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Theresa D. Lynch
Hendricks County Recorder IN
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**AMENDMENT OF THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR DEVONSHIRE**

This Amendment of the Declaration of Covenants, Conditions, and Restrictions for Devonshire ("Amendment") is executed as of the 11th day of May, 2015 ("Amendment Effective Date"), by Timberstone Development, LLC ("Timberstone"), as the Declarant of Devonshire.

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions for Devonshire, dated as of February 11, 2014 were recorded in the Recorder's Office of Hendricks County, Indiana as Instrument Number 201402920 on February 14, 2014 (the "Declaration"), and

WHEREAS, pursuant to Section 11.4 of the Declaration, Timberstone, as the Declarant, desires to amend the Declaration as provided for herein; and

IN WITNESS WHEREOF, the officers of the Corporation hereby amend the Declaration as follows:

SECTION 6.22 shall be amended as follows (additions in bold print):

Section 6.22. Outside Use of Lots. No fences, hedges, walls or other improvements shall be erected or maintained upon the Property without approval of the Architectural Committee, except those installed in accordance with the initial construction of the buildings located thereon. Above ground swimming pools are prohibited on the Property. In ground swimming pools must have a five foot (5') fence that encloses the backyard, **or an automatic pool cover**. All playground equipment must be approved by the Architectural Committee and shall be constructed of wood. Trampolines will not be approved, unless enclosed by a privacy fence. Portable basketball goals do not require approval, but must be stored when not in use. Any basketball goals (permanent or portable) must not obstruct the right-of-way or sidewalks.

SECTION 6.27 shall be amended as follows (additions in bold print, deletions shown as strikethrough, e.g., ~~deletion~~):

Section 6.27 Fences. The Architectural Committee, prior to any installation, must approve any fencing and landscaping screening. It is the goal to keep all fencing or screening harmonious with the architectural character of the Subdivision. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Architectural Committee when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or Builder. If approved by the Architectural Committee, fences may be privately installed but must be constructed to professional levels of

2x30'

quality, design, material, composition, and color as determined by the Architectural Committee. Non-professionally installed fences may be inspected by the Architectural Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fences shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. No fence shall be located any closer to the front line than the rear foundation line of the residence.

Fences are to be white PVC, ~~vinyl-coated chain-link~~, wrought iron, cedar or treated pine. Galvanized fencing, **chain link fencing**, and stockade fencing will not be permitted. Further, cedar or treated pine fences are to be dog-eared (flattop fences are not allowed) shadow box style with 1" x 6" vertical boards, and are to remain unpainted. Cedar or treated pine fences shall be a maximum of six feet (6') in height and white PVC fences, ~~vinyl-coated chain-link fences~~ and wrought iron fences shall be a maximum of five feet (5') in height. The Architectural Committee must approve all fencing materials, design, and location. The Architectural Committee will approve landscape screening materials, design, and location on an individual basis. Natural Stone and masonry walls shall only be constructed by the Declarant or the Builder of the Dwelling Unit at the time of construction of the Dwelling Unit and the Owners of the Lots shall not be allowed to construct any natural stone or masonry walls at any time.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Architectural Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days after submittal, then said request shall be considered DENIED.

[SIGNATURES ON THE FOLLOWING PAGE]

IN TESTIMONY WHEREOF, witness the signature of Declarant this 11th day of May, 2015.

~~PRIMBERSTONE DEVELOPMENT, LLC~~

Timberstone Development, LLC

By: Crest Management, Inc., its Manager
As Declarant of Devonshire

By: [Signature]
Steven M. Dunn, Vice President

STATE OF INDIANA)
)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for County and State, personally appeared Steven M. Dunn, as Vice President of Crest Management, Inc, Manager of Timberstone Development, LLC, who acknowledged execution of the foregoing Amendment to the Declaration of Covenants, Conditions and Restrictions of Conner Crossing, for and on behalf of said company.

Witness my hand and notarial seal this 11th day of May 2015.

My Commission Expires:

May 21, 2017



[Signature]
Notary Public, Signature

Shirley J. White
Notary Public, Printed

May 21, 201 - Madison
County of Residence

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in the document, unless required by law. John F. Donaldson.

This instrument was prepared by and after recording return to John F. Donaldson, 9210 N. Meridian Street, Indianapolis, Indiana 46260.

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02/14/2014 02:28:29P 43 PGS
Theresa Lynch
Hendricks County Recorder IN
Recorded as Presented



PC8/2/1AB

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

FOR

DEVONSHIRE

A Subdivision located in Hendricks County, Indiana

43+3
98-
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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
DEVONSHIRE**

THIS Declaration of Covenants, Conditions and Restrictions of Devonshire ("Declaration") is made on the 29th day of January, 2014, by Timberstone Development, LLC, an Indiana limited liability company, ("Declarant"),

WITNESSETH:

WHEREAS, Declarant or its affiliate is the owner of certain real estate, located in Hendricks County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Real Estate") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision.

WHEREAS, Declarant desires to subdivide and develop the Real Estate, as hereinafter provided.

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots (as defined in Article II below) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its respective successors entitled to the Property or any part or parts thereof.

As of the date of execution hereof, the Property consists solely of the Real Estate. The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained. By acceptance of such deed, execution of such contract, and/or actively occupying such Lot, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these restrictions and also for itself, its heirs, personal representatives, successors, and assigns covenants and agrees to keep, observe and comply with the terms and conditions hereof.

ARTICLE I

Name

The subdivision of the Property created by this Declaration shall be known and designated as Devonshire (hereinafter "Subdivision").

ARTICLE II

Definitions

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.2 "Association" means the DEVONSHIRE HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, its successors and assigns.

Section 2.3 "Board of Directors" means the Board of Directors of the Association.

Section 2.4 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot (as hereinafter defined).

Section 2.5 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) Lake Area as defined below, and (3) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereinafter defined) as a "Block", "Common Area, "C.A", or such other areas within the Property that are not otherwise identified on the Plat (as hereinafter defined) as a lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot (as hereinafter defined) to an Owner (as hereinafter defined) is described in the Plat (as hereinafter defined). The Common Area shall be subject to the Declaration of Restrictive Covenants for Conservation as defined in Section 2.8.

Section 2.6 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners (as hereinafter defined) by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.7 "Declarant" means TIMBERSTONE DEVELOPMENT, LLC, an Indiana limited liability company and its successors and assigns.

Section 2.8 "Declaration of Restrictive Covenants for Conservation" or "Conservation Declaration" shall refer to the Declaration of Restrictive Covenants for Conservation entered into by Declarant wherein Declarant agreed to, among other things, create aquatic habitats, riparian areas, buffers, and place certain restrictive covenants on the portion of the "Mitigation Property", as defined in the Conservation Declaration. The Conservation Declaration is hereby incorporated by reference herein and attached hereto as Exhibit "B".

Section 2.9 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot (as hereinafter defined) or any other portion of the Property.

Section 2.10 "Dwelling Unit" means any single-family residence situated upon a Lot (as hereafter defined).

Section 2.11 "Lake Area(s)" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water, which now exists or is later constructed by Declarant in a Lake Area.

Section 2.12 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined) by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.13 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.14 "Park" shall mean any portion of the Real Estate which the Declarant, in the Declarant's sole and absolute discretion designates on a Plat as a "Reservation" to be dedicated or donated to any local governmental entity, as a public park for public use or for other purposes.

Section 2.15 "Plat" means the subdivision plats of the Property, which are recorded with the Recorder of the county in which the Property is located, as the same may be hereafter amended or supplemented pursuant to this Declaration.

Section 2.16 "Provider" shall mean and refer to the entity or entities, which provides Provider Services (as hereinafter defined).

Section 2.17 "Provider Services" shall mean, without limitation, television, cable, computer connection and/or internet connection by line, wire, cable, fiber optic, main, duct, pipe conduit, pole, antenna, microwave, satellite dish, or wire or wireless technology.

ARTICLE III

Property Rights, Easements and Encroachments

Section 3.1 Owners' Easements of Enjoyment of Common Area. Except as provided for in the Declaration of Restrictive Covenants For Conservation, every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which nonexclusive right and easement of enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;
- (b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;
- (d) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;
- (e) The right of the Association to mortgage any or all of the common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;
- (f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;
- (g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be

effective unless there is recorded an instrument agreeing to such dedication or transfer signed by seventy five percent (75%) of the membership of each class of members of the Association;

(h) If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner's easement for ingress and egress;

(i) The right of the Declarant to erect any signs (i) advertising the sale of the Property or any Lot and/or (ii) identifying the Subdivision; and

(j) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.3 Certain Obligation and Access Rights to the Common Area.

(a) Except as otherwise set forth in this Declaration or the Declaration of Restrictive Covenants for Conservation, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall

automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property unless otherwise set forth herein.

(a) Declarant hereby reserves unto itself and unto any public or private utility, a general easement ("General Drainage, Utility, and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas and sanitary and storm sewer, to serve any Dwelling Unit constructed on the Property; provided, however, that only those Providers which receive the Declarant's explicit written permission shall be permitted within the General Drainage, Utility, and Sewer Easement. This General Drainage, Utility, and Sewer Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area(s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first

conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or to change the description of any drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended plat or amendment to the Plat recorded in the Office of the Recorder of the County in which the Property is located.

(e) During the period that Declarant owns any Lot, Declarant shall have an easement for access to Common Areas for the purpose of constructing structures and other improvements in and to the Lots and for installing, maintaining, repairing, and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of owners in the Subdivision.

(f) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 3.5 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the Declarant to be conveyed to the Association for the common enjoyment of all residents in the Subdivision.

Section 3.7 Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, and/or sanitary or storm sewer easements, or any combination thereof (hereafter collectively "D&UE Easements"), which are hereby reserved for the non-exclusive use for such purposes by the appropriate governmental entities, public utilities, private utilities and Provider(s) for the installation and maintenance of swales, ditches, mains, ducts, poles, lines, wires, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities, and for ingress and egress to accomplish such maintenance and installation; provided, however, that the only Providers which receive the Declarant's explicit written permission shall be permitted to be within the D&UE Easement. No permanent structure of any kind, including fences, patios, decks, driveways, walkways, landscaping, and trees, shall be built, erected or maintained on or within any such drainage easements, utility easements, and/or sanitary or storm sewer easements, except by the Declarant or its assigns. Purchasers of Lots in this Subdivision shall take title subject to all such easements hereby created and subject at all times to (i) the rights of proper authorities to service and maintain all such drainage, utility and sanitary or storm sewer facilities and easements and (ii) the rights of such governmental entities, public utilities, and private utilities of ingress and egress to access all said easements. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to all such easement areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. The drainage easements hereby created are reserved (i) for the use of Declarant during the Development Period, for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations for the Property and adjoining properties and (ii) for the non-exclusive use of the Association, or any applicable governmental authority for access to and maintenance, repair and replacement of such drainage system. It shall be the responsibility of the Association and the Owners of the areas enclosed within drainage easements to maintain any drainage areas in such condition that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department of any private or public utility. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners or other land contained within the Plat upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.8 Designated Easements for Landscaping, Mounding, Screening and Signage. Within any strips of ground shown or designated on a Plat as a landscape easement, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself and its affiliates during the Development Period and thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected between (i) the area of any such easements and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 3.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 3.10 Easement Work. Notwithstanding any architectural approval under Section 6.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.8 and Section 3.9 above.

Section 3.11 No Access. There may be strips of ground designated on the Plat as “no access strips”, “no access”, “no access easement”, “no access esmt”, or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress and egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 3.12 Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements, upon, under, over and across the real estate which is adjacent to the Property.

ARTICLE IV

Association Membership, Voting Rights, Board of Directors, and Professional Management

Section 4.1 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. 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 members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B Membership shall cease and be converted to a Class A Membership on the happening of either of the following events, whichever occurs earlier:

(i) December 31, 2024; or

(ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership; provided, however, that the Class B Membership shall recommence in the event that the Declarant subsequently records a plat of part of or all of the Property and, by virtue thereof, the total number of votes outstanding in the Class A Membership is no longer equal to or greater than the total number of votes outstanding in the Class B Membership.

Section 4.3 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 Professional Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have the exclusive right to manage or designate a Managing Agent for the Property and to perform all or any of the functions of the Association until the expiration of the Development Period. Declarant may, at its option, engage the services of a Managing Agent, including a Managing Agent affiliated with Declarant, to perform such functions, and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services. No contract or agreement for professional management of the Association, nor any

other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 4.5 Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of six (6) months, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current and/or all defaults remedied.

ARTICLE V

Covenant for Maintenance Assessments

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore (except Declarant, as more specifically provided in Section 5.6 below), whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and
- (b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration.
- (c) A working capital contribution upon the sale or transfer of any Lot in the amount of Two Hundred and no/100 Dollars (\$200.00), which shall be due at the time of such sale or transfer.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in the title unless expressly assumed by them.

Section 5.2 Purposes or Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and

replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessments.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be Four Hundred Dollars (\$400.00) per Lot per year.

(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than twenty percent (20%) above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than twenty percent (20%) above the maximum Regular Yearly Assessment for the previous year, by a vote of two-thirds (2/3) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) So long as such action complies with I.C. § 32-25.5-3-3, the Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes entitled to be cast by those Members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) 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 one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6 Uniform Rate of Assessment. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed as a uniform rate for all Lots. Declarant and any individual or entity purchasing a Lot or Lots solely for the

purposes of construction of a for-sale Dwelling Unit thereon (a "Builder") shall not be obligated to pay any Regular Yearly Assessments and Special Assessments.

Section 5.7 Date of Commencement of Yearly Assessments: Due Dates. The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat on the first day of the first month following the conveyance of such Lot by the Declarant to an Owner (other than Builder), or by Builder to an Owner who is an end-user. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection periods (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.8 Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and reasonable attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

Section 5.9 Subordination of the Lien to Mortgages: Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from

the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

ARTICLE VI

Use Restrictions, and Architectural Control

Section 6.1 Lot Use and Conveyance. All Lots shall be used exclusively for single family detached residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Architectural Control. No building, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefore as above provided. However, there shall be no such approval of the planting of hedges, the installation of walls, fences, structures and/or other improvements prohibited under Section 3.8 and 3.9 above, and any such approval shall be null and void. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

Declarant intends that the members of the Architectural Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Committee, could only conclude that such determination constituted an abuse of discretion.

The Architectural Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Neither the Architectural Committee nor any agent thereof, nor the Declarant, or Association shall be liable in any way for costs, fees, damages, delays or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further the Architectural Committee, Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advice, engineering, and inspections on each Lot prior to proposing construction.

Section 6.3 Leasing. Any Lot may be leased by its Owner.

Section 6.4 Animals. No animals shall be kept or maintained on any Lot except domestic, household pets traditionally kept in individual residences throughout the State of Indiana. All such pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Association to be removed from the Property.

Section 6.5 Outside Storage. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Section 6.6 Front Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-ways lines there shall be erected, placed or altered no structure or part thereof. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 6.7 Side and Rear Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances, subject to variances granted to Declarant by applicable zoning authorities.

Section 6.8 Temporary Structures and Outbuildings. No tent, shack, basement (other than as part of a Dwelling Unit constructed on a Lot), detached garage, barn, storage shed, mini-storage barn or other out-building shall be erected, placed, or constructed upon any Lot.

Section 6.9 Motor Vehicle Repairs. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration.

Section 6.10 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on a Lot by this

Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot. Nothing which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Subdivision or which result in a cancellation of any insurance for any portion of the Subdivision, or which would be in violation of any law or governmental code or regulation shall be permitted in the Subdivision. Without limiting the generality of the foregoing provisions, no horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Subdivision. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Subdivision shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

Section 6.11 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6.12 Drains and Vents. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6.13 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling with an attached garage as is usual and incidental to the use of residential lots and not otherwise prohibited hereunder. All Lots in this Subdivision shall be designated as residential Lots, and no home shall exceed two and one half (2-1/2) stories or thirty-five (35) feet in height. All homes must have a minimum of a two (2) car garage.

Section 6.14 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 6.15 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys' fees and costs of collection.

Section 6.16 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) feet and twelve (12) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting points forty (40) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street right-of-way lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street right-of-way line with the edge of a driveway pavement or alley line. No driveway shall be located within seventy-five (75) feet of the intersection of two street lines. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front setback line and the street curb.

Section 6.17 Semi-Tractor Trucks, Trailers, Etc. No semi-tractor trucks, semi-trucks, semi-tractors, trailers boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, Builders' or Association's business on the Property.

Section 6.18 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) feet may be displayed with the purpose of advertising the Lot for sale.

Section 6.19 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in this Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Area may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 6.20 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the

Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.21 Development and Sale Period. Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residence, construction offices, sales offices and business offices.

Section 6.22 Outside Use of Lots. No fences, hedges, walls or other improvements shall be erected or maintained upon the Property without approval of the Architectural Committee, except those installed in accordance with the initial construction of the buildings located thereon. Above ground swimming pools are prohibited on the Property. In ground swimming pools must have a five foot (5') fence that encloses the backyard. All playground equipment must be approved by the Architectural Committee and shall be constructed of wood. Trampolines will not be approved, unless enclosed by a privacy fence. Portable basketball goals do not require approval, but must be stored when not in use. Any basketball goals (permanent or portable) must not obstruct the right-of-way or sidewalks.

Section 6.23 Mailboxes. All mailboxes installed upon a Lot shall contain no more than two (2) mailboxes per post and all mailboxes and posts shall be uniform and of a type, color and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors of the Association.

Section 6.24 Yard Lights. Declarant shall during the Development Period and, thereafter, the Board of Directors of the Association shall, determine the uniform location of yard lights or coach lights. The yard light or coach light thereafter shall be maintained in proper working order by the Owner of each Lot.

Section 6.25 Notice of Zoning Commitments. Notice is hereby given that certain written commitments were made in connection with the zoning of all or part of the Property (hereafter "Commitments"). The Commitments pertain, without limitation, to Common Areas, tree preservation areas, mounding, buffers, architectural commitments, and landscape buffers. Unless and until such Commitments are vacated or released per their terms, the Association shall comply with the terms and conditions thereof. The Property shall be subject to the Commitments and all covenants, conditions, easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Property, all of which are incorporated herein by reference.

Section 6.26 Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines.

(a) Any home occupation must be conducted entirely within the residence and conducted solely by a member of the immediate family residing in said Dwelling Unit;

(b) Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;

(c) There can be no sign or display that will indicate from the exterior of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;

(d) No commodity can be sold from the Lot or Dwelling Unit located thereon;

(e) No person can be employed on the Lot or Dwelling Unit other than a member of the immediate family residing in the Dwelling Unit;

(f) No manufacturer or assembly operations can be conducted; and

(g) Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business.

In no event shall the following similar activities be conducted for business purposes; child care, barber shop, styling salon, animal hospital, kennel, any form of animal care or treatment such as dog training, or any similar activities.

Section 6.27 Fences. The Architectural Committee, prior to any installation, must approve any fencing and landscaping screening. It is the goal to keep all fencing or screening harmonious with the architectural character of the Subdivision. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Architectural Committee when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or Builder. If approved by the Architectural Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Architectural Committee. Non-professionally installed fences may be inspected by the Architectural Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fences shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. No fence shall be located any closer to the front line than the rear foundation line of the residence.

Fences are to be white PVC, vinyl coated chain link, wrought iron, cedar or treated pine; galvanized fencing and stockade fencing will not be permitted. Further, cedar or treated pine fences are to be dog-eared (flattop fences are not allowed) shadow box style with 1" x 6" vertical boards, and are to remain unpainted. Cedar or treated pine fences shall be a maximum of six feet (6') in height and white PVC fences, vinyl coated chain link fences and wrought iron fences shall be a maximum of four feet (4') in height. The Architectural Committee must approve all fencing materials, design, and location. The Architectural Committee will approve landscape screening materials, design, and location on an individual basis. Natural Stone and masonry walls shall only be constructed by the Declarant or the Builder of the Dwelling Unit at the time of construction of the Dwelling Unit and the Owners of the Lots shall not be allowed to construct any natural stone or masonry walls at any time.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Architectural Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days after submittal, then said request shall be considered DENIED.

Section 6.28 Animal Kennels. Animal kennels or quarters which are not connected to a Dwelling Unit are prohibited. Animal quarters or kennels which are connected to the Dwelling Unit must be approved by the Architectural Committee.

Section 6.29 Driveways. All driveways shall be concrete. Any modifications (i.e. color changes, stamping) must be approved by the Architectural Committee.

ARTICLE VII

Maintenance, Repairs and Replacements

Section 7.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his/her Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 7.2 Common Properties and Lawns by the Association.

(a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

(i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;

(ii) Maintenance of the entry signs, permanent subdivision identification signs, and landscaping installed by the Declarant in any Common Area, or any Landscape Easement, Landscape Maintenance Easement, Landscape Maintenance Access Easement or similar easement;

(iii) The maintenance of any street lights which are installed by Declarant and which are not located upon any Lot; and

(iv) The maintenance of any brick surface installed by Declarant on any internal street or entryway.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which the Owner's Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

ARTICLE VIII

Insurance

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organization of the Association or Board of Directors, all persons acting or who may come to act as agents, or employees of any of the foregoing with respect to the Association. It shall also cover all Common Area owned by the Association, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 Fidelity Bonds. The Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any Management Agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the Management Agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its Management Agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) years' assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be cancelled or substantially modified for any reason.

Section 8.3 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and over cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any Management Agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. The same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 8.5 Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the

cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 8.6 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any right against any Owner for committing willful or malicious damage.

ARTICLE IX

Mortgages

Section 9.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided by this Declaration.

Section 9.3 Condemnation and Insurance Awards. No provisions of this Declaration or any amendment thereto, shall give any Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the same, of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 9.4 Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any "right of first refusal" subsequently granted

to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Lots must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Lots must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell or lease a unit acquired by the mortgagee.

Section 9.5 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

ARTICLE X

Grievance Resolution Procedure

Section 10.1 Disputes Pursuant to I.C. § 32-25.5-3-6, the following procedures are hereby established as the grievance resolution procedures that apply to all Owners and the Board of Directors:

a. Any Owner or Board of Directors member making a complaint should attempt to first informally resolve the grievance with the party responsible for the alleged violation ("Offending Party"), to the extent that such attempted informal resolution may be initiated peacefully and without confrontation.

b. If the grievance remains unresolved, the aggrieved party shall provide written notice of the alleged violation to the Offending Party and to the Association, which notice shall include:

- i. The name, address, phone number, and email address of the Aggrieved Party;
- ii. The name, address, phone number and email address of the Alleged Offending Party or Parties;
- iii. The specific nature of the grievance, including the designation of dates, times, and number of occurrences;

c. Upon receipt of such written notice, the Offending Party may elect to cure the alleged violation or, upon the election and written consent of the parties to any such disputes, claims or grievances, and written notice to the Association, if applicable, be submitted to arbitration and the parties thereto shall accept the arbitrators' decisions as final and binding; provided that no question affecting the claim of title of any person to any fee or life estate in real estate is involved. The American Arbitration Association as amended and in effect from time to time hereafter shall be applicable to any such arbitration. Any agreement to arbitrate pursuant to the provisions of this Article XI shall include an agreement between the parties that the judgment of any court of the State of Indiana may be rendered upon any award rendered pursuant to such arbitration.

Section 10.2 Judicial Relief In the absence of the election and written consent of the parties pursuant to Section 11.1 above, no lot owner or the Association shall be precluded from petitioning the Courts to resolve any such disputes, claims or grievances.

Section 10.3 Election of Remedies Election by the parties to any such disputes, claims or grievances to submit such disputes, claims or grievances to arbitration shall preclude such parties from litigating such disputes, claims or grievances in the Court.

ARTICLE XI

General Provisions

Section 11.1 Right of Enforcement. In event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 11.2 Severability and Waiver. The Declaration shall operate in congruence with I.C. § 32-25.5-3 and be enforceable to the fullest extent permitted at law or in equity. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 11.3 Assignment. Declarant may at any time assign some or all of its rights and obligations under this Declaration. Such assignment shall be effective after it is executed and recorded by Declarant with the Recorder of the County in which the Property is located.

After such assignment is recorded with the Recorder of the County in which the Property is located, Declarant shall have no further obligations or liabilities under the Declaration with respect to the rights or obligations assigned.

Section 11.4 Amendment. This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of the County in which the Property is located, approved and signed by the then Owners of at least seventy-five percent (75%) of the Lots (including Declarant or Builder). Provided, however, that none of the easements, rights, or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within six (6) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners or Declarant shall effect any of the following changes without the prior written approval of the then Owners of seventy five percent (75%) of the Lots (including Declarant or Builder):

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;

(b) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);

(c) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

Section 11.5 HUD Amendment Approval. All other provisions of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property notwithstanding, so long as there is a Class B membership, if required by applicable law, the Federal Housing Administration or Secretary of the Department of Housing and Urban Development shall have the right to review and approve amendments or changes to the Declaration and related documents relating to the following:

- (a) Annexation of real estate;
- (b) Dedication or mortgaging of Common Area;

(c) Mergers and consolidation of any Property, Common Area or the Association; and

(d) Amendment of the Declaration of Covenants, Conditions and Restrictions.

Section 11.6 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

Section 11.7 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

Section 11.8 Borrowing Money Except as otherwise provided for in I.C. § 32-25.5-3-5, the Association may not borrow money during any calendar year on behalf of the Association in an amount that exceeds the greater of:

(1) five thousand dollars (\$5,000) during any calendar year; or

(2) if the Association operated under an annual budget in the previous calendar year, an amount equal to at least ten percent (10%) of the previous annual budget of the Association; unless borrowing the money is approved by the affirmative vote of a majority of the members of the Association voting under this section.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, TIMBERSTONE DEVELOPMENT, LLC, has caused this Declaration to be executed as of the date first written above.

TIMBERSTONE DEVELOPMENT, LLC,
an Indiana limited liability company

By: Crest Management, Inc., its Manager

By: [Signature]
Steven M. Dunn

Title: vice President

STATE OF Indiana)
) SS:
COUNTY OF Marion)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Steven M. Dunn, on behalf of Timberstone Development, LLC, an Indiana limited liability company, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Devonshire.

Witness my hand and Notarial Seal this 29th day of ~~December~~ ^{January}, 2014.

My Commission Expires:

May 21, 2017

[Signature]
Notary Public

Residing at Madison County

Shirley J. White
Printed Name



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in the document, unless required by law. John F. Donaldson

This instrument was prepared by and after recording return to John F. Donaldson, Esq., Mercho Donaldson LLC, 828 E. 64th Street, Indianapolis, IN 46220. (317) 722-0607.

EXHIBIT A

That portion of the Southeast Quarter of Section 13, Township 15 North, Range 1 East of the Second Principal Meridian, Washington Township, Hendricks County, Indiana, described as follows:

Considering the south line of the East Half of Section 13 as bearing North 88 degrees 43 minutes 14 seconds East with all bearings contained herein being relative thereto.

BEGINNING at a granite stone found at the northwest corner of said Southeast Quarter; thence North 88 degrees 41 minutes 00 seconds East along the north line thereof 1376.46 feet to the northeast corner of the West Half of said Southeast Quarter; thence South 01 degree 12 minutes 16 seconds East along the east line of the West Half of said Southeast Quarter 1913.23 feet to a 5/8 inch rebar with cap stamped "BANNING ENG FIRM #0060" (herein referred to as "rebar"); thence South 88 degrees 43 minutes 14 seconds West parallel with said south line 143.00 feet to a rebar set; thence South 01 degree 12 minutes 16 seconds East parallel with said east line 754.00 feet to a mag nail with "BANNING ENG FIRM #0060" tag (herein referred to as mag nail) set on said south line; thence South 88 degrees 43 minutes 14 seconds West along said south line 719.48 feet to a mag nail set at the southeast corner of Minor Plat Number 205 as per plat thereof recorded in Plat Book 11, Page 108 in the Office of the Recorder of said county; thence North 01 degree 05 minutes 39 seconds West along the east line of said plat 497.82 feet to a rebar set; thence South 88 degrees 43 minutes 14 seconds West along the north line of said plat 175.00 feet to a rebar set on the east line of the West Half of the West Half of the Southwest Quarter of said Southeast Quarter; thence North 01 degree 05 minutes 39 seconds West along said east line 835.46 feet to a rebar set on the north line of said Southwest Quarter Quarter Section; thence South 88 degrees 42 minutes 07 seconds West along said North line 344.97 feet to a rebar set on the west line of said Southeast Quarter; thence North 01 degree 03 minutes 26 seconds West along said West line 1333.17 feet to the **POINT OF BEGINNING**, containing 69.430 acres, more or less.

EXHIBIT B

DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION is made this 11TH day of FEBRUARY 2014, by James W. Van Ness, Engineering/Development Manager, Timberstone Development Company, 9210 North Meridian Street, Indianapolis, Indiana 46260. ALL

RECITALS

WHEREAS, Declarant is the sole owner in fee simple of certain real property located in Hendricks County, Indiana, as described in Deed Book # 05 Inst. #, Page 01300493 in the Office of the Hendricks County ~~Clerk~~ ^{Recorder}, and as more particularly described in legal description attached hereto as Exhibit A and shown on the site plan attached hereto as Exhibit B, both of which are incorporated herein by reference ("Property");

WHEREAS, the discharge of dredged and/or fill material into jurisdictional waters of the United States, including wetlands and streams, pursuant to Sections 404 of the Clean Water Act, requires compensatory mitigation; and

WHEREAS, as compensatory mitigation under Federal law for and in consideration of Department of the Army Permit No. LRL-2013-815-sjk ("Permit") issued by the U.S. Army Corps of Engineers, Louisville District ("Corps") pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344) and/or Section 10 of the Rivers and Harbors Act (33 U.S.C. §403) and the 401 Water Quality certification No. 2013-564-32-SKG-A, and in recognition of the continuing benefit to the permitted property, and for the protection of waters of the United States and scenic, resource, environmental, and other conservation values, Declarant has agreed to create aquatic habitats, riparian areas, buffers, and place certain restrictive covenants on the portion of the Property depicted in the site plan attached hereto as Exhibit C and incorporated herein by reference ("Mitigation Property"), in order that the Mitigation Property shall remain substantially in its natural condition forever, and to grant a right of access and entry to the Property;

NOW THEREFORE, in consideration of the benefits to be derived by the Declarant(s) and each and every subsequent owner and occupant of the Mitigation Property, and as required mitigation for the discharge of dredged and/or fill material into waters of the United States, as authorized by the Permit and Certification, Declarant hereby makes this Declaration on the terms and conditions stated below.

1. **Purpose.** The purpose of this Declaration of Restrictive Covenants is to restrict the current and future use of the Mitigation Property in perpetuity in order to protect aquatic resource functions and values, scenic, resource, environmental, and other conservation values, and conservation functions and ecological services; to establish the Mitigation Property as open, common, and undeveloped conservation area; and to preserve the natural condition of the Mitigation Property in perpetuity.

2. **Covenant Running with the Land.** Declarant hereby declares that the Property shall be bound by, held, transferred, sold, conveyed, leased, improved, hypothecated, occupied or otherwise disposed of and used subject to the rights of access and entry provision and property transfer provision of the following restrictive covenants, which shall be perpetual and run with the land and be binding on all the Declarant's heirs, executors, administrators, successors, assigns, lessees, or other persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title, or interest in said Property or any part thereof; and that the Mitigation Property shall be held, transferred, sold, conveyed, leased, improved, hypothecated, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on all the Declarant's heirs, executors, administrators, successors, assigns (which are included in the term "Declarant" below), lessees, or other occupiers and users. The terms and conditions of the following restrictive covenants shall be both explicitly and implicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or part of the Property. Any such transfer, conveyance or encumbrance shall set forth the terms and conditions of this document by reference to this document and its recorded location in accordance with paragraph 9 of this Declaration.

3. **Definitions.**

3.1 Natural Condition. The term "natural condition" shall mean the condition of the Mitigation Property at the time of the declaration and as restored, created, enhanced, and preserved pursuant to the Mitigation Plan. The natural condition shall be evidenced in part by a surveyed plat of the Mitigation Property recorded in the deed records office for each county in which the Property is situated which shows all relevant property lines, all existing man-made improvements and features, and major, distinct natural features such as waters of the United States and is attached hereto as the site plan which shows all relevant property lines, all existing man-made improvements and features, and major distinct natural features such as waters of the United States and is attached hereto as Exhibit B. The natural condition of the Mitigation Property may also be evidenced by:

- (a) A current aerial photograph of the Mitigation Property at an appropriate scale taken as close as possible to the date the declaration is made; [and]
- (b) On-site photographs taken at appropriate locations on the Mitigation Property, including major natural features; [and]
- (c) [*Other methods of documentation can be inserted subject to approval.*];

3.2 Mitigation Plan. The term "Mitigation Plan" shall mean the plan approved by the Permit and Certification.

4. **Restrictions/Prohibitions.** Any activity on, or use of, the Mitigation Property, which is or may become inconsistent with the purposes of this Declaration is prohibited. Without limiting the generality of the foregoing, the following activities are expressly prohibited except as provided for in the Declarant's Reserved Rights:

4.1 General/Topography. There shall be no filling, flooding, cultivating, excavating, earthmoving, grading, mining or drilling; no removal of natural materials; no dumping of materials; and no alteration of topography in any manner.

4.2 Waters and Wetlands. There shall be no draining, ditching, diking, dredging, channelizing, damming, pumping, or impounding; no changing the grade or elevation, impairing or diverting the flow or circulation of waters, or reducing the reach of waters; and no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended.

4.3 Trees/Vegetation. There shall be no clearing, burning, cutting, mowing or destroying of trees or vegetation.

4.4 Non-Native/Exotic Species. There shall be no introduction of non-native or exotic species to the Mitigation Property.

4.5 Uses. There shall be no agricultural, commercial, or industrial activity undertaken or allowed on the Mitigation Property, including but not limited to grazing and mining. There shall be no horseback riding, whether on or off an established trail.

4.6 Structures. There shall be no construction, erection, or placement of buildings, billboards, signs, or any other temporary or permanent structure, nor any additions to existing structures.

4.7 Roads. There shall be no construction or building of new roads, trails, or other rights of way without the prior written approval by the Corps.

4.8 Off Road Vehicles. There shall be no use of off road vehicles, 4-wheel drive vehicles, all terrain vehicles, snowmobiles, or other types of motorized recreational vehicles except on existing roads and except as necessary to manage the Mitigation Property.

4.9 Utilities. There shall be no construction or placement of utilities or related facilities without the prior written approval of the Corps.

4.10 Waste. There shall be no placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or industrial, municipal, or agricultural waste on the Mitigation Property.

4.11 Pest Control. There shall be no application of pesticides or biological controls, including but not limited to insecticides, fungicides, rodenticides and herbicides, without prior written approval from the Corps.

5. **Reserved Rights**. Notwithstanding the foregoing Restrictions, the Declarant reserves for itself, its heirs, executors, administrators, successors and assigns the right to use the Mitigation

Property for all purposes not inconsistent with the purposes of these restrictive covenants. Further, the Declarant expressly reserves for itself, its heirs, executors, administrators, successors, and assigns the following rights, which may be exercised upon providing 30 days prior written notice to the Corps, except where expressly provided otherwise:

5.1 Wildlife and Forestry Management. Declarant reserves the right to naturally manage the Mitigation Property to preserve and improve the existing forest and wildlife resources. Declarant reserves the right to remove or trim vegetation hazardous to persons or property, and harvest and manage timber downed or damaged due to natural forces, such as fire, storms, insects, or infectious organisms, to the extent necessary to protect the environment. Such management activities shall be carried out only after approval by the Corps and in accordance with Best Management Practices as set out by the U.S. Forest Service.

5.2 Landscape Management. Declarant reserves the right to undertake landscaping necessary to prevent severe erosion or damage to the Mitigation Property or portions thereof, or significant detriment to existing or permitted uses, to the extent such landscaping is consistent with preserving the natural condition of the Mitigation Property.

5.3 Recreation. Declarant reserves the right to engage in outdoor, non-commercial recreational activities, including hunting, fishing, and similar recreational or educational activities, consistent with cumulatively very small impacts and with the continuing natural condition of the Mitigation Property, but excluding planting and burning. No prior written notice to the Corps is required.

5.4 Road Maintenance. Declarant reserves the right to maintain existing roads, trails, or other rights of way. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and maintenance of roadside ditches.

5.5 Signs. Declarant reserves the right to erect signs on the Mitigation Property to mark the Mitigation Property as a protected area and to convey information on restricted use of the Mitigation Property, including no trespassing signs, no mowing signs, temporary signs indicating the Mitigation Property is for sale, signs identifying the trees, vegetation, wetlands or conservation ecological services of the Mitigation Property, and signs identifying the owner.

5.6 Mitigation Measures. Declarant reserves the right to undertake restoration and mitigation measures required under the Mitigation Plan or otherwise required under law.

6. **Rights of Access and Entry**. The Declarant grants the Corps and its authorized agents an irrevocable and assignable right to enter in, on, over and across the Mitigation Property to inspect and monitor the Mitigation Property; to implement the Mitigation Plan or take corrective measures under the Mitigation Plan; to take any actions necessary to maintain or restore the natural condition of the Mitigation Property; or to take any actions necessary to verify compliance with these restrictive covenants. The Declarant also grants the Corps and its authorized agents an irrevocable and assignable right to enter and exit over and across the

Property as necessary to access the Mitigation Property for the purposes listed above. No rights of access or entry to or use of any portion of the Mitigation Property or Property is granted or conveyed to members of the general public by these restrictive covenants.

7. Enforcement. The Declarant grants the Corps, as third party beneficiary hereof, a discretionary right to enforce these restrictive covenants in a judicial action against any person or other entity violating or attempting to violate these restrictive covenants; provided, however, that no violation of these restrictive covenants shall result in forfeiture or reversion of title. In any enforcement action for violations of this Declaration, an enforcing agency shall be entitled to complete restoration of the Mitigation Property for any violation, as well as any other remedy available under law or equity, such as injunctive relief and administrative, civil or criminal penalties. No omission or delay in acting by the Corps shall bar subsequent enforcement rights or constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification. Nothing herein shall limit the right of the Corps to modify, suspend, or revoke the Permit. Nothing herein shall be construed to authorize the Corps to institute proceedings against the Declarant for changes to the Mitigation Property due to acts of God, natural disasters, or unauthorized acts of third parties outside the control of the Declarant, so long as the compensatory mitigation is completed and determined by the Corps to be successful in accordance with the Mitigation Plan.

8. Notice to Government.

8.1 Any permit application, or request for certification or modification, which may affect the Mitigation Property, made to any government entity with authority over wetlands or other waters of the United States, shall expressly reference and include a copy (with the recording stamp) of these restrictive covenants.

8.2 The Declarant shall provide the Corps with written notice of any legal action affecting this Declaration, including but not limited to foreclosure proceedings, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation proceedings, and the exercise of the power of eminent domain. For any action that might result in this Declaration being voided or modified, such notice shall be provided at least 60 days before such action would be taken.

9. Property Transfers. The Declarant shall include the following notice on all deeds, mortgages, plats, or any other legal instrument used to convey any interest in the Property and/or Mitigation Property:

NOTICE: This Property is subject to a Declaration of Restrictive Covenants for Conservation dated FEBRUARY 11, 2014, recorded in the Hendricks County Clerk's RECORDER'S Office on date: 2-14-2014 in Deed Book # 111ST. #, Page _____ and enforceable by the U.S. Army Corps of Engineers. 201402919

The Declarant shall provide the Corps with written notice of any such grant, transfer or conveyance of any interest in any or all of the Property at least sixty (60) days prior to the grant, transfer or conveyance. The notice shall include the name, address, and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the portion of the Property and/or Mitigation Property being transferred. Failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants.

10) Warranties.

10.1 The Declarant represents and warrants that:

A. The Declarant is the sole owner of the Mitigation Property and holds fee simple title which is free and clear of any and all liens, loans, claims, restrictions, easements and encumbrances.

B. The Declarant has identified all other parties that hold any interest (e.g. encumbrances) in the Mitigation Property and has notified such parties of the Declarant's intent to grant this Declaration;

C. This Declaration will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which the Declarant is a party, or by which the Declarant may be bound or affected;

D. This Declaration will not materially violate or contravene any zoning law or other law regulating use of the Mitigation Property; and

E. This Declaration does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Declaration.

10.2 The Declarant represents and warrants that, to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Mitigation Property;

B. There are no underground storage tanks located on the Mitigation Property whether presently in service or closed, abandoned, or decommissioned;

C. The Mitigation Property is in compliance with all federal, state, and local laws, regulations, and permits and there is no pending or threatening litigation in any way affecting, involving, or relating to the Property and its use; and

D. The Mitigation Property is not land-locked and there is access to the Mitigation Property by road, dedication of pathway or by an access easement.

11. Notification. Any notice, request for approval, or other communication require by these restrictive covenants shall be sent by registered mail, pre-paid postage, to the following addresses (or such addresses as may be hereinafter specified by notice pursuant to this paragraph):

To Declarant: Timberstone Development Company
c/o James W. Van Ness
9210 North Meridian Street
Indianapolis, Indiana 46260

To Corps: U.S. Army Corps of Engineers
OP-FN, Room 752
P.O. Box 59
Louisville, KY 40201-0059

12. Amendment. After recording, these restrictive covenants may only be amended by a recorded document signed by the Corps and Declarant. Amendment shall be allowed at the discretion of the Corps, in consultation with resource agencies as appropriate, and then only in exceptional circumstances. Any amendment must be consistent with the requirements of Sections 404 of the Clean Water Act. There shall be no obligation to allow an amendment.

13. Termination. This Declaration is intended to be perpetual in nature and run with the land as set forth in paragraph 1 of this Declaration. However, if the Corps determines that the compensatory mitigation undertaken on the Mitigation Property set forth in the Mitigation Plan is not successful and the alternative mitigation identified does not involve the Mitigation Property, then the Declarant and Corps may terminate this Declaration by written agreement.

14. Recording. Declarant shall record this Declaration in the official property records of the Office of the Hendricks County ~~Clerk~~^{Recorder} within thirty (30) days of execution of this Declaration by the Declarant, and shall, within thirty (30) days of recording, provide the Corps with a copy of the recorded Declaration and exhibits. Declarant may re-record this instrument at any time as may be required to preserve its rights.

15. Successors in Interest. All references to the Corps shall include successor governmental agencies, departments, or divisions, or any other successor entities prescribed by law.

16. Severability Provision. Should any separable part of these restrictive covenants be held contrary to law, unenforceable, or void, the remainder shall continue in full force and effect.

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration effective on the date first written above, but actually on the date set forth below.

DECLARANT Timberodino Development, LLC

By: [Signature]
[Type name Under Line]
James W. Van Ness

Engineering / Development Mgr.
[Type Title]

2/11/14
Date

STATE OF INDIANA)
) ss:
COUNTY OF Marion)

On this 11th day of February, 2014, before me, a Notary Public in and for said County and State, personally appeared James W. Van Ness, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed same for the purposes contained therein.

WITNESS my hand and official seal.

[Signature]
NOTARY PUBLIC
Shirley J. White
May 21, 2017
My commission expires:



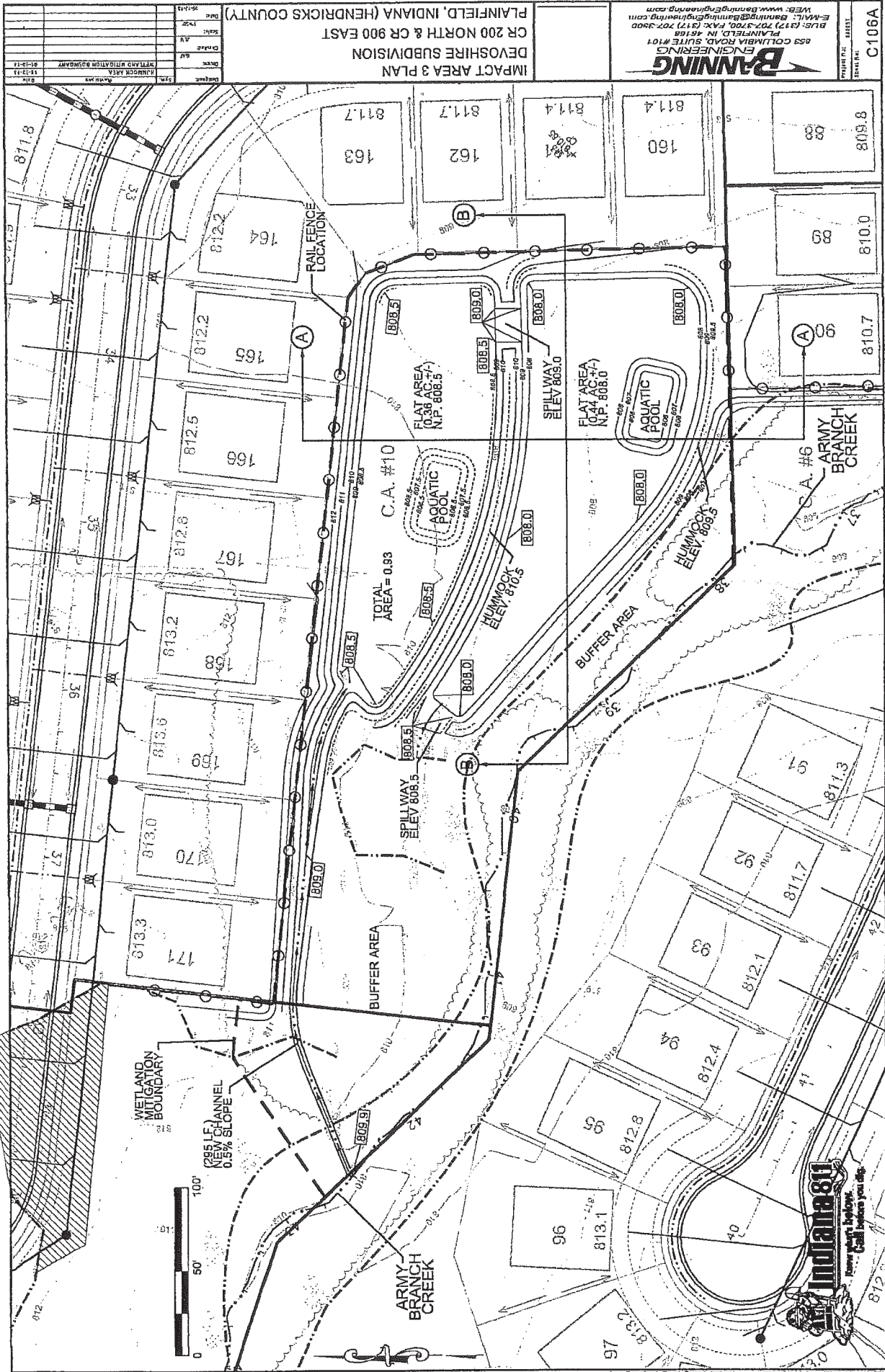
Prepared By: Ron L. Dixon, Natural Resource Consultant
per USACOE Prescribed Template.

Proposed Wetlands Description

That portion of the Southeast Quarter of Section 13, Township 15 North, Range 1 East of the Second Principal Meridian, Washington Township, Hendricks County, Indiana, described as follows:

Commencing at a granite stone marking the northwest corner of said Southeast Quarter; proceed thence South 01 degrees 03 minutes 26 seconds East (bearing per record survey) along the west line thereof 806.05 feet; proceed thence North 88 degrees 56 minutes 34 seconds East 229.78 feet to the POINT OF BEGINNING; thence North 56 degrees 14 minutes 44 seconds East 100.04 feet; thence South 83 degrees 37 minutes 17 seconds East 34.43 feet; thence South 06 degrees 22 minutes 43 seconds West 21.08 feet; thence South 83 degrees 37 minutes 17 seconds East 420.73 feet; thence South 53 degrees 12 minutes 58 seconds East 18.44 feet; thence South 21 degrees 15 minutes 53 seconds East 30.57 feet; thence South 01 degrees 12 minutes 16 seconds East 188.82 feet; thence South 88 degrees 47 minutes 44 seconds West 189.89 feet; thence North 42 degrees 43 minutes 13 seconds West 178.66 feet; thence North 83 degrees 23 minutes 47 seconds West 160.00 feet; thence North 43 degrees 20 minutes 10 seconds West 135.53 feet to the POINT OF BEGINNING, and containing 2.213 acres of land, more or less.

Exhibit B
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BANNING
ENGINEERING
833 COLUMBIA ROAD, SUITE #101
PLAINFIELD, IN 46168
BUS: (317) 707-9700, FAX: (317) 707-3900
E-MAIL: Banning@BanningEngineering.com
WEB: www.BanningEngineering.com

IMPACT AREA 3 PLAN
DEVSHIRE SUBDIVISION
CR 200 NORTH & CR 900 EAST
PLAINFIELD, INDIANA (HENDRICKS COUNTY)

