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11/07/2007 9:30am \$75.00  
SNOHOMISH COUNTY, WASHINGTON

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND RESERVATIONS FOR  
LINCOLNSHIRE**

**Grantor/Declarant** SCHADEMAN HOMES LLC, a Washington limited liability company

**Grantee** LINCOLNSHIRE HOMEOWNERS ASSOCIATION, a Washington corporation

**Legal Description** SECTION 22, TOWNSHIP 27 N , RANGE 5 E , NE QUARTER, SE QUARTER AND SECTION 23, TOWNSHIP 27 N , RANGE 5 E , NW QUARTER, SW QUARTER  
Official legal description on Exhibit A

**Assessor's Tax Parcel ID No** 270522-004-001-00, 270522-004-003-00, 270523-003-002-00

**Reference No (if applicable)**

UNOFFICIAL COPY

DECLARATION

OF

COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS

FOR

LINCOLNSHIRE

A Subdivision

DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS  
FOR  
LINCOLNSHIRE

This Declaration is made as of this 14<sup>th</sup> day of SEPTEMBER, 2007, by Schademan Homes LLC, a Washington limited liability company, hereinafter referred to as "Declarant"

RECITALS

A Declarant is the owner of that certain real property and improvements located within the County of Snohomish, State of Washington, commonly known as Lincolnshire, referred to hereinafter as "Lincolnshire" or the "Property" and more particularly described in Exhibit A attached hereto

B Declarant desires to create an association at Lincolnshire to provide for the maintenance, preservation, and architectural control of the privately-owned parcels and Common Areas (as defined below) within the community and to promote the health, safety, happiness, and welfare of the residents of the community

C For the benefit and protection of the Property, to enhance its value and attractiveness, Declarant provides herein for a comprehensive system of land-use and building controls within the Property

SUBMISSION OF THE PROPERTY TO THIS DECLARATION

Declarant, being the sole owner of the Property, hereby makes this Declaration for the purpose of submitting the Property to this Declaration, and declares that the Property described above shall be held, sold, conveyed, encumbered, leased, rented, occupied and improved subject to the following covenants, conditions, restrictions, reservations, grants of easement rights, rights of way, liens, charges and equitable servitudes, which are for the purpose of protecting the value and desirability of the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof. This Declaration shall run with the land and bind Declarant, its successors and assigns, all subsequent owners of the Property or any part thereof, together with their grantees, successors, heirs, executors, administrators, devisees or assigns. Any conveyance, transfer, sale, assignment, lease or sublease of a Lot in the Property, shall and hereby is deemed to incorporate by reference all provisions of this

**Declaration** The provisions of this Declaration shall be enforceable by Declarant, any Lot Owner, the Association, and any first Mortgagee of any Lot

**Article 1. DEFINITIONS**

**Section 1.1 Definitions** For the purposes of this Declaration and any amendments hereto, the following definitions shall apply.

“Architectural Control Committee” shall mean the Board, as defined below, or a committee by that name designated by the Board

“Articles” shall mean the articles of incorporation of the Association, as defined below

“Assessments” shall mean all sums chargeable by the Association against a Lot, including, without limitation (a) general and special assessments for maintenance, repair or replacement of the Common Areas, (b) special assessments for maintenance, repair or reconstruction of facilities used in common within the Private Easements, (c) special assessments against a Lot Owner for work done on the Owner’s Lot, (d) fines imposed by the Association, (e) interest and late charges on any delinquent account, and (f) costs of collection, including reasonable attorneys’ fees, incurred by the Association in connection with the collection of a delinquent Owner’s account

“Association” shall mean the Lincolnshire Homeowners Association, a Washington non-profit corporation, as described more fully in Article 3, and its successors and assigns

“Board” shall mean and refer to the Board of Directors of the Association, as provided for in Article 3

“Bylaws” shall mean the bylaws of the Association as they may from time to time be amended.

“Common Area” shall mean all real property and improvements described in Section 2.1

“County” shall mean the County of Snohomish, State of Washington.

“Declarant” shall mean Schademan Homes LLC, a Washington limited liability company, and its successors and assigns if such successors or assigns should (i) acquire more than one Lot from the Declarant for the purpose of development, and (ii) be specifically assigned the rights and duties of Declarant by written instrument in recordable form.

**“Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions, and Reservations for Lincolnshire, and any amendments thereto**

**“Home” shall mean a structure located on a Lot which is designed and intended for use and occupancy as a residence or which is intended for use in connection with such residence**

**“Lot” shall mean and refer to any of the 17 numbered lots shown upon the recorded Plat Map of the Property. Ownership of a Lot shall include ownership of the Home and improvements now or hereafter constructed on the Lot**

**“Member” shall mean a person entitled to membership in the Association pursuant to Section 3.5**

**“Mortgage” shall mean a recorded mortgage or deed of trust that creates a lien against a Lot and shall also mean a real estate contract for the sale of a Lot**

**“Mortgagee” shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a Mortgage and shall also mean the vendor, or the designee of vendor, of a real estate contract for the sale of a Lot. For the purpose of determining the percentage of first Mortgagees approving a proposed decision or course of action, a Mortgagee shall be deemed a separate Mortgagee for each Lot on which it holds a Mortgage which constitutes a first lien on said Lot. Mortgagees shall have the same voting rights as the owners of any Lot subject to such Mortgage**

**“Notice and Opportunity to be Heard” shall mean the procedure wherein the Board shall give written notice of the proposed action to all Owners, tenants or occupants of Homes whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five days from the date notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.**

**“Owner” or “Lot Owner” shall mean the owner of record, whether one or more persons or entities, of a fee simple title to any Lot and, except as may be otherwise expressly provided herein, shall, in the case of a Lot which has been sold pursuant to a real estate contract, include any person of record holding a vendee’s interest under such real estate contract, to the exclusion of the vendor thereunder. Any person or entity having such an**

interest merely as security for the performance of an obligation shall not be considered an Owner.

"Person" shall include natural persons, partnerships, corporations, associations and personal representatives

"Plat Map" shall mean the plat recorded in conjunction with this Declaration which depicts the layout of the Lots and Tracts on the Property. The Plat Map for the Property was recorded at Volume 2007 11075001 of Plats, at page(s)       , Recorder's File No       , records of Snohomish County, Washington

"Private Easements" shall mean private drainage easements, as shown on the Plat Map and referred to in Easement Provisions 2, 4, 5 and 6 on Sheet 2 of the Plat Map

"Property" shall mean that real property and improvements located within the County of Snohomish, State of Washington, commonly known as Lincolnshire and more particularly described on Exhibit A attached hereto.

"Structure" shall mean any building, fence, rockery, wall, pole, driveway, walkway, patio, swimming pool, or the like

"Transition Date" shall mean the earlier of the following (i) the date on which the votes of the Class A members of the Association equal the votes of the Class B member or (ii) the seventh anniversary of the date of recording of this Declaration

Article 2. COMMON AREAS

Section 2.1 Description of Common Areas The Common Area, as shown on the Plat Map, is comprised of the following

- Landscape strips separating the sidewalk from the roadway, including street trees planted and street lighting installed thereon
- Tract 991 Private Road
- Tract 992 Open Space
- Tract 993 Native Growth Protection Area
- Tract 994 Native Growth Protection Area
- Tract 995 Detention/Open Space
- Tract 996 Native Growth Protection Area
- Tract 997 Native Growth Protection Area
- Tract 998 Native Growth Protection Area
- Tract 999 Private Road

Section 2.2 Dedication of Common Areas Declarant, by recording the Plat, dedicates and conveys the Common Areas to the Association

Section 2.3 Use of Common Area Each Owner shall have the right to use the Common Areas in common with all other Owners, subject to this Declaration, the Bylaws, any rules and regulations adopted by the Association, and the following:

2.3.1 The Association may totally bar or restrict use of portions of the Common Area where ordinary use could be dangerous, unreasonably increase Association costs, or be detrimental to the environment, or is inconsistent with its designation as a Native Growth Protection Area on the Plat Map

2.3.2 The Association shall have the right to suspend the voting rights of any Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed 60 days for any, and for each separate, infraction of the Association's published rules and regulations

2.3.3 The Association shall have the right to dedicate or transfer all or any portion of the Common Area, including easements thereon, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless two-thirds of each class of Members vote or consent in writing to such dedication or transfer. The instrument dedicating or transferring all or any portion of the Common Areas shall be executed by the president and secretary of the Association who shall certify that the requisite vote or consent has been obtained

Section 2.4 Private Roads The Association shall be responsible for construction and maintenance of all private roads on the Property including, but not limited to, the roads contained within Tracts 991 and 999. The Association shall be responsible for maintenance, repair, replacement, and costs of operation of a motorized entry gate and street lighting fixtures, if any, installed on the Property. Such costs of operation shall include, but are not limited to, the cost of energy used in the operation of a motorized entry gate and street lighting fixtures, if any

Section 2.5 Native Growth Protection Areas As enumerated in Section 2.1 herein, certain portions of the Common Area have been specially designated on the Plat as Native Growth Protection Areas. Those areas are subject to any special use restrictions set forth on the Plat Map and to any supplemental rules or regulations adopted by the Association consistent with the Plat Map restrictions. Pursuant to the Plat Map, all Native Growth Protection Areas on the Property shall be left permanently undisturbed in a substantially natural state, and the Association shall be responsible for operating, maintaining, repairing and restoring the condition of the Native Growth Protection Area in the event of any unauthorized disturbance

**Section 2.6** Drainage Facility Maintenance Covenant Pursuant to the Drainage Facility Maintenance Covenant on the Plat Map, the Association is responsible for regular maintenance of the drainage facilities installed on the Property. Such maintenance shall include, at a minimum, annual inspection of the stormwater drainage system. If the County determines that an imminent or present danger exists that necessitates repair or maintenance of the drainage facilities by the County and performs such work or hires vendors to perform such work, the Association shall reimburse the County or pay directly to the County's vendors the reasonable fees, charges, and expenses charged by such vendors.

**Section 2.7** Private Storm Drainage Easements The Plat Map establishes private storm drainage easements over certain specified Lots (the "Burdened Lots") for the benefit of certain specified Lots or all Lots (the "Benefited Lots"), or the Association, as follows:

2.7.1 A private storm drainage easement over, under, and across Lots 1, 3 and 4, and Common Area Tract 996, is reserved for the benefit of Lots 3, 4 and 5. The Owners of Lots 1 through 5 are jointly responsible for maintenance, repair and reconstruction of that portion of the drainage system used in common, except that Owners of any lower parcel shall not be responsible for the swale above their parcel.

2.7.2 Private storm drainage easements over, under, and across Lots 15, 16 and 17 are conveyed to the Association. The Association is responsible for maintenance, repair and reconstruction of the drainage system lying within the easements.

2.7.3 A private storm drainage easement over, under, and across the 10 feet parallel with and adjoining the street frontage of all Lots, Tracts and Common Areas is reserved for and conveyed to the Owners of all Lots and the Association. The Owners of all Lots and the Association are responsible for maintenance, repair and reconstruction of that portion of the drainage system used in common, except that Owners of any lower parcel and the Association shall not be responsible for the storm line above their connection.

**Section 2.8** Landscape Buffers. The Owners of Lots 13 and 14 shall be responsible for maintaining the vegetated buffer within Tract 998, as shown on the Plat Map and referred to in Notes 11, 12 and 13 on Sheet 2 of the Plat Map, with sight obscuring vegetation in accordance with the approved Open Space Management Plan for the Plat of Lincolnshire, which is on file with Snohomish County Planning and Development Services.

**Section 2.9** Delegation of Use. Any Member may delegate, in accordance with such rules and regulations as the Association shall promulgate, his or her right of use and enjoyment of the Common Areas to family members, guests, and tenants of such Member. Each Owner shall be responsible for informing such Owner's family members, guests, tenants, and service personnel of the contents of this Declaration as well as any rules and regulations that may be adopted by the Association as they may relate to the use and



enjoyment of the Common Area. Each Owner shall be personally liable for any damage to any Common Areas or any other area maintained by the Association or to any other property of the Association, whether real or personal, caused by the Owner or the Owner's family member, guest, tenant, agent, workman, contractor or other licensee or invitee. The Association may have a lien upon the Owner's Lot for the amount of such damages as determined by the Board after Notice and Opportunity to be Heard.

**Section 2.10 Maintenance** Except to the extent maintained by the County or covered by a County maintenance program, the Association shall have full responsibility for the maintenance, repair, replacement and improvement of (1) the Common Areas, including the private roads as provided in Section 2.4 herein and those tracts designated as Native Growth Protection Areas on the Plat Map as provided in Section 2.5, (2) the motorized entry gate and street lighting fixtures, if any, installed on the Property, (3) fencing constructed within Common Areas, but not fencing built on Owners' Lots that is required to be maintained by Owners of such Lots pursuant to Section 6.23, (4) the drainage facilities installed on the Property as provided in Section 2.6 herein, and (5) upon request of the Owners served by the Private Easements as provided below, the Private Easements pursuant to Section 2.7 herein. All such areas and facilities shall be reasonably maintained for their intended use, subject to applicable governmental restrictions. The Association shall own and have full responsibility for maintenance of street trees, if any. The Association shall, upon the written request of a majority of the Owners of the Lots served by a Private Easement, perform such maintenance, repairs or reconstruction of the portion of the facilities within the easement used in common as may be requested by the Owners. If one or more of the Owners served by a Private Easement, but less than a majority of those served, makes a written request to the Association to have maintenance, repairs or reconstruction of a portion of the facilities within the easement used in common, the Board shall, after Notice and Opportunity to be Heard given to all of the Owners served by that easement, decide whether it is reasonably necessary for the maintenance, repair or reconstruction to be done. The cost of such maintenance, repairs or reconstruction shall be assessed equally against each of the Lots responsible for such costs pursuant to Subsections 2.7.1 and 2.7.3 herein. With regard to the Private Easement described in Subsection 2.7.3 herein, the Association, acting through the Board, shall be deemed an Owner of a Lot served by a Private Easement for purposes of determining the number of Owners making a written request to the Association to perform maintenance, repairs or reconstruction and for purposes of assessing costs under this Section.

### Article 3 HOMEOWNERS ASSOCIATION

**Section 3.1 Establishment** There is hereby created an association called the Lincolnshire Homeowners Association (the "Association")

**Section 3.2 Form of Association** The Association shall be a nonprofit corporation formed and operated under the laws of the State of Washington.

Section 3 3 Articles and Bylaws Declarant will adopt Articles of Incorporation and will propose to the initial Board of Directors the adoption of Bylaws to supplement this Declaration and to provide for the administration of the Association and the Property and for other purposes not inconsistent with this Declaration. In the event of any conflict between this Declaration and the Articles for such nonprofit corporation, the provisions of this Declaration shall prevail. Bylaws for the administration of the Association and the Property, and to further the intent of this Declaration, shall be adopted or amended by the Owners at regular or special meetings, provided that the initial Bylaws shall be adopted by the Board of Directors. In the event of any conflict between this Declaration and any Bylaws, the provisions of this Declaration shall prevail.

Section 3 4 Board of Directors The Association shall be managed by a Board of Directors who are members of the Association. They shall be elected as set forth in the Articles of Incorporation and Bylaws of the Association.

Section 3 5 Membership and Voting Rights The Association shall have two classes of voting membership:

3.5.1 Class A Members shall be all Owners except the Declarant, and each Class A Member shall be entitled to one vote for each Lot owned, whether improved or not. When more than one Person holds an interest in any Lot, all such Persons shall be members. The vote for such Lot shall be exercised as the joint owners may decide among themselves, but in no event shall more than one vote be cast with respect to any Lot.

3 5 2 The Class B member shall be the Declarant who shall be entitled to three votes for each Lot owned by it. The Class B class of membership shall cease and be converted to Class A membership upon the Transition Date.

Section 3 6 Transfer of Membership The membership in the Association of each Owner (including Declarant) shall be appurtenant to the Lot giving rise to such membership, and shall not be transferred in any way except upon the transfer of title to the Lot and then only to the transferee of title to the Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association to the new Owner.

Section 3 7 Books and Records The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures of the Association, in a form that complies with generally accepted accounting principles. The Board or a majority of the Owners may at any time require an annual audit prepared by an independent certified public accountant which shall be paid for by the Association.

Section 3.8 Inspection of Association Documents, Books, and Records The Association shall make available to Owners, Mortgagees, prospective purchasers and their prospective mortgagees, and the agents or attorneys of any of them, current copies of this Declaration, the Articles, the Bylaws, and other rules, books, records, and financial statements of the Association, and the most recent annual audited financial statement, if one is prepared. "Available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances. The Association may require the requesting party to pay a reasonable charge to pay the cost of making the copies.

Article 4 MANAGEMENT OF THE ASSOCIATION

Section 4.1 Administration of the Property The Members covenant and agree that the administration of the Property shall be in accordance with the provisions of this Declaration and the Bylaws of the Association which are made a part hereof. Administrative power and authority shall be vested in the Board.

Section 4.2 Authority and Duties of the Board On behalf of and acting for the Association, the Board, for the benefit of the Property and the Members, shall have all powers and authority permitted to the Board under this Declaration including, but not limited to, the following:

4.2.1 Levy, collect, and enforce the collection of, assessments, as more particularly set forth in Article 7 hereof, to defray expenses attributable to carrying out the duties and functions of the Association hereunder.

4.2.2 Require any officer or employee of the Association handling or responsible for Association funds to furnish adequate fidelity insurance, the premiums for which shall be paid by the Association.

4.2.3 Enter into agreements with one or more qualified persons to provide for the maintenance and repair of the Common Areas and Private Easements, the collection of assessments, the sending of all required notices to Owners, the operation of Association meetings, and other regular activities of the Association.

4.2.4 Contract and pay for any materials, supplies, labor or services which the Board should determine are necessary or proper for carrying out its powers and duties under this Declaration, including legal, accounting, management, security patrol or other services, however, if any materials, supplies, labor or services are provided for particular Lots or their Owners, the cost thereof shall be specially charged to the Owners of such Lots. The Board may pay the Declarant a reasonable fee for any services it performs on behalf of the Association.

4 2 5 All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness in the name of the Association shall be signed by such officer or officers, agent or agents of the Association and in such manner as is from time to time determined by the Board.

Section 4 3 Adoption of Rules and Regulations When and to the extent it deems advisable, the Board may adopt reasonable rules and regulations governing the maintenance and use of the Common Areas and the Property and other matters of mutual concern to the Members, which rules and regulations are not inconsistent with this Declaration and the Bylaws and which treat all Members fairly and in a non-discriminatory manner

Section 4.4 Additional Powers of the Association In addition to the duties and powers of the Association, as specified herein and elsewhere in this Declaration, but subject to the provisions of this Declaration, the Association, acting through its Board, shall have the power to do all other things which may be deemed reasonably necessary to carry out its duties and the purpose of this Declaration

## Article 5. ARCHITECTURAL CONTROL

Section 5 1 Committee Membership Except as provided in Section 5.2, the Architectural Control Committee ("ACC") shall be composed of three members appointed by the Board. A member of the ACC may be removed upon a majority vote of the Board members. The mailing address of the ACC shall be the mailing address of the Association, unless otherwise provided in writing by the ACC. No compensation shall be paid to members of the ACC for their services as members.

Section 5 2 Initial Committee Membership Notwithstanding any provision herein to the contrary, Declarant shall act as the ACC until completed Homes have been constructed on all of the Lots. Upon construction of completed Homes on all Lots, Declarant shall notify the Board in writing that it will relinquish its duties in all respects upon the Board's appointment of new ACC members subject to the Bylaws, which appointment shall occur within 30 days of Declarant's written notice to the Board.

Section 5 3 Architectural Guidelines The ACC shall have the authority to determine and establish standards (the "Architectural Guidelines") that address aesthetic considerations of harmony and conformity of the exterior design and color of a proposed project with proposed or existing structures and features on the Lots and the Property. Such standards are intended to promote attractive development of the subdivision. The Architectural Guidelines may include, but are not limited to, standards governing the height, configuration, design, and appearance of Homes, fences, walls, outbuildings, swimming pools, and other structures appurtenant to the use of a Home. The Architectural Guidelines may be amended from time to time by the ACC, by majority vote of its members, so long as

the standards as revised are consistent with the provisions of this Declaration. In any case where a provision of the Architectural Guidelines conflicts with a provision of this Declaration, this Declaration shall govern.

**Section 5.4 Committee Authority**

**5.4.1** All Structures to be constructed, erected, placed or altered within the Property, exterior alterations and repairs (including, but not limited to, re-roofing or repainting) of any Structures on the Property and visible from any street or other Lot, and any construction or alteration of landscaping on the Property must be approved by the ACC. Complete plans and specifications of all such proposed Structures, exterior alterations and repairs, or landscaping together with detailed plans showing the nature, kind, shape, height, materials and location on the particular building site of the same, and other data requested by the ACC, shall be submitted to the ACC before construction, alteration or repair is begun pursuant to Section 5.5 herein. Construction, alteration or repair shall not be commenced until approval thereof is given by the ACC pursuant to Section 5.6 herein.

**5.4.2** All Structures shall be erected or constructed, and all exterior alterations or repairs made, by a contractor, house builder or other person or entity approved by the ACC, which approval shall not be unreasonably withheld. The ACC may consider quality of workmanship in its evaluation of a proposal. The ACC shall have the right to refuse to approve any design, plan or color for such improvements, construction or exterior, alteration or repair visible from a street or other Lot which is not suitable or desirable, in the ACC's opinion, and such refusal may be based entirely on aesthetic or other factors.

**5.4.3** In evaluating any design, the ACC may consider the suitability of the proposed Structure, the material of which it is to be built, the exterior color scheme, the site upon which such buildings or structures are proposed to be built, the harmony thereof with the surroundings, and the effect or impairment that such building or structure will have on the view or outlook of surrounding Lots, compliance with the Plat Map, and any and all other factors which, in the ACC's opinion, shall affect the desirability or suitability of such proposed structure, building, improvements, or exterior alteration or repair.

**5.4.4** The ACC may consider the location of the Structure or landscaping, with respect to topography, finish grade elevation and building setback restrictions and compliance with the Plat Map.

**5.4.5** The ACC shall have the right to disapprove the design or installation of a swimming pool or any other recreational structure or equipment deemed undesirable, in the ACC's reasonable opinion, based on aesthetic factors or otherwise, provided, however, that the ACC may approve plans and specifications that do not conform to the Architectural Guidelines pursuant to Section 5.7 herein. The ACC may consider the visual impact of the proposed structure or equipment and the noise impact of the related

activities upon all nearby Lots or Common Areas. Any enclosure or cover used in connection with such a recreational structure or equipment whether temporary, collapsible, or seasonal, shall be treated as a permanent structure for purposes of these covenants, and shall be subject to all the conditions, restrictions, and requirements as set forth herein for all buildings and structures.

5.4.6. The ACC may require, at the Owner's expense, the trimming, topping or, if deemed necessary by the ACC, removal of any tree, hedge or shrub on the Owner's Lot which the ACC determines is reasonably blocking or interfering with the view or access to sunlight of another Lot or any Common Area. Wiring to accessory buildings of any type shall be underground.

5.4.7. Declarant (including any successor in interest to Declarant's status as Declarant) shall not be subject to the restrictions of this Article 5 as to any Lot owned by Declarant.

5.4.8. No Structure shall be erected, altered, placed or permitted to remain on any Lot unless the Structure complies with the Plat Map and with applicable building codes. In all cases, the ultimate responsibility for satisfying building codes and all other governmental requirements rests with the Owner. The ACC shall be held harmless in the event of any failure to comply with building codes and other requirements.

**Section 5.5. Preparation and Submission of Plans** The Owner shall submit all materials subject to ACC review and approval by mail to the address of the Association, unless otherwise provided in writing by the ACC. The submitted materials shall consist of six complete sets of the required materials printed on 8½-inch by 11-inch paper. At least one complete set of the materials shall in each case be permanently left with the ACC. Each set shall be signed by the Lot Owner or his authorized agent and shall set forth: (1) the name and address of the Owner, (2) the name and address of the authorized agent, if any, (3) the contact person, firm name, and phone number of the builder, (4) plot plans, (5) floor plans, (6) front and rear elevations, (7) outline specifications, (8) legal descriptions and addresses for each Lot, and (9) such other information as may be required to determine whether such proposed Structure, construction, alteration or repair conforms with the Architectural Guidelines and the covenants, conditions and restrictions herein. The ACC may require that all plans or specifications be prepared by an architect or a competent house designer approved by the ACC. The ACC may require that the Owner furnish the ACC with evidence that all necessary permits have been obtained from the County for any work on a Lot for which ACC approval is required under this Section prior to commencement of the work.

**Section 5.6. Approval or Disapproval** Within 30 days after the receipt of plans and specifications, the ACC shall approve or disapprove such plans and specifications. Approval or disapproval shall be made upon one of the copies thereof and returned to the address of the Owner shown on the plans and specifications. In the event the ACC fails to

approve or disapprove such plans and specifications within 30 days after they have been submitted to it, the ACC will be deemed to have given its approval of the plans and specifications. In any case of such deemed approval, the maximum height of any improvement shall be no greater than 30 feet and such improvement must also comply with local zoning, land use and building codes. Furthermore, in the event of such deemed approval, the Lot Owner shall deliver copies of the plans and specifications to the Owner of each adjacent Lot together with a written statement that (1) the said plans and specifications have been submitted to the ACC, (2) thirty days have expired since the date of said submission and no action has been taken thereon by the ACC, and (3) unless suit to enjoin construction pursuant to the submitted plans and specifications is commenced within 10 days after delivery of the written statement and copies, construction will begin pursuant to said plans and specifications. If no Owner commences a suit to enjoin the construction within 10 days of delivery of the written statement and copies, construction pursuant to said plans and specifications may be commenced. No Owner may be enjoined or subjected to other equitable relief or be required to respond to claims for damages by any other Owner or Owners for any action taken with the approval of the ACC, whether such approval is affirmatively given or deemed given by default, provided that notice has been provided as required by this Section.

**Section 5.7 Approval of Nonconforming Proposal, No Waiver** The ACC shall have the authority to approve plans and specifications that do not conform to the Architectural Guidelines or other provisions of this Declaration where (1) practical difficulties prevent compliance with the Architectural Guidelines or approval of the plans and specifications is required in order to avoid imposing a hardship on the party submitting the proposal, and (2) the nonconformity so approved shall not be materially injurious to the Owners of other Lots or the Property as a whole. Such approval of nonconforming plans and specifications shall not constitute a waiver or modification in any respect of the provisions of the Architectural Guidelines or this Declaration.

**Section 5.8 Deposits** The ACC may require the Owner or contractors employed by the Owner to deposit a reasonable amount of funds with the Association pending completion and approval of work pursuant to approved plans and specifications. Such funds shall serve to guarantee that the Owner or contractors shall perform all work required by the ACC and the County in connection with the work, and repair any damage to roads, curbs, sidewalks, any and all utilities, adjacent Lots, and Common Areas. Such deposits shall be refunded to the Owner or contractors promptly upon completion and approval of any post-construction inspections, unless all or a portion of such deposit must be used by the Association for completion of work or repairs.

**Section 5.9 Appointment of Advisors** The ACC may appoint advisors from time to time to advise on matters pertaining to the Property.

Section 5 10 Declarant Facilities Notwithstanding any provision in this Declaration to the contrary, Declarant and its agents, employees and contractors shall be permitted to maintain during the period of sale of Lots or Homes upon such portion of the Property (other than Lots sold by Declarant) as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of Lots and Homes, including but not limited to a business office, storage area, signs, model units, sales office, construction office and parking areas for all prospective tenants or purchasers of Declarant

Article 6 USE AND MAINTENANCE OBLIGATIONS OF OWNERS

Section 6 1. Home and Yard Maintenance Except for such maintenance and repairs which are to be performed by the Association pursuant to the provisions of this Declaration, each Owner, at said Owner's cost and expense, shall promptly and continuously maintain, repair, replace and restore the Home and other Structures or improvements on the Owner's Lot in a good, clean, attractive, safe and sanitary condition and in full compliance with all applicable laws, the provisions of this Declaration, and any rules and regulations of the Association. All trees, hedges, shrubs, and flowers shall be kept in an attractive, neat, trimmed and pruned condition. Owners shall not allow their Lots to become overgrown or unkempt so as to create a visual nuisance. Leaves, clippings, dead plants and other yard waste shall be placed in a compost pile or appropriate containers for disposal. No leaves, clippings, dead plants or other yard waste shall be dumped, deposited or placed on any Common Area. If any Owner fails to maintain, repair, replace or restore the Owner's Home, other Structures located on the Lot, or the Owner's Lot, the Association may, at the Owner's cost and expense, maintain, repair, replace or restore such items or areas and the Owner shall pay or reimburse the Association on demand for all such costs and expenses, provided that the Association shall provide written notice to the Owner, by certified or registered mail to the last known address of the Owner, of the Association's intent to commence such maintenance, repair, replacement or restoration, provided further that the Association shall commence such maintenance, repair, replacement or restoration only if the Owner shall fail to respond in a manner satisfactory to the Association within 45 days of the mailing of the notice. In the event the estimated cost of such maintenance, repair, replacement or restoration should exceed one half of one percent (0.5%) of the assessed value of the subject Lot and the improvements constructed thereon, the Association shall be required to have the assent of 67% of each class of voting membership prior to commencing such maintenance, repair, replacement or restoration.

Section 6 2 Restrictions on Storage No Owner shall store or allow any occupant or tenant to store any goods, vehicles, trailers, campers, motor homes, recreational vehicles, motorcycles, boats, or trucks over two tons (except those used by Declarant in connection with the development of the Property or construction of the Homes) or any disabled or inoperable motor vehicle on the Property unless any such vehicle is completely enclosed and



hidden from view within a garage or within such other enclosure as may be approved in advance by the ACC, provided, however, that temporary (i.e., less than 24 hours) parking of operable motor vehicles on driveway areas adjacent to garages is permitted. Parking of vehicles for more than 24 hours on roadways on the Property is prohibited. The ACC may approve exceptions to this Section to allow parking or storage of vehicles within the driveway of a Lot for a period to exceed 24 hours, provided, however, that such exception shall terminate at the end of the period specified by the ACC. Violations of this Section shall subject such vehicles to impound by the Association, upon 48 hours notice to the Lot Owner, at the expense and risk of the owner thereof.

**Section 6.3 Roads and Sidewalks** The roads and sidewalks located in Lincolnshire shall be used exclusively for normal access, ingress and egress, and no obstructions shall be placed thereon or therein except by express written consent of the Board. The Board may adopt rules and regulations governing parking by Owners and their guests in Lincolnshire.

**Section 6.4 Residential Use** All Lots and Structures located thereon shall be used, improved and devoted exclusively for residential purposes only, including (i) sleeping, eating, food preparation for on-site consumption by occupants and guests, entertaining by occupants or personal guests, and similar activities commonly conducted within a residential dwelling (without regard to whether the Owner or occupant uses the Home as a primary or secondary personal residence, on an ownership, rental, lease or invitee basis) or such other reasonable ancillary purposes commonly associated with residential dwellings and otherwise in compliance with this Declaration and all applicable laws for residential dwellings, (ii) for use as a home office or for a home occupation not involving use by nonresident employees or regular visits by customers or clients, and otherwise as permitted by the Association and applicable ordinances, codes, laws or regulations, (iii) for the common social, recreational or other reasonable uses normally incident to such purposes, and (iv) for purposes of operating the Association and managing the Property. No dwelling shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single family dwelling not to exceed two stories in height, inclusive of basement, if any, and a private enclosed car shelter for not less than two cars. No single Structure shall be altered to provide residence for more than one family.

**Section 6.5 No Nuisances** No noxious or offensive conditions shall be permitted upon any Lot or improvement thereon, nor shall anything be done thereon which is or may become an annoyance or nuisance to other occupants on the Property.

**Section 6.6 Restriction on Further Subdivision** No Lot, or any portion of a Lot in the Property, shall be divided and sold or resold, or ownership changed or transferred whereby the ownership of any portion of the Property shall be less than the area required for the use district in which the Property is located, provided, the foregoing shall not prohibit deeds of correction, deeds to resolve boundary disputes and similar corrective instruments.

**Section 6.7 Garbage and Trash Removal** No Lot or Common Area shall be used as a dumping ground for rubbish, trash, garbage, litter, junk and other debris. All garbage, trash and yard waste shall be placed in appropriate sanitary containers for regular disposal or recycling, except that a regularly tended compost device shall be permitted. Each Owner shall be responsible for the prompt and regular disposal of all of garbage, trash, junk and yard waste from the Owner's Lot. All containers for garbage, trash and yard waste may be placed in public view only on the designated collection day.

**Section 6.8 Animal Restrictions** No insects, reptiles, poultry or animals of any kind shall be raised, bred or kept in or on any Home or Lot or on any Common Area, except that domesticated dogs, cats or other usual household pets (hereinafter referred to as "pets") not exceeding in aggregate two per Home may be kept on the Lots subject to rules and regulations adopted by the Board. No dog houses, kennels, dog runs or the like may be kept or maintained on any Lot or on the outside of any Home. All pets when outside a Home shall be maintained on an adequate leash or other means of physically controlling the pet, by a person capable of controlling the pet at all times or by a suitable invisible electronic confinement system not dangerous to humans. Pets shall not be allowed to leave excrement on any Lot or on any portion of the Common Area. Any Owner whose pet violates these provisions or who causes any unreasonable noise or damage to persons or property shall be liable to all such harmed Owners and their families, guests, and invitees. The Board may, after Notice and Opportunity to be Heard, require the removal of any pet which the Board finds is disturbing other Owners unreasonably, and may exercise this authority for specific pets even though other pets are permitted to remain.

**Section 6.9 Signs** No signs shall be displayed to public view on any Lot except (i) one professionally created sign of not more than one square foot displaying the resident's name, (ii) one sign of not more than three and one-half (3½) square feet advertising the Lot for sale or rent, (iii) political yard signs not more than 2 square feet and of a temporary nature posted during campaign periods, (iv) signs used by Declarant or other home builders to advertise Lots or Homes for sale, or (v) the permanent entry signs for Lincolnshire.

**Section 6.10 Renting and Leasing**

**6.10.1** With respect to the leasing, renting, or creation of any kind of tenancy of a Home, the Owner (except for a lender in possession of a Lot and improvements located thereon following a default in a first Mortgage, a foreclosure proceeding, or any deed of trust sale or other arrangement in lieu of a foreclosure) shall be prohibited from leasing or renting less than the entire Home, and for any term less than 30 days, and all leasing or rental agreements shall be in writing and be subject to this Declaration, the Articles and Bylaws, with a default of the tenant in complying with this Declaration, the Articles or Bylaws constituting a default under such lease or rental agreement.

6 10 2 If a Home is rented by its Owner, the Board may collect, and the tenant or lessee shall pay over to the Board, so much of the rent for such Home as is required to pay any amounts due the Association hereunder, plus interest and costs, if such amounts are in default over 30 days. The renter or lessee shall not have the right to contest payment over to the Board, and such payment will discharge the lessee's or renter's duty of payment to the Owner for rent to the extent such rent is paid to the Association, but will not discharge the liability of the Owner (and the Home under this Declaration for assessments and charges) or operate as an approval of the lease. The Board shall not exercise this power where a receiver has been appointed with respect to the Home or its Owner, or in derogation of any rights which a Mortgagee of such Home may have with respect to such rents. Other than as stated herein, there are no restrictions on the right of any Owner to lease or otherwise rent his Home.

Section 6 11 Zoning Regulations. Zoning regulations, building regulations, environmental regulations and other similar governmental regulations applicable to the Property subject to this Declaration shall be observed. In the event of any conflict between any provision of such governmental regulations and restrictions of this Declaration, the more restrictive provisions shall apply.

Section 6 12 Business Use. No business of any kind shall be conducted on any Lot with the exception of (i) the business of the Declarant in developing and selling Homes or Lots, and (ii) home occupations approved by the Board which do not involve employees, regular visits by customers or clients, create excess traffic, parking problems, noise, or otherwise violate this Declaration. Owners shall also comply with all of the requirements of the appropriate local government concerning the operation of such home occupations. No business materials, supplies or equipment shall be stored on any Lot within the view of another Lot, except for items relating to an improvement which is under construction in conformance with this Declaration.

Section 6 13 Temporary Residence. No outbuilding, tent, shack, garage, trailer, shed or temporary building of any kind shall be used as a residence either temporarily or permanently, except for trailers used by Declarant, builders, or contractors during the construction period.

Section 6 14 Satellite Dishes. Except as approved by the ACC, no antenna, satellite dish or similar equipment shall be affixed to the exterior of any Structure or otherwise placed on any Lot. The ACC may regulate the location and screening of any antenna, satellite dish or similar equipment which the Owner may have a right to install on the Owner's Lot pursuant to federal law.

Section 6 15 Governmental and Plat Requirements. All Structures and other Lot improvements shall comply with the Plat Map and all applicable governmental requirements including, without limitation, minimum setback requirements.

Section 6 16 Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 6 17 Use and Disposal of Hazardous Substances The Owner of each Lot shall comply with all state, federal and local laws and regulations governing or in any way relating to the handling, storage, use, dumping, discharge or disposal of any hazardous substance or material. The Owner of each Lot shall not dispose of or discharge any hazardous substance or materials on any Lot, Common Area, public street or other area located within the Property.

Section 6 18 Completion of Projects Any Structures or improvements, including any repairs or replacement thereof, constructed on any Lot shall be completed as to external appearance, including finish painting, within three months from the commencement of construction except for reasons beyond the control of the Owner, in which case a longer period may be permitted by the ACC. This period may be extended by the ACC due to inclement weather.

Section 6 19 Mailboxes Each of the mailboxes and mailbox structures shall be placed in locations approved by the United States Postal Service. Owners may not damage or otherwise interfere with a mailbox structure.

Section 6 20 Exterior Add-ons No awnings, air conditioning units, or other projections shall be placed on or hang from the exterior surfaces of any Home unless they have been approved by the ACC. Notwithstanding the foregoing, basketball hoops may hang from exterior surfaces of a Home as long as the hoop is hidden from view from the roads located within the Property.

Section 6 21 Outdoor Fires Outdoor barbecues may be used for cooking on the Lots when permitted by law. Reasonable and adequate precautions against fires must be taken. Excessive smoke or soot accumulation from fires shall not be allowed. No other outdoor fires shall be permitted on the Property, except for fires by Declarant or contractors for burning construction wastes where all necessary government permits have been obtained.

Section 6 22 Screened Service Areas Unsightly items must be hidden from view within a Home or garage or within a fenced or screened area where they will not be seen from any Lot or road. Unsightly items shall include, but shall not be limited to, garbage and trash, clothes lines, bicycles, recreational gear, outdoor maintenance equipment, firewood and ladders. The design and materials used for any fenced or screened area shall be consistent with the general appearance of the Home and must receive prior approval from the ACC.

Section 6 23 Location of Fences, Permissive Use Declarant has constructed certain fences between Homes on adjoining Lots within the Property for privacy purposes. With approval of the ACC, Owners may also construct fences. All fences installed by Owners shall be the same as the fencing originally installed by the Declarant. The intention of the Declarant is that each fence, when constructed, shall be wholly on one Lot or another and not on the property line between adjoining Lots, as shown on the Plats. For reasons of convenience or topography, Declarant or the Lot Owner may not construct each fence immediately adjacent to the property line between adjoining Lots. Accordingly, the fences are not intended to mark the property line and no fence shall be construed as modifying the property line between the adjoining Lots, as shown on the Plats. The Owner of the Lot upon which a fence is located (the "Fence Owner") shall own the fence and shall have the right to relocate the fence to another position on the Owner's Lot at any time and for any reason, subject to approval of the ACC. The Owner of the adjoining Lot (the "Adjoining Owner") shall have only a revocable personal license to use the strip of land between the recorded property line and the fence for landscaping and other ordinary yard purposes until revoked by the Fence Owner and any such use of the strip of land by the Adjoining Owner shall be deemed permissive. The Owners shall be responsible for keeping the fencing on their respective Lots in good condition and repair.

Section 6 24 Damage and Repair of Property Upon any Substantial Damage (as defined below) to any Home or Lot, the Owner shall promptly restore and repair the Home to substantially the same size and design as the original Home. The prior written consent or vote of the Board and a vote of 67% of the total votes entitled to be cast by the Owners of the Lots is required to rebuild in accordance with a plan that is different from the original plan or as modified by alterations approved by the Board. As used in this Section, Substantial Damage shall mean that in the judgment of a majority of the Board the estimated damage for the Home exceeds ten percent of the full, fair market value of the Home before the damage occurred, as determined by the then current assessment for the purpose of real estate taxation.

## Article 7 ASSESSMENTS

Section 7 1 Creation of the Lien and Personal Obligation of Assessments Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association any assessment duly levied by the Association as provided in this Declaration. Such assessments, together with interest, costs, late charges and reasonable attorneys fees, shall also be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successor title unless the lien for such delinquent assessments had been properly recorded prior to title transfer or unless expressly assumed by that party. When

ownership of a Lot changes, assessments payable in installments which have been established for the current fiscal year shall be prorated between the Buyer and Seller based on a 365 day year

**Section 7.2** Liability for Assessments Any assessments which may be levied from time to time pursuant to the authority of the Board shall be established in accordance with this Article 7, except for assessments levied against an Owner for the purpose of paying or reimbursing the Association for costs incurred or to be incurred in connection with performing requested maintenance, repairs or reconstruction of facilities within the Private Easements or for the purpose of paying or reimbursing the Association for costs incurred or to be incurred in connection with bringing an Owner's Lot into compliance with the provisions of this Declaration. Declarant shall not be obligated to pay any assessment levied against any Lots owned by it unless a Home has been constructed on the Lot and the Home is occupied. No Owner may exempt himself or herself from liability for his assessments by abandoning the Owner's Lot.

**Section 7.3** Association Budget The Association shall prepare, or cause the preparation of, an operating budget for the Association at least annually, in accordance with generally accepted accounting principles. The operating budget shall set forth sums required by the Association, as estimated by the Board, to meet its annual costs and expenses. Assessments on each Lot shall commence upon the closing of the sale of the Lot with a completed Home thereon or upon the occupancy of the Home, whichever is earlier. The members of the Association who are obligated to pay assessments based on a particular budget may reject said budget at a special meeting of the Association by a vote of 51% of the votes of each class of Members. Until assessments have commenced on all Lots, Declarant shall have the option of either paying an amount equal to the assessments which would have been due with respect to the unoccupied Lots owned by it had assessments commenced thereon or paying to the Association an amount equal to the excess, if any, of actual expenses of the Association over assessments levied.

**Section 7.4** Levy of General Assessment In order to meet the costs and expenses projected in its operating budget, the Board shall determine and levy on every Owner a general assessment. The Association's operating budget shall be divided by the number of Lots to determine the amount of one assessment unit. Except as provided in Section 7.3 with respect to unoccupied Lots owned by the Declarant, each Owner's general assessment shall be calculated by multiplying the number of Lots owned by the Owner by one assessment unit.

**Section 7.5** Amount of General Assessment The Board shall make reasonable efforts to determine the amount of the general assessment payable by each Owner for an assessment period at least 30 days in advance of beginning of such period. Notice of the general assessment shall thereupon be sent to each Owner subject to assessment; provided, however, that failure to notify an Owner of the amount of an assessment shall not render such assessment void or invalid. Any failure by the Board, before the expiration of any assessment

period; to fix the amount of the general assessment hereunder for the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Owner from the obligation to pay the general assessment, or any installment thereof, for that or any subsequent assessment period

**Section 7 6. Assessment Period** The general assessment fixed for the preceding period shall continue until a new assessment is fixed. Upon any revision by the Association of the operating budget during the assessment period for which each budget was prepared, the Board shall, if necessary, revise the general assessment levied against the Owners and give notice of the same in the same manner as the initial levy of a general assessment for the assessment period.

**Section 7 7. Special Assessments** In addition to the general assessments authorized by this Article, the Association may levy an assessment or assessments at any time against all Lot Owners, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, inordinate repair, or replacement of a Common Area, or for such other purposes as the Association may consider appropriate, provided, however, that any such assessment must have the prior favorable vote of 67% of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. The amount of each Owner's special assessment for any year shall be calculated like the general assessment, except that the total special assessment shall be substituted for the operating budget amount and shall be payable in one or more installments, as determined by the Board. In addition, costs of the Association incurred pursuant to Section 2 10 for maintenance, repair or reconstruction of facilities shared in common within any Private Easement shall be a special assessment against the Owners served by that easement payable in one or more installments, as determined by the Board, and costs incurred by the Association for work done on the Owner's Lot pursuant to Section 6 1 shall be a special assessment against the Owner of that Lot. Special assessments may be levied either before or after the work is done, in the discretion of the Board

**Section 7 8. Notice and Quorum for any Action Authorized under Section 7 7** Written notice of any meeting called for the purpose of taking any action authorized under Section 7 7 herein shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the meeting, the presence of Members or of proxies entitled to vote 60% of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be 50% of the required quorum of the preceding meeting

**Section 7 9. Manner and Time of Payment** Assessments shall be payable monthly, or in such reasonable manner as the Board shall otherwise designate. Any assessment or installment thereof which remains unpaid for at least 30 days after the due date thereof shall bear interest at the rate of 12% per annum, and the Board may also assess a late

