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### Forestal Estates

# DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FORESTAL ESTATES**

**NAME****DEFINITIONS****PROPERTY RIGHTS**

Certain Obligations with Respect to Easement Areas  
Drainage, Utility and Other Easements

**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Membership  
Classes of Membership and Voting Rights  
Board of Directors  
Professional Management

**COVENANT FOR MAINTENANCE ASSESSMENTS**

Creation of the Lien and Personal Obligation of Assessments  
Purpose of Regular Assessments  
Maximum Regular Annual Assessments  
Special Assessments for Capital Improvements and Operating Deficits  
Notice and Quorum for Any Action Authorized Under Section 5.3 and 5.4  
Uniform Rate Assessment  
Date of Commencement of Assessments; Due Dates  
Effect of Nonpayment of Assessments; Remedies of the Association  
Subordination of the Lien to the Mortgage; Sale or Transfer

**USE RESTRICTIONS AND ARCHITECTURAL CONTROL**

Lot Use and Conveyance  
Accessory Outbuilding Prohibited  
Occupancy or Residential Use of Partially Completed Dwelling House Prohibited  
Other Restrictions  
Restrictions Concerning Size, Placement, and Maintenance of Dwelling Houses and Other Structures  
Minimum Living Space Areas  
Fences, Light Fixtures, Mailboxes, Lawns and Trees  
Exterior Construction  
Heating Plants  
Damaged Structures  
Prohibition of Used Structures and Modular Homes  
Maintenance of Lots and Improvements  
Association's Right to Perform Certain Maintenance  
Restrictions as to Owners  
Architectural Control  
Signs

**Rules and Regulations**

Development and Sale Period  
Restrictions Regarding Building Completion

**MAINTENANCE OF BUILDINGS**

Maintenance of Owners

**INSURANCE**

Liability Insurance  
Miscellaneous Insurance Provisions  
Payment of Insurance  
Additional Insurance

**GENERAL PROVISIONS**

Right of Enforcement  
Severability  
Amendment  
Mortgage Rights  
Notice to Mortgagees

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FORESTAL ESTATES**

<b>NAME</b>	2
<b>DEFINITIONS</b>	2
<b>PROPERTY RIGHTS</b>	
Certain Obligations with Respect to Easement Areas	4
Drainage, Utility and Other Easements	4
<b>ASSOCIATION MEMBERSHIP AND VOTING RIGHTS</b>	
Membership	7
Classes of Membership and Voting Rights	7
Board of Directors	8
Professional Management	8
<b>COVENANT FOR MAINTENANCE ASSESSMENTS</b>	
Creation of the Lien and Personal Obligation of Assessments	8
Purpose of Regular Assessments	9
Maximum Regular Annual Assessments	9
Special Assessments for Capital Improvements and Operating Deficits	10
Notice and Quorum for Any Action Authorized Under Section 5.3 and 5.4	10
Uniform Rate Assessment	10
Date of Commencement of Assessments; Due Dates	10
Effect of Nonpayment of Assessments; Remedies of the Association	11
Subordination of the Lien to the Mortgage; Sale or Transfer	12
<b>USE RESTRICTIONS AND ARCHITECTURAL CONTROL</b>	
Lot Use and Conveyance	12
Accessory Outbuilding Prohibited	13
Occupancy or Residential Use of Partially Completed Dwelling House Prohibited	13
Other Restrictions	13
Restrictions Concerning Size, Placement, and Maintenance of Dwelling Houses and Other Structures	13
Minimum Living Space Areas	13
Fences, Light Fixtures, Mailboxes, Lawns and Trees	14
Exterior Construction	14
Heating Plants	14
Damaged Structures	15
Prohibition of Used Structures and Modular Homes	15
Maintenance of Lots and Improvements	15
Association's Right to Perform Certain Maintenance	15
Restrictions as to Owners	16
Architectural Control	19
Signs	20
Rules and Regulations	20
Development and Sale Period	20
Restrictions Regarding Building Completion	20
<b>MAINTENANCE OF BUILDINGS</b>	
Maintenance of Owners	21
<b>INSURANCE</b>	
Liability Insurance	21
Miscellaneous Insurance Provisions	21
Payment of Insurance	21
Additional Insurance	21
<b>GENERAL PROVISIONS</b>	
Right of Encroachment	22
Severability	22
Amendment	22
Mortgage Rights	23
Notice to Mortgagees	23

DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

Forestal Estates

THIS DECLARATION, made on this \_\_\_\_\_ day of 20\_\_\_\_ by M One Design Build, LLC (hereinafter referred to as "Declarant")

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate located in Hamilton County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by this reference made a party hereof (hereinafter referred to as "Property");

WHEREAS, Declarant desires to subdivide and develop the Property as generally shown on the Secondary Plat for Forestal Estates, hereafter recorded in the office of the Recorder of Hamilton County, Indiana (hereinafter sometimes referred to as the "Plat" and sometimes referred to as the "Development").

WHEREAS, Declarant intends to sell and convey the residential lots situated within the Development and before doing so desires to subject to and impose upon the Property mutual and beneficial restrictions, covenants, conditions, assessments and charges (hereinafter referred to as the "Restrictions"), under a general plan or scheme of improvement for the benefit and complement of the Property and future home owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the Property is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of the lots within the Development and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Declarant and upon the parties hereafter having or acquiring any right, title or interest, legal or equitable, in and to the Property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's

successors in title to the Property. Declarant specifically reserves unto itself the right and privilege, prior to the recording of the Plat by Declarant to exclude any real estate as shown from the provisions of this Declaration, or to include additional real estate.

#### ARTICLE I

##### NAME

The subdivision of the Property created by this Declaration shall be known and designated as Forestal Estates subdivision located in Hamilton County, Indiana, the legal description for which is more particularly described on "exhibit A" attached hereto and by reference made a party hereof.

#### ARTICLE II

##### DEFINITIONS

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

Section 2.2 "Association" shall mean Forestal Estates Homeowner's Association, Inc., an Indiana not-for-profit corporation.

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

Section 2.4 "Common Expenses" means (i) expenses of administration of the Association, (ii) expenses of and in connection with the performance of the responsibilities and duties of the Association, including (without limitation) expenses for the improvement, maintenance or repair of the Landscape Easements, the Sign Easements and the drainage system located in and upon the Drainage Easements, (iii) all sums lawfully assessed against the Owners by the Association, and (iv) all sums declared by this Declaration to be Common Expenses.

Section 2.5 "Committee" shall mean the Development Control Committee, composed of three (3) members appointed by Declarant who shall be subject to removal by Declarant at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of Declarant until the end of Development Period, at which time the Association shall appoint from

its membership this Committee. The initial members of the Committee appointed by Declarant are to be determined at a later date.

Section 2.6 "Declarant" means Maintenance One Design Build, LLC, an Indiana limited liability corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have rights of Declarant hereunder, including (without limitation) any mortgagee acquiring title to any portion of the Property, pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

Section 2.7 "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 or any other portion of the Property.

Section 2.8 "Drainage Easements" mean those areas designated on the Plat as Drainage Easements, either separately or in combination with any other easements designated on the Plat.

Section 2.9 "Landscape Easements" mean those areas designated on the Plat as Landscape Easements, either separately or in combination with any other easements designated on the Plat.

Section 2.10 "Lot" means any parcel of land shown upon the Plat and identified by a number 1 through 3 inclusive.

Section 2.11 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which it is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of any obligation. Unless specifically indicated to the contrary, the term Owner as used herein shall include the Declarant, so long as the Declarant shall own any Lot.

Section 2.12 "Plat" means the subdivision plat of the Property identified as Secondary Plat of Forestal Estates and recorded in the Office of the Recorder of Hamilton County, Indiana, as the same may be hereafter amended or supplemented.

Section 2.13 "Property" means the real estate described in Exhibit "A".

Section 2.14 "Sign Easements" means those areas designated on the Plat as Sign Easements, either separately or in combination with any other easement designated on the Plat.

Section 2.15 "Utility Easements" mean those areas designated on the Plat as Utility Easements, either separately or in combination with any other easement designated on the Plat.

#### ARTICLE III

##### PROPERTY RIGHTS

###### Section 3.1. Certain Obligations with Respect to Easement Areas.

- (a) The Association shall maintain the Landscape Easements and all fences, walls, earthen mounds, trees, foliage, landscaping and other improvements thereon installed by Declarant or the Association and the Sign Easements and all signs installed thereon by Declarant or the Association in good, clean, attractive, condition, order, and repair. The Association shall also maintain in a good state of repair all on-site drainage facilities.
- (b) Declarant hereby declares, creates and reserves an access easement over and across the entirety of the Property (subject to the limitations hereinafter provided in this paragraph): (i) for the use of all public utility companies (not including transportation companies) and governmental agencies for access to the Utility Easements created and reserved herein; and (ii) for the use of Declarant during the Development Period and for the use of the Association and the Board of Public Works and Safety of the City of Carmel, Indiana, for access to the Drainage Easements created and reserved herein. Notwithstanding the foregoing, the area of the access easement created by this Section 3.1(b) shall be limited to that part of the Property which is not in, on, under, over, across, or through a building or other improvement or the foundation of a building or other improvement located on the Property. The parties for whose benefit this access easement is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

###### Section 3.2. Drainage, Utility and Other Easements.

- (a) Declarant hereby declares, creates and reserves the Drainage Easements (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 (ii) for the use of the Association and the Board of Public Works and Safety of the City of Carmel, IN, for access to and maintenance, repair, or replacement of such drainage system; provided however, that each Owner of a Lot subject to a Drainage Easement shall be required to keep the portion of such Drainage Easement on his Lot free from obstruction so that the surface water drainage will be unimpeded. No improvement or permanent structure (except walkways, pathways, fences, signs, lighting, landscaping and pavement on streets and driveways) shall be placed, erected or maintained upon said Drainage Easements, and any fences so installed are subject to rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of Declarant, the Association and the Board of Public Works and Safety of the City of Carmel, Indiana, to construct, maintain, repair or remove any necessary facilities to provide for and maintain appropriate drainage.

(b) Declarant hereby declares, creates and reserves the Utility Easements for the use of all public utility companies (not including transportation companies) and governmental agencies for access to an installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables, and other equipment and facilities for furnishing utility services, including cable television services. No improvements or permanent structures (except walkways, pathways, fences, signs, lighting, landscaping and pavement on streets and driveways) shall be placed, erected or maintained upon said Utility Easements, and any fences so installed are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any utility company or governmental agency to construct, maintain, repair or remove any necessary facilities.

(c) Declarant hereby declares, creates and reserves the Landscape Easements (i) for the use of Declarant during the Development Period for access to and installation and replacement of fences, walls, earth mounds, trees, foliage, landscaping and other



improvements, and (ii) for the use of the Association for access to and the installation, maintenance, repair and replacement of fences, walls, earth mounds, trees, foliage, landscaping and other improvements. Except as installed by Declarant or installed or maintained by the Association, no improvements or permanent structures (including, without limitation, fences) shall be erected and maintained in or upon said Landscaping Easements.

(d) Declarant hereby declares, creates and reserves the Sign Easements (i) for the use of Declarant during the Development Period for access to and the installation and construction of an entrance sign or signs, and (ii) for the use of the Association for access to and the installation, construction, maintenance, repair and replacement of an entrance sign or signs. Except as installed by Declarant or installed and maintained by the Association, no improvements or permanent structures (including, without limitation, fences) shall be erected or maintained in or upon said Sign Easements.

(e) Declarant reserves unto itself during the Development Period (as to any Lot or portion of the Property which has not been conveyed by Declarant) the full right, title, and authority (i) to relocate, alter or otherwise change the locations of any Drainage or Utility Easement, Sign Easement, Landscape Easement or any facility at any time located therein or thereon; (ii) to 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, egress, utility and similar purposes on or within any such Lot or portion of the Property for the benefit of any Lot; and (iii) to describe more specifically or to change the description of any Drainage or Utility Easement, Sign Easement, Landscape Easement or any other easement, license, or right of way now or hereafter existing on such Lot or portion of the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hamilton County, Indiana.

(f) The title of any Owner of any Lot shall be subject to the rights and easements reserved herein. Provided, however, that the rights reserved herein shall not be

exercised after conveyance of any Lot in a manner that unreasonably and adversely affects any single family residential dwelling or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or which unreasonably restricts the rights of ingress and egress to such Lot. The rights and easements reserved by Declarant herein shall run with the land.

#### ARTICLE IV

##### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 4.1. Membership. Initially, to satisfy the requirements of the Indiana Not-for-Profit Corporation Act, the three (3) persons who serve as incorporators of the Association shall be the members (the "Initial Members"). The Initial Members shall remain members of the Association until three (3) persons have become Class A or Class B members, at which time the Initial Members, membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot. At such time as a member ceases to own a Lot his membership will terminate and the new owner of his Lot shall be and become a member of the Association.

Section 4.2. Classes of Membership and Voting Rights. The Association shall have two (2) classes of voting memberships:

(a) Class A. Class A members shall be all Owners with the exception of the Declarant (unless the Class B membership has been converted to Class A membership as provided in the following paragraph, in which event Declarant shall be a Class A member). From and after the Applicable Date (herein defined), each Class A member shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members; the vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote cast with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant. Until the Applicable Date, the Class B member shall exercise all voting rights with respect to matters submitted to a vote of the members of the Association and shall be entitled to one (1)

vote for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier (the applicable date being the "Applicable Date").

- (i) the end of the Development Period; or
- (ii) the date on which the written resignation of Declarant as a Class B member is delivered to the Secretary of the Association,

Section 4.3. Board of Directors. The Board of Directors shall manage the affairs of the Association.

Section 4.4. Professional Management. 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, without any termination fee, on written notice of ninety (90) days or less.

#### 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 from Declarant, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) "Regular Assessments" for Common Expenses; and (2) "Special Assessments" for (a) capital improvements and operating deficits as provided for herein and (b) for special maintenance or repairs as provided for herein. Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made prior to all other liens except only (i) tax liens on the Lot in favor of any unit of government or special taxing district, (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot

at the time such assessment became due and payable. Where the Owner of the Lot constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successor in title unless expressly assumed by them.

Section 5.2. Purpose of Regular Assessments. The Regular 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 health, safety, and welfare of the residents in the Property, for the improvement, maintenance, and repair of the Landscape Easements, Sign Easements and drainage system located in and upon the Drainage Easements, for the performance of the obligations and duties of the Association and for other purposes as are specifically provided herein. A portion of the Regular Assessments shall be set aside for otherwise allocated in a reverse fund for the purpose of providing repair and replacement of the Landscape Easements and Sign Easements and other capital improvements which the Association is required to maintain.

Section 5.3. Maximum Regular Annual Assessments.

- (a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Assessment on any Lot conveyed by Declarant shall be to be determined.
- (b) From and after January 1 of such year, the Maximum Regular Assessment may be increased each calendar year by not more than 10% above the Regular Assessment for the previous year, except as provided in the following paragraph. (c).
- (c) From and after the Applicable Date, the Board of Directors of the Association may fix the Regular Assessment at any amount in excess of the maximum amount specified in (b) above with the approval of two-thirds (2/3) of those members of the Association who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors from time to time may fix the Regular 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 Assessments authorized above, the Association may levy a Special Assessment 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 for the construction of improvements or to recover any operating deficits which the Association may from time to time incur, provided that any such assessments shall have the assent of two-thirds (2/3) of those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5. Notice and Quorum for Any Action Authorized Under Section 5.3 and 5.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.3 or 5.4 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 the proxies entitled cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be 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 Assessment. Regular Assessments and Special Assessments for capital improvements and to recover operating deficits shall be fixed at a uniform rate for all Lots.

Section 5.7. Date of Commencement of Assessments, Due Dates.  
The Regular Assessment provided for herein shall commence as to each Lot on the date of conveyance of such Lot by Declarant. Until the Applicable Date, and notwithstanding anything else contained herein, no Regular Assessments or Special

Assessments shall be owed or payable by Declarant with respect to any Lot or shall become lien on any Lot while such Lot is owned by Declarant.

The Owner shall pay on the day of conveyance in advance his or her share of the Regular Assessment for the balance of the calendar year in which the conveyance takes place.

The Regular Assessment against each Lot shall be paid in advance on the first day of January of each calendar year. Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

The Board of Directors shall fix any increase in the amount of such assessments at least thirty (30) days in advance of the annual assessment period. Written notice of any increase in the Regular 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 assessment and collection period for any Special Assessments shall be established by the Board of Directors.

The Association shall, upon demand, furnish a certificate in recordable signed by an officer of the Association setting forth whether the assessment 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.

The Board of Directors of the Association may provide for reasonable interest and late charges past due assessments.

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 thereof pursuant to Section 5.7 hereof, then the Board of Directors, in its discretion, may accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable (together with interest thereon, costs

and attorneys' fees as provided in this Article V). If any assessment is not paid when due, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's Lot or both. In such event, there shall be added to the amount of 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 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) or any proceedings or deed in lieu therefore shall extinguish the lien of all assessments become due prior to the date of such sale or transfer; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefore. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot or the purchaser at the foreclosure sale, or grantee in the event of a conveyance in lieu therefore, from liability for any assessments thereafter becoming due or from the lien therefore; 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 Section 5.7, 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 residential purposes, except that Declarant, during the Development Period,

reserves the rights provided herein respecting the Property generally. Except as herein provided, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as separately designated and legally described freehold estate subject to the covenants, conditions, and restrictions contained herein and in the Plat.

Section 6.2. Accessory Outbuilding Prohibited. No accessory outbuildings shall be erected on any Lot or Lots without the prior written approval of the Committee.

Section 6.3. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any Lot shall be occupied or used for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

Section 6.4. Other Restrictions. All of the Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

Section 6.5. Restrictions Concerning Size, Placement and Maintenance of Dwelling Houses and Other Structures.

A. Minimum Living Space Areas. Dwellings on Lots 1 through 3 inclusive shall have a minimum of two bedrooms and a minimum of a two car garage.

All two-story dwellings on Lots 1, 2, and 3 shall have a minimum of 2,000 square feet of finished living area in the aggregate. All one story dwellings on Lots 1, 2, and 3 shall have a minimum of 2,500 square feet of finished living area. For the purposes of calculating the aggregate square feet of living area, the square footage of a lower level may not be added unless the lower level is finished, has windows and has a door leading directly to the outside.

All two-story dwellings on Lots 1 through 3 shall have a minimum of 2,000 square feet of finished main floor living area and a minimum of 3,400 square feet of finished



living area in the aggregate. All one story dwellings on Lots 1 through 3 inclusive shall have a minimum of 3,000 square feet of finished living area. For the purposes of calculating the aggregate square feet of living area, the square footage of a lower level or basement may not be added.

B. Fences, Light Fixtures, Mailboxes, Lawns and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence or light fixture must be approved by the Committee in writing, as to size, location, height and composition before it may be installed. Fencing shall only be allowed in rear yards and must be decorative in nature and may not exceed 42 inches in height. (No chain link allowed). A standard mailbox and post and yard light will be adopted for each Lot by the Declarant.

C. Exterior Construction. All utility facilities in the Development will be underground. Each driveway in the Development will be of concrete, asphalt or paving brick material. No additional parking will be permitted on a Lot other than in the existing driveway. Each dwelling will have a continuous concrete sidewalk from the driveway to the front porch. The exterior of fireplace chimneys shall be brick or stone. All garage doors in the Development will be of a Masonite or wood material. All windows must be wood or wood windows with clad exterior. No outside fuel storage tanks will be permitted above ground in Development. All gutters and downspouts in the Development, other than copper, will be painted.

All roofing in the Development will be no less than a heavy textured fiberglass or asphalt shingle roof to be approved by the Committee. All roof pitches will be 6/12 or greater. Plumbing vent stacks, metal furnace flues and roof attic vents shall be painted to blend with roof color and shall be located on the rear of the home. No metal, fiberglass or similar type material awnings or patio covers will be permitted in the Development. No above-ground swimming pools will be permitted in the Development.

D. Heating Plants. Every dwelling in the Development must contain a heating plant in compliance with the required codes. No heat pumps, A/C units, gas meters or

any other structures shall be located forward of the front plane of the house and if in view from the street shall be screened by fence or landscaping.

E. Damaged Structures. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of destruction or damage.

F. Prohibition of Used Structures and Modular Homes. All structures constructed or placed on any Lot in the Development shall be constructed with substantially all new materials, and no used structures be relocated or placed on any such Lot, nor shall modular constructed structures be placed on Lot.

G. Maintenance of Lots and Improvements. The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly, and, specifically, such Owner shall:

- (i) Remove all debris or rubbish.
- (ii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iii) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

H. Association's Rights to Perform Certain Maintenance. In the event that the Owner of any Lot in the Development shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these restrictions, the Association shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, clean or perform such other acts as may reasonably be necessary to make such Lot and improvements thereon, if any, conform to the requirements of these restrictions. The cost therefore to the Association shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced on the manner provided in the Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents,

employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

Section 6.6. Restrictions as to Owners. The Owners, further, shall be subject to the following use restrictions:

A. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any single family residential dwelling which would be in violation of any statute, rule, ordinance, regulation, permit or other validity imposed requirement of any governmental body. No damage to, or waste of, the Landscape Easement or Sign Easement areas shall be committed by any Owner or any invitee or tenant of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees or tenants. No noxious, destructive or offensive activity shall be allowed on any Lots, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property; provided, however, that no act, conduct, activity or operation which Declarant is authorized or permitted to do hereunder shall ever be deemed to be noxious, destructive, offensive nor a nuisance for purposes of this Section.

B. Fences and Walls. No Owner shall relocate, heighten, lower or otherwise move or change any fence or wall upon the Property except with approval of the Committee as provided herein.

C. No Unsightly Uses. No clothes, sheets, blankets or laundry of any kind or other articles shall be hung on a Lot so as to be visible from outside the Lot.

D. Animals. No animals, rabbits, livestock, fowl, farm animals, horses, or poultry of any kind shall be raised, bred or kept in or on any Lot, except that household pets of mature size of not more than 32 inches shoulder height may be kept on Lots, subject to rules and regulations adopted by the Board of Directors provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently

## Comment:

removed from the Property subject to these restrictions upon three days' written notice from the Board of Directors, and provided, further, that upon written request of 25% of the votes of the Association, the Board of Directors shall have the authority to and shall order the removal of, any pet.

E. Prohibited Structures. No structure of a temporary character, trailer, boat, camper-bus, basement, tenant, storage tanks, or shack shall be maintained on any Lot nor shall any garage or other building except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters, either temporarily or permanently.

F. Storage. Outside storage of any items, except outdoor cooking equipment, including but without limiting the generality of the foregoing, sporting equipment, toys, yard and garden tools and equipment shall not be allowed. Temporarily outside storage of trash and garbage shall be permitted if it is totally screened from view. The storage or collection of rubbish of any character whatsoever, any material that emit foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort, or serenity of residents is prohibited. Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini-bikes, unlicensed or inoperable vehicles, or any other vehicles of any description other than normal passenger automobiles shall at any time be stored or parked on any Lot outside of a garage, either permanently or temporarily.

G. Antennae. Except with the prior written approval and authorization of the Committee, no exterior television or radio antennae of any sort, including discs, shall be placed, allowed or maintained on the Property or upon any portion of the improvements or structures to be located upon the Property.

H. Window Coverings. Owners shall install and maintain window coverings such as curtains or blinds on all windows and such window coverings shall not be unsightly from the exterior, including garage windows if visible from the street.

I. Mailboxes. All mailboxes shall be of the same style and color.

J. Yard Lights. All yard lights shall be of the same style and kind and must be placed within 3 feet of the front Lot line and contain a dusk to dawn switch.

K. Garage Doors. All garages opening to the street shall have automatic door controls. Lot Owners shall keep garage doors closed at all times except during times of actual use of the garage facility.

L. Water Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on the Plat.

M. Building Lines. No buildings shall be erected on Lots 1 – 3 inclusive closer than 15 feet to the side of such Lots. Where buildings are erected on more than one single Lot this restriction shall apply to the side lines of the extreme boundaries of the multiple Lots. The foregoing notwithstanding, Declarant shall approve the location of each building on a Lot.

N. Sump Pump Outlets. Outlets for sump pump water will be provided for each Lot in this subdivision by the Declarant or home builder at the time of Lot development. If during excavation of the foundation for crawl space or basement, ground water is encountered, or if the house location is in an area of high water table (as per Hamilton County Surveyor or City of Carmel), an outlet will be provided directly to a storm sewer or approved open ditch with plastic pipe. The route of outlet will be via platted easements and approved by proper agencies. Where a storm sewer exists on or directly adjacent to a subject Lot, all sump pumps shall tie directly to storm sewer via underground pipe. Lots not located in an area of high water table may outlet sump pump water in the rear yard, no closer than 25 feet from established Lot lines or platted easements.

O. Construction of Sump Pump Outlet. Construction of any sump pump outlet will commence only when appropriate construction plans have been submitted and

approved by the proper agencies and applicable permits issued from the local building authority. Where construction will be in established Drainage and/or Utility Easements, approval must be obtained from City of Carmel or Hamilton County Surveyor. The maintenance of drainage pipes and facilities for discharging sump pumps shall be the responsibility of the individual Lot Owner.

P. Geo-Thermal Heat Pumps. Geo-thermal heat pumps shall be of the closed loop type only.

Q. Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot.

R. Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on its Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. Failure to comply with this restriction shall authorize the Association to cut weeds and clear the Lot of any such growth at the expense of the Owner thereof and the Association shall have a lien against the cleared Lot for the expense thereof as provided in Section 6.5 H.

Section 6.7. Architectural Control. No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials, 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 Committee. Vinyl or aluminum siding shall not be allowed. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed to change thereto and shall require the approval therefore as above provided. In the event that written approval is not received as required hereunder within twenty one (21) days from the date requested, the failure to issue such written approval shall be construed as the disapproval of the request made. For the purpose of this Section, structures shall include swimming pools and tennis courts.

Section 6.8. Signs. No sign of any kind (other than designations, in such styles and materials as the Committee shall by rule or regulation approve, of street addresses) shall be displayed provided that it is in such form as the Committee may require, and except that Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the Development during the Development Period.

Section 6.9. Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Property. 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 after the end of the Development Period. Copies of rules and regulations shall be furnished by the Board of Directors to the Owners prior to the time when the same shall be effective.

Section 6.10. Development and Sale Period. Nothing contained in this Article VI shall be construed or interpreted to restrict the activities of Declarant in connection with the development of the Property and sale of Lots. During the Development Period, Declarant 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, as in the sole opinion of Declarant 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 residences, construction offices, sales offices, and business offices.

Section 6.11. Restrictions Regarding Building Completion. Unless a delay is caused by strikes, war, court injunction or acts of God, the exterior of any residences built upon any Lot shall be completed within one (1) year after the date of commencement of the building process, after which time the Association may enter, take possession of the Lot, without notice, and sell the Lot together with improvements; and after payment of liens and expenses, pay the balance of the sale proceeds to the Owner of the Lot at the time of sale.

## ARTICLE VII

MAINTENANCE OF BUILDINGS

Section 7.1. Maintenance of Owners. The Owner of each Lot shall furnish and be responsible for at his or her own expense all the maintenance and repair of such Owner's residence and the maintenance of such Owner's Lot, except as provided for herein as the responsibility of the Association.

## ARTICLE VIII

INSURANCE

Section 8.1. Liability Insurance. The Association shall purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy a Lot.

Section 8.2. Miscellaneous Insurance Provisions. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workman'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 cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 8.3. Payment of Insurance. The premiums for the insurance described above shall be paid by the Association as part of the Common Expenses.



Section 8.4. Additional Insurance. Each Owner shall be solely responsible for and obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his real and personal property.

#### ARTICLE IX

##### GENERAL PROVISIONS

Section 9.1. Right of Enforcement. In the 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 attorney's fees and the costs and expenses incurred as a result thereof. Neither Declarant nor the Association shall be liable for any damages of any kind to any person for failing to enforce or carry out the covenants, conditions or restrictions contained herein.

Section 9.2. Severability. Invalidation of any one of the covenants, restrictions or provisions contained in the 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.

Section 9.3. Amendment. During the first twenty (20) years following its recordation, this Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, approved and signed by at least two-thirds (2/3) of the then Owners, and thereafter by an instrument signed by at least two thirds (2/3) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be amended by Declarant at any time prior to the end of the Development Period, provided that Declarant shall not

be entitled to make any amendment which has a materially adverse effect on the rights of any mortgage of a Lot, or which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

The covenants, restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon all persons claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten (10) year period this Declaration is amended or changed in whole or in part as hereinabove stated.

Section 9.4. Mortgagee Rights. In addition to any other rights provided elsewhere in the Declaration to mortgagees, and 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 or lien against any 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 therefore from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.5. 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. Any such certificate properly executed

by an officer of the Association shall be binding upon the Association, as provided for herein.

IN WITNESS WHEREOF, M One Design Build, LLC., has caused this Declaration to be executed as of the date first written above.

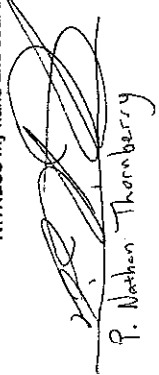
M One Design Build, LLC.  
An Indiana Corporation.

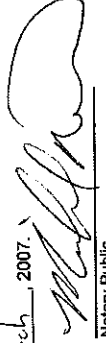
STATE OF INDIANA  
COUNTY OF HAMILTON

}  
SS:

Reigre me, a Notary Public, in and for said county and state, personally appeared Phillip Nathan Thornberry known to me as the President of M One Design Build, LLC., who having been first duly sworn, acknowledged the execution of the foregoing Declaration for and on behalf of said corporation.

WITNESS my hand and seal this 16th day of March, 2007.

  
P. Nathan Thornberry

  
Notary Public

Printed Name \_\_\_\_\_

My Commission Expires:

Residing in \_\_\_\_\_ County.



**I affirm, under the penalties for perjury, that I have taken reasonable care to reduce each Social Security number in this document, unless required by law.**  
(name) Phillip Nathan Thornberry

Prepared by Phillip Nathan Thornberry