached to a residence, shall be constructed of permanent, long-lasting materials. The materials used for the flagpole shall be harmonious with the residence and must have a silver finish with a gold or silver ball at the top. The flagpole must not exceed three (3) inches in diameter.

3.2.5 The display of a flag, or the location and construction of the supporting flagpole, shall comply with applicable zoning ordinances, easements, and setbacks of record.

3.2.6 A displayed flag, and the flagpole on which it is flown, shall always be maintained in good condition. Any flag that is deteriorated must be replaced or removed. Any flagpole that is structurally unsafe or deteriorated shall be repaired, replaced, or removed.

3.2.7 Only one flagpole will be allowed per Lot. A flagpole can either be securely attached to the face of the residence (no other structure) or be a freestanding flagpole. A flagpole attached to the residence may not exceed 4 feet in length. A freestanding flagpole may not exceed 20 feet in height. Any freestanding flagpole must be in either the front yard or backyard of a Lot, and there must be a distance of at least 5 feet between the flagpole and the property line.

3.2.8 Any flag flown or displayed on a freestanding flagpole may be no smaller than 3'x5' and no larger than 4'x6'.

3.2.9 Any flag flown or displayed on a flagpole attached to the residence may be no larger than 3' X 5'.

3.2.10 Any freestanding flagpole must be equipped to minimize halyard noise. The preferred method is using an internal halyard system. Alternatively, swivel snap hooks must be covered, or "Quiet Halyard" Flag snaps installed. Neighbor complaints of noisy halyards are a basis to have flagpole removed until Owner resolves the noise complaint.

3.2.11 The illumination of a flag is allowed so long as it does not create a disturbance to other residents in the community. Solar powered; pole mounted light fixtures are preferred as opposed to ground mounted light fixtures. Compliance with all municipal requirements for electrical ground mounted installations must be certified by the Owner. Flag illumination may not shine into another residence. Neighbor complaints regarding flag illumination are a basis to prohibit further illumination until Owner resolves complaint.

3.2.12 Flagpoles shall not be installed in Common Properties or property maintained by the Association. All freestanding flagpole installations must receive prior written approval from the Reviewer.

### **SECTION 3.3 RAIN BARRELS OR RAINWATER HARVESTING SYTEMS**

3.3.1 Rain barrels or rainwater harvesting systems and related system components (collectively, "Rain Barrels") may only be installed after receiving the written approval of the Reviewer,

3.3.2 Rain Barrels may not be installed upon or within Common Properties of the subdivision.

3.3.3 Under no circumstances shall Rain Barrels be installed or located in or on any area within a Lot that is in-between the front of the property owner's home and an adjoining or adjacent street,

3.3.4 The rain barrel must be of color that is consistent with the color scheme of the property owner's home and may not contain or display any language or other content that is not typically displayed on such Rain Barrels as manufactured,

3.3.5 Rain Barrels may be in the side-yard or back-yard of an owner's Residential Parcel so long as these may not be seen from a street, another Lot, or any Common Properties of the Association,

3.3.6 In the event the installation of Rain Barrels in the side-yard or back-yard of an owners' property in compliance with paragraph e above is impossible, the Reviewing Body may impose limitations or further requirements regarding the size, number and screening of Rain Barrels with the objective of screening the Rain Barrels from public view to the greatest extent possible, The owner must have sufficient area on their Lot to accommodate the Rain Barrels.

3.3.7 Rain Barrels must be properly always maintained or removed by the owner.

3.3.8 Rain Barrels must be enclosed or covered.

3.3.9 Rain Barrels which are not properly maintained, become unsightly or could serve as a breeding pool for mosquitoes must be removed by the owner from the Lot,

**[End of Exhibit C]**

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