



Doc ID: 003601900046 Type: MIS  
 Recorded: 10/09/2007 at 02:30:48 PM  
 Fee Amt: \$104.00 Page 1 of 46  
 Workflow# 495671

Johnson County-Recorded as Presented  
 Sue Anne Misliniec Recorder

Inst **2007-024683**

(46)

**DECLARATION OF COVENANTS, RESTRICTIONS AND  
 EASEMENTS FOR GREENWOOD TRACE**

THIS DECLARATION is made this 20<sup>th</sup> day of June, 2007, by Indiana Land Development Corporation, an Indiana corporation (hereafter "Declarant").

**RECITALS:**

- A. Declarant is the owner of certain Property, located in Greenwood, Johnson County, Indiana and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").
- B. Declarant has laid off, platted and subdivided the Property into lots pursuant to the Plat and the Commitments with the intent of developing the Property as a residential subdivision.
- C. Declarant desires to subject and place upon the Property certain covenants, restrictions, easements, reservations and other conditions set forth herein, in addition to those set forth on the Plat and in the Commitments, in order to ensure that development and use of the Lots and Units are harmonious, to protect the value of the Lots and Units and to promote and safeguard the health, comfort, safety, convenience and general welfare of the Owners, tenants and/or occupants of the Lots and Units and of Declarant and its successors and assigns.
- D. Declarant desires to provide for the maintenance of the Common Areas and the Limited Common Areas, to that end, desires to establish certain obligations of such Owners of the Lots and Units and a system of assessments and charges upon such Owners for certain maintenance and other costs in connection with the operation and maintenance of the Subdivision.

**NOW, THEREFORE,** Declarant hereby declares that all the Property shall be held, occupied, sold, conveyed, hypothecated or encumbered, leased, rented, used, maintained and improved subject to the Plat, the Commitments and the following covenants, easements, restrictions, reservations and conditions, all of which are declared and agreed to be in furtherance of a plan for improvement and sale of the Property, and are established and agreed upon for the purpose of protecting and enhancing the value and desirability of the Subdivision as a whole and each Lot and each Unit situated therein. All of the following covenants, restrictions, easements, reservations and other conditions set forth herein shall run with the Property and be binding on all parties having or acquiring any right, title or interest (legal or equitable) in and to the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. The Owner of any Lot or Unit, by acceptance of a deed conveying title thereto, by the execution of a contract for the purchase thereof (whether from Declarant or a subsequent Owner), or by the act of occupancy or ownership of any Lot or Unit, shall accept such deed, execute such contract and/or occupy or own such Lot or Unit subject to this Declaration. By acceptance of such deed, execution of such contract and/or occupancy or ownership of such Lot or Unit, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to this Declaration, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with the Declarant, the Association, and all other Owners of each of the Lots and Units to keep, observe, comply with this Declaration.

## **ARTICLE I**

### **NAME**

**Section 1.** The platted subdivision of the Property, and all amendments thereto, created by this Declaration shall be known and designated as Greenwood Trace (hereafter "Subdivision").

## **ARTICLE II**

### **DEFINITIONS**

**Section 2.** The following are definitions of terms as they are to be used in this Declaration:

- 2.1 "Architectural Review Committee" or "ARC" or "Committee" shall mean the Architectural Review Committee of the Subdivision, as established in accordance with Article VIII.
- 2.2 "Articles" shall mean the Articles of Incorporation of the Association 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.
- 2.3 "Assessment" shall mean collectively or individually one (1) or more of the following: a Common Assessment, a Limited Common Assessment, a Special Assessment and/or a Violation Assessment.
- 2.4 "Association" shall mean the Greenwood Trace Homeowners Association (or an organization of similar name), its successors and assigns, which has been or shall be created as an Indiana nonprofit corporation and whose membership shall consist of all Owners.
- 2.5 "Board" shall mean the Association's Board of Directors.
- 2.6 "Builder" shall mean Paul Shoopman Home Building Group, Inc., an Indiana corporation, its successors and assigns.
- 2.7 "Building" shall mean and refer to each structure located on three (3) contiguous Units containing three (3) Dwelling Units.
- 2.8 "By-Laws" shall mean all by-laws duly adopted by the Association, and all amendments thereto.
- 2.9 "City" shall mean the City of Greenwood in Johnson County, Indiana.
- 2.10 "Commission" shall mean the Plan Commission of the City.
- 2.11 "Commitments" shall mean those commitments made to the City concerning the use and development of the Property, a copy of which is attached hereto and made a part hereof as Exhibit "B", and which have been recorded in the Office of

the Recorder of Johnson County, Indiana, as the same are or hereafter may be amended from time to time.

- 2.12 "Common Area" (and in the plural form, "Common Areas") shall mean and refer to (i) all real 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, including without limitation all portions of the Property designated on the Plat as "Common Area", "C.A.", "Lake", "Lake Area", "Pond" or "Pond Area" and the landscaped area surrounding each Unit which is not identified as a Unit or Limited Common Area on the Plat, (ii) any portion of the Property as is herein declared to be Common Area on the Plat of the Property even though located on or constituting part of one or more such Units shown on such Plat, and (iii) any other area designated by the Declarant, and after the Control Transfer Date, the Association, for the common use and enjoyment of the residents of the Subdivision.
- 2.13 "Common Assessment" shall mean the annual share of Common Expenses imposed upon and assessed against each Lot, Unit or Dwelling Unit as determined and levied pursuant to the provisions of Article IX.
- 2.14 "Common Expenses" shall mean the estimated and actual costs for any maintenance, management, operation, repair, improvements and replacement of all or any part of the Common Area, including without limitation any taxes assessed against all or any portion of the Common Area, the costs of insurance for the Common Area as required herein, a reasonable allowance for working capital, contingencies and reserves, the costs of administration and enforcement of the Declaration and/or any rules or regulations promulgated in furtherance thereof, and any other cost or expense incurred for the benefit of the Common Area or the Subdivision generally.
- 2.15 "Control Transfer Date" shall mean the date as defined in Article VI hereof.
- 2.16 "Declarant" shall mean Indiana Land Development Corporation, an Indiana corporation, or any other person or entity which succeeds to its interest as a matter of law or as evidenced by a written instrument of transfer to such effect recorded in the Office of the Recorder of Johnson County, Indiana.
- 2.17 "Declaration" shall mean the Plat, the Commitments and this Declaration, collectively.
- 2.18 "Development Plan" shall mean a complete and accurate site plan, drawn to scale, showing the drainage, grading, utility, landscaping and construction plans for the improvement of a Lot or Unit, as the case may be, and the construction of the Residence thereon, including without limitation, elevations, building materials and specifications, interior blueprints and estimated construction schedule, all as further specified in Article VIII hereof and by the ARC from time to time. All building plans and drawings required to be submitted to the ARC shall be drawn to a scale of  $\frac{1}{4}''=1'$  and all plot plans shall be drawn by a professional to a scale of  $1''=30'$  or to such other scale as the ARC shall deem appropriate.

- 2.19 "Drainage Board" shall mean the Drainage Board of Johnson County, Indiana.
- 2.20 "Drainage, Utility and Sewer Easements" shall mean the strips of ground designated on the Plat (or otherwise granted, created or reserved pursuant to this Declaration) as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby granted to and/or reserved or created for the appropriate governmental entities, public utilities, private utilities, the Declarant and/or the Association for the installation and maintenance of swales, ditches, pipes, drains, electric lines, gas lines, telephone lines, fiber optic and/or internet lines, sanitary sewers, manholes, detention and retention areas, other drainage areas and/or other facilities or equipment.
- 2.21 "Dwelling Unit" shall mean and refer to any building, structure or portion thereof: (i) approved by the ARC, (ii) permitted by the City and the Commission, (iii) intended for use and occupancy as a residence by one (1) single family, and (iv) located on a Unit; a single Dwelling Unit may be constructed on more than one (1) Unit with the consent of Declarant.
- 2.22 "Federal Agencies" means (by way of illustration but not limitation) the Federal Housing Authority, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency.
- 2.23 "Finished Living Area" shall mean that portion, measured in square feet, of any Residence that is intended exclusively for (and is suitable and habitable for) permanent occupancy by the Owner, but specifically excluding those portions of the Residence that constitute the garage, the basement (regardless of whether it is finished or not), any enclosed porch, any patio or deck.
- 2.24 "General Easements" shall mean blanket easement(s) in, across and over all or any portion of the Property for drainage, utility and sewer purposes as granted, created or reserved pursuant to this Declaration which are not otherwise shown on the Plat but which are necessary for the installation and/or maintenance of electrical, telephone, water, gas, sanitary and storm sewer, television, transmission facilities, security systems and other utility services (including without limitation all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) in, on and/or over all or any portion of the Common Area, Limited Common Area, any Lot or Lots, any Block or Blocks and/or any Unit or Units in order to serve any Lot(s), Unit(s), Block(s) and/or all or a portion of the Common Area.
- 2.25 "Landscape Easement" shall mean any strips of grounds designated on the Plat and a blanket easement in, across and overall or any portion of the Property, as granted, created or reserved pursuant to this Declaration, for the installation and/or maintenance of landscaping including, but not limited to, landscape easements, landscape maintenance easements, and/or landscape maintenance access easements.

- 2.26 "Limited Common Area" (and in the plural form, "Limited Common Areas") shall mean that portion of the Common Area, the use of which is limited to the adjoining Dwelling Unit, including the landscape area and lawn surrounding the Unit, any and any fence, masonry wall, landscaping and other device or structure screening any living area outside of the Unit.
- 2.27 "Limited Common Expenses" shall mean the estimated and actual costs for any maintenance, management, operation, repair, improvements and replacement of all or any part of the Limited Common Area, including without limitation any taxes assessed against all or any portion of the Limited Common Area, the costs of insurance for the Limited Common Area as required herein, a reasonable allowance for working capital, contingencies and reserves, the costs of administration and enforcement of the Declaration and/or any rules or regulations promulgated in furtherance thereof, and any other cost or expense incurred for the benefit of the Limited Common Area.
- 2.28 "Limited Common Assessment" shall mean the annual share of Limited Common Area Expenses imposed upon and assessed against each Unit or Dwelling Unit as determined and levied pursuant to the provisions of Article IX.
- 2.29 "Lot" (and in the plural form, "Lots") shall mean any and each portion of the Property designated as a lot or lots upon the Plat or as designated by Declarant by its deed of the same to another Person. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of Property greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Residence.
- 2.30 "Mortgagee" shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot, Dwelling Unit, or the Common Area who has notified the Association of this fact in writing. An "Eligible Mortgagee" shall be a Mortgagee who has given notice to the Association of its interest and requested all rights afforded Eligible Mortgagees under Article X.
- 2.31 "Owner" (and in the plural form, "Owners") shall mean the record owner, whether one or more persons or entities, of the fee simple title to a Lot or any Dwelling Unit, including without limitation contract sellers, but excluding those persons and/or entities having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary in this Declaration, the term "Owner" shall include the Declarant for as long as Declarant owns any portion of the Property and a Builder for as long as Builder owns any interest in any Lot, Unit or Dwelling Unit.
- 2.32 "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.
- 2.33 "Plat" shall mean the Final Plat of Greenwood Trace, recorded in the Office of the Recorder of Johnson County, Indiana, and any subsequent amendments thereto.
- 2.34 "Pond Area" shall mean any Common Area on which a Pond now exists or is designated on the Plat or is later constructed. "Pond" shall mean any body of

water (whether designated as a pond or by another name on the Plat) which now exists or is designated on the Plat or is later constructed in a Pond Area.

- 2.35 "Pond Easement" shall mean any strips of ground designated on the Plat (or otherwise granted, created or reserved pursuant to this Declaration) for the installation and/or maintenance of a Pond Area and/or Pond, including but not limited to, an easement and right-of-way in, over and to any portion of the Common Area and/or Lot(s) on which or adjacent to which a Pond now exists or is designated on the Plat or is later constructed for the retention and detention of surface water to facilitate adequate drainage of the Subdivision.
- 2.36 "Proportionate Share" shall mean, with respect to the Limited Common Expenses allocated among the Units, the percentage share for each Unit derived by dividing such Unit by the total number of Units.
- 2.37 "Residence" shall mean any building, structure or portion thereof, together with all appurtenances thereto: (i) approved by the ARC, (ii) permitted by the City and the Commission, (iii) intended for use and occupancy as a residence by one (1) single family, and (iv) located on a Lot; a single Residence may be constructed on more than one (1) Lot with the consent of Declarant.
- 2.38 "Residential Roadways and Drives" shall mean each private road, if any, located in the Property extending from dedicated streets ("Residential Roads"), and all drives between each Block ("Residential Drives"), if any, all of which are a part of the Limited Common Areas.
- 2.39 "Sidewalk Easement" shall mean the strips of ground designated on the Plat and a blanket easement in, across and over all or any portion of the Property, as granted, created or reserved pursuant to this Declaration, for the installation and/or maintenance of a Sidewalk. "Sidewalk" shall mean any concrete or asphalt sidewalk installed within any Sidewalk Easement.
- 2.40 "Signage Easement" shall mean a blanket easement in, across and over all or any portion of the Property (as granted, created or reserved pursuant to this Declaration) for the benefit of the Declarant (and after the Control Transfer Date, the Association) to install, erect, construct and maintain an entryway sign(s), directional signs, advertising signs advertising the Subdivision or any Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered useful or convenient for the development, operation and/or marketing of the Subdivision and/or any Lots.
- 2.41 "Special Assessment" shall have the meaning as set forth in Article IX.
- 2.42 "Street" shall mean any street so designated on the Plat.
- 2.43 "Substantial Completion" shall mean the completion of construction of a Residence such that the City can issue a Certificate of Occupancy (or the City's equivalent) for the Residence to allow for the occupancy of the Residence for residential purposes in compliance with all City building codes and ordinances.

- 2.44 "Surveyor's Office" shall mean the Surveyor's Office of Johnson County, Indiana.
- 2.45 "Unit" (and in the plural form, "Units") shall mean any and each portion of the Property (excluding any part of the Common Areas or Limited Common Areas) designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit, as designated as a unit or units on the Plat or as designated by Declarant by its deed of the same to another Person. Subject to any necessary approval of the appropriate governmental authority, a "Unit" may contain portions of Property greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Residence.
- 2.46 "Violation Assessment" shall have the meaning as set forth in Article IX.

### ARTICLE III

#### CHARACTER OF THE DEVELOPMENT

##### Section 3.

- 3.1 No structure shall be erected, placed or permitted to remain upon any Unit except a Dwelling Unit, subject to the provisions of Articles VII and VIII hereof and in accordance with this Declaration. No structure shall be erected, placed or permitted to remain upon any Lot except a Residence and accessory building(s) and structure(s) incidental to the use of a Residence, subject to the provisions of Articles VII and VIII hereof and in accordance with this Declaration. All Property located within the Plat which has not been designated by numbering shall be used in a manner determined by the Declarant. Each Lot and each Unit shall be used only for single-family residential purposes, subject to the provisions of Article VII hereof, and only one Residence shall be constructed on a Lot and only one Dwelling Unit shall be constructed upon a Unit. No portion of any Lot or Unit shall be sold or subdivided such that there will be thereby a greater number of Residences and Dwelling Units in the Property than the number of Lots and Units depicted on the Plat.
- 3.2 All of the Property, including without limitation each Lot, Block and Unit and all Common Areas and Limited Common Areas, shall be subject to the easements, covenants and restrictions granted, reserved and created pursuant to this Declaration, the easements, restrictions and limitations of record appearing on the Plat (and any amendments thereto), on recorded easements, and rights-of-way, and also to all governmental zoning authority and regulations affecting the Property, all of which are incorporated herein by reference.
- 3.3 All tracts of land located within the Development which have not been designated by numbering as residential building lots in the plat shall be used in a manner by the Declarant with the approval of the City of Greenwood, Indiana (if required). Declarant reserves unto itself the right to change the character of such designated use at any time in the future by applying, where necessary, to the City of Greenwood, Indiana and any other necessary governmental body for such

reclassification, rezoning or variance of use needed to accommodate the Declarant's planned use. Declarant shall have the right to bring within the scheme of this Declaration and add to the Development real estate that is contiguous to the Development. In determining contiguity, public rights of way shall not be considered. The additions authorized under this Paragraph shall be made by filing of record of one or more Supplemental Declarations with respect to the additional real estate. For purposes of this Paragraph, a Plat depicting a portion of the Development Area shall be deemed a Supplementary Declaration.

#### **ARTICLE IV**

#### **EASEMENTS**

**Section 4.** The following are easements, property rights and interests designated on the Plat or granted, created or reserved, in Declarant's sole discretion, pursuant to this Declaration:

- 4.1 The Drainage, Utility and Sewer Easements and the General Easements are hereby reserved unto the Declarant until the Control Transfer Date, and thereafter to the Association, for the development of the Subdivision, and the Association and all Owners of Lots and/or Dwelling Units in the Subdivision shall take title subject to the Drainage, Utility and Sewer Easements, the General Easements and such other easements created, granted or reserved herein and subject at all times to the rights of the entities to which the easements are granted or reserved to service and maintain such drainage facilities and easements.
- 4.2 No permanent structure and/or improvement (including without limitation, no landscaping or trees) of any kind, and no part thereof, shall be built, erected or maintained on or within the Drainage, Utility and Sewer Easements, the General Easements or such other easements created, granted or reserved herein, except by the Declarant, (or if after the Control Transfer Date, the Association) unless approved in writing in advance by the entity to which such easement(s) is granted or reserved. In furtherance of the foregoing, no mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, landscaping, trees or other permanent structure and/or improvement shall be placed within ten (10) feet of the center of any water or sanitary sewer infrastructure located within the Drainage, Utility and Sewer Easements, General Easements or other such other easements created, granted or reserved herein without the prior written approval of the Declarant (or if after the Control Transfer Date, the Association) and the appropriate entity to which the easements are granted or reserved. Any improvements and/or permanent structures, or any part thereof (including without limitation any landscaping or trees), installed on or within the Drainage, Utility and Sewer Easements, the General Easements or such other easements created, granted or reserved herein (or, in the case of water and sanitary sewer infrastructure, within ten (10) feet of the center of same) are subject to the rights (including the right to remove such improvement and/or structure where necessary without a duty of replacement or reimbursement) of the Declarant (or if after the Control Transfer Date, the Association) and the entities to which the easements are granted or reserved to construct, maintain, repair or remove any necessary facilities.



- 4.3 It shall be the responsibility of the Association and the Owners of the areas enclosed within the Drainage, Utility and Sewer Easements, the General Easements or such other easements created, granted or reserved herein to maintain such 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 of the Drainage, Utility and Sewer Easements, the General Easements or such other easements created, granted or reserved herein 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 affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to access such areas to perform maintenance and to protect the easement and servitude rights.
- 4.4 Each Owner of a Residence or a Dwelling Unit is responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the Residence on the Lot (or Dwelling Unit on a Unit) to the Residence's or Unit's connection to the sanitary sewer main. The discharge of clear water sources, including without limitation foundation drains, sump pumps and roof drains to the sanitary sewers is prohibited. Subject to the terms and conditions contained in this Declaration, any grade changes across sanitary sewer facilities must be approved in advance in writing by the applicable utilities.
- 4.5 It shall be the responsibility of every Builder and the Owner of any Lot, Unit or other parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved in conjunction with the Plat by the Drainage Board and/or the Surveyor's Office and such other applicable agencies and the requirements of all drainage permits for such Plat issued by such agency or department. Failure to so comply shall operate as a waiver and release of the Declarant, the Association, and their respective engineers, agents and contractors, the Drainage Board and/or the Surveyor's Office from all liability as to damage caused by storm waters or storm drainage. Notwithstanding the foregoing, Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot or Unit or erosion of a Lot or a Unit, and by acceptance of a deed conveying title thereto, by the execution of a contract for the purchase thereof (whether from Declarant or a subsequent Owner), or by the act of occupancy or ownership of any Lot or Unit, each Owner shall be deemed to have agreed to indemnify, defend and hold harmless Declarant from and against all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the Lot or Unit described in such deed.
- 4.6 The Sidewalk Easement is hereby reserved unto the Declarant and, after the Control Transfer Date, the Association, and the Association and all Owners of Lots or Units in the Subdivision shall take title subject to the Sidewalk Easement and such other easements created, granted or reserved herein.
- 4.7 The Signage Easement is hereby reserved unto the Declarant and, after the Control Transfer Date, the Association, and the Association and all Owners of Lots or Units in the Subdivision shall take title subject to the Signage Easement

and such other easements created, granted or reserved herein. Any signs within the Signage Easement shall comply with any applicable zoning requirements of the City and/or Commission, and all such signs and other facilities installed within the Signage Easement shall be installed and maintained by the Association as a part of the Common Areas.

- 4.8 The Pond Easement is hereby reserved unto the Declarant and, after the Control Transfer Date, the Association, and the Association and all Owners of Lots or Units in the Subdivision shall take title subject to the Pond Easement and such other easements created, granted or reserved herein.
- 4.9 Prior to the date upon which all Streets and/or Residential Roadways and Drives within the Subdivision are dedicated to the City, each Owner shall have a non-exclusive easement to use the Streets and Residential Roadways and Drives, as designated on the Plat, within the Subdivision for ingress and egress from the Owner's Lot or Unit, subject to any and all reasonable and non-discriminatory rules and regulations adopted by the Declarant, and after the Control Transfer Date, the Association.
- 4.10 The Landscape Easement is hereby reserved unto the Declarant and, after the Control Transfer Date, the Association, and the Association and all Owners of Lots or Units in the Subdivision shall take title subject to the Landscape Easement and such other easements created, granted or reserved herein, for the purposes of (a) providing signs which either advertise the Property, the availability of Lots or Units and/or identify the Property; and/or (b) installing landscaping, mounding, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant and, after the Control Transfer Date, the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) the Landscape Easement and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant and, after the Control Transfer Date, the Association.
- 4.11 Declarant reserves unto itself and, after the Control Transfer Date, the Association, the right: (a) to relocate, alter or otherwise change the location of any Drainage, Utility and Sewer Easement, General Easement, Signage Easement, Sidewalk Easement, Landscape Easement, Pond Easement and/or such other easements created, granted or reserved herein, or any facility at any time located therein; (b) to create, grant or reserve such further easements, licenses and rights-of-way within the Property as Declarant or Association may deem necessary or appropriate for the benefit of the Property or any portion thereof; and (c) to describe more specifically or to change the description of any Drainage, Utility and Sewer Easement, General Easement, Signage Easement, Sidewalk Easement, Landscape Easement, Pond Easement and/or such other easements created, granted or reserved herein, or easement, license or right-of-way now or hereafter created on the Property, by written instrument or by amendment to the Plat recorded in the Office of the Recorder of Johnson County, Indiana.

- 4.12 Title to the Common Areas, Limited Common Areas and any and all Lots and Units shall be subject to the rights and easements created, granted or reserved herein.
- 4.13 Notwithstanding any architectural approval under Article VIII below, during the course of any maintenance, service, repair or work upon any easement, the Declarant (or if after the Control Transfer Date, the Association), any private utility, any public utility, and/or any governmental entity to which an easement has been granted or reserved herein shall have the right and the authority, without any obligation or liability whatsoever to any Owner, to remove, damage, or destroy any permanent improvement, facility, fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 4 hereof above and without any obligation of replacement therefor.
- 4.14 For a period of ten (10) years from the date hereof, Declarant (and after the Control Transfer Date, the Association) shall have a blanket easement and right on, over and under the Property to maintain and to correct drainage of surface water on, under, over and/or across the Property in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes, in addition to the rights in Section 4.13 above, the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant (or the Association if after the Control Transfer Date) shall restore the affected property to its original condition as nearly as practicable and provide reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant (or the Association if after the Control Transfer Date) an emergency exists which precludes such notice.

ARTICLE V



COMMON AREAS AND LIMITED COMMON AREAS

Section 5:

CHICAGO TITLE

- 5.1 Subject to such terms, conditions, rules and regulations as promulgated from time to time by the Declarant (or the Association if after the Control Transfer Date), Declarant hereby grants a non-exclusive easement to Owners for the use and enjoyment of the Common Areas (except for such portions of the Common Areas, if any, for which the use, enjoyment and benefit is limited to the Owners of certain designated Units to the exclusion of other Units, as may be provided herein), which non-exclusive easement shall be appurtenant to and pass with the title of each Lot and each Unit, subject to (a) all rights of the Association herein regarding the Common Areas, and (b) all easements created, granted or reserved in this Declaration.
- 5.2 Declarant shall, at its sole discretion on or before the Control Transfer Date, convey the Common Areas and Limited Common Areas by quitclaim deed to the Association, and upon such conveyance, the Common Areas and Limited Common Areas shall be deemed to have been accepted by the Association. Upon

conveyance of the Common Areas and Limited Common Areas to the Association, the Association shall have all of the rights regarding the Common Areas and Limited Common Areas as are herein reserved to the Declarant.

5.3 Declarant hereby reserves the following rights regarding the Common Areas and Limited Common Areas, and upon conveyance of the Common Areas and Limited Common Areas to the Association, the Association shall have the following rights regarding the Common Areas and Limited Common Areas:

- (a) To dedicate or transfer all or any part of the Common Areas and the Limited Common Areas to any public agency, authority or utility for such purposes, subject to such conditions as may be adopted by the Association;
- (b) To suspend the voting rights of any Owner for any period during which any assessments against the Owner's Lot(s) and/or Unit(s) remain unpaid, or an Owner is in violation of this Declaration, the Articles, the By-Laws, and/or published rule of the Association; and
- (c) To create, grant and/or reserve an easement in any portion of the Common Areas and Limited Common Areas for the benefit of the Declarant or a third-party in accordance with Article IV hereof.

5.4 No boats shall be permitted upon any part of any Pond or Pond Area. No dock, pier, wall or other structure may be extended into a Pond or Pond Area. No swimming, fishing, ice skating or other recreational activity will be permitted in, on or around any Pond or Pond Area. Each Owner of a Lot or Unit abutting any Pond or Pond Area within the Subdivision shall indemnify and hold harmless the Declarant, the Association, the Drainage Board, the Surveyor's Office and every other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property (personal or real), or as a result of any other cause or thing, arising from or related to use of, or access to, such Pond or Pond Area by any Person who gains access thereto from, over or across the Owner's Lot or Unit or Limited Common Area. Neither the Declarant, nor the Association, Drainage Board and/or Surveyor's Office shall have any liability to any Person with respect to any Pond or Pond Area, the use thereof or access thereto, or with respect to any damage to any Lot or Unit or Limited Common Area resulting from any Pond or Pond Area or the proximity of a Lot thereto, including without limitation loss or damage arising from erosion, accretion, flooding or failure to drain properly. Notwithstanding anything to the contrary contained herein or in any other document or instrument or any marketing materials, Declarant and the Association make no representation or warranty with respect to the level of water in any Pond or Pond Area from time to time, which level may fluctuate and to extremes. Without limiting the generality of the foregoing, any "pond elevation" shown on the Plat shall be as estimated for engineering purposes only and shall not be deemed a representation or warranty.

5.5 The Association shall be required at all times (for as long as the Association exists) to maintain public liability and casualty insurance for the Common Areas in an aggregate amount of not less than One Million Dollars (\$1,000,000), naming the Declarant as an additional insured for as long the Declarant owns at least one (1) Lot, Unit or any interest in any of the Property of the Subdivision

and providing that such insurance shall not be cancelled without at least thirty (30) days' prior written notice to Declarant.

- 5.6 In each instance in which this Declaration imposes on the Association a maintenance obligation with respect to the Common Areas, Limited Common Areas or a part thereof, the Association shall maintain the Common Area and Limited Common Areas in good condition, order and repair comparable to its condition when originally constructed, installed or planted and compatible with other first-class residential subdivisions immediately adjacent to the Subdivision.
- 5.7 By acceptance of a deed conveying title to a Lot or Unit, by the execution of a contract for the purchase thereof (whether from Declarant, Builder or a subsequent Owner), or by the act of occupancy or ownership of any Lot or Unit, each Owner shall be deemed to have acknowledged, accepted and agreed to any changes made now or hereafter by Declarant, in its sole discretion, regarding the layout of the Streets and Residential Roadways and Drives (including without limitation changes to any cul-de-loops) and ingress to and egress from the Subdivision to the immediately adjacent public streets surrounding the Subdivision, including without limitation, changes to make any access points to the Subdivision only "right-in, right-out" access points or to otherwise restrict or limit the flow of traffic from or to the Subdivision as Declarant determines in its sole discretion, regardless of what is designated on the Plat. Without limiting the generality of the foregoing, any Streets, Residential Roadways and Drives and/or other public or private driveway, street, access point, turn lane or other roadway shown on the Plat shall be for preliminary engineering purposes only and shall not be deemed a representation or warranty that the Subdivision shall either contain such public or private driveway, street, access point, turn lane or other roadway or contain same at such locations as shown on the Plat.
- 5.8 By acceptance of a deed conveying title to a Lot or Unit, by the execution of a contract for the purchase thereof (whether from Declarant, Builder or a subsequent Owner), or by the act of occupancy or ownership of any Lot or Unit, each Owner shall be deemed to have acknowledged, accepted and agreed that: (a) the legal description of the Lot or Unit may not correspond to the apparent boundaries of the Lot or Unit and/or what appears to be the boundaries of the Lot or Unit from a visual inspection thereof; (b) there is a significant portion of Common Area, Limited Common Area and/or easements surrounding and immediately adjacent to the Lot or Unit which are not a part of the Lot or Unit; and (c) Owner shall not rely upon any verbal representations by Declarant and/or any Builder, broker or subsequent Owner in regarding the boundaries of any Lot or Unit or location of any Common Area, Limited Common Area and/or easement and shall waive any and all claims against Declarant for any misrepresentations, inaccuracies and/or omissions regarding the boundaries of a Lot or Unit or location of any Common Area, Limited Common Area and/or easement.
- 5.9 The Owner of each Unit shall be solely responsible for the initial construction of the following Limited Common Areas surrounding and immediately adjacent to such adjoining Unit, notwithstanding the subsequent maintenance and control thereof by the Association, which such initial construction shall include:

- (a) the installation of landscaping and grass around the Unit in such landscape areas as may be designated by Declarant to the Owner of such Unit;
- (b) the construction of any porch, patio, fence, masonry wall and other screening device which extends outside of the Unit, to be located as designated by Declarant to the Owner of such Unit;
- (c) the construction and paving of such Unit's driveway from the Dwelling Unit's garage to the Residential Drive or Street running between each Building; and
- (d) such other items as designated by Declarant to the Owner of the Unit which are customarily constructed by a homeowner in a zero lot line community with lots extending to street right-of-way.

Notwithstanding the construction of such items by the Owner of such Unit or its agents, such property is located in Common Areas and all right, title and interest thereto shall remain and belong to the Declarant, prior to the Control Transfer Date, and Association (whether owned in fee, by leasehold, by contract or in the nature of an easement or license); provided, however, that the roofs, foundations and exteriors of the Dwelling Units shall be owned by each respective Owner of such Dwelling Units and are treated as Limited Common Areas solely for the purpose of allocating the maintenance and insurance obligations therefore to the Association.

5.10 Each Owner shall be responsible for, if the need therefore arises, all maintenance, repairs, decoration and replacement of its own Dwelling Unit and any Limited Common Area. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Unit 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 its own Unit and Dwelling Unit which, if neglected, might adversely affect any other Unit or Dwelling Unit or any part of the Common Areas or Limited Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances and other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to its Dwelling Unit or Unit. Further, at the election of the Association, each Owner of a Unit may be responsible for the snow removal of the Residential Drive serving the Dwelling Unit and the walkways leading to the Dwelling Unit and along the frontage thereto.

5.11 Maintenance, repairs, replacements and upkeep of the Common Areas shall (except to the extent provided herein as the obligation of Owners) be furnished by the Association, as part of its duties, and the cost thereof shall constitute a part of the Common Expenses, or the Limited Common Expenses, as the case may be. The Board may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas and Limited Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration. Any authorized agent or representative of the Association, the Board or Declarant shall be entitled to reasonable access to any Unit or Limited Common Area as may be necessary in connection with any maintenance, repairs or replacements of or to the Common Areas or Limited

Common Areas. The Association, its employees, agents and/or designees are hereby granted a blanket easement over and upon the Units, except for the interior of any Dwelling Unit, for the purpose of exterior and ground maintenance.

5.12 The maintenance responsibilities of the Association include the following:

- (a) Maintenance of the Common Areas (and the Limited Common Areas as specified below) including any and all improvements thereon in good repair as the Association deems necessary or appropriate including streets, sidewalks and recreation areas.
- (b) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Areas as the Association deems necessary or appropriate.
- (c) Maintenance, repair and replacement of all private street or entrance signs, if any.
- (d) Contracting for such other services for the Common Areas, such as security control, lawn mowing or snow removal, as the Association deems necessary or advisable.
- (e) For the Units only, maintenance of lawns located on any Limited Common Area immediately adjacent to that Unit, which lawns shall be considered part of the Limited Common Areas for purposes of maintenance only. Maintenance of lawns located on any Limited Common Area immediately adjacent to that Unit shall be limited only to the mowing of grass as needed and the fertilization of grass two (2) times a calendar year. Maintenance of lawns located on any Limited Common Area immediately adjacent to that Unit shall not include, without limitation, the following: (i) the watering of lawns on Units, (ii) any additional fertilizing of lawns beyond that specified herein, (iii) edging and trimming around fences, trees, shrubs and bushes, (iv) the care and maintenance of shrubs, trees, flowers, or other plants on any Unit, or (v) any mowing or fertilization of grass within any fenced portion of any Unit.
- (f) For the Units only, removal of snow (when two inches or more has accumulated in a twenty-four hour period) from the driveway located on any Unit and the sidewalk connecting the driveway to the Dwelling Unit, but such snow removal shall not include public sidewalks, patios, porches or decks.
- (g) The Association shall not provide any of the maintenance referenced in subsections (e) and (f) above for any Lot. The Association shall also not provide any exterior or interior maintenance to any Dwelling Unit or Residence, and the responsibility for all maintenance of a Dwelling Unit or Residence belongs solely to the Owner of such Dwelling Unit or Residence. However, for the Dwelling Units only, in the event that the need for maintenance or repair of a Dwelling Unit is caused through the

willful or negligent acts or omissions of the Owner of an adjacent Dwelling, the Association shall have the right (but not the obligation) to assess the cost of such maintenance or repair to the adjacent Dwelling Unit, which assessment shall be added to and become a part of the Limited Common Assessment to which such Dwelling Unit is subject.

- 5.13 All of the Limited Common Expenses shall be allocated to all Owners of Units in accordance with each Owner's Proportionate Share. Any Owner of a Unit who constructs a single Dwelling Unit on more than one Unit shall still have its Proportionate Share based upon the number of Units upon which the Dwelling Unit is located or owned by such Owner. No Limited Common Expenses shall be allocated to any Lot.

## ARTICLE VI

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

#### Section 6.

- 6.1 The duties of the Association shall include the following: (a) the promotion of the recreation, health, safety, and welfare of the residents in the Property; (b) the maintenance and repair of the Common Areas; (c) the performance of any other obligations and duties of the Association specified herein; and (d) the exercise of all rights and privileges specified herein or derived from same. The Association shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.
- 6.2 The Declarant and each Owner shall automatically be a member of the Association and shall enjoy the privileges and be bound by the obligations contained in this Declaration and in the Articles and By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Unit. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration, the Articles and by-Laws on other Owners, including those provisions with respect to the payment of Assessments.
- 6.3 The Association shall have the following single class of voting membership: All Owners within the Subdivision shall be "Class A" members of the Association. Class A members shall be entitled to one (1) vote for each Lot or Unit owned. When more than one Person holds an interest in any Lot or Unit, all such Persons shall be members of the Association; provided, however that the vote for such Lot or Unit shall be exercised as the members holding an interest in such Lot or Unit determine among themselves, but in no event shall more than one (1) vote be cast or counted with respect to any one (1) Lot or any one (1) Unit.
- 6.4 Upon acceptance of a deed or other instrument conveying title to or any interest in a Lot or Unit, each Owner of such Lot or Unit shall automatically confer, does hereby confer and shall be deemed to have conferred upon Declarant an irrevocable proxy to vote in such Owner's name, place and stead on any and all matters on which an Owner is entitled to vote under this Declaration, the Articles



or the By-Laws. The proxy shall be a right, coupled with an interest, which shall be irrevocable until the earliest to occur of the following events (hereinafter referred to as the "Control Transfer Date"):

- (a) the date that Declarant voluntarily surrenders and terminates the proxies;  
or
- (b) the date that the number of Lots and Units representing ninety-five percent (95%) of the total Lots and Units of the Subdivision have been conveyed from Declarant to others.

Upon the Control Transfer Date, the aforementioned proxies shall terminate and be of no force or effect thereafter.

- 6.5 After the Control Transfer Date, the Owners shall elect the Board as prescribed by the By-Laws. The Board shall manage the Association's affairs. The initial Board shall be appointed by the Declarant and shall manage the Association's affairs until the Control Transfer Date. Prior to the Control Transfer Date, the Directors of the Board need not be members of the Association.
- 6.6 Prior to the Control Transfer Date, the Association may not use its resources, nor take a public position, in opposition to future phases of the Subdivision or changes to current phases proposed by the Declarant.

## ARTICLE VII

### COVENANTS AND RESTRICTIONS

Section 7. Each Owner hereby covenants and agrees to abide by the following covenants and restrictions in the construction and maintenance of the Owner's Lot and Residence located thereon, or Owner's Unit and Dwelling Unit located thereon:

- 7.1 Lots and Units may be used only for single-family residential purposes, except as otherwise permitted herein, and only one (1) Residence may be constructed upon a Lot and only one (1) Dwelling Unit may be constructed upon a Unit. No portion of any Lot or Unit may be sold or subdivided such that there will be thereby a greater number of Residences and Dwelling Units on the Property than the number of Lots and Units depicted on the Plat.
- 7.2 The numbers representing the address of each Residence and Dwelling Unit will be affixed to the front exterior elevation of the Residence or Dwelling Unit closest to the street or will otherwise be of a uniform appearance and displayed in a uniform location and manner, as determined by the ARC. All mailboxes and posts must be uniform and standard in size, location, design, height, material, color and design, as determined by the ARC.
- 7.3 Each Residence and Dwelling Unit shall have at least one (1) photoelectric dusk-to-dawn light located on each side of the garage door(s). The dusk-to-dawn lights for each Residence and Dwelling Unit shall be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the

ARC, and shall be installed and maintained by the Owner of the Lot or Unit. Unless approved in writing by the ARC, no other exterior light other than the aforementioned shall be permitted to be installed so as to shine or reflect directly upon another Lot or Unit. Street lights may be installed by Declarant in any easement created in, across or over a Lot, Unit, Common Areas or Limited Common Areas by the Plat, the Commitments or this Declaration. Street lights, if any, shall be operated and maintained by the Association. The Association reserves the right to remove street lights no longer deemed necessary by the Board of Directors.

- 7.4 No trailer, shack, tent, boat, basement, garage or other outbuilding shall be used at any time on a Lot, Unit, Common Area or Limited Common Area as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling at any time.
- 7.5 Each Residence and each Dwelling Unit shall have a continuous five (5)-foot wide by a minimum of four (4) inches thick concrete Sidewalk installed parallel to all interior dedicated Street frontage. Sidewalks shall be installed by the Builder within the designated Sidewalk Easement located on the Lot or Limited Common Area for a Unit and shall be included in the purchase price of the Residence or Dwelling Unit. If an asphalt bike/walking path is approved by the City in lieu of the Sidewalk, no additional concrete Sidewalk will be required; provided, however, that such asphalt bike/walking path is installed within the designated Sidewalk Easement as provided herein and is included in the purchase price of the Residence or Dwelling Unit. The Sidewalk shall be installed and completed prior to or simultaneously with Substantial Completion of the Residence or Dwelling Unit and shall be insured and maintained at all times by the Owner.
- 7.6 Each Residence and each Dwelling Unit shall have a concrete driveway a minimum of sixteen (16) feet in width and least four (4) inches thick, which driveway shall be uniform in appearance and construction, as determined by the ARC and shall not be constructed within any side yard building setback for the Lot or Building (as such side yard setback is specified on the Plat and in this Declaration). The driveway shall be installed and completed by the Owner prior to or simultaneously with Substantial Completion of the Residence or Dwelling Unit and shall be maintained at all times by the Owner.
- 7.7 Prior to Substantial Completion of the Residence or Dwelling Unit, each Owner shall connect to all utilities located within the Drainage, Utility and Sewer Easements and/or General Easements and shall pay all connection, availability, hook-up, lateral extension or other charges lawfully established with respect to connections thereto.
- 7.8 In the event storm water drainage from any Lot(s) or Unit(s) flows across another Lot or Unit, provision shall be made by the Owner of such downstream Lot or Unit to permit such drainage to continue, without restriction or reduction, across the downstream Lot or Unit and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, Drainage, Utility and Sewer Easements reserved as drainage swales shall be maintained by the Owner

of the Lot or Unit upon which such easements are located such that water from any adjacent Lot or Unit shall have adequate drainage along such Swale. Lots or Units within the Property may be included in a legal drain established by the Drainage Board. In such event, each Lot and each Unit in the Property will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the drainage system and the pond control structures included in such legal drain, which assessment will be a lien against such Lot and such Unit. The elevation of a Lot or a Unit shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

7.9 Except as permitted pursuant to the Signage Easement, no sign of any kind shall be displayed to the public view on any Lot or Unit except that one (1) sign of not more than four (4) square feet, and otherwise in compliance with all ordinances of the City, may be displayed at any time for the purpose of advertising the Lot for sale, or may be displayed by a Builder to advertise the Lot or Unit during construction and sale. Notwithstanding anything to the contrary contained herein, Declarant may, in its absolute discretion, display any sign on the Property in connection with the development and marketing of the Property until the Control Transfer Date.

7.10 This subsection is applicable to all Lots except those Lots which are used for a sales office or model home by the Declarant or a Builder. No fence, wall, hedge, or shrub planting higher than twenty-four (24) inches shall be permitted between the front property line and the front building setback line except where such planting is part of Residence landscaping approved by the Architectural Review Committee and the prime root thereof is within six (6) feet of the Residence. Corner Lots shall be deemed to have two (2) front property lines. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". All fencing on a Lot shall be of a wrought-iron material no higher than five (5) feet in height and otherwise uniform in style, color and material and harmonious with surrounding Residences and fences, as determined by the sole discretion of the ARC; provided, however, that such fencing shall also conform to the City's ordinances and regulations. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence. No fence may be erected on a Lot without prior approval of the ARC; provided, however, that all fencing erected on a Lot must be erected within six (6) inches of the property line of such Lot and shall not be erected beyond the rear building setback line of the Residence into any side yard of the Lot. The ARC may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Pond and design standards for fences. All fences shall be kept in good repair. No fence, wall, hedge, or shrub planting, or tree foliage which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Lot lines at the streets and a line connecting points

twenty-five (25) feet from the intersection of said street Lot lines; and, the same rule shall apply to the intersection of a driveway with a Street, in which case the edge of the driveway pavement shall be substituted for one of the Street Lot lines. No fence, wall, hedge, shrub or other permanent accessory improvements or landscaping shall be permitted on any Unit or Limited Common Areas unless approved by the ARC as provided herein.

- 7.11 No noxious or offensive activity shall be carried on upon any Lot, Unit or Limited Common Area, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the Subdivision. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance, shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant and/or the Association to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance. In the event of a successful enforcement by an Owner, the Declarant and/or the Association of the provisions hereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.
- 7.12 No trash, leaves or other materials shall be accumulated and/or burned upon a Lot, Unit or Limited Common Area at any time, including without limitation, composting. No Lot, Unit or Limited Common Area shall be used or maintained as a dumping ground for trash. Garbage and all other waste shall be kept in sanitary containers out of the public view except not more than twenty-four (24) hours prior to its removal thereof, when it may be placed at the curb of the Lot or Limited Common Area of that Unit.
- 7.13 No above- or below-ground fuel storage tanks, with the exception of gas storage tanks used solely in connection with gas grills, shall be allowed to be kept or stored on any Lot, Unit, Limited Common Area, Dwelling Unit or Residence at any time.
- 7.14 No septic tank, absorption field, or any other on-site sewage disposal system shall be installed or maintained on any Lot, Unit, Limited Common Area, Dwelling Unit or Residence. Water wells shall not be drilled on any of the Lots, Units or Limited Common Areas (except as required by Declarant or Association to irrigate Common Areas).
- 7.15 Except on Lots or Units on which there is maintained a sales office or model home by the Declarant or a Builder, or as approved by the ARC, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on any Lot, Unit or Limited Common Area.
- 7.16 No trucks one (1) ton or larger in size and/or campers, trailers, motor homes, boats, snowmobiles, jet skis or similar vehicles shall be parked on any Street or Residential Roadway and Drive within the Subdivision at any time or shall be permitted to remain on any driveway, yard, Lot, Unit or Limited Common Area at any time except within a closed garage. No outside storage of any commercial vehicles or trucks, trailers, boats, inoperable vehicles or fuel tanks shall be permitted at any time on any Lot, Unit, Limited Common Area, Residential Roadway and Drive or Street.

- 7.17 No antenna, satellite dish or other device for the transmission or reception of radio, television, telephone or satellite signals shall be permitted on any Lot, Unit or Limited Common Area without the prior written approval of the ARC, which approval shall not be unreasonably withheld if: (a) such device is not visible from the neighboring Lots, Units, Streets and/or Common Areas; (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots or Units who would have views of the device from their Lots or Units; (c) the device is a satellite dish one (1) meter or less in diameter and not affixed to the roof of the Residence or Unit; or (d) if prohibition of the installation, use and maintenance of such device is specifically preempted and superseded by applicable governmental authority.
- 7.18 Except on Lot or Units on which there is maintained a sales office or model home by the Declarant or a Builder, no exterior lights shall be erected or maintained between the building line and the Lot's or the Unit's boundary lines so as to shine or reflect directly upon another Lot or Unit.
- 7.19 Electric bug killers, "zappers" and other similar devices shall not be installed in a location or operated in a manner so as to create a nuisance.
- 7.20 It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereof. It shall be the duty and obligation of the Owner of a vacant Unit to pay all Assessments in connection with that Unit on time and in full. Declarant and the Association shall have the right, but not the duty, to enter upon each vacant Lot or Unit and to maintain the appearance thereof by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances. The Owner shall be responsible for payment of all such expenses upon demand and the Declarant and/or the Association, shall have a lien on such Lot or Unit for the payment of such expenses, together with attorneys' fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith.
- 7.21 In the event that the Owner of any Lot or Unit shall fail to maintain its Lot or Unit and Limited Common Area and any improvements situated thereon in accordance with the provisions of this Declaration, the Declarant and/or the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot or Unit and Limited Common Area and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The costs incurred by the Declarant or the Association shall be assessed to the Owner. The Owner shall reimburse the Declarant or the Association, as the case may be, within thirty (30) days of the date on which the Owner is invoiced by the Declarant or the Association. The Declarant or the Association, as the case may be, shall have the right to collect any outstanding Assessments in the manner described in this Declaration. Neither the Declarant nor the Association or any of its agents, employees, or contractors, respectively, shall be liable for any damage that may result from any maintenance work performed hereunder.

- 7.22 No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, Unit or Limited Common Area. Dogs, cats and other household pets may be kept on a Lot provided that they are not raised, bred or kept for commercial purposes and provided that all such household pets kept on a Lot, Unit or Limited Common Area are confined to the Lot, Unit or Limited Common Area in such a manner that none of the household pets is or becomes a nuisance, a danger to children or annoys or disturbs adjoining Owners. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, etc.) shall be permitted to exist in a Residence or on a Lot (or in a Dwelling Unit or on a Unit or Limited Common Area) without the unanimous consent of the Board of Directors; provided, however, that the decision of the Board of Directors to permit such animal or animals may be overturned by a majority vote of the Owners at any meeting.
- 7.23 Only permanent, in-ground pools and in-ground hot tubs with professional construction, approved in writing in advance by the ARC, shall be permitted on any Lot within the Subdivision. All Development Plans submitted to the ARC for approval of a pool or hot tub shall include landscape and/or fence plans. All pools and hot tubs should be oriented to minimize the potential effect on neighboring Lots and shall be adequately screened from public view with fence and/or landscaping, as determined by the ARC, and otherwise in compliance with the City's ordinances and regulations. No pools or hot tubs of any kind, including temporary or transportable pools or tubs, shall be permitted on any Unit or Limited Common Area.
- 7.24 Children's play equipment, such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, and swing and slide sets shall not require prior written approval by the ARC; provided, however, that (a) such equipment is not more than eight (8) feet in height at its highest point and is properly painted and maintained by Owner in good repair, (b) such equipment is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the Residence into the rear yard of the Lot, and (c) such swing and slide sets are constructed of wood or plastic. Aluminum and/or metal swing and slide sets and/or play equipment are prohibited. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts and other sporting facilities will not be permitted without the prior written approval of the ARC. No basketball goal or backboard shall be permitted to hang from or be affixed to the Residence or garage. Lighted courts of any kind are not permitted. Temporary or portable basketball courts will not be permitted in the Streets of the Subdivision. No trampoline(s) shall be permitted to be stored outside in public view on any Lot. No children's play equipment, sandboxes, temporary swimming pools, recreational courts, backboards or goals or trampolines shall be permitted on any Unit or Limited Common Area.

- 7.25 Other than as may be necessary or incident to the Declarant's, Builder's or Association's business or activities upon the Property (for which no ARC approval shall be required), any and all forms of an outbuilding, including but not limited to, storage shed, pool house, animal quarters, kennel, play house or other accessory building to a Residence shall not be installed or constructed on a Lot without the prior written approval of the ARC, which approval may be withheld in its sole discretion if the color, design and material of the proposed outbuilding is not substantially similar to that of the Residence and if the size and location are not harmonious and in keeping with the Residence, adjacent Residences and any other outbuildings located within the Subdivision. All forms of outbuilding are strictly prohibited on any Unit or Limited Common Area.
- 7.26 No Owner or Builder shall install or maintain a heat pump, air conditioning unit or gas meter in the front yard of its Residence or Dwelling Unit, or in the case of any corner Lot or Unit, in the back yard of its Residence or Dwelling Unit. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot or Unit (including but not limited to the window of any Residence or Dwelling Unit or garage).
- 7.27 Subsurface drains have been provided in certain areas within the Drainage, Utility and Sewer Easements, General Easements and/or other easements provided herein as additional storm and ground water drainage sources and are part of the public storm drainage system. Subsurface drain laterals have been provided on specific Lots and/or Units, and the Builder on such Lots or Units shall connect all sump pump discharge lines to such laterals in accordance with the City's and the County's standards and as further specified in this Declaration. All maintenance, replacement and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Owner in accordance with the following:
- (a) Owner's responsibility includes maintenance, repair and replacement of all sump pump lines and subsurface drain laterals, to be buried from the Residence or Dwelling Unit to the Street (or Residential Roadway and Drive, as the case may be) according to the City's and the County's standards between the connection at the sump pump within the Residence or Dwelling Unit and the connection with the publicly maintained storm sewer or subsurface drain within the drainage easement;
  - (b) In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance, replacement and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered;
  - (c) Any Owner or Builder damaging, changing, or altering these subsurface drains and/or common subsurface drain laterals will be held responsible for such action and will be given ten (10) days' notice, by registered mail, to repair and/or replace said damage, after which time, if no action is taken, the appropriate jurisdictional agency, the Declarant and/or the Association will cause said repairs and/or replacement to be accomplished and the invoice for such repairs and/or replacement will be sent to the responsible Owner(s) and/or Builder(s) for immediate

payment. If immediate payment is not received, the Declarant and/or the Association, as the case may be, shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in this Declaration;

7.28 Each Owner shall at all times maintain its Lot and the Residence and any other improvements located thereon, or its Unit and the Dwelling Unit located thereon and the Limited in good condition and repair, in compliance with all Laws (as hereinafter defined) and shall, including without limitation:

- (a) Mow and trim the Lot and all landscaping located thereon regularly in the Spring, Summer and Fall months as required to prevent the unsightly growth of vegetation and weeds;
- (b) Regularly remove all debris and rubbish from the Lot or Unit;
- (c) Regularly prevent existence of any other condition that reasonably tends to detract from or diminish aesthetic appearance of the Subdivision;
- (d) Regularly keep the windows in such a state of repair or maintenance so as to avoid their becoming unsightly;
- (e) Regularly maintain any painted trim on the Residence or Dwelling Unit and any accessory buildings so as to avoid unsightly peeling of the painted trim;
- (f) Cut down and remove any dead trees from the Lot or Unit in a timely manner;
- (g) Clear and shovel any snow accumulation of two (2) inches or greater from any Sidewalks on the Lot in a timely manner;
- (h) Regularly maintain (without altering or otherwise changing) any drainage structures and/or swales located on the Lot and repair and replace any damage to such drainage structures and/or swales within thirty (30) days from the date the Owner is made aware of such damage; and
- (i) For each Owner of a Lot or Unit that abuts a Pond Area and/or Pond Easement, at all times maintain the portion of the bank of the Pond Area and/or Pond Easement above the water surface level as constitutes a part of, or abuts, the Owner's Lot or Unit and keep that portion of the Pond Area and/or Pond Easement abutting such Lot or Unit free of debris and otherwise in reasonably clean condition.

7.29 No Lot or Unit shall be used by an Owner for any purpose other than as a single-family residence, except that a home occupation, which satisfies the following definition as well as all requirements of the City's Zoning Ordinance, may be permitted for any use conducted entirely within the Residence or Dwelling Unit and participated in solely by a member of the immediate family residing in said Residence or Dwelling Unit, which use is clearly incidental and secondary to the use of the Residence or Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: a) no sign or display that will indicate from the exterior that the Residence or Dwelling Unit is being utilized in whole or in part for any purpose other than that of a dwelling; b) no commodity sold upon the premises; c) no person is employed other than a member of the immediate family residing in the Residence or Dwelling Unit; and d) no manufacture or assembly operations are conducted; provided, however, that in no event shall the following or similar activities be conducted or considered to be a permitted Home Occupation: child day care, barber shop, styling salon,



animal hospital, or any form of animal care or treatment such as dog trimming, or any other similar activities. The foregoing notwithstanding, the Declarant (and Builders which have obtained the prior written approval of the Declarant) shall be permitted to operate sales trailers, model homes, and sales offices.

7.30 The following shall apply to open ditches and swales:

- (a) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated Drainage, Utility and Sewer Easements, General Easements or other easements as provided herein, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant. Owners must maintain these swales as grassways or other non-eroding surfaces in accordance with all Laws. Any damage to swales or drainage structures must be repaired or replaced by the Owner; and
- (b) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair and/or replace said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs and/or replacement to be accomplished and the invoice for such repairs will be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in this Declaration.

7.31 Except as otherwise provided, no individual using a Pond, if any, has the right to cross another Lot or Unit or trespass upon shoreline not within a Common Area or Limited 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 the Declaration. No one shall do or permit any action or activity which could result in pollution of any Pond, diversion of water, elevation of any Pond level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Pond management except as provided in the Declaration. A Pond 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. Ponds and Pond Areas may or may not exist on the Property, and the reference throughout this Declaration to Ponds and Pond Areas is made in order to address Ponds and Pond Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Pond or Pond Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Pond or Pond Area. Only the Declarant shall have the right to store items or develop recreational facilities upon any Common Area or Limited Common Area owned by the Declarant or Association adjacent to a Pond.

7.32 No clotheslines may be erected on any Lot or Unit.

7.33 All plumbing vent stacks shall be located on the rear of the Residences or Dwelling Units.

- 7.34 The roofing materials on all Residences or Dwelling Units within the Subdivision shall be of a color, quality, style and composition acceptable to the ARC, in its sole discretion.
- 7.35 All metal and PVC roof or range vents shall be painted to blend with the Residence's or Dwelling Unit's roof color.
- 7.36 No solar panels shall be permitted on any Residence or Dwelling Unit.
- 7.37 If storm doors are installed, they must be painted to match the exterior color of the Residence or Dwelling Unit. No unfinished aluminum doors or windows shall be permitted.
- 7.38 Decorative street signs that do not conform to applicable City standards may be installed by Declarant in the Declarant's sole and absolute discretion. Such decorative street signs shall be maintained by the Association, and shall be repaired or replaced by the Association if damaged in accordance with applicable rules and regulations of the controlling municipality. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs.
- 7.39 No Residence constructed on any Lot or Dwelling Unit on a Unit shall be occupied or used for permanent residential purposes or human habitation until a certificate of occupancy (or its equivalent) has been issued by the City.
- 7.40 Subject to those items which the ach Owner shall cut all grass and trim and otherwise insure, replace and maintain all other landscaping located in the Street right(s)-of-way and the Landscape Easement(s) on, abutting or nearest its Lot and shall insure, replace and maintain all Sidewalks in the Sidewalk Easements on its Lot. Each Owner shall insure, maintain and immediately replace any landscaping, including without limitation any Street trees, located within any Street right(s)-of-way and Landscape Easement on, abutting or nearest its Lot as required by this Declaration, the Plat, or any other document controlling maintenance of Lots.
- 7.41 The front yard, side yards and that portion of the back yard of the Lot or Unit a distance of ten (10) feet from the Residence or Dwelling Unit building line shall be sodded immediately following final grading of the Lot or Unit, and the balance of the Lot or Unit shall be hydroseeded. For Lots or Units on which Residences or Dwelling Units, respectively, are Substantially Completed on or after November 15<sup>th</sup> and before April 15<sup>th</sup>, all landscaping, hydroseeding, sodding and irrigation installation shall be completed on or before the following June 30<sup>th</sup>. For all other Lots, all landscaping, irrigation installation, hydroseeding and sodding shall be completed within sixty (60) days after Substantial Completion of the Residence or Unit.

## ARTICLE VIII

### ARCHITECTURAL REVIEW COMMITTEE

#### Section 8.

- 8.1 The ARC shall have the authority to regulate the external design, appearance, use, location and maintenance of the Subdivision and the Property in order to preserve and enhance values and maintain a harmonious relationship among the Lots, Residences, Units and Dwelling Units within the Subdivision. Each purchaser and Owner of a Lot or Unit within the Subdivision shall take title subject to the aforementioned authority of the ARC and the standards and procedures contained herein. Approvals, determination, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Association, by an officer thereof, and with respect to the ARC, by one (1) member thereof.
- 8.2 The ARC shall be composed of three (3) members appointed by the Declarant, who shall be subject to removal by the Declarant at any time, with or without cause. Any vacancies from time to time shall be filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, relinquish to the Association the power to appoint and remove one or more members of the Committee.
- 8.3 Declarant intends that the ARC exercise discretion in the performance of its duties consistent with the provisions hereof, and every Owner by the purchase of a Lot or Unit and every Mortgagee by the acceptance of a mortgage or deed of trust for a Lot or Unit shall be conclusively presumed to have consented to the exercise of discretion by the ARC. In any judicial proceeding challenging a determination by the ARC and in any action initiated to enforce this Declaration in which an abuse of discretion by the ARC 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 ARC, could only conclude that such determination constituted an abuse of discretion.
- 8.4 The ARC shall have the right to inspect work being performed on any Lot or Unit without the Owner's permission to assure compliance with the restrictions and applicable regulations in this Declaration.
- 8.5 Neither the ARC nor the Declarant or Association, or any agent thereof, respectively, shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any Development Plan or plans submitted to it, nor shall the ARC, Association or Declarant, or any agent thereof, respectively, 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 ARC, Association, Declarant and/or any agent thereof, respectively, make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, the compliance of proposed plans with laws and zoning ordinances, or the materials to be used. All parties should seek professional construction and engineering advice and inspections on each Lot

prior to proposing construction.

- 8.6 None of the following shall be installed or constructed by any Owner or Builder, but specifically excluding the Declarant (prior to the Control Transfer Date) and the Association (after the Control Transfer Date), without prior written approval thereof by the ARC: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, Limited Common Area, Landscape Easement, Drainage, Utility and Sewer Easements, General Easements or any other easements provided pursuant to this Declaration; (ii) any entrance monument or signage identifying the Development or any section thereof; and/or (iii) street signage.
- 8.7 Whenever two (2) or more contiguous Lots shall be owned by the same Owner, and such Owner shall desire to use two (2) or more of said Lots as a site for a single Residence, such Owner must apply in writing to the ARC for permission to so use such Lots. If permission for such a use is granted, the Lots constituting the site for a single Residence shall be treated as a single Lot for the purpose of applying this Declaration to said Lots, so long as the Lots remain improved with one (1) single Residence; provided, however, that the Owner agrees to and shall pay all Common Assessments for each originally platted Lot and shall agree to the placement of any lien by the Association on both Lots.
- 8.8 No construction, repair or remodel of any Residence, Dwelling Unit, building structure, fence, deck, kennel, swimming pool, hot tub, tennis or basketball court or the like, or improvement of any type or kind (including any significant landscaping, as determined by the ARC), nor the alteration of any exterior color or building material of same, shall be permitted without the prior approval of the ARC. Such approval shall be obtained only after the Owner of the Lot or Unit requesting authorization from the ARC has made written application to the ARC at least thirty (30) days prior to the commencement of the proposed construction. Such written application shall be in the manner and form as prescribed from time to time by the ARC and shall be accompanied by two (2) complete sets of the Development Plan for the proposed Residence, Dwelling Unit and/or improvement. The ARC shall have a period of thirty (30) days from the date of receipt of a complete application and Development Plan in which to approve, disapprove or approve with conditions the Owner's application and Development Plan. If the ARC approves the Owner's application and Development Plan, the Owner shall be permitted to commence construction of the proposed improvement, and the ARC's approval shall remain valid and effective for a period of one (1) year from the date such written approval is issued. If the ARC disapproves the Owner's application and Development Plan, the ARC shall provide its reasons for doing so in writing to the Owner. If, however, approval has not been received by applicant in writing within thirty (30) days from the date of receipt of the complete application and Development Plan, then said application shall be deemed DENIED. The Owner may thereafter resubmit a revised application and Development Plan to the ARC, and the same time periods and procedures for review and approval of the resubmitted application and plan shall apply. The ARC may also approve an application and Development Plan with certain imposed conditions, and the Owner shall be permitted to commence construction of the proposed improvement as long as the Owner agrees in writing, prior to commencing such construction, to honor and comply with the

conditions imposed by the ARC. Any application and/or Development Plan submitted to the ARC for any improvement other than the initial construction of a Residence on a Lot or Dwelling Unit on a Unit shall be accompanied by payment of an administrative fee in the amount of Two Hundred Fifty Dollars (\$250.00) (in the form of cash, a cashier's check, money order or credit card payment) to defray the costs of reviewing the application and/or Development Plan and administering the approval process. No application and/or Development Plan submitted without the accompanying full payment of the aforementioned administrative fee shall be considered by the ARC for approval or reviewed in any manner until such time as full payment is received. The Declarant and/or the Association reserves the right to change the administrative fee at any time and from time to time as it deems necessary, in its sole discretion. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the ARC in the ARC's sole and absolute discretion, the ARC may pre-approve a Builder's plans and specifications for the original construction of a Residence or Dwelling Unit and, in the event of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots, or pre-approved Dwelling Unit on different Units, without further approvals from the ARC.

- 8.9 The ARC may refuse to grant approval with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following: (a) the plans and specifications, drawings or other material submitted must be adequate and complete, show the proposed improvement and must not be in violation of the Plat, the Commitments or Declaration; and (b) the design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures.
- 8.10 The ARC may allow reasonable variances or adjustments to this Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Declaration, and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots or Units in the Development, and any such variance or adjustment granted shall not be considered as setting a precedent or creating an expectation that the ARC might rule similarly in the future on other variance requests. Except as otherwise expressly provided in this Declaration, no construction, improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or Unit or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to another Owner shall be made or done without the prior approval by the ARC of a Development Plan therefor.
- 8.11 A decision of the ARC (including a denial resulting from the failure of the ARC to act on a Development Plan within the specified period) may be appealed to the Board of Directors, which may reverse or modify such decision (including approve a Development Plan deemed denied by the failure of the ARC to act on such plan within the specified period) by a two-thirds (2/3) vote of the Board of Directors then serving.

- 8.12 If an Owner or Builder has encroached on an adjacent Owner's Lot or Unit (or Limited Common Area immediately adjacent to such Unit), a portion of the Property or in a Common Area, the encroaching Owner or Builder will immediately, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment if so directed by the Declarant.
- 8.13 Each purchaser of a Lot or a Unit in the Subdivision shall take title subject to the aforementioned authority of the ARC and the architectural standards and procedures as outlined in the Commitments.
- 8.14 No approval by the ARC of any application, Development Plan, other plans or variance or adjustment request shall be deemed or construed to be a representation or warranty on the part of the ARC, the Declarant or the Association that such application, Development Plan, other plans or variance or adjustment is in compliance with all local, state and federal codes, laws, ordinances, statutes, rules and regulations or is free from defect in design, method of construction, engineering, etc. Neither the ARC, the Declarant, the Association, nor any agent thereof, respectively, shall be liable in any way for any costs, fees, damages, delays or any charges or liability whatsoever relating to the review, approval or disapproval (or failure to do grant any of the same) of any application, Development Plan, other plans or any other request submitted to it. Each Owner has the responsibility and obligation to ascertain whether the proposed Residence, Dwelling Unit or improvement is in compliance with all applicable local, state or federal codes, ordinances, statutes, laws, rules and regulations ("Laws") and free from defect, and prior to making any application or submitting any Development Plan to the ARC, the Owner shall have obtained all necessary variances, waivers and/or other approvals from any local, state or federal governmental authority, including without limitation the City or the Commission, for the construction of any proposed Residence or improvement which is not in compliance with all Laws. Subsequent to the ARC's approval of the Development Plan, the Owner shall obtain all necessary permits and/or other approvals, including without limitation a building permit from the City, from any local, state or federal governmental authority to allow for the commencement and completion of the proposed Residence, Dwelling Unit or other improvement in accordance with the approved Development Plan, all Laws. In submitting an application or request to the ARC, the Owner hereby warrants and represents that it has or will have obtained all of the aforementioned necessary approvals and permits and has satisfied itself that the proposed Residence, Dwelling Unit or improvement is free from defect and is merely seeking approval of the proposed Residence, Dwelling Unit or improvement as being in compliance with the Declaration and harmonious with the Subdivision and architectural style of other Residences or Dwelling Units within the Subdivision. If any change is made to the Development Plan subsequent to the ARC's approval thereof, the Owner shall be required to submit a revised Development Plan showing such change and obtain the ARC's approval of such revised Development Plan prior to commencing any construction, and the revised Development Plan shall be subject to the review process and all other provisions of this Section 8.
- 8.15 The ARC may utilize the services of architects, engineers and other Persons possessing design expertise and experience in evaluating Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed

by virtue of the fact that any of such consultants are affiliated with Declarant or may, from time to time, represent Persons filing Development Plans with the ARC.

- 8.16 The ARC shall not be required to consider any Development Plan submitted by an Owner who is, at the time of submission of such Development Plan, in violation of any provision of this Declaration, unless such Owner submits to the ARC with such Development Plan an irrevocable agreement and undertaking (with such surety as the ARC may reasonably require) to cure such violation, including without limitation removing from the Owner's Lot or Unit any improvements, landscaping or exterior lighting constructed and/or installed prior to the submission of a Development Plan (or constructed and/or installed in violation of a previously approved Development Plan) to the extent any such previously constructed and/or installed improvement, landscaping or exterior lighting is not subsequently approved by the ARC.
- 8.17 The ARC shall have the power to recommend to the Board of Directors that the Declarant or the Association assess a Violation Assessment against any Owner who fails to comply with the requirements of this Article 8. Under no circumstances shall any action or inaction of the ARC be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Development Plan for approval by the ARC has violated any provision of the Declaration and such violation remains uncured.
- 8.18 No reference herein to any accessory building, pool, hot tub, fence or other structure or improvement shall be construed as a representation by the Declarant or the Association that same will be permitted as a matter of right or that an Owner is entitled to approval of same.

ARTICLE IX

ASSESSMENTS

Section 9.

- 9.1 Each Owner of any Lot or any Unit, except the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association as follows: (a) Common Assessments; (b) Special Assessments; and (c) Violation Assessments. In addition, each Owner of any Unit, except the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association for any and all Limited Common Assessments:
- 9.2 By a majority vote of the Board, the Board shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration can be met.
- 9.3 By a majority vote of the Board, the Board during any calendar year shall be entitled to increase the Common Assessments for that year if it should determine that the estimated or current Assessment is insufficient for that year, provided

that the Board shall give at least thirty (30) days' advance written notice to the Owners. The Board shall establish the dates upon which the Common Assessments shall become due and the manner in which it shall be paid.

- 9.4 In addition to any other Assessments, by a majority vote of the Board, the Board may levy in any year a "Special Assessment" for the purpose of enforcing the Declaration, for legal expenses, for collection expenses, to defray the cost of undertaking the action that is the responsibility of an Owner but which action has not been taken, for the cost of any capital improvement which the Association is required to maintain, for operating deficits, or such similar purpose; provided, however, that any such Assessment shall have the assent of the majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- 9.5 In addition to all other Assessments authorized herein, by a majority vote of the Board, the Board may levy a "Violation Assessment" for any violation of this Declaration or for damage to any portion of the Common Area by an Owner and/or the Owner's occupants, guests, invitees, agents and/or contractors (including without limitation the Owner's builder, general contractor and subcontractors) which damages the Owner has not undertaken to repair or replace in accordance with the provisions of this Declaration.
- 9.6 Each Lot or Unit owned by a Person other than the Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot or whether a Dwelling Unit has been constructed upon a Unit. The provisions of subsection for uniform assessment shall not be deemed to require that all Assessments against vacant Lots or Units or Lots or Unit improved with comparable types of Residences or Dwelling Units, respectively, be equal, but only that each Lot and each Unit be assessed uniformly with respect to comparable Lots and comparable Units subject to assessment for similar costs and expenses.
- 9.7 Neither the Declarant nor the Builder nor any related entity shall be assessed any portion of any Common Assessment, Limited Common Assessment, Special Assessment or Violation Assessment prior to the Control Transfer Date.
- 9.8 All Assessments, together with interest thereon, attorneys fees, and other costs of collection permitted by this Declaration to be collected, shall be a charge on the land and shall be a continuing lien upon the Lot or Unit against which each Assessment is levied until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorneys fees, shall also be the personal obligation of the Person who was the Owner of the Lot or Unit at the time when the Assessment became due. No sale or transfer of a Lot or Unit shall relieve such Lot or Unit from liability for any Assessments or liens due and owing to the Association.
- 9.9 No Owner, by waiver of the use or enjoyment of the Common Areas or Limited Common Areas, or by abandonment of the Residence or Dwelling Unit belonging to such Owner, may exempt itself from paying any Assessment or other expense provided for in this Declaration. In addition to any other rights of the Board as provided herein, any failure of any Owner to timely pay any



Assessment shall entitle the Board, by a majority vote of the Board, to take any or all of the following actions:

- (a) impose a monthly late charge of up to twenty-five percent (25%) of the amount of the Assessment;
- (b) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable;
- (c) suspend the Owner's right to use the Common Areas;
- (d) suspend the Owner's right to vote;
- (e) foreclose upon the Owner's Residence or Dwelling Unit for the amount of the lien for such unpaid Assessment; and/or
- (f) take any other action, seek enforcement of any other right and/or pursue any other remedy provided at law or in equity.

9.10 Each Owner shall be personally liable for the payment of all Assessments, and where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several.

9.11 The Association shall, upon reasonable request by an Owner, furnish a letter in writing signed by an officer of the Association, indicating the accounting status of Assessments on a Lot and showing the balance due, if any, to the Association. In connection with providing such letter, the Association may adopt an administrative fee to be charged to the Owner to defray the cost of processing such request and issuing such letter.

9.12 The Declarant (and after the Control Transfer Date, the Board) shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Common Assessment against each Lot and each Unit at any amount not in excess of the "Maximum Common Assessment" as follows:

- (a) Until December 31, 2007, the Maximum Common Assessment on any Residence or Dwelling Unit for any calendar year shall not exceed Fifteen Dollars (\$15.00) per month.
- (b) Until December 31, 2009, the Maximum Common Assessment on any Residence or Dwelling Unit for any calendar year may be increased by not more than ten percent (10%) above the Common Assessment for the previous calendar year without a vote of the members of the Association as provided in the following subparagraph (c).
- (c) From and after January 1, 2010, the Declarant (and after the Control Transfer Date, the Board) may fix the Common Assessment at an amount in excess of the maximum amount specified in subparagraph (b) above only with the approval of a majority of those Members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called for such purpose.

- (d) Each Residence and each Dwelling Unit shall be assessed an equal amount for any Common Assessment, excepting any proration for ownership during only a portion of the assessment period.

9.13 The Declarant (and after the Control Transfer Date, the Board) shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Limited Common Assessment against each Unit for those maintenance services provided pursuant to Paragraph 5.12 hereof at any amount not in excess of the "Maximum Limited Common Assessment" as follows:

- (a) Until December 31, 2007, the Maximum Limited Common Assessment on any Dwelling Unit for any calendar year shall not exceed Forty-Five Dollars (\$45.00) per month.

- (b) Until December 31, 2009, the Maximum Limited Common Assessment on any Dwelling Unit for any calendar year may be increased by not more than ten percent (10%) above the Limited Common Assessment for the previous calendar year without a vote of the members of the Association as provided in the following subparagraph (c).

- (c) From and after January 1, 2010, the Declarant (and after the Control Transfer Date, the Board) may fix the Limited Common Assessment at an amount in excess of the maximum amount specified in subparagraph (b) above only with the approval of a majority of those Members of the Association who own Units and cast votes in person or by proxy at a meeting of the members of the Association duly called for such purpose.

- (d) Each Dwelling Unit shall be assessed an equal amount for any Limited Common Assessment, excepting any proration for ownership during only a portion of the assessment period.

9.14 The Declarant (and after the Control Transfer Date, the Board) shall establish and maintain a reserve for replacements by the allocation and payment to such reserve fund of an amount determined annually by the Declarant, or the Board as the case may be, to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Areas and any amenities or facilities located thereon. In determining the amount, the Declarant, or the Board as the case may be, shall take into consideration the expected useful life of the Common Areas, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of such consultants as the Declarant or the Board may employ.

9.15 The Common Assessment, Limited Common Assessment and/or Special Assessment, if any, shall commence as to each Residence or Unit on the first day of the first calendar month following the first conveyance of such Residence or Unit to an Owner who is not one of the persons named in Paragraph 9.7 above.

9.16 In addition to the Common Assessments, Limited Common Assessments and Special Assessments (if any), at closing on the Lot or Unit with the Declarant or

Builder, the Owner shall pay an amount equal to one (1) year's Common Assessment which shall be applied against the obligations set forth herein for the Association in regard to the Common Areas and Limited Common Areas.

- 9.17 The lien of the Assessments provided for herein against a Lot or Unit shall be subordinate to the lien of any recorded first mortgage covering such Lot or Unit and to any valid tax or special assessment lien on such Lot or Unit in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the Assessment lien, and no sale or transfer shall relieve such Lot or Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

## ARTICLE X

### GENERAL PROVISIONS

#### Section 10.

- 10.1 Each Owner of a Lot or Unit subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, shall accept such deed and execute such contract subject to each and every covenant, condition, easement and restriction contained in this Declaration. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of the Declarant, the ARC and the Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner covenants and agrees and consents to and with the Declarant, the ARC and the Association to keep observe, comply with and perform such covenants, conditions, easements and restrictions contained in this Declaration. ®
- 10.2 The Declarant, the Association and/or any Owner (subject to the provisions of Article 11 above) shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, restrictions, easements, liens, Assessments and charges now or hereafter imposed by the Declaration or other Association documents unless such right is specifically limited. Failure by the Declarant and/or the Association or any Owner to enforce any right, provision, covenant or conditions which may be granted by this Declaration shall not constitute a waiver of the right of the Declarant and/or Association or any Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Declarant and/or the Association or any Owner by this Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising same from exercising such privileges as may be granted to it by this Declaration or at law or in equity. Notwithstanding the foregoing, nothing contained in this Declaration shall be construed in any manner to limit any activity of the Declarant in the construction, development and marketing of the Property.
- 10.3 Any Mortgagee shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such

Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Eligible Mortgagee pursuant to the terms of the Declaration, the Articles or the By-Laws (the "Organizational Documents") shall be deemed effectively given if mailed to such Eligible Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary by the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

- 10.4 The Association shall promptly provide to any Eligible Mortgagee notice of any of the following:
- (a) Any delinquency in the payment of any Assessment owed by the Owner of any Residence or Dwelling Unit on which said Eligible Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than one hundred eighty (180) days; or
  - (b) Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees, as provided herein.
- 10.5 The covenants, easements and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of the Declarant or any Owner subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded. Upon the expiration of such initial twenty-year period, this Declaration shall automatically be extended for successive periods of ten (10) years each upon expiration of the previous ten-year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty-year period or during the last year of any subsequent ten-year period, three-fourths (3/4) of the votes cast at a duly held meeting of the Owners of the Association vote in favor of terminating this Declaration at the end of its then current term. In order for such vote to be deemed valid: (a) all Owners of the Association shall have been given written notice of such meeting at least thirty (30) days in advance, (b) the vote shall have been administered in accordance with this Declaration and the By-Laws; (c) the Board shall prepare and execute a certificate documenting the vote by three-fourths (3/4) of the Owners to terminate the Declaration and obtain the signatures of all Eligible Mortgagees having an interest in any Lot or Unit on the certificate; and (d) such certificate shall be recorded in the Office of the Recorder of Johnson County, Indiana.
- 10.6 The Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of the Owners, and the assets, both personal and real, shall be disposed of in accordance with state and federal laws applicable to a nonprofit corporation.
- 10.7 Any and all rights and obligations of the Declarant set forth herein may be transferred, in whole or in part, to other persons or entities, provided that such

transfer shall not reduce an obligation or enlarge a right beyond that contained in this Declaration. Any such transfer shall not be effective unless a written instrument signed by the Declarant is recorded with the Office of the Recorder of Johnson County, Indiana.

- 10.8 Until the Control Transfer Date, the Declarant reserves the exclusive right, at any time, in its sole discretion and without notice, to make any modifications or amendments to this Declaration deemed necessary or desirable by the Declarant. After the Control Transfer Date, modifications and amendments to this Declaration may be made from time to time upon the affirmative vote of two-thirds (2/3) of all Owners at any meeting called for that purpose; provided, however, that the full text of any proposed amendment shall be included in the notice of such meeting and the voting requirements specified for such action.
- 10.9 The Declarant shall have no duties, obligations or liabilities hereunder as to any other matters of any description except such as are expressly assumed by Declarant, and no undertaking, duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration. The Owner of each Lot shall indemnify, defend and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with this Declaration, the Plat, the Development Plan, all rules, regulations, laws, ordinances and codes, including without limitation any erosion control plan adopted and/or implemented in connection with the Subdivision.
- 10.10 Invalidation of any one of the provision of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation and this Declaration, this Declaration shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.
- 10.11 Until the Control Transfer Date, the Declarant shall have the right to enter into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed one (1) year; provided, however, that such contracts contain a provision that the Association, after the Control Transfer Date, shall have the right to terminate such contracts, with or without cause, upon thirty (30) days' written notice to the other party and without payment of a termination fee.

## **ARTICLE XI**

### **REMEDIES**

#### **Section 11.**

- 11.1 No delay or failure on the part of any aggrieved party to invoke any available

remedy with respect to a violation of any one or more of covenants, conditions, and restrictions in this Declaration shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration.

- 11.2 Subject to the provisions contained in Section 11.3 below, the Association or any party to whose benefit this Declaration inures, including the Declarant and/or any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration, or to compel compliance with this Declaration, and shall be entitled to recover costs of collection and reasonable attorney's fees; however, neither the Declarant, nor the Association, shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any terms, conditions, or restrictions contained in this Declaration.
- 11.3 Any dispute by and between any Owner (including a Builder) and the Declarant and/or the Association arising from the Declarant's and/or the Association's: (a) enforcement, administration, waiver of any provision under this Declaration and/or the Organizational Documents; (b) performance of all obligations under this Declaration and the Organizational Documents and/or operation, maintenance, repair and/or replacement of the Common Area and the Subdivision generally; (c) exercise, granting, assignment and/or transfer (or failure to do same) of any right or privilege under this Declaration or the Organizational Documents; and/or (d) any act or omission in connection with development, operation and/or maintenance of the Subdivision, shall be settled by arbitration in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association.

## ARTICLE XII

### EFFECT ON BECOMING AN OWNER

#### Section 12.

- 12.1 The Owner(s) of any Lot or Unit subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restrictions contained in this Declaration. By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of the Declarant, Committee, and Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, Committee and the Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

## **ARTICLE XIII**

### **PARTY WALLS AND ROOFS**

**Section 13.** The following provisions contained in this Article XIII shall be applicable solely to each Unit, and each Dwelling Unit located thereon, within the Subdivision:

- 13.1 Each wall which is built as a part of the original construction of each Building and placed on the dividing lines between the Dwelling Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- 13.2 The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. For purposes of this Article XIII, the term "party wall" shall include the roof connecting the three (3) Dwelling Units comprising the Building.
- 13.3 If, at any time, an Owner believes that it has become necessary to replace the roof on his Dwelling Unit, then that Owner shall notify the Owners of the adjoining Dwelling Units comprising that Building. Such notice shall be sent by Certified Mail and shall specify the reason(s) that the Owner believes that the roof should be replaced and whether or not an inspection has been performed. If all Owners agree that the roof should be replaced, the roof shall be replaced and the Owners shall share the cost of such roof replacement based upon the ratio of roof area that each Dwelling Unit bears to the total roof area of all three (3) Dwelling Units. If the Owners cannot agree upon the need for roof replacement, the Owner requesting the roof replacement shall make written application to the Architectural Review Committee. The Architectural Review Committee shall determine if such roof replacement is necessary. If roof replacement is deemed necessary, the roof shall be replaced and the Owners shall share the cost based upon the ratio that the roof area of each Dwelling Unit bears to the total roof area of all three (3) Dwelling Units. This section applies only to complete roof replacement. Ordinary and routine maintenance for the roof of each Dwelling Unit shall be the responsibility of each individual Owner of a Dwelling Unit.
- 13.4 If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and the other Owners shall contribute equally to the cost of restoration thereof, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- 13.5 Notwithstanding any other provision of this Article, an Owner who by his negligent, malicious or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- 13.6 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

- 13.7 "Plans", as that term is used herein, shall mean and refer to the floor and building plans of any Dwelling Unit, together with any surveys and final elevation Plans. In the event that any horizontal or vertical boundary line as shown on the plans do not coincide with the actual location of the respective walls, floor, ceiling, driveway, or roof of any Dwelling Unit because of inexactness of construction, settling after construction, or for any other reason, then the boundary line of such Dwelling Unit and its respective walls, floor, ceiling, driveway, or roof shall be deemed to be, and treated for purposes of occupancy, possession, maintenance, decoration, and use and enjoyment, as in accordance with the actual and existing construction. In such cases, permanent easements for exclusive use shall exist in favor of the owner of each Dwelling Unit in and to the space outside of the boundary lines of the Dwelling Unit and its respective walls, floor, ceiling, driveway, or roof as indicated on the plans, but within the walls, floors, ceiling, driveway or roof of the Dwelling Unit as they may actually exist.

#### ARTICLE XIV

##### TITLES

#### Section 14.

- 14.1 The titles preceding the various Sections and paragraphs of this Declaration are for convenience of reference only and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall by taken to mean or apply to the feminine or to the neuter.

#### ARTICLE XV

##### DECLARANT'S RIGHTS

#### Section 15.

- 15.1 Any and all of the rights and obligations of the Declarant set forth in this Declaration may be transferred, in whole or in part, to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded with the Recorder of Johnson County, Indiana.
- 15.2 Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant and/or any Builders in their development of the Property and construction of residences thereon. Therefore, notwithstanding anything herein to the contrary, the Declarant and/or Builder may maintain and carry upon portion of the Common Area, and other portions of the Property and Lots or Units owned by the Declarant, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Residences or Dwelling Units including, but not limited to, business offices, signs, model units, sales offices, and sales trailers.



IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Declaration as of the date first written above.

DECLARANT:

Indiana Land Development Corporation  
an Indiana corporation

By   
Paul Shoopman, President

STATE OF INDIANA )  
) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public within and for the State of Indiana, duly commissioned and qualified, personally appeared Paul Shoopman, the President of Declarant, and who, having been duly sworn, stated that the representations therein contained are true.

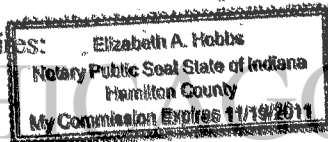
WITNESS my hand and Notary Seal this 20<sup>th</sup> day of June, 2007.

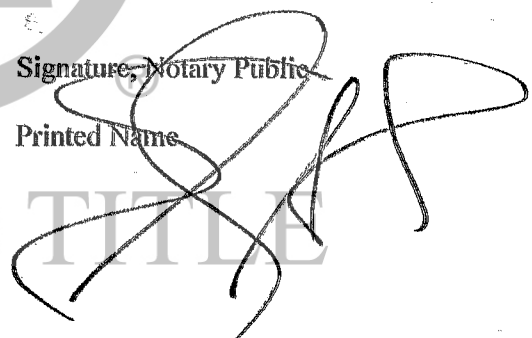
County of Residence:  
\_\_\_\_\_

Signature, Notary Public

Printed Name

My Commission Expires:





This instrument was prepared by Heather Meyer,  
KOE Engineering & Surveying, Inc., 70 E Main St,  
Greenwood, IN 46143.

"I AFFIRM, UNDER THE PENALTIES FOR PERJURY,  
THAT I HAVE TAKEN REASONABLE CARE TO REDACT  
EACH SOCIAL SECURITY NUMBER IN THIS  
DOCUMENT, UNLESS REQUIRED BY LAW."

NAME



## EXHIBIT "A"

### LEGAL DESCRIPTION – SECTION ONE

Part of the Northwest Quarter of Section 16, Township 13 North, Range 4 East of the Second Principal Meridian, Johnson County, Indiana, Being more particularly described as follows:

Commencing at the northeast corner of said Northwest Quarter; thence South 00 degrees 27 minutes 44 seconds West (basis of bearings The Schneider Corporation Project No. 4070.001) along the East line of said Northwest Quarter 2,123.26 feet to the Point of Beginning; thence continuing South 00 degrees 27 minutes 44 seconds West along said East line 511.89 feet to a point which is 62.00 feet north of the Southeast corner of said Northwest Quarter; thence South 88 degrees 35 minutes 28 seconds West parallel with the South line of said Northwest Quarter 532.41 to a point on a non-tangent curve to the left having a radius of 86,157.67 feet; thence northerly along said curve an arc distance of 398.97 feet, subtended by a chord having a bearing of North 14 degrees 59 minutes 03 seconds West with a chord length of 398.97 feet; thence South 74 degrees 47 minutes 12 seconds West a distance of 279.90 feet; thence South 29 degrees 34 minutes 21 seconds West a distance of 27.93 feet to the East right-of-way of U.S. Highway 31, being a point on a non-tangent curve to the left having a radius of 85,857.67 feet; thence northerly along said curve and right-of-way an arc distance of 99.67 feet, subtended by a chord having a bearing of North 15 degrees 37 minutes 42 seconds West with a chord length of 99.67 feet; thence South 60 degrees 24 minutes 03 seconds East a distance of 28.16 feet; thence North 74 degrees 47 minutes 12 seconds East a distance of 280.40 feet to a point on a non-tangent curve to the left having a radius of 86,157.67 feet; thence northerly along said curve an arc distance of 307.41 feet, subtended by a chord having a bearing of North 15 degrees 15 minutes 32 seconds West with a chord length of 307.41 feet; thence North 75 degrees 51 minutes 19 seconds East a distance of 87.02 feet; thence North 84 degrees 33 minutes 20 seconds East a distance of 47.22 feet; thence North 77 degrees 56 minutes 37 seconds East a distance of 54.26 feet; thence North 79 degrees 12 minutes 15 seconds East a distance of 35.86 feet; thence North 82 degrees 25 minutes 27 seconds East a distance of 138.18 feet; thence South 77 degrees 12 minutes 07 seconds East a distance of 49.82 feet; thence South 00 degrees 27 minutes 44 seconds West a distance of 292.00 feet; thence South 89 degrees 32 minutes 16 seconds East a distance of 105.69 to a point on a tangent curve to the left having a radius of 15.00 feet; thence northerly along said curve an arc distance of 23.56 feet, subtended by a chord having a bearing of North 45 degrees 27 minutes 44 seconds East with a chord length of 21.21 feet; thence North 00 degrees 27 minutes 44 seconds East a distance of 75.00 feet; thence South 89 degrees 32 minutes 16 seconds East a distance of 60.00 feet; thence South 00 degrees 27 minutes 44 seconds West a distance of 61.22 feet; thence South 89 degrees 32 minutes 16 seconds East a distance of 152.33 feet to the Point of Beginning, containing 9.837 acres, more or less. Subject to all legal rights of way and easements of record.

LEGAL DESCRIPTION -- SECTION TWO

Part of the Northwest Quarter of Section 16, Township 13 North, Range 4 East of the Second Principal Meridian, Johnson County, Indiana, Being more particularly described as follows:

Commencing at the northeast corner of said Northwest Quarter; thence South 00 degrees 27 minutes 44 seconds West (basis of bearings The Schneider Corporation Project No. 4070.001) along the East line of said Northwest Quarter 1482.26 feet to the Point of Beginning; thence continuing South 00 degrees 27 minutes 44 seconds West along said East line 641.00 feet; thence North 89 degrees 32 minutes 16 seconds West a distance of 152.33 feet; thence North 00 degrees 27 minutes 44 seconds East a distance of 61.22 feet; thence North 89 degrees 32 minutes 16 seconds West a distance of 60.00 feet; thence South 00 degrees 27 minutes 44 seconds West a distance of 75.00 to a point on a tangent curve to the right having a radius of 15.00 feet; thence southerly along said curve an arc distance of 23.56 feet, subtended by a chord having a bearing of South 45 degrees 27 minutes 44 seconds West with a chord length of 21.21 feet; thence North 89 degrees 32 minutes 16 seconds West a distance of 105.69 feet; thence North 00 degrees 27 minutes 44 seconds East a distance of 292.00 feet; thence North 77 degrees 12 minutes 07 seconds West a distance of 49.82 feet; thence South 82 degrees 25 minutes 27 seconds West a distance of 138.18 feet; thence South 79 degrees 12 minutes 15 seconds West a distance of 35.86 feet; thence South 77 degrees 56 minutes 37 seconds West a distance of 54.26 feet; thence South 84 degrees 33 minutes 20 seconds West a distance of 47.22 feet; thence South 75 degrees 51 minutes 19 seconds West 87.02 feet to a point on a non tangent curve to the left having a radius of 86,157.67 feet; thence northerly along said curve an arc distance of 87.70 feet, subtended by a chord having a bearing of North 15 degrees 23 minutes 25 seconds West with a chord length of 87.70 feet; thence North 74 degrees 47 minutes 12 seconds East a distance of 30.00 feet; thence North 15 degrees 12 minutes 48 seconds West a distance of 60.00 feet; thence South 74 degrees 47 minutes 12 seconds West a distance of 30.24 feet to a point on a non tangent curve to the left having a radius of 86,157.67 feet; thence northerly along said curve an arc distance of 184.88 feet, subtended by a chord having a bearing of North 15 degrees 31 minutes 15 seconds West with a chord length of 184.88 feet; thence North 82 degrees 45 minutes 14 seconds East a distance of 836.67 feet to the Point of Beginning, containing 8.008 acres, more or less. Subject to all legal rights of way and easements of record.

16-

**FILED**

JUN 14 2007

*James B. Rishbert*  
AUDITOR, JOHNSON COUNTY

EXHIBIT "B"

Doc ID: 009500010003 Type: MIS  
Recorded: 06/14/2007 at 12:11:41 PM  
Fee Amt: \$17.00 Page 1 of 3  
Workflow# 483869  
Johnson County-Recorded as Presente  
Sue Anne Misiwiec Recorder  
Inst 2007-014950

③

**COMMITMENTS CONCERNING THE USE AND  
DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION  
WITH THE REZONING OF PROPERTY**

In accordance with applicable law, the owner of real estate located on the East side of U.S. 31, approximately 1500 feet south of Pushville Road (700N), in Greenwood, Johnson County, Indiana, which is more particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference (hereinafter REAL ESTATE), makes the following commitments concerning the use and development of the REAL ESTATE hereunder consideration;

**WITNESSETH:**

1. That by the execution of this document, the undersigned does hereby certify and warrant that the REAL ESTATE hereunder consideration is owned in fee simple absolute by \_\_\_\_\_  
Indiana Land Development Corp.

(Owner)

The OWNERS, Indiana Land Development Corporation, warrant that they are the owners of the REAL PROPERTY pursuant to a deed recorded on December 27, 2006, as instrument #2006-033487, in the Recorder's Office of Johnson County, Indiana, and, that this commitment agreement will be recorded in the chain of title of the REAL PROPERTY, and that they have the authority to enter into this Agreement.

2. The REAL ESTATE shall be developed in accordance with the requirements of the appropriate statutes and ordinances, provided, however, that the owner commits that the use and development of the REAL ESTATE shall be as follows:

1. All side yards shall be a minimum of eight (8) feet; and
2. No single-family ranch home shall be smaller than 1,100 square feet.

3. These Commitments shall be binding upon the owner, subsequent owners of the REAL ESTATE, and other persons acquiring an interest therein. These Commitments may be modified or terminated by the decision of the Greenwood Plan Commission made at a public hearing after proper notice has been given.

4. The Commitments contained in this instrument shall be effective upon the later of adoption of Greenwood Common Council Ordinance No. 07-09, which changes zoning on the REAL ESTATE aforesaid from C-3 Commercial - Regional use to R-2B Residential - Single Family use, or the recording of these Commitments.

5. These Commitments shall be considered covenants running with the land and shall bind all subsequent owners to their terms and conditions and subsequent modifications thereto as made pursuant to this instrument, statutes of the State of Indiana, or ordinances of the City of Greenwood.

6. The Commitments may be enforced jointly and severally by:

A. The Greenwood Plan Commission; and

B. Owners of all parcels of ground adjoining the REAL ESTATE to a depth of 300 feet. The identity of such owners shall be determined from the records of the Office of the Johnson County Auditor which lists the current owners of

record. For purposes of this paragraph, the cutoff date for such determination shall be at 12:00 O'Clock noon on the date of filing for enforcement.

The undersigned covenant and warrant that he/she/they is/are duly authorized to execute and deliver the foregoing Commitments and that all necessary action has been taken to approve and adopt the Commitments made herein, and that upon final approval and adoption of the rezoning ordinance described herein, these Commitments shall be the lawful and binding obligations of said owner and all subsequent owners of the real estate.

IN WITNESS WHEREOF, the owner has executed this instrument this 24 day of May, 2007.

"OWNER" of REAL ESTATE

Paul Shoopman - President  
(Printed Name and Title)

STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF Johnson )

Before me, a Notary Public, in and for said County and State, personally appeared Paul Shoopman, who acknowledged the execution of the within COMMITMENTS, and who having been duly sworn upon their oath, stated that the representations contained therein are true and correct to the best of their knowledge and belief.

Witness my hand and Notarial Seal this 24th day of May, 2007.

My Commission Expires: Feb 17, 2008  
Angelika Davis  
Angelika Davis, Notary Public  
Johnson  
County of Residence

This instrument was prepared by Shawna Koons-Davis, Greenwood City Attorney, 225 S. Emerson Avenue, Suite B, Greenwood, Indiana 46143.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Shawna Koons-Davis, City Attorney.