

**DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR**

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

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**THE GRANT, RESERVATIONS &
RECITALS**

This Declaration of Covenants, Conditions and Restrictions of _____ is made on _____, 2022, by _____, a Texas _____, as “Declarant”, whose mailing address is _____.

RECITALS

Declarant is the owner of all of the real property, including the land; all improvements and structures on the property; and all easements, rights, and appurtenances belonging to the property that is located in Moore County, State of Texas, more particularly described in Exhibit “A” (the “Property”), which is attached hereto and incorporated by reference herein.

Declarant desires that the Property be developed as a single-family residential subdivision divided into 10 & 20 acre tracts (the “Project”).

Declarant declares that the Property is to be held, sold, and conveyed subject to certain easements, restrictions, covenants, conditions, assessments and liens as set forth herein or shown on the Survey for the overall benefit of future owners of the Property.

In consideration of the foregoing premises, Declarant declares that the Project is held and shall be held, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property, and the division of the Property into Lots, and all of which are established and agreed on for the purpose of enhancing and perfecting the value, desirability, and

attractiveness of the Project and every part of the Project. All of the covenants, conditions, and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title, or interest in any part of the Property and shall be for the benefit of each Owner of the Project or any interest in the Project and shall inure to the benefit of and be binding on each successor in interest of the Owners.

SECTION I **DEFINITIONS**

Except as otherwise set forth herein, or unless the context otherwise specifies or requires, the following words and terms when used in this **Declaration** shall have the following meanings:

1.1 Architectural Control Committee or ACC Subject to Section IV, the “Architectural Control Committee” or “ACC” shall initially mean the Declarant during the Control Period, and thereafter mean the members of the committee elected or appointed by the Declarant in accordance with Section IV. The committee shall consist of at least one member but not more than three members.

1.2 Control Period. “Control Period” shall mean the period until Declarant executes a deed conveying title at least seventy-five percent (75%) of the Lots to a third party.

1.3 Declarant. “Declarant” shall mean _____ LLC, a Texas _____, or any successor or assigns.

1.4 Declaration. “Declaration” shall mean this instrument, and any amendments or modifications to this Declaration filed in the Official Public Records of Deaf Smith County, Texas.

1.5 Design Guidelines. “Design Guidelines” shall mean any rules or guidelines that are established from time to time by the ACC to provide governance to Owners and builders regarding construction, repair, or replacement of Improvements on the Property as more fully set forth in Section IV. The ACC may establish determinations on a situation-by-situation or ad hoc basis, but is encouraged, but not required, to reduce its determinations, approvals and disapprovals to writing and to preserve such written records.

1.6 Home Occupation. “Home Occupation” shall mean a commercial enterprise conducted within the Residence on a Lot. A Home Occupation is allowed if conducted pursuant to Section III.

1.7 Improvement. “Improvement” or “Improvements” shall mean all structures, improvements and fixtures located on the Property, plus all equipment traditionally considered a trade fixture located on the Property. Such term shall include but not be limited to Residence, buildings, fences, landscaping, poles, signs, exterior air conditioning, pipes, lines, meters, antennas, and towers.

1.8 Lot. “Lot” or “Lots” means each Lot (each a “Lot” and collectively “Lots”) shown on the Survey as amended from time to time and improvements located on the Lots. Tract and Lot may be used interchangeable throughout this Declaration

1.9 Mortgage. “Mortgage” shall mean any mortgage, deed of trust or vendor’s lien covering a Lot given to secure the payment of a debt, which debt is purchase money for the Lot. Such term shall also include any deed of trust or vendor’s lien by the Declarant on any Property owned by the Declarant, whether for purchase money or not.

1.10 Mortgagee. “Mortgagee” or “Mortgagees” shall mean the holder or holders of any Mortgage or Mortgages.

1.11 Owner. “Owner” or “Owners” shall mean each Person who is a record owner of a fee simple interest in any Lot, but excluding Declarant and any Mortgagee

1.12 Person. “Person” or “Persons” shall mean any individual, individuals, entity or entities having the legal right to hold title to real property.

1.13 Plans and Specifications. “Plans and Specifications” shall mean any and all documents designed to guide or control the construction or erection of any Improvement.

1.14 Residence. “Residence” means a one single-family house.

1.15 Rules. “Rules” shall mean such rules including but not limited to traffic rules, parking rules, rules governing excessive noise or other offensive conduct, and any scheduled fines and penalties for violations established and promulgated by the Declarant or the majority of the Owners. Except to the extent that a rule would be prohibited by law, by this Declaration or except to the extent that a rule requires the approval of the membership, the Declarant shall have the power to adopt such rules as the Declarant in its discretion shall deem appropriate during the Control Period, except that no rule shall take effect until 30 days after the Declarant gives notice to the Owners of such rule, except in the event that the Declarant deems that an emergency requires the implementation and enforcement of a rule prior to 30 days after notice to the Owners. After the Control Period, any Rule shall be adopted by the majority vote of the Owners.

1.16 Subdivision. “Subdivision” shall mean and refer to the Property that has been subdivided by legal tract status pursuant to Chapter 232 of the Texas Local Government Code, whether now or in the future.

1.17 Survey. “Survey” shall mean that Survey attached hereto as Exhibit B showing the map description of each Lot.

SECTION II

GENERAL RESTRICTIONS

All of the Property shall be owned, held, leased, used, occupied and enjoyed subject to the following limitations and restrictions. No Owner shall allow any of the following prohibited matters to occur or exist on the Owner’s Lot, and no Owner shall, nor shall the Owner allow any of his invitees, representatives, agents or contractors to do any of the prohibited matters described in this Declaration. Each Owner is strictly responsible for his own Lot, and invitees, representatives, agents or contractors on any part of the Property affecting any part of the Property. Additionally, this Section II contains positive covenants running with the land, and easements that are binding upon the Owners of each Lot.

Part 1: Construction Procedures

2.1 Utilities. All utilities must be installed underground except as approved by the ACC.

2.2 Building Materials. All structures must be constructed on the Lot except as approved by the ACC. No building material of any kind or character may be placed or stored upon a Lot until the commencement of construction of improvements. During construction, materials must be placed only within the Lot upon which the improvements are to be erected unless otherwise agreed to by Declarant. Construction and use of materials must progress without undue delay.

2.3 Completion of Residence. Construction of a Residence must be completed within twelve (12) months from the date construction is commenced unless extended by the ACC.

2.4 Completion of Accessory Buildings. Construction of all Accessory Buildings on a Lot must be completed within six (6) months from the date construction is commenced unless extended by the ACC.

2.5 Garage and Parking Requirements. Each Residence must have at least a two (2) car garage. The garage must conform in design and materials with the main structure of the Residence. Following completion of the Garage, a driveway shall be installed. The first 20 feet of the driveway, measured from the street, must be concrete.

2.6 Size of Accessory Buildings. The total square footage area of all Accessory Buildings may not exceed in the aggregate 50% of the size of the Residence.

2.7 Exterior Walls. Exterior cladding associated with the architectural style of the Residence must be used. The ACC shall establish Rules regarding the architectural style of each Residence.

2.8 HVAC Systems. All heating, ventilation, and air conditioning systems ("HVAC Systems") on the ground must be screened with the same material used on the exterior walls of the Residence so the HVAC Systems are not visible from other Residences. The screen for the HVAC Systems must be constructed with material and in a size, height, and design approved by the ACC. HVAC Systems may not be installed on the ground in front of a Residence. HVAC Systems may not be installed on the roof of a Residence unless approved by the ACC. No window air-conditioning apparatus or evaporative cooler may be attached to any Residence or Accessory Building or at any other location.

2.9 Fences. All fences in the front of the lot must be constructed of piped fencing or three-tiered open rail in a size, height, and design approved by the ACC, except those locations designated by the Declarant or ACC that will have iron or wooden fences. A fence enclosing or partially enclosing a Building Site may not be constructed before the construction of the Residence on the Lot.

2.10 Setback Restrictions. All Residences must be constructed so they comply with the following:

- (a) Front yard – 30 foot minimum;
- (b) Side yard – 20 foot minimum; and
- (c) Rear yard – 10 foot minimum.

2.11 Roof Materials. The roof materials associated with the architectural style of the home must be used. The ACC shall establish Rules regarding the architectural style of each Residence.

2.12 Materials for Accessory Buildings. On all Accessory Buildings the exterior walls facing Roads must be constructed out of the same exterior materials as the exterior walls of the Residence unless approved by the ACC. The design of the Accessory Buildings must conform to the design of the Residence.

2.13 Irrigation System. Before a Residence may be occupied or used, the Owner must install an automatic underground irrigation system with a rain sensor in the Landscaped Area of the Lot so it is adequately irrigated.

2.14 Portable Sanitary Systems. During construction on any Lot, the builder must provide a portable sanitary system for use by contractors, subcontractors, and their employees, located at least 12.5' behind the curb or 20' from any occupied lot, until the construction is completed.

2.15 Construction Debris. During construction on a Lot, the builder must put all construction trash that is susceptible to being blown from the construction site in the Approved Containers furnished by the builder to prevent trash from blowing off the construction site. The Approved Containers must be emptied periodically, at the builder's expense, so there is always room for the trash. Builders must prevent construction trash from blowing out of the Approved Containers and off the construction site. The Declarant or ACC may impose a fine on the builder or Owner for each violation of this provision. The fine for the first violation will be \$100. The fine for each subsequent violation will be \$500. The Declarant or ACC may hire a third party to collect and dispose of the trash and the builder or Owner shall pay the costs for this service. Builder or Owner shall pay all fines and costs upon demand.

2.16 Building Code. The construction of all Residences and Accessory Buildings must comply with all applicable building codes in force from time to time in Deaf Smith County, Texas.

Part 2: Aesthetics

2.17 Accessory Buildings. Accessory Buildings may not be used at any time as a Residence, except for a guesthouse constructed simultaneous with or subsequent to the construction of the Residence.

2.18 All Terrain Recreational Vehicles. No motorcycles, motorized dirt bikes, 3-wheelers, 4-wheelers, or similar all terrain recreational vehicles may be operated on the Property in a manner that unreasonable interferes with the use and quiet enjoyment of owners of other Lots. All such vehicles must be street-legal.

2.19 Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any Lot, which is visible from any Road or other Lot unless it is impossible to receive signals from another location that complies with these requirements. In that event, the receiving device may be placed in a visible location as approved by the ACC. The ACC may require as much screening as possible while not substantially interfering with reception. The Declarant and/or the ACC shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite, or other signals for the benefit of all or a portion of the Property. No satellite dishes shall be permitted which are larger than one meter in diameter and cannot be installed on the front elevation or within 5' of any side elevation from the front of the Improvements. No Lot may have more than one (1) satellite dish. No broadcast antenna may exceed the height of the center ridge of the roofline. No MMDS antenna mast may exceed the height of the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus which transmit television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property.

2.20 Solar Energy Device and Energy Efficiency Roofing. A "Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. "Energy Efficiency Roofing" means shingles that are designed primarily to: (i) be wind and hail resistant; (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (iii) provide solar generation capabilities. Approval by the Architectural

Control Committee is required prior to installing a Solar Energy Device or Energy Efficient Roofing once a Residence has been constructed

2.21 Automobiles and Other Vehicles and Equipment. No automobile, van, pickup truck, truck, or similar vehicle or equipment may be parked for storage in the front of any Residence, nor may any such vehicle or equipment be parked for storage in the side or rear yard of any Residence unless said vehicle is out of view from any other Residence. No boat, trailer, marine craft, recreational vehicle, camper, pick-up camper, travel trailer, motor home, camper body, tractor, or similar vehicle or equipment may be parked for storage that may be seen from any other Residence. No such vehicle or equipment may be used as a Residence or office temporarily or permanently. This restriction does not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, maintenance, or repair of a Residence.

2.22 Clothes Drying/Yard Equipment. The drying of clothes in public view is prohibited. A drying yard or other suitable enclosure must be constructed to screen from public view any clothes drying equipment, yard equipment, and storage areas.

2.23 Composite Building Site. Any Owner of one or more adjoining Lots may, with the prior approval of Declarant or ACC, consolidate such Lots into a single building site. Owners of three adjoining Lots may, with the prior approval of Declarant, consolidate such Lots into one or two separate building sites. The side Lot setback for such Building Site will be measured from the exterior of the combined Lots. The combined Building Sites will become one Lot for voting and other purposes, except combined Building Sites will remain separate for Assessment purposes.

2.24 Dogs and Cats. No pets may be kept that interfere with the health or safety of the Property. No more than a total of four (4) dogs or cats (or a combination of four (4) dogs and cats), will be permitted on a Lot. Dogs and cats must be restrained by a leash or confined in the Building Site or the Landscaped Area inside a fenced area or within the Residence unless accompanied by and under the control of a person in designated dog run areas. Pet owners are required to promptly remove and sanitarly dispose of their pet's waste on the Common Properties. Pet owners that are cited for three (3) pet waste violations may be fined by the ACC. It is the pet Owner's responsibility to keep the Lot clean and free of pet debris. All pets must be properly tagged for identification and vaccinated against rabies. Owners of dogs must keep the dogs from barking so as not to be a nuisance.

2.25 Frontage of Residences. All Residences must be constructed to front on the Road on which the Lot fronts unless the Lot fronts on two Roads in which case, the Residence must front, as directed by the ACC, on either of the two Roads or partially on both.

2.26 Greenhouses and Gazebos. No Greenhouse or gazebo may be placed or constructed on a Lot without the prior approval of the ACC.

2.27 Hazardous Materials. No vehicles of any size that transport flammable, explosive, or hazardous cargo may be kept on the Property at any time.

2.28 Insurance Rates. Nothing shall be done or kept on the Property that would increase the rates of insurance or cause the cancellation of insurance on any Lot or any of the improvements located upon any Lot, or the roads within the Property, without the prior written approval of the ACC.

2.29 Junk/Trash. No portion of the Property may be used as a dumping ground for junk, dead tree limbs, rubbish, or any other material, or as a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment, disassembled or inoperative vehicles, and discarded appliances and furniture. The Lot Owner of each Lot must contract with a trash removal company

to place a dumpster on the Lot for trash and weekly pick up. The dumpster must be at least 4 feet tall with the capacity to place at least 1 ½ yards of trash in the dumpster. The dumpster must be placed on the Owner's Lot and not on the public streets or rights of way. Trash, garbage, waste, and other debris may not be kept on any Lot except in dumpster. If trash, garbage, waste, or debris will not fit into the dumpster, it must be completely removed from the Property and not stored on any portion of the Property at any time. All junk equipment, inoperative motor vehicles, and other similar junk must be removed from the Property at Owner's expense.

2.30 No Fires. Except within fireplaces in the Residence, outdoor fireplaces, and outdoor cooking in grills, no burning of anything is permitted on the Property.

2.31 No Firearms or Fireworks. No firearms may be used or discharged on the Property, except in self-defense and the use of a shotgun for the control of varmints and predator animals.

2.32 No Hunting. No hunting or trapping is allowed on the Property.

2.33 No Prefabricated Structures. No prefabricated structure or other type of building may be moved onto a Lot unless approved by the ACC.

2.34 Oil and Gas Development. No oil, gas or other minerals drilling, development, operation, quarrying or mining of any kind shall be permitted in or on the Property.

2.35 Outdoor Lighting and Outdoor Speakers. No bright outdoor lighting or loud outdoor speakers will be permitted on any Lot. All permanent outdoor lighting components must be dark sky compliant and outdoor speakers must be approved, in advance, by the ACC.

2.36 Prohibited Activities. No Lot or improvement may be used for commercial, wholesale, retail, or manufacturing purposes of any kind. No noxious or offensive activity may be undertaken on the Property, and nothing may be done which is or may become an annoyance or nuisance to any other Owner. Nothing in this Paragraph 2.36 prohibits an Owner's use of a Residence for quiet, inoffensive activities, such as home office, tutoring, or giving music or art lessons as long as these activities do not (a) materially increase the number of cars parked on the Lot or Roads or interfere with adjoining Owners' use and enjoyment of Roads, their Residences, or yards, or (b) violate any current Deaf Smith County ordinances.

2.37 Prohibited Animals. There shall be no commercial breeding of any animal on the Property. FFA and 4-H show animals are permitted for the period of the project only. A maximum of two (4) horses are allowed on (10 & 20) acre lots. If a homeowner has a question regarding a specific animal or breed, the home owner can contact the ACC for approval. All animals on the properties should be state and local guidelines. No pet may be kept on a Lot that interferes with the quietude, health, or safety of the community.

2.38 Outdoor Pets. Pets must be restrained or confined on the back of the Lot or within the Residence. All pets should be properly supervised and leashed. Pets must not create a threat or a nuisance to other Lot Owners. It is the pet owner's responsibility to keep the Lot reasonably clean and free of pet debris.

2.39 Plans and Specifications "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement.

2.40 Restrictions on Resubdivision. None of the Lots may be subdivided without the ACC's consent.

2.41 Sanitary Waste Treatment System. No open cesspools, outside toilets, or privies will ever be permitted to be erected, constructed or maintained on any lot. Metal, concrete, or manufactured specific tanks with adequate subterranean field tile according to all applicable county and regulatory requirements and standards must be installed to service each residence. The septic system must be constructed so that there is no damage to the underground water

2.42 Signs. The ACC has the right to approve or reject any sign placed on the Property. No sign of any kind may be displayed to the public view on any Lot except (a) one sign of not more than six square feet advertising the Property for rent or sale, (b) signs used by a builder during construction and sales periods, (c) signs used by Declarant to advertise the Property during development, and (d) political signs no more than 30 days before a national, state, or local election day, which must be removed within two days after such election. The ACC has the right to remove any sign, billboard, or other advertising structure that does not comply with this Paragraph 2.41 and in so doing will not be subject to any liability for trespass or any other liability in connection with the removal.

2.43 Trucks and Livestock Trailers. Trucks, commercial vehicles, and livestock trailers with tonnage in excess of one and one-half (1.5) tons shall only be permitted to park on lot so long as said vehicles park on the side or in the rear of the Residence. Additionally, such vehicles may temporarily park on the Property when used by a builder during the construction of improvements or with the prior written consent of the ACC.

2.44 Windows. Window jambs and mullions shall be fabricated of anodized aluminum, vinyl, or wood. All aluminum or anodized metal windows on any front elevation of a Residence shall have baked-on painted aluminum divided light windows (no mill finish), unless otherwise approved by the ACC.

2.45 Application. For the avoidance of doubt, the provisions of Section III shall not apply to the Declarant.

2.46 Holiday Decorations. Decorations for secular or religious holidays must be taken down within 2 weeks after the end of the holiday. Holiday decorations may be put up no more than 20 days prior to the beginning of the holiday.

2.47 Gas. Owners that require propane must have the propane tank located to the side or rear of the Residence.

SECTION III

RESTRICTIONS FOR RESIDENTIAL USE

3.1 General. Except for other uses of the Property by, through or under Declarant during the Control Period, the Property shall be improved and used only for single-family residential use and for all other expressly permitted uses.

3.2 Residential Uses. Except for other uses of the Property by, through or under Declarant during the Control Period, all Lots shall be used exclusively for residential purposes. No more than one family or entity may own an interest in a Lot and may share their use of the Lot and Residence located thereon. No more than six (6) individuals may occupy one Residence at any one time unless they are all members of one (1) family in which case such limitations shall not apply; however, a single family may consist of as many as three generations. Except as provided below, no business or business activity shall be carried on, in or upon any Lot at any time except with the written approval of the ACC. No deliveries of merchandise for sale or distribution, no traffic of customers or clients to or from a Lot, and no storage of

inventory or products are permitted on any Lot. Garage sales or yard sales (or any similar vending of merchandise) conducted on any Lot shall be considered a business activity and is therefore prohibited, unless previously sanctioned by the ACC.

Notwithstanding the foregoing, a Lot may be used for a "Home Occupation," meaning a commercial enterprise conducted within the Residence on a Lot which is incidental to the principal residential use of the Lot, provided that:

- (i) no person other than a resident of the Lot shall be engaged or employed in the Home Occupation at the site;
- (ii) there shall be no visible storage or display of inventory, occupational materials or products;
- (iii) there shall be no exterior evidence of the conduct of a Home Occupation such as a sign and no Home Occupation shall be conducted outside of the Residence on the Lot;
- (iv) members of the public, customers, clients, patients and other business invitees shall not be on the premises; thus, this exclusion is limited to situations where the individual performing the occupation is able to conduct the business alone on the premises and any external communication is conducted by telephone and other electronic means; and
- (v) no additional parking shall be provided for the Home Occupation and no material amount of additional vehicular traffic shall be generated to or from the Lot as a result of the Home Occupation.

3.3 Restrictions on Leasing Residences; Leasing Permitted. Nothing in the Declaration shall prevent the rental of any Residence by the Owner thereof; provided, however, any such rentals shall be accomplished only by bona fide written leases with terms of at least six (6) months, and the rental of any Residence for less than six (6) months is prohibited. Residences may be rented or leased only by written leases and subject to the restriction that the tenant shall be subject to the terms and conditions of this Declaration and the rules and regulations promulgated by the ACC as though such tenant were an Owner. Each Owner agrees to cause his lessee or the persons living with such Owner to comply with this Declaration and the rules and regulations promulgated pursuant hereto, and is responsible and liable for all violations and losses caused by such tenants or occupants, to the extent the tenants or occupants do not fully satisfy their liability for any such violation. All provisions of this Declaration and of any rules and regulations promulgated pursuant hereto that govern the conduct of Owners and that provide for sanctions against Owners shall also apply to all occupants of any Residences. Within thirty (30) days after leasing Residence, the Owner of the Residence must give written notice to the ACC of the name of the tenant and the present address of the Owner, and deliver a copy of the lease to the ACC. A tenant must agree to the provisions of this Declaration and if the tenant is in breach of or in violation of this Declaration the tenant shall be liable to the ACC for any fines as a result of such breach or violation.

SECTION IV **ARCHITECTURAL CONTROL COMMITTEE**

4.0 Initial Architectural Control Committee. Initially, the ACC shall be the Declarant until such time as the Declarant resigns or until such time as the Control Period ends, whichever occurs first. At

the end of the Control Period or upon Declarant's resignation from the ACC, the Declarant shall appoint at least one, but not more than three, Owners to serve on the ACC.

4.1 Membership of Architectural Control Committee. Once Declarant ceases to serve as the ACC in accordance with Section 4.0, above, the Owner(s) appointed by Declarant shall not serve terms, but shall serve for so long as they desire or until such time as the majority of the Owners elect new members to the ACC. If the Owners fail to achieve the majority required to elect new ACC members, the existing ACC members may appoint additional members to the ACC. At all times, the ACC shall have a membership of at least one Owner, but not more than three Owners. To the extent any provision of this document conflicts with this Section 4.1, this Section 4.1 shall control.

4.2 Approval of Plans and Specifications. No Improvement shall be commenced, erected, or constructed upon any Lot or Residence on the Project, nor shall any exterior addition to or change or alteration therein (including outside painting, roof repair or addition to a Residence) be made until the Plans and Specifications therefor shall have been submitted to and approved by the ACC in accordance herewith. Any Owner may remodel, paint or redecorate the interior of such Owner's Improvements without such approval. However, modifications to Improvements visible from outside the structure shall be subject to such prior approval.

4.3 Actions of the Architectural Control Committee. The ACC may, by resolution, unanimously adopted in writing, designate one or more of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote or written directive of a majority of all of the members of the ACC taken without a meeting shall constitute an act of the ACC.

4.4 Adoption of Rules and Design Guidelines. The ACC may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may determine to be necessary or proper for the performance of its duties. Specifically, the ACC may prepare Design Guidelines that are intended to provide guidance to Owners and builders regarding matters of particular concern to the ACC in reviewing Plans and Specifications. The Design Guidelines are not the exclusive basis for decisions of the ACC, and compliance with the Design Guidelines does not guarantee approval of any application for approval. The ACC shall have full authority to amend or grant variances to its Design Guidelines, but any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive. The ACC shall make their respective Design Guidelines available to Owners and builders who seek to engage in development or construction within the Property.

4.5 Review of Proposed Construction. Whenever in this Declaration the approval of the ACC is required, it shall consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts and information that, in its sole discretion, it considers relevant, and may require an Owner to provide such other or additional information as it deems relevant. Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the ACC, and construction thereof may not commence unless and until the ACC has approved such Plans and Specifications in writing. Such application or submission to the ACC shall include Plans and Specifications showing the site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The ACC may postpone review of the Plans and Specifications until such time as the Architectural Review Committee has received all information requested by it. The ACC shall specify reasons for objections may, but is not required to, offer

suggestions for curing any objections. No approval, whether expressly granted or deemed to be granted pursuant to the foregoing, shall be inconsistent with this Declaration or the applicable Design Guidelines unless a variance has been granted pursuant to this Declaration. The ACC shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the ACC. The ACC shall not be responsible for reviewing any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes of governmental regulatory authorities. In reviewing each submission, the ACC may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures, environment, and location within the community. Decisions may be based on purely aesthetic considerations. The determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of particular Improvements.

4.6 Variances. The ACC may grant variances from compliance with any of the provisions of this Declaration or the Design Guidelines, when, in the opinion of the ACC, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property, and such variance is justified due to unusual or aesthetic considerations, unusual circumstances, undue hardship in a particular instance, or for other reasons as shall be determined in good faith by the ACC. All variances must be evidenced by a written instrument, and must be signed by a majority of the voting members of the ACC. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this Declaration applicable to the Lots for any purpose except as to the particular Property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for future waiver, modification or amendment of the terms and provisions hereof or to estop the denial of a variance in other circumstances. Notwithstanding the foregoing, such variances shall not vary any local governmental ordinance unless a variance or special exception has been first granted by the respective local governmental authority.

4.7 No Waiver of Future Approvals. The approval or consent of the ACC to any Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the ACC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

4.8 Work in Progress. The ACC, at its option, may inspect and is granted the right to inspect all work in progress to ensure compliance with approved Plans and Specifications.

4.9 Address. Plans and Specifications shall be submitted to the ACC at such address as may be designated by the ACC or by Declarant, its successors and assigns, from time to time.

4.10 Fees. The ACC shall have the right to require a reasonable submission fee as established by the ACC or the Declarant from time to time for each set of Plans and Specifications submitted for its review and may require payment of same in full prior to review of any application or submission.

4.11 Certificate of Compliance. Upon completion of any Improvement approved by the ACC and upon written request by the Owner of any Lot, the ACC may issue a certificate of Compliance certifying that there are no known violations of this Declaration or the Design Guidelines. The certificate shall not be construed to certify the acceptability, sufficiency or approval by the Architectural Review Committee of the actual construction of the Improvements or of the workmanship or material thereof. The Owner is hereby notified that the certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the ACC of the construction workmanship, materials or equipment of the

Improvements. Preparation and recordation of such a certificate shall be at the expense of the Owner of the Lot. Issuance of such a certificate shall estop the ACC from taking enforcement action with respect to any condition as to which the ACC had notice as of the date of such certificate.

4.12 Commencement Obligation. If construction does not commence on the work for which Plans and Specifications have been approved within six (6) months after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed work. Once construction is commenced, it shall be diligently pursued to completion. If approved work is not diligently pursued to completion, it shall be considered nonconforming and shall be subject to enforcement action by the ACC, the Declarant or any aggrieved Owner.

4.13 Limitation of Liability. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ACC or other reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Improvements are of comparable quality, value or size or of similar design. The ACC, the Declarant, any other committee, and any member of any of the foregoing may not be held liable for soil conditions, drainage or other general site work, or for any defects in plans reviewed or approved hereunder, or for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any structure. In all matters, the ACC and all persons comprising the ACC shall be defended and indemnified as provided in this Declaration.

4.14 Control Period. During the Control Period the Declarant is exempt from compliance with this Article IV.

SECTION V

GRANT OF EASEMENTS & RIGHTS RETAINED BY DECLARANT

5.1 Reserved Easements. All grants and dedications of easements, rights-of-way, restrictions and related rights affecting the Property and made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and they, together with all easements, reservations, and provisions contained in this instrument shall be construed as being adopted and incorporated in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of or interest in the Property. Further, the ACC shall have the right to grant utility easements and rights-of-way across any portion of the Property for the purpose of more efficiently and economically providing any, existing or future, utility to any portion of the Project so long as any easement granted across any lot does not unreasonably interfere with an Owner's use and enjoyment of their Lot or Residence.

5.2 Sanitary Control Easement - A sanitary control easement is created on the plan of the Property around each approved water well location with a radius of not less than the minimum distance required by applicable law within which no subsurface sewage system may be constructed. In addition, no water well location will be approved that is closer to a subsurface sewage system than the minimum distance required by applicable law. Additionally, all water well locations will be a minimum of 50 feet from any Property line.

5.3 Installation and Maintenance. There is hereby created a non-exclusive easement upon, across, over and under all portions of the Property, as are reasonably necessary in connection with installing, replacing, repairing, maintaining and extending all utilities, including, but not limited to, water, sewer, gas,

drainage, cable television, fiber optic cable, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for Declarant or utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, across and under the Property, within the utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Declarant or the utility companies furnishing service shall have the right without incurring any liability to remove from time to time all trees, shrubs, and vegetation situated within any utility easements located within the Property, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements. In the future, with innovation there may be the need for additional or new utility lines.

SECTION VI

CASUALTY INSURANCE, CASUALTY DAMAGE & REPAIRS

6.1 Ordinary Repair and Maintenance. Each Owner of a Lot must:

- (a) maintain the exterior of the Residence, the Accessory Buildings, fences, walls, and other improvements on the Owner's Lot in good condition and repair;
- (b) replace worn and rotten parts;
- (c) regularly repaint or re-stain all painted and stained surfaces; and,
- (d) not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, sidewalks, driveways, parking areas, or other exterior portions of the improvements to deteriorate.

6.2 Failure to Repair. In the event of a fire, wind damage or other casualty loss, and each Owner agrees to use the proceeds from such insurance for the repair and replacement of the improvements including an entire Residence, and the Owner shall promptly repair the damage and return the Residence to its original condition, in accordance with the requirements of this Declaration. If an Owner fails or refuses to promptly complete the replacement or repair as required by this Declaration, then the ACC may, but is not obligated to, make the repairs at the cost of the Owner and all costs and expenses in making that repair, plus a fifteen percent (15%) overhead factor, shall become a debt due to the ACC which shall be payable upon demand. If any amounts required by this paragraph are not paid upon demand, then the same shall bear interest at eighteen percent (18%) or the highest rate of interest allowed by law, whichever is less.

SECTION VII

GENERAL PROVISIONS

7.1 Term. This Declaration, as it may be amended in accordance with the provisions hereof, shall run with and bind the Property and shall be and remain in effect for a period of forty (40) years after the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by at least sixty seven percent (67%) of the total Owners in the Subdivision agree to terminate this Declaration has been recorded within the year immediately preceding the beginning of a ten (10) year renewal period, in which case this Declaration shall terminate at the end of its original term or the applicable extension period. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be extended and renewed as provided in this Section.

7.2 Nonliability of the Architectural Control Committee Members. Neither Declarant, the ACC, nor any member thereof shall be liable, to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of Declarant's or the ACC's respective duties under this Declaration, unless due to the willful misconduct or bad faith of Declarant, the ACC or its members, as the case may be.

7.3 Amendment. This Declaration may be amended by the recording in the real property records of Deaf Smith County, Texas an instrument executed and acknowledged by the Declarant during the Control Period, which shall have the sole right to amend the Declaration during the Control Period; or after the Control Period, by at least sixty-seven percent (67%) of all Owners of the Subdivision setting forth the amendment and certifying that such amendment has been approved by the Owners entitled to cast at least sixty-seven percent (67%) of the Owners. The instrument shall identify all Owners and be executed by those Owners agreeing to the Amendment. Any amendment to this Declaration must be recorded in the real property records of Deaf Smith County, Texas to be effective.

7.4 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered as follows. (a) If the party receiving the notice has provided the party giving the notice with their email address or facsimile number, then one notice shall be given either by facsimile transfer or by email at the number or address previously provided as applicable (nothing in this provision shall require a party giving notice to have a duty to inquire about a facsimile number or an email address); and (b) in any case, the party giving notice shall send written notice to the party receiving notice in one of the following methods:

- a. hand delivery to the Residence;
- b. overnight courier; or
- c. depositing the notice by U.S. Mail in a properly addressed and properly stamped to the recipient's last known address (if notice is given by certified or registered mail, notice must also be given by regular U.S. Mail to avoid delays in delivery).

If notice is actually received, the failure to give notice according to this provision shall be excused. Notice shall be deemed given on the earliest of the following dates:

- i. when written notice is actually received by the recipient;
- ii. the first business day after a notice is transmitted, properly addressed and sent, either by overnight courier or by facsimile transfer;
- iii. five (5) business days after deposit with the U.S. Mail.

7.5 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a plan for the development and operation of the Property and of promoting and effectuating the welfare of all of the Owners and the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

7.6 Exemption of Declarant. During the Control Period, and notwithstanding anything herein contained to the contrary, Declarant shall not be subject to the jurisdiction or control of the ACC and it shall be expressly permissible for Declarant to use its property and to maintain and carry on, upon such portion of its property as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's sales activities related to its property, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Common Properties; the right to carry on sales and promotional activities on its property which is a part of the Project; the right to operate information and sales offices on its property; and

the right to use its property as set forth in Section II hereof. During the Control Period, the Declarant shall not be subject to the provisions of Section II or III of this Declaration.

7.7 Assignment by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign in writing, all of its privileges, exemptions, rights and duties under this Declaration together with portions of the Property that it owns to any other person or entity and upon such assignment, said assignee shall become the Declarant which will permit the participation, in whole or in part, by such other person or entity in any of its privileges, exemptions, rights and duties hereunder.

7.8 Enforcement and Nonwaiver.

A. **Right of Enforcement.** Except as otherwise provided herein, (i) any Owner at his own expense, (ii) Declarant, and/or (iii) the ACC shall each have the right to enforce all of the provisions of this Declaration and the rules and regulations. The ACC may impose fines or other sanctions, which shall be collected as provided herein for the collection of Assessments. Failure to comply with this Declaration or the rules and regulations shall be grounds for an action to recover sums due for damages, injunctive relief, or any other remedy available at law or in equity, maintainable by the ACC or by any Owner of a portion of the Property. The ACC shall also have the right to enforce, by any proceeding at law or in equity, any other restrictions, conditions, covenants and liens imposed upon any portion of the Property, which by the terms of the instrument creating same grant the power to enforce same, and failure of the ACC to enforce such provisions shall in no event be deemed a waiver of the right to do so thereafter. No fine shall be unreasonable or excessive, but a fine may be sufficient to cover anticipated costs to the ACC together with inconvenience to the other Owners. Any fines or damages, and any resulting attorney's fees or court costs, resulting from any violation pertaining to a Lot, shall become a lien, pursuant to the terms of this Declaration against said Lot and enforceable against said Lot pursuant to the terms of this Declaration.

B. **Nonwaiver.** The failure to enforce any provision of this Declaration or the rules and regulations at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

7.9 Construction.

A. **Severability.** The provisions of this Declaration or the rules and regulations shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

B. **Gender and Grammar.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

C. **Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles hereof.

7.10 Notice of Sale or Transfer of Title. In the event that an Owner sells or otherwise transfers title to his or her Lot (or any interest in said Lot), such Owner and the New Owner shall provide ACC with a copy of the executed instrument of conveyance and give the ACC written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the ACC may

reasonably require. Until such written notice is received by the ACC, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of Assessments, notwithstanding the transfer of title to the Lot.

7.11 Notices of Delinquency to Mortgagees. Upon written request to the ACC by a Mortgagee (such request to state the name and address of the applicable Owner and the description of the applicable property), the ACC will provide a written statement as to whether or not such Owner is delinquent in the payment of Assessments or charges to the ACC with respect to the property subject to the Mortgage of such Mortgagee.

7.12 No Partition. No party acquiring an interest in the Property or any part thereof shall seek or be entitled to a partition of the Common Properties.

7.13 Disclaimer by Declarant. EXCEPT AS SPECIFICALLY STATED HEREIN, DECLARANT HAS NOT MADE, DOES NOT MAKE AND DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, OR CONCERNING (I) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING BUT NOT BY WAY OF LIMITATION, THE WATER, SOIL, GEOLOGY AND THE SUITABILITY THEREOF, AND OF THE PROPERTY, FOR ANY AND ALL ACTIVITIES AND USES WHICH OWNER MAY ELECT TO CONDUCT THEREON OR ANY IMPROVEMENTS ANY OWNER MAY ELECT TO CONSTRUCT THEREON, EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ANY OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME; (II) THE MANNER OF CONSTRUCTION AND CONDITION OF ANY OF THE IMPROVEMENTS ON COMMON PROPERTIES CONSTRUCTED BY DECLARANT; (III) THE ABILITY TO DEVELOP A LOT FOR SINGLE FAMILY RESIDENTIAL PURPOSES; AND (IV) THE DESIGNATION OR LOCATION OF COMMON PROPERTIES OR THE TYPE OR NATURE OF ANY AMENITIES OR IMPROVEMENTS THAT COULD BE CONSTRUCTED ON ANY PORTION OF THE PROPERTY OTHER THAN ANY AMENITIES OR IMPROVEMENTS SHOWN ON ANY APPROVED SURVEY OR THE TIMING OF THE CONSTRUCTION OF THE SAME.

7.14 Arbitration.

A. Any controversy or claim arising from or related to this Declaration or the breach thereof and/or any Property subject to this Declaration shall be settled by binding arbitration administered by the American Arbitration Association under its Arbitration rules for the Real Estate Industry and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties covenant that the arbitration proceedings shall be conducted in Deaf Smith County, Texas. The parties agree to use the most expedited procedures available.

B. All parties agree that this Declaration evidences a binding commitment and that the enforcement of this arbitration provision and the confirmation of any award issued to any party by reason of an arbitration conducted pursuant to this arbitration provision shall be governed by the United States Arbitration Act, 9 U.S.C. § 1 et seq and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. All parties waive and agree they shall not be entitled to punitive or exemplary damages.

7.15 Invitee's Compliance. Entry upon the Project shall constitute a person's agreement to abide by these rules. All Owners shall be responsible for each invitee or guest to their Residence to insure compliance by the guest or invitee with this Declaration and any rules and regulations adopted by the ACC.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this ____ day of _____, 2022.

_____, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____, the _____ of _____, LLC, a Texas limited liability company.

Notary Public, State of Texas

AFTER RECORDING PLEASE RETURN TO:

EXHIBIT “A”

Legal Description

EXHIBIT “B”

Survey of Tracts