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MASTER DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS  
FOR THE  
HERON CREEK COMMUNITY

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS (the "Master Declaration") is made this 12<sup>th</sup> day of November, 2007 by Waters Edge Land Company, LLC, an Indiana limited liability company, for itself, its successors, grantees and assigns other than the ultimate purchasers of any Land, Dwelling or Lot (hereinafter called the "Declarant").

ARTICLE I

The Property, Declarant's Approvals, Use Restrictions, and Architectural Review

Section 1.01. The Property. The Property subject to this Declaration consists of all that certain real property with any improvements constructed thereon, located in Hancock County, Indiana and more fully described in "Exhibit A" which is attached hereto, and made a part hereof, together with the easements, rights and appurtenances belonging thereto, and any additional real estate, as defined herein, subjected to this Declaration. The Entire Development consists of several land uses, including but not limited to, (i) single family dwellings, (ii) two-family dwellings, (iii) commercial, (iv) condominiums ("Patio Homes"), and (v) multi-family ("Apartments"), and (vi) residential care facilities (individually or collectively, the "Land Use(s)"). Some of the residential uses may be age restricted or age targeted.

Section 1.02. Declarant's Approvals. Notwithstanding anything in the Master Declaration, Supplement Declarations, or By-Laws to the contrary, until all Dwellings, Land, Lots, and other structures in the Entire Development have been constructed, or until Declarant relinquishes such control in writing, whichever occurs first, all residential dwellings of every kind or type, and the color schemes therefore, as well as all commercial building plans, shall first be approved by the Declarant or its designee. All commercial building plans shall include building design and materials, signage, landscaping, parking, and lighting, and shall conform to the Zoning Commitments.

Section 1.03. Use Restrictions and Architectural Review. Use Restrictions for any portion of the Property shall be set forth in the Supplemental Declaration for such portion of the Property, and shall include provisions with regard to architectural review and approval.

ARTICLE II  
Definitions

Section 2.01. Definitions. Unless otherwise stated, the following terms when used in this Declaration, a Supplemental Declaration, if any, an Additional Supplemental Declaration, if any, and in the By-Laws of the Community Association are intended to be consonant with the meanings ascribed to them by this Section 2.01.

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- (a) "Additional Supplemental Declaration" shall mean a supplemental Declaration of Covenants, Conditions, Easements and Restrictions for a particular portion of the Property setting such portion of the Property aside for one or more Land Uses.
- (b) "Assessments" shall mean all levies, charges or sums payable by one or more Owners from time to time upon notification by the Board of Directors. The obligation to pay Assessments is a covenant running with the land. Each Assessment shall be separate and payable by the Owner of each Dwelling, Lot, or Land to which the Assessment is appurtenant.
- (c) "Association" or "Community Association" shall mean the Heron Creek Community Association, Inc., an Indiana not-for-profit corporation, being an association of all of the Owners, which shall have the duties and powers established in this Declaration, Supplemental Declarations, if any, Additional Supplemental Declaration, if any, and in the By-Laws.
- (d) "Board of Directors" or "Board" shall mean a board of no less than five (5) individuals with one (1) member from each Land Use subject to a Supplemental or Additional Supplemental Declaration. The Board shall manage and administer the business, operation and affairs of the Community Association on behalf of the Owners. The initial Board shall be appointed by Declarant pursuant to Section 6.03.
- (e) "By-Laws" shall mean the governing regulations adopted pursuant to this Declaration for the administration of the Community Association, including any amendments which are adopted from time to time.
- (f) "Common Expenses" shall mean expenses for which the Owners are liable as provided herein, including, but not limited to:
- (i) Expenses of administration, maintenance, repair and replacement of the Community Facilities;
  - (ii) Expenses or liabilities agreed upon as common by the Board of Directors;
  - (iii) Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves; and
  - (iv) All other assessments, non-refundable contributions, expenses or charges levied or to be levied pursuant to this Declaration, any Supplemental Declaration, and any Additional Supplemental Declaration, or the By-Laws against Owners.

- (g) "Common Receipts" shall mean the funds collected from the Owners as Assessments and receipts designated as common by the provisions of this Declaration, any Supplemental Declaration and the By-Laws.
- (h) "Common Surplus" shall mean the excess of all Assessments over all Common Expenses.
- (i) "Community Facilities" shall mean and include all of those facilities and portions of the Property which are owned or intended to be owned pursuant to the provisions of this Declaration, any Supplemental Declaration, any Additional Supplemental Declaration or any amendment thereto by the Community Association. The Community Facilities are currently intended to include, but shall not be limited to, open green space land, recreational improvements and areas, community buildings, community lighting, private streets, if any, signage, entry monuments, decorative street signs and street furniture, landscaping, common sidewalks, walking trails and ponds, and any other appurtenant features. Community Facilities are identified as Common Area on the Plat, and do not include Limited Common Areas.
- (j) "Declaration of Condominium" shall mean a Declaration subjecting a particular portion of the Property to the condominium form of ownership and establishing a condominium association, which may or may not be established as a condominium pursuant to the Indiana Condominium Law.
- (k) "Developer" or "Approved Builder" shall mean any person or entity to whom the Declarant conveys a portion of the Property for the development of Lots or parcels of land with or without any of the Declarant's rights contained within this Declaration, the By-Laws or any Supplemental Declaration.
- (l) "Development" shall mean a specifically referenced subdivision subjected to a Supplemental Declaration pursuant to this Declaration.
- (m) "Entire Development" or "Community" shall mean the development created on the Property, and any Additional Real Estate or other property which may be developed or transferred by Declarant, by a Developer, or by an Approved Builder and subjected to this Declaration and which shall also be referred to as the "Heron Creek Community".
- (n) "Land" shall mean any portion of the Property that is transferred by Declarant to a third party for the purpose of further development of that portion of the Property by the third party, its successors and assigns.

- (o) "Limited Charge" shall mean that assessment made against an Owner(s) (i) for services provided to that Owner(s) not otherwise included in Common Expenses or Limited Common Area Assessment, or (ii) for costs incurred from the Owner's negligent conduct.
- (p) "Limited Common Area" shall mean those Community Facilities which are designated for, and subject to easement for, the sole use of an Owner or Owners, or that are for the exclusive use of a specific Development or type of Development, and whose use of the Community Facilities is limited to an Owner or Owners as provided in a Supplemental Declaration. Limited Common Areas are identified as Common Area on the Plat, but may be designated as Limited Common Area by way of a Supplemental Declaration.
- (q) "Limited Common Area Assessment" shall mean that assessment determined by the Board of Directors of the Community Association for the maintenance, repair or replacement of the Limited Common Area.
- (r) "Lot" shall mean a separate and subdivided parcel of land which is shown as a separate unit on a recorded Plat.
- (s) "Member" shall mean the Class A and Class B members of a SubAssociation.
- (t) "Overall Development Plan" shall mean the plan of projected development of the Property and any additional real estate, which may be revised from time to time by the Declarant.
- (u) "Owner" shall mean the record owner (including the Declarant and any Developer or Approved Builder), whether one or more persons or entities, of fee simple title to any Land, Dwelling, Lot or which is situate within the Property, but excluding those persons having an interest merely as security for the performance of an obligation. Multiple owners of a Dwelling or Lot shall together be deemed one Owner for purposes of this Declaration.
- (v) "Person" shall mean a natural individual, corporation, partnership, association, trust or other legal entity or any combination thereof.
- (w) "Plat" shall mean a final subdivision plat depicting all or a portion of the Property recorded in the Office of the Recorder of Hancock County, Indiana.
- (x) "Property" shall mean and include the real property, and all easements, rights and appurtenances belonging thereto, which have been submitted by the Declarant to the provisions of this Declaration.

- (y) "Recorded" shall mean that an instrument has been duly entered of record in the Office of the Recorder of Hancock County, Indiana.
- (z) "Sub-Association" shall mean any non-profit corporation or unincorporated association and its successors, organized and established by Declarant or by Declarant and/or Developer pursuant to or in connection with a Supplemental Declaration.
- (aa) "Supplemental Declaration" shall mean a Supplemental Declaration of Covenants, Conditions, Easements and Restrictions for a particular portion of the Property already subjected to this Master Declaration and, designating any Community Facilities or Limited Common Area, setting forth the obligations, structure and operational procedures of the Advisory Committee and any covenant, conditions, obligations, easements or restrictions which are applicable only to the Property subjected to the Supplemental Declaration. Each Plat or subdivision of the Community may be subjected to a Supplemental Declaration upon the determination of the Declarant.
- (bb) "Zoning Commitments" shall mean the Commitments concerning the use and development standards for the Property recorded in the Office of the Hancock County Recorder as Instrument Numbers I030012286 and I030012286, and any amendments made thereto.

### ARTICLE III Applicability

Section 3.01. Applicability. This Declaration shall be applicable to the Property. All present and future Owners and occupants or tenants of any Land, Dwelling, or Lot, their guests, licensees, servants, agents, employees, and any other person or persons who shall be permitted to use the Community Facilities, and Limited Common Areas shall be subject to this Declaration, the Supplemental Declaration, if any, the By-Laws and any rules and regulations the Board of Directors shall promulgate from time to time to govern the conduct of its Owners and occupancy of the Property. Ownership, rental or occupancy of any Dwelling or Lot in the Property shall be conclusively deemed to mean that the Owner, tenant or occupant has accepted, ratified and will comply with this Master Declaration, the Supplemental Declaration, if any, the By-Laws and any rules and regulations of the Community Association. This Declaration shall apply to any additional real estate for the purposes of development, and any such purchaser accepts the terms of this Declaration by accepting a deed for such real estate that has been subjected to this Declaration. Declarant reserves the right, prior to such transfer, to subject such real estate to a Supplemental Declaration prior to transfer.

Section 3.02. Interpretation of Declaration, the Supplemental Declaration, if any, and By-Laws. In the event of a conflict of interpretation between the provisions set forth in the By-Laws, the Supplemental Declarations, and this Declaration, this Declaration shall govern, except

to the extent this Declaration is inconsistent with the Zoning Commitments, in which event the Zoning Commitments shall control. In the event that the Internal Revenue Code is hereafter amended or changed, both this Declaration and the By-Laws shall be interpreted so as to conform to the provisions of the Internal Revenue Code with respect to non-profit entities, it being the intention to preserve the lawful status of the Association as a bona-fide non-profit entity.

**ARTICLE IV**  
**The Community Facilities and Limited Common Areas**

**Section 4.01. Owner's Easement of Enjoyment of Master Community Facilities.** The Community Facilities located or to be located within the Property are set forth in the Overall Development Plan. To the extent the Declarant subjects any additional real estate to the provisions of this Declaration pursuant to Article VI hereof, the Declarant shall have the right to amend the Overall Development Plan to show any additional Community Facilities erected or to be erected within the Property and the Additional Real Estate subjected to the Declaration. Every Owner shall have the right of ingress and egress over and the right of enjoyment in and to the Community Facilities which right shall be appurtenant to each Land, Dwelling or Lot and shall pass with title to every Land, Dwelling or Lot, subject, nevertheless, to the following provisions:

- (a) The right of the Community Association to make reasonable charges and Assessments for the use of any or all of the Community Facilities, and the obligations of the Community Association under this Declaration to provide for the maintenance, repair and replacement of the Community Facilities.
- (b) The right of the Community Association to suspend the voting rights of an Owner and the right of an Owner to use any of the Community Facilities for the failure to pay in full any Assessment within thirty (30) days of the due date, or for the infraction of any of the rules and regulations of the Community Association after the Board of Directors determines that an infraction has occurred and notifies the Owner of the infraction.
- (c) The right of the Community Association to declare or transfer all or any part of the Community Facilities to any public agency, authority, or utility for those purposes and subject to those conditions agreed to be the Owners. No dedication or transfer shall be effective unless a vote of eighty percent (80%) of the Board of Directors shall be obtained.
- (d) The right of the Community Association to limit or prescribe the number or kinds of guests of Owners or occupants who may use the Community Facilities, to make a charge for use of the Community Facilities by guests of Owners or occupants, or to allow persons who are not Owners to use some or all of the Community Facilities, subject to any fees and rules and regulations which the Board of Directors may establish from time to time.

- (e) The right of the Community Association to establish rules and regulations governing the use of the Community Facilities.
- (f) An easement for the present and future installation and maintenance of electric service, cable service, telecommunication services, domestic water, storm water facilities and sanitary sewer facilities including, but not limited to, laterals, mains, clean outs and manholes, gas, drainage and other utility facilities and the necessary appurtenances to the same which easement shall run in favor of the Declarant, the Community Association and the entity or entities owning or operating these facilities.
- (g) The right and privilege hereby expressly reserved for the Declarant, its successors and assigns other than ultimate Land, Dwelling or Lot purchasers without let or hindrance, to go upon any or all of the Community Facilities, including land conveyed or developed; to construct, reconstruct, repair, renovate, or to correct work done or to be done by themselves, their agents, servants, workmen or contractors.
- (h) An easement in favor of the Declarant, its successors and assigns other than ultimate Land, Dwelling or Lot purchaser, its agents, servants, licensees and invitees for the purposes incident to the operations by the Declarant, in the process of construction and marketing of Dwellings, Lots, and Land.
- (i) The right of the Community Association to enter upon the Land, Lot, or Dwelling of an Owner to fulfill the Community Association's obligations with respect to the Community Facilities and Limited Common Area.
- (j) The right of the Declarant or Board of Directors by designation in a Supplemental Declaration to limit the use and enjoyment of certain portions of the Property subjected to this Master Declaration or to a Supplemental Declaration, or to limit the use and enjoyment of certain facilities within such property, to the sole and exclusive use of less than all of the Owners, and to provide for the assessment by the Community Association of the costs and expenses associated with the maintenance, repair, replacement, operation and administration of such property or facilities by the Community Association to only such Owners.

Section 4.02. Non-Occupant Owners' Use. In the event an Owner leases his Land, Lot or Dwelling, or any part thereof, (where such lease is not prohibited by the Zoning Commitments), the tenant of the Dwelling shall be entitled to use any of the Community Facilities located on the Property or otherwise available for use by all Owners. Such tenant's right to use the Community Facilities shall be deemed as assignment of the Owners' right to use these facilities and shall preclude the non-occupant Owner from also using these facilities (unless otherwise determined by the Board of Directors).

Section 4.03. No Waiver of Use. No Owner may exempt himself from the payment of Assessments levied by the Community Association, nor release his Land, Dwelling or Lot from the liens created for non-payment of Assessments by waiver of the use or enjoyment of the Community Facilities by abandonment of his Land, Dwelling or Lot, by any conveyance or covenant severing the rights and benefits from the Land, Dwelling or Lot or otherwise. The obligation to pay Assessments is absolute and unconditional and, in addition to being a covenant running with the land, is a personal obligation of each Owner and shall not be subject to setoffs or counterclaims.

Section 4.04. Obsolescence. Subject to the provisions of Section 4.05(c), in the event that the Board of Directors shall determine that any Community Facility is obsolete, the Board of Directors may determine whether or not the Community Facility should be demolished. The vote of eighty percent (80%) of the Board shall determine whether the Community Facilities should be demolished. The cost of demolition or replacement shall be a Common Expense.

Section 4.05. Community Facilities.

- (a) The Community Facilities, or portions thereof, shall be conveyed by the Declarant to the Community Association at such time as is determined by the Declarant. The Community Association shall accept ownership of the Community Facilities, or any portion of the Community Facilities, provided such acceptance shall not be deemed a waiver of the Declarant's obligation to complete the Community Facilities, if not completed at the time of transfer. The costs and expenses incurred in the use and operation of the Community Facilities shall be a Common Expense whether the Community Facility is owned by the Declarant or the Community Association. In the event any Community Facility is located within a portion of the Property subject to a Supplemental Declaration creating a condominium, no such Community Facility shall be conveyed to the Community Association, however, in all other respects such Community Facility will be treated in the same manner as other Community Facilities pursuant to this Declaration.
- (b) The Declarant reserves the right in connection with the development of the Community to create additional Community Facilities on the Property, some of which may replace or supplement Community Facilities already erected or installed on the Property.

Section 4.06. Limited Common Area.

- (a) Limited Common Area located or to be located within the Property shall be described in a Supplemental Declaration and shown on a Plat. To the extent the Declarant subjects any additional real estate to the provisions of this Declaration pursuant to Article V hereof, the Declarant shall have the right to amend this Master Declaration or Supplemental Declaration to



show any additional Limited Common Area erected or to be erected within additional real estate subjected to this Declaration.

- (b) The Limited Common Area shall be conveyed by the Declarant to the Community Association at such time as is determined by the Declarant. The Community Association shall accept ownership of the Limited Common Area or any portion of the Limited Common Area, provided such acceptance shall not be deemed a waiver of the Declarant's obligation to complete the Limited Common Area, if not completed at the time of transfer. The costs and expenses incurred in the use and operation of the Limited Common Area shall be a Limited Common Area Assessment whether the Common Area is owned by the Declarant or the Community Association.
- (c) Every Owner or Owners right to the use and enjoyment of the Limited Common Area shall be subject to the following provisions:
  - (i) The right of the Board of Directors of the Community Association to make Limited Common Area Assessments;
  - (ii) The rights and easements granted to the Declarant, Developer and Community Association herein;
  - (iii) The obligation of each Owner to keep those Limited Common Areas which are for the exclusive use of a group of Owners free from debris; and
  - (iv) The obligation of the Owner to secure and insure any personal property maintained in the Limited Common Area exclusively assigned to the Owner.
- (d) Any rights which any Owner, its tenants, guests, licensees, servants, agents, employees or any other persons may have now or in the future to access or use any of the Limited Common Area shall be set forth in any Supplemental Declaration recorded against such Owner's Land, Dwelling or Lot.
- (e) The obligations of the Community Association with respect to Limited Common Area may also be set forth in the Supplemental Declaration or Additional Supplemental Declaration applicable to the Limited Common Area.

ARTICLE V  
Entire Development

Section 5.01. Entire Development. The Declarant may change or alter the plan for the Entire Development without the approval of or notice to any Owner or the Community Association subject however to the requirements or any municipal approvals. The provisions of the Entire Development shall not create any rights in favor of any Owner or the Community Association unless and until any such real estate included in the Entire Development is finally approved and a final subdivision plat is duly recorded by the Declarant or Developer and such real estate is subjected to this Declaration by amendment.

Section 5.02. Reservation of Option to Subject Additional Real Estate to the Declaration. Declarant explicitly reserves the option, until the expiration of five (5) years from the date on which the Declarant sells the final Lot, Dwelling or Land contained in the Entire Development, subject to, from time to time, all or any portion of any additional real estate to this Declaration in accordance with the provisions of this Article V. This option may be exercised by the Declarant without the consent or approval of any Owner or any Eligible Mortgagee except the Department of Housing and Urban Development (HUD) and the Veterans' Administration (VA) to the extent each holds, insures or guarantees any first mortgage lien on any Land, Lot or Dwelling in the Property and requires the Declarant to obtain approval. This option shall not terminate prior to its expiration except by amendment to this Declaration filed of record by the Declarant.

Section 5.03. Reservation of Right to Add Real Estate to Additional Real Estate. Declarant explicitly reserves the right to add parcels of real estate to the additional real estate. Such real estate must be contiguous to the Property or the additional real estate at the time of the proposed addition.

Section 5.04. Procedure for Adding Additional Real Estate or Subjecting Additional Real Estate to Declaration. Upon the Declarant's election to add additional real estate, the Declarant shall, at its own cost and expense, prepare and record an amendment to this Declaration so as to include that additional real estate in the Property. The Declarant shall have the right to record this amendment without the prior approval of the Board of Directors or the Owners.

Section 5.05. Option to Create Additional Community Facilities or Limited Common Area. The Declarant reserves the option, until the expiration of five (5) years from the date on which the Declarant sells the final Land, Lot or Dwelling contained in the Entire Development, to create Community Facilities and Limited Common Area within additional real estate and to convey any of the Community Facilities or Limited Common Area that may be created in the additional real estate to the Community Association in accordance with the provisions of this Article V. This option may be exercised by the Declarant without the consent or approval of any Owner or any Eligible Mortgagee except HUD and VA to the extent each holds, insures or guarantees any first mortgage lien on any Land, Lot or Dwelling in the Property and requires the Declarant to obtain this approval. This option shall not terminate prior to its expiration except by amendment to this Declaration filed of record by the Declarant. The Declarant expressly

reserves the right to create or designate Community Facilities or Limited Common Area within any or all portions of the additional real estate and to convey any of the Community Facilities or Limited Common Area to the Community Association at any time, at different times, in any order and without limitation, until the option herein reserved expires. The Declarant makes no assurances with regard to the order in which these Community Facilities or Limited Common Area may be created or designated nor within which portion of the additional real estate these Community Facilities or Limited Common Area shall be created or designated. The Declarant shall not be required to create or designate Community Facilities or Limited Common Area within all or any portion of the additional real estate.

Section 5.06. Procedure for Creating Additional Community Facilities or Limited Common Area. Upon the Declarant's election to create or designate Community Facilities or Limited Common Area within the additional real estate, the Declarant shall, at its own cost and expense, prepare and record an amendment to this Declaration so as to include the newly created or designated Community Facilities or Limited Common Area in the Entire Development and, to the extent the Declarant shall deem it necessary, to amend or supplement any provisions of this Declaration to account for the newly created or designated Community Facilities or Limited Common Area. The Declarant shall have the right to record these amendments and supplements without the prior approval of the Community Association, its Board of Directors or the Owners.

ARTICLE VI  
The Community Association

Section 6.01. The Community Association.

- (a) Subject to Section 1.02 hereof, the Community Association is the governing body for the Entire Development and is responsible for the following:
- (i) the maintenance, repair, replacement, management, operation and administration of the Community Facilities subject to the provisions of this Declaration;
  - (ii) billing the Sub-Associations, if any, for the Common Expenses and the collection thereof;
  - (iii) any additions or improvements to the Community Facilities;
  - (iv) authority regarding improvements to any Lot;
  - (v) any obligations that may be described in a Supplemental Declaration; and
  - (vi) any other responsibilities set forth in the By-Laws.

- (b) The Community Association shall retain the services of a professional management company to manage the Entire Development.
- (c) The Common Expenses incurred or to be incurred for the utility services, maintenance, repair, replacement, management, operation and use of the Community Facilities, and the making of any additions or improvements to the Community Facilities shall be assessed by the Community Association against and collected from the Sub-Association in accordance with Article IX hereof. Common Expenses with respect to Community Facilities shall be shared by all Owners.
- (d) Limited Common Area Assessments shall be assessed exclusively against the Owners whose Land, Dwelling or Lot is subjected to a Supplemental Declaration describing such Limited Common Area and shall be assessed in accordance with the terms of this Master Declaration and the applicable Supplemental Declaration.

Section 6.02 Membership in Sub-Associations.

- (a) All Owners, upon acceptance of the deed to any Land, Dwelling or Lot, shall become Members of the Sub-Association, if any, for the portion of the Property in which they own a Lot, Dwelling or Land and shall then be obligated to pay all Assessments levied by the Community Association and the Sub-Association. The Sub-Association shall bill the Owners for such Common Expenses and pay same to the Community Association.
- (b) Every Owner shall be entitled to all of the rights and shall be bound by all of the obligations accompanying membership. Any person who is holding an interest in any Land, Dwelling or Lot merely as a security for the performance of an obligation shall not be a Member.
- (c) There shall be two classes of membership in a Sub-Association; Class A Members and the Class B Member.
  - (i) Class A Members shall be all Owners and each shall be entitled to the specific vote set forth in each Supplemental Declaration recorded pursuant to this Declaration.
  - (ii) The Class B Member shall be the Declarant who shall retain all of the votes for the Property and additional real estate not transferred to an Owner, and shall have the specific votes set forth in each Supplemental Declaration.

The Class B membership shall cease and shall be converted to Class A membership as set forth in 6.03(b) herein.

- (d) When more than one person holds an interest or interests in any Land, Dwelling or Lot, all persons shall be one member collectively, and the vote(s) for this Land, Dwelling or Lot shall be exercised as if one (1) person owned such Land, Dwelling or Lot, but in no event shall more than the votes as described in Subparagraph (c) above be cast with respect to any Land, Dwelling or Lot.
- (e) The total number of votes shall be increased to reflect the additional Land, Dwellings or Lots and votes when any additional real estate is subjected to this Declaration. Notwithstanding any other provision of this Declaration or the By-Laws, no action shall be taken or adopted by the Community Association that would in any way affect any of the rights, privileges, powers or options of the Declarant, including, but not limited to, development of the Property or the additional real estate, without the prior written approval of the Declarant.
- (f) Every lawful transfer of title to any Land, Dwelling or Lot shall include membership in a Sub-Association and, upon making this transfer, the previous Owner's membership shall automatically terminate. Except as otherwise expressly provided, membership in a Sub-Association may not be assigned or transferred without the transfer of legal title to any Land, Dwelling or Lot and any attempt at assignment or transfer thereof shall be void and of no effect.

Section 6.03. Board of Directors.

- (a) Subject to the provisions of this Declaration and the By-Laws, the Board of Directors shall have the power to act on behalf of the Community Association. The initial Board of Directors shall consist of a minimum of five (5) members appointed by the Declarant, with one (1) member representing those Owners from each Land Use in existence and subject to a Supplemental Declaration. The Board shall manage and administer the business, operation and affairs of the Community Association on behalf of the Owners. The members of the initial Board of Directors shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. The Declarant-appointed members of the Board of Directors may be replaced with a Director elected by the members of a Sub-Association of a Land Use area other than the Declarant, in accordance with the provisions of Subparagraph 6.03.
- (b) Subject to the right of the Declarant to alter the following procedure so as to have all or part of the transition process occur earlier than as hereafter described, the transition from Declarant-appointed members of the Board of Directors to Board Members other than the Declarant shall occur as follows:

- (i) No later than the annual meeting immediately following the conveyance of all of the Land, Dwellings or Lots contained in a Land Use area subjected to a Supplemental Declaration, the members shall elect one (1) member of the Board of Directors, who shall replace the Declarant-appointed member for such portion of the Property appointed pursuant to Subsection (a) above.
- (ii) Notwithstanding the foregoing, the Declarant shall have the right to appoint a representative to the Board of Directors until six (6) months after the last Land, Dwelling or Lot owned by the Declarant is conveyed by the Declarant, a Developer, or an Approved Builder to an Owner. This representative to the Board of Directors shall receive all notices and information provided to members of the Board of Directors. The Declarant representative shall have the right to veto within ten (10) days any decision of the Board of Directors which he deems adverse to the interest of the Declarant but shall not otherwise be entitled to vote.
- (c) Regardless of the Declarant's status with regard to the Board of Directors, Declarant reserves the right to be and to control any Architectural Control Committee of any portion of the Entire Development subject to this Master Declaration. The Board of Directors shall not obtain control of such Architectural Control Committee until such time as the Declarant affirmatively transfers, in writing, such control to the Board of Directors.

## ARTICLE VII Insurance

**Section 7.01. Liability.** The Board of Directors shall obtain or cause to be obtained "broad-form" comprehensive public liability and property damage insurance covering liability for loss or damage to persons or property in those amounts, against those risks and in those insurance companies which the Board of Directors shall determine from time to time, but in no event less than One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. This insurance shall include protection against liability for property of others, and any other risks customarily covered in similar policies for associations similar to the Community Association. All liability insurance contracts shall contain severability of interest provisions and cross liability endorsements to cover liabilities of the Community Association or the Owners as a group to an individual Owner.

**Section 7.02. Property.** The Board of Directors shall obtain or cause to be obtained "Community" or "blanket" "all-risk" hazard and, if applicable, flood insurance coverage covering damage to the Community Facilities and Limited Community Facilities, all fixtures and equipment, if any, and all personal property owned by the Community Association (the "Insured

Property”).

Section 7.03. Insurance Maintained by Owner.

- (a) Each Owner shall be individually responsible for maintaining "all risk" hazard, and, if applicable, flood insurance coverage for his Land, Lot or Dwelling and the fixtures installed therein and for all personal property of the Owner in a company or companies acceptable under the standards set by the Board of Directors in an amount equal to the maximum insurable replacement value, providing for no "co-insurance", and containing an "agreed amount endorsement" or its equivalent, and, if available, an "Inflation Guard Endorsement". In the event of damage or destruction to any structure on any Land, Lot or Dwelling, the Owner shall repair or replace the structure within one hundred and eighty (180) days.
- (b) Each Owner shall be obligated to repair and restore the damage to his Land, Lot or Dwelling, unless repair or replacement would be illegal under any state local health or safety statute or ordinance or at least eighty percent (80%) of the Board of Directors vote not to rebuild.

Section 7.04. General Insurance Provisions. Premiums for the insurance coverage carried by the Association and related insurance expenses shall be part of the Common Expenses for which Assessments are levied against the Owners as set forth in the By-Laws.

Section 7.05. Damage or Destruction of Community Facilities, Limited Community Facilities; Repair or Replacement. Where loss or damage occurs to any portion of the Community Facilities, Limited Common Area or other insured property, the Community Association shall be obligated to repair and the damage caused by the loss, unless repair or replacement would be illegal under any state or local health or safety statute or ordinance or at least eighty percent (80%) of the Board of Directors vote not to rebuild.

- (a) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration and shall have the right and obligation to negotiate and contract for the repair and restoration of the Community Facilities, Limited Common Area, insured Dwellings or other insured property.
- (b) If the net proceeds of the insurance are insufficient to pay for the estimated cost of repair and restoration (or for the actual cost thereof if the work has actually been done), the Board of Directors shall promptly, upon determination of the deficiency, levy a special assessment for Common Expense against all Owners for that portion of the deficiency as is attributable to the cost of repair and restoration of the Community Facilities and Limited Common Areas for that portion of the deficiency not covered by insurance proceeds. The special assessment funds shall be added by the Board of Directors to the insurance proceeds available for the

repair and restoration.

- (c) In the event the insurance proceeds are sufficient to pay for the cost of restoration and repair, or in the event the insurance proceeds are insufficient, but additional funds are raised by special assessment so that sufficient funds are on hand to fully pay for the restoration and repair, then no Eligible Mortgagee shall have the right to require the application of insurance proceeds to the payment of its loan.

Section 7.06. Damage or Destruction of Community Facilities, Limited Common Area; No Repair or Replacement. If the Community Facilities or Limited Common Area are not repaired or replaced the following shall apply:

- (a) The insurance proceeds attributable to the damaged Community Facilities and Limited Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Property as determined by the Board of Directors; and
- (b) The insurance proceeds attributable to the Community Facilities and Limited Common Area which are not rebuilt shall be utilized by the Community Association to offset Common Expenses or shall be added to reserve accounts, as determined by the Board of Directors.

Section 7.07. Limitation of Liability. Notwithstanding the duty of Board of Directors to maintain and repair the Community Facilities and Limited Common Area or the Dwellings if so provided in a Supplemental Declaration, the Board of Directors shall not be liable for injury or damage caused by the failure of the Board of Directors to maintain or repair the same, except to the extent of the proceeds of insurance carried by the Board of Directors and collected and received therefore.

## ARTICLE VIII Easements

Section 8.01. Utilities. All of that real property subjected to this Declaration shall be subject to an easement for the present and future installation and maintenance of electric service, cable service, telecommunication services, emergency communication and security services, water service, storm water and sanitary sewage services, gas service and other utility services and the facilities and appurtenances necessary to the same, which easement shall run in favor of the Declarant, Developers, the Community Association and the entity or entities owning or operating these facilities and providing the aforementioned services. The Declarant, Developers and the Board of Directors shall have the right to grant to third parties additional utility easements which are deemed reasonable by the Declarant, Developer or Board of Directors in connection with the supply of utility services to the areas of the Property and improvements erected thereon.



Section 8.02. Community Association and Board of Directors' Access. The Community Association and its Board of Directors, officers, agents and employees, shall have the irrevocable right and easement to have access to each Land, Dwelling and Lot as may be necessary for the inspection, maintenance, repair or replacement of any of the Community Facilities or Limited Common Area therein or accessible therefrom or the making of any addition or improvements thereto or to make repairs to the Community Facilities (if these repairs are reasonably necessary for public safety or to prevent damage to the Community Facilities), to the Limited Common Areas, or to abate any violation of this Declaration or any rules or regulations of the Community Association or any violation of any laws or orders of any governmental authorities having jurisdiction over the Community Facilities or Limited Common Area. The Community Association and its Board of Directors shall have the right to grant permits, licenses and easements over and through the Community Facilities and Limited Common Area for utilities, rights of way, and ether purposes reasonably necessary or useful for the proper maintenance and operation of the Community Facilities and Limited Common Area.

Section 8.03. Declarant's Easement for Marketing. The Declarant reserves the right for itself and for any Developer or builder with respect to the marketing of Dwellings to use the Community Facilities and other portions of the Property for the ingress, regress and egress of itself, its officers, employees, agents, contractors, subcontractors, invitees and guests. The Declarant, Developer and Approved Builder shall also have the right, in connection with their marketing of Land, Dwellings and Lots until the conveyance of the last Land, Dwelling or Lot it owns in the Property, to erect signs on the Community Facilities, and to maintain sales offices, management office, rental office and models within the Property. Any damage to the Community Facilities resulting from this easement shall be repaired by the Declarant, Developer, or Approved Builder within a reasonable time after the completion of its sale of all of the Dwellings or Lots in the Property or termination of the use of the Community Facilities, whichever shall occur first. The Declarant agrees to indemnify and to hold the Community Association harmless from all liability for personal injuries and physical property damage resulting from the Declarant's, Developer's or Approved Builder's use of the Community Facilities in conjunction with the marketing of Land, Dwellings or Lots. The rights reserved for the Declarant, Developer and Approved Builder by this Section 8.03 shall remain in effect for as long as the Declarant, Developer or builder shall remain the owner of any Land, Dwelling or Lot in the Property. This Section shall not be amended without the prior written consent of the Declarant.

Section 8.04. Declarant's Easement for Construction. The Declarant reserves for itself and any Developer or builder the right and privilege without let or hindrance with respect to the construction of structures, Dwellings, Community Facilities or any other improvements to go upon any and. all of the Property for purposes of construction, reconstruction, maintenance, repair, renovation, replacement or correction of Community Facilities, Dwellings or other structures and improvements. The Declarant, Developer, and Approved Builder agree to indemnify and hold the Community Association harmless from liabilities from personal injuries and physical damage to property resulting from the exercise of this easement. This easement shall be appurtenant and shall pass with title to every Land, Dwelling and Lot. The rights hereby reserved for the Declarant and Developer and Approved Builder shall last as long as Declarant or

Developer or Approved Builder is the owner of any Land, Dwelling or Lot in the Property. This Section shall not be amended without the prior written consent of the Declarant.

Section 8.05. Encroachments. If any portion of the Community Facilities or Limited Common Area hereafter encroaches upon any Land, Dwelling or Lot, or if any Dwelling, structure or improvements originally constructed made in connection with such structure or Dwelling (including without limitation driveway, patio, parking area or outdoor private living area) hereafter encroaches upon any portion of the Community Facilities or Limited Common Area other than as a result of the purposeful or negligent act or omission of the owner of the encroaching structure or Dwelling or of the Community Association in the case of encroachments by the Community Facilities or Limited Common Area, a valid easement appurtenant to the encroaching Dwelling, structure or improvements or Limited Common Area or Community Facilities for the encroachment and for the maintenance of the same shall exist for so long as the encroachment shall exist. It shall be the responsibility of the Owner whose driveway, patio, parking area or outdoor living area encroaches to maintain, insure, repair and restore such encroaching facilities.

Section 8.06. Continuing Easements. The foregoing easements in Sections 8.01, 8.02, 8.03, 8.04 and 8.05 shall run with the land and inure to the benefit of and be binding upon the Community Association, each Owner, each Eligible Mortgagee and the manager, if any.

#### ARTICLE IX Assessment Obligations

Section 9.01. Owners' Assessment Obligation. Each Owner, by acceptance of the deed for any Land, Dwelling or Lot, whether or not it shall be so expressed in the deed or other conveyance, shall be deemed to covenant and agree to pay to the Community Association (in addition to any other charges or costs levied by the Community Association pursuant to this Declaration) all Assessments including, but not limited to, the following: (a) regular Assessments to be made due and payable on a regular basis as reasonably determined from time to time by the Board of Directors based upon the budget of the Community Association (such assessments shall include any Limited Common Area Assessment allocable by the Board of Directors to such Owner's Land, Dwelling or Lot); (b) special Assessments, fixed, established and collected, from time to time, as provided in this Declaration, in a Supplemental Declaration, in an Additional Supplemental Declaration or the By-Laws; (c) any other charges or Assessments which may be determined by the Community Association, from time to time, to be due and payable by an Owner in accordance with this Declaration; and (d) any interest charges, attorneys' fees, penalties or fines levied by the Board of Directors for non-payment of Assessments or for noncompliance with the terms and provisions of this Declaration, the By-Laws or any rules or regulations created by the Board of Directors. The Community Association shall have the right to assess charges (herein referred to as "Limited Charges") against any one or more Owners to provide services which are exclusively for such Owner or Owners. Notwithstanding the above, the Board of Directors shall have the authority to reduce the regular Assessment chargeable to an Owner until the structure receives a Certificate of Occupancy from the appropriate authorities. The regular and special Assessments and Limited Charges, together with any interest thereon, fines, late charges and costs of collection thereof, as hereinafter

provided, shall be a charge on the land and shall be a continuing lien upon the Land, Dwelling or Lot against which each Assessment is made from the time the Assessments, fines, late charges or costs of collection become due. Each Assessment, together with interest thereon, fines, late charges and costs of collection thereof as hereinafter provided shall also be the personal obligation of the Owner who was the owner of the Land, Lot or Dwelling at the time when the Assessment becomes due. The obligation of each Owner to pay Assessments, interest, late charges, fines, attorneys' fees and costs of collection shall be an absolute and unconditional obligation of each Owner. No Owner may exempt himself from Assessments or other charges due under this Declaration by waiver of use or enjoyment of the Community Facilities or by abandonment of the Land, Dwelling or Lot owned by him or by set off counterclaim.

Section 9.02. Owners' Nonrefundable Contribution. The Community Association shall assess each Owner of Land, Dwelling or Lot at closing, a sum as a nonrefundable contribution to the Community Association, which amount may be used from time to time by the Community Association for the purposes deemed appropriate or desirable by the Board of Directors. The Declarant reserves the right to assess each Developer or Approved Builder at closing, a nonrefundable contribution to the Community Association, unless such contribution is prohibited by an agreement with a Developer or an Approved Builder. The Board of Directors may modify the amount of the nonrefundable contribution to be assessed from time to time without Member approval.

Section 9.03. Owners' Negligence. Each Owner shall be obligated to reimburse the Community Association for any expenses incurred by it in repairing or replacing any part or parts of the Community Facilities or Limited Common Area damaged by his act, omission or negligence or by the Act, omission or negligence of his tenants, agents, guests or licensees, promptly upon receipt of the Community Association's statement therefore or, with approval of the Board of Directors, may make these repairs himself.

Section 9.04. Surplus Funds. Any Common Surplus of the Community Association remaining after payment of Common Expenses and payment of or allocation to reserves may be used by the Community Association as determined by the Board of Directors to repay loans made by Declarant to the Community Association and, to the extent not so used, may be credited to the Owners to reduce their future Assessments. Any funds allocated to reserves must be reasonable and in accordance with standard accepted practices in Hancock County, Indiana and the counties contiguous thereto.

Section 9.05. Time of Payment. Except as otherwise provided in this Declaration, payment of Assessments by Owners shall be made at the discretion of the Board of Directors. The failure of the Board of Directors to formally declare any periodic Assessment shall result in the regular periodic Assessment for the immediately preceding period being the regular periodic Assessment applicable to and due and payable for the next period.

Section 9.06. Lien for Assessments. All Assessments and charges chargeable to any Land, Dwelling or Lot and Owner, including all fines, fees, charges, late charges, interest and costs of collection thereof (including attorneys' fees); and penalties levied for non-compliance with this Declaration, the By-Laws and any rules and regulations of the Community Association

shall constitute a lien against the Land, Dwelling or Lot in favor of the Community; provided that all fines, fees, charges, late charges, interest, costs of collection and penalties shall be subordinate to the lien of any Eligible Mortgagee. This lien shall be effective from and after the time the Assessment or charge becomes due and may be recorded in the public records of Hancock County, Indiana of a claim of lien stating the description of the Land, Dwelling or Lot, the name of the record owner and the date when the Assessment or charge became due. This claim of lien shall include only those sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the Community Association. Upon full payment of all sums secured by the lien and a preparation fee, the party making payment shall be entitled to a recordable satisfaction of lien to be recorded at his sole expense.

Section 9.07. Declarant's Assessment Obligation and Assumption of Deficits. The Declarant shall not be liable for any assessments applicable to any Land, Dwelling or Lot. The Declarant shall have the right, but not the obligation, to subsidize the Community Association Common Receipts. Any payment by the Declarant to subsidize the Community Association shall not be deemed to establish any precedent for further or additional payments. Further, the Declarant may advance funds to the Association to offset deficits on terms and conditions acceptable to the Board of Directors and Declarant.

ARTICLE X  
Transfer of Land, Dwellings and Lots

Section 10.01. Transfer of Lands, Dwellings or Lots. In the event an Owner transfers all of its ownership in any Land, Lot or Dwelling which is subject to this Declaration, the transfer shall automatically include his membership in the Community Association. An Owner may transfer its Land, Dwelling or Lot, which includes membership in the community Association, to any person without the prior consent of the Community Association, the Board of Directors or any other Owner.

ARTICLE XI  
Compliance and Default

Section 11.01. Compliance and Default.

- (a) Each Owner shall be governed by and shall comply strictly with the terms, covenants, conditions and restrictions of this Declaration, the By-Laws, any Supplemental Declaration, any Additional Supplemental Declaration, and any rules and regulations adopted pursuant thereto, and the same as they may be amended from time to time.
- (b) The Board of Directors shall have the power to adopt, amend and enforce compliance with any reasonable rules and regulations relative to the operation, use and occupancy of the Property consistent with the provisions of this Declaration, any Supplemental Declaration or Additional Supplemental Declaration, including, but not limited to enforcement procedures and penalties for violations of this Declaration,

the By-Laws and any rules and regulations adopted pursuant thereto which the Board of Directors shall deem appropriate. Any rules and regulations shall be adopted or amended, from time to time, by means of appropriate resolutions duly approved by the Board of Directors in accordance with the By-Laws. A copy of the rules and regulations and copies of any amendments thereto shall be delivered or mailed to each Owner and occupant of any Land, Lot and Dwelling promptly after the adoption thereof and shall become binding upon all Owners, their successors in title and assigns, and occupants of Land, Lots and Dwellings.

- (c) Failure of the Owner to comply with any provision of this Declaration, any Supplemental or Additional Supplemental Declaration, the By-Laws, or any rules and regulations adopted pursuant thereto shall entitle the Community Association or Owners to the remedies provided in this Declaration, and also to the following relief, none of which shall be exclusive of any other remedies:
  - (i) Suits: Failure to comply with the terms of this Declaration, any Supplemental or Additional Supplemental Declaration, the By-Laws, and any rules and regulations adopted pursuant thereto, as they may be amended from time to time, shall entitle the Community Association or any aggrieved Owner to sue for the recovery of damages or for injunctive relief, or both. The Community Association's determination not to pursue any action shall not preclude any Owner from doing so, however, the Community Association shall not be subject to any claim for reimbursement of costs and expenses, including attorney fees, even if the Community Association receives a benefit from any such action. This relief shall not be exclusive of other remedies provided by law.
  - (ii) Costs and Attorneys' Fees: In any proceeding arising because of an alleged failure of an Owner to comply with the terms of this Declaration, any Supplemental or Additional Supplemental Declaration, the By-Laws, and any rules and regulations adopted pursuant thereto, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees in the same manner as provided in Article IX herein; provided, however, that no costs or attorneys' fees may be recovered against the Board of Directors in any action unless the court shall first expressly find that the Board of Directors acted in bad faith.
  - (iii) No Waiver of Rights: The failure of the Declarant, or the

Board of Directors, or any Owner to enforce any covenant, restriction or other provision of this Declaration, Supplemental Declaration, the By-Laws or any rules and regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

Section 11.02. Complaint and Hearing Procedure.

- (a) Unless the internal remedies provided by this Section and any rules and regulations promulgated by the Board of Directors shall be expressly waived by the Community Association, or the Community Association fails or refuses to act, no action at law or in equity shall be commenced by any Owner or occupant of any Land, Lots or Dwelling until this internal remedy is pursued to exhaustion.
- (b) The Board of Directors, or a committee appointed by the Board of Directors, shall hear complaints from owners or occupants of any Land, Lots or Dwellings of alleged violations of this Declaration (other than violations with respect to Assessment obligations), the Supplemental Declaration, any Supplemental or Additional Supplemental Declaration, the By-Laws and any rules and regulations of the Community Association.
- (c) The Board of Directors, or the committee appointed by the Board of Directors, shall hold a hearing on any complaint within thirty (30) days after the receipt by the Board of Directors of a formal notice of complaint from an Owner or Occupant of any Land, Lot or Dwelling. A decision shall be issued in writing by the Board of Directors within ten (10) days after the conclusion of the hearing.
- (d) The Board of Directors shall have the right to establish various rules and procedures governing the operation and administration of the complaint and hearing process and the enforcement of this Declaration, the Master Plan, the Supplemental Declaration, the By-Laws and any rules and regulations.
- (e) In hearings before the Board of Directors, or a committee appointed by the Board of Directors, all parties shall be entitled to be represented by counsel.

ARTICLE XII  
Amendments

Section 12.01. Generally. Subject to the other provisions of this Declaration relative to amendment, including without limitation the provisions of Articles IV and V hereof, this Declaration may be amended in the following manner:

- (a) **Before Any Conveyances:** Prior to the transfer of any Land, Dwelling or Lot by the Declarant to an Owner, the Declarant may amend this Declaration in any legal fashion as the Declarant may deem appropriate. After the first transfer of title, the terms of the following subparagraphs shall apply; provided, however, that any other provisions of this Declaration setting forth other conditions of amendment shall take precedence.
- (b) **Notice:** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Board of Directors or Community Association in which a proposed amendment is considered, and shall be served upon all Owners in the manner hereinafter provided for service of notices.
- (c) **Resolution:** An amendment may be proposed by either the Board of Directors or by at least twenty percent (20%) of the Board of Directors. Other than amendments to this Declaration, the Supplemental Declaration, any Additional Supplemental Declaration, or the By-Laws (the "Association Documents") or termination of the Community Association or revocation of this Declaration made as a result of destruction, damage or condemnation, and subject to the applicable provisions of this Declaration, no proposed amendment shall be effective unless it has the affirmative vote of at least eighty percent (80%) of the total votes of the Board of Directors, either in person or by proxy, at a meeting of the Community Association, including the following:
- (i) Voting;
  - (ii) Assessments or assessment liens or subordination of liens;
  - (iii) Reserves for maintenance, repair and replacement of the Community Facilities;
  - (iv) Insurance or fidelity bonds;
  - (v) Rights to use the Community Facilities;
  - (vi) Responsibility for maintenance and repair of the Community Facilities;
  - (vii) Interests in the Community Association and rights to the Community Facilities; and
  - (viii) Any provisions which are for the express benefit of Eligible Mortgagees.

- (d) **Agreement:** An amendment may be made by an agreement signed and acknowledged by at least eighty percent (80%) of the total votes of the Board of Directors of the Community Association in the manner required for the execution of a deed, and this amendment shall be effective when recorded.
- (e) **Proviso:** Notwithstanding anything in this Article to the contrary, no amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers and options of the Declarant unless the Declarant shall join in the execution of the amendment. The Declarant may amend this Declaration, any Master Declaration, any Supplemental Declaration, any Additional Supplemental Declaration, or the By-Laws in any manner which will not materially adversely affect those Owners other than the Declarant by recording the amendment or amendments on or before the conveyance of the last Lot, Dwelling or Land in the Property. However, Zoning Commitments may not be amended except by following the procedure stated therein as well as any applicable statute or ordinance.
- (f) Any addition or amendment to the Association Documents shall not be considered material if it is for the purpose of correcting technical errors.
- (g) **Execution and Recording:** A copy of each amendment shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by the officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Office of the Recorder of Hancock County.

ARTICLE XIII  
Duration and Termination

Section 13.01. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, for a term not to exceed twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated, at least six (6) months before the commencement of any extension, by a vote of not less than eighty percent (80%) of the total votes of the Board of Directors of the Community Association subjected hereto, evidence of which shall be recorded.

Section 13.02. By Unanimous Agreement. This Declaration may be terminated at any time by the unanimous agreement, in writing, in the form of a Deed of Revocation, executed by all of the Board of Directors, the Declarant (while it owns any Land, Lot or Dwelling within the Property) and Eligible Mortgagees. This deed of revocation shall become effective upon being recorded.



ARTICLE XIV  
Notice

Section 14.01. Notice. All notices required to be served upon Owners pursuant to this Declaration, the Supplemental Declaration or the By-Laws shall be sufficient if delivered to the Land, Lot or Dwelling or mailed to the Member at the Dwelling mailing address by regular mail. The effective date of a notice shall be the date of delivery to the Land, Lot or Dwelling, or any other address upon specific notice to the Association in the case of actual delivery and a date three (3) days after deposit in the mail in the case of notice sent by mail.

ARTICLE XV  
General Provisions

Section 15.01. Severability. If any provisions of this Declaration are determined to be invalid, that determination shall not affect the validity or effect of the remaining provisions hereof, the By-Laws or any rules and regulations, all of which shall continue in effect as if the invalid provisions had not been included herein.

Section 15.02. Headings. The headings herein are for reference purposes only and shall not affect the meaning or interpretation of this Declaration.

Section 15.03. Effective Date. This Declaration shall become effective when it has been duly entered of record.

Section 15.04. Binding. This Declaration shall inure to the benefit of and shall be binding upon the Declarant's successors or assigns.

Section 15.05. Construction. Number and gender, is used in this Declaration, shall extend to and include both singular and plural and all genders as the context and construction require.

In Witness Whereof, the Declarant has set its hand on the date first written above.

WATERS EDGE LAND COMPANY, LLC

BY: THE BRADFORD GROUP, INC.,  
Managing Member

BY:   
James L. Brothers, President

APPROVED AND CONSENTED BY:

MT COMFORT DEVELOPMENT  
COMPANY, LLC

BY: THE BRADFORD GROUP, INC.,  
Managing Member

BY: [Signature]  
James L. Brothers, President

STATE OF INDIANA )  
COUNTY OF Marion )

SS:

Before me, a Notary Public, in and for said County and State, personally appeared James L. Brothers, the President of The Bradford Group, Inc., Managing Member of Mt Comfort Development Company, LLC, who acknowledged the execution of the foregoing Declarations, and who, having been duly sworn, stated that they represent and certify that they have been fully empowered by proper resolution to execute and deliver this Declaration and that the representations therein contained are true.

Witness my hand and Notarial Seal this 12 day of November, 2007.

[Signature]  
Notary Public

My Commission Expires:  
County of Residence:

Joan Fitzwater  
State of Indiana Notary Public  
Resident of Marion County  
My Commission Expires 10/29/2014

STATE OF INDIANA )  
COUNTY OF Marion )

SS:

Before me, a Notary Public, in and for said County and State, personally appeared James L. Brothers, the President of The Bradford Group, Inc., Managing Member of Waters Edge Land Company, LLC, who acknowledged the execution of the foregoing Declarations, and who, having been duly sworn, stated that they represent and certify that they have been fully empowered by

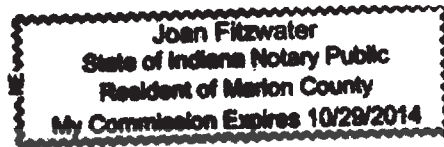
proper resolution to execute and deliver this Declaration and that the representations therein contained are true.

Witness my hand and Notarial Seal this 12 day of November, 2007.

Joan Fitzwater  
Notary Public

My Commission Expires:  
County of Residence:

re/heron creek community/master declaration.blb.110607



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. Mike Gibson  
MIKE GIBSON

Prepared by Ronald L. Pritske, Attorney At Law

## Land Description Heron Creek Phase I

A part of the Northeast Quarter in Section 25, Township 16 North, Range 5 East in Buck Creek Township, Hancock County, Indiana; said part being more particularly described as follows:

BEGINNING at a stone marking the Northwest corner of said Northeast Quarter; thence South 89 degrees 56 minutes 05 seconds East along the North line of said Northeast Quarter a distance of 708.00 feet to the Northeast corner of a 0.021 acre tract of land described as Tract D in Instrument No. 04-0012990 in the Office of the Recorder of said Hancock County, Indiana; thence South 00 degrees 54 minutes 58 seconds East along the Easterly boundary of said 0.021 acre tract a distance of 132.00 feet to the Northerly boundary of a 92.462 acre tract of land described in Instrument No. 04-0012992 in the Office of said Recorder; thence South 89 degrees 56 minutes 05 seconds East along said Northerly boundary and being parallel with the North line of said Northeast Quarter a distance of 379.60 feet to the Southwest corner of a 0.036 acre tract of land described in Instrument No. 05-0007554 in the Office of said Recorder; thence North 00 degrees 54 minutes 54 seconds West along the Westerly boundary of said 0.036 acre tract a distance of 132.00 feet to the Northwest corner thereof and being the North line of said Northeast Quarter; thence South 89 degrees 56 minutes 05 seconds East along said North line a distance of 259.27 feet to the Northeast corner of the East half of said Northeast Quarter; thence South 00 degrees 54 minutes 12 seconds East along the West line of the East half of said Northeast Quarter a distance of 338.08 feet to the Southeast corner of a 0.113 acre tract of land described in Instrument No. 04-00122990 in the Office of said Recorder; thence North 89 degrees 37 minutes 15 seconds West along the Southerly boundary of said 0.113 acre tract a distance of 14.67 feet to an Easterly corner of a 92.462 acre tract of land described in Instrument No. 04-0012992 in the Office of said Recorder; (the next five (5) calls are along the boundaries of said 92.462 acre tract); (1) thence North 89 degrees 49 minutes 38 seconds West a distance of 88.39 feet; (2) thence South 68 degrees 04 minutes 57 seconds West a distance of 233.99 feet; (3) thence South 28 degrees 28 minutes 26 seconds West a distance of 153.06 feet; (4) thence North 89 degrees 56 minutes 05 seconds West a distance of 196.36 feet; (5) thence South 16 degrees 38 minutes 02 seconds East a distance of 30.98 feet to the beginning of a curve tangent, concave Westward, the radius point of which bears South 73 degrees 21 minutes 58 seconds West a distance of 335.00 feet; thence Southerly along said curve, through a central angle of 30 degrees 00 minutes 55 seconds an arc distance of 175.49 feet to the end of said curve; thence North 83 degrees 02 minutes 45 seconds West a distance of 120.46 feet to the beginning of a tangent curve, the radius point of which bears North 06 degrees 57 minutes 15 seconds East a distance of 117.63 feet to the end of said curve; thence North 89 degrees 56 minutes 05 seconds West a distance of 538.53 feet to the West line of said Northeast 1/4; thence North 00 degrees 54 minutes 54 seconds West along said West line a distance of 700.12 feet to the Point of Beginning. Containing 17.340 acres more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

This plat consists of Common Areas 'A', 'B', 'C', 'D', and 'E'. The dimensions are shown in feet and decimal points thereof. Area within the subdivision dedicated to Hancock County for use of dedicated street right-of-way is 3.575 acres more or less.

## Land Description Heron Creek Phase II, Section 1

A part of the Northeast Quarter in Section 25, Township 16 North, Range 5 East in Buck Creek Township, Hancock County, Indiana; said part being more particularly described as follows:

Commencing at a stone marking the Northwest corner of said Northeast Quarter; thence South 00 degrees 54 minutes 54 seconds East along the West line of said Northeast Quarter a distance of 835.12 feet to a 5/8" capped rebar "Gibson" and the Point of Beginning; thence South 89 degrees 56 minutes 05 seconds East a distance of 33.01 feet to a 5/8" capped rebar "Gibson"; thence North 00 degrees 03 minutes 55 seconds East a distance of 135.00 feet to a 5/8" capped rebar "Gibson"; thence South 89 degrees 56 minutes 05 seconds East a distance of 505.52 feet to the beginning of a curve, tangent, concave Easterly, the radius point of which bears North 42 degrees 53 minutes 55 seconds East a distance of 187.50 feet; thence Southerly and Southeasterly along said curve, through a central angle of 35 degrees 56 minutes 40 seconds an arc distance of 117.63 feet to the end of said curve; thence South 83 degrees 02 minutes 45 seconds East a distance of 120.45 feet to a point on a curve, tangent, concave Westerly, the radius point of which bears North 76 degrees 37 minutes 07 seconds West a distance of 335.00 feet, said point also being on the Easterly line of a 92.462 acre tract of land described in Instrument No. 04-00122990 in the Office of the Recorder of said Hancock County; (the next seven (7) calls are along the boundaries of said 92.462 acre tract); (1) thence Southerly along said curve, through a central angle of 11 degrees 59 minutes 31 seconds, and arc distance of 70.12 feet to the end of said curve; (2) thence South 25 degrees 22 minutes 44 seconds West a distance of 42.30 feet to the beginning of a curve, tangent, concave Easterly, the radius point of which bears South 64 degrees 37 minutes 36 seconds East a distance of 265.00 feet; (3) thence Southwesterly and Southeasterly along said curve, through a central angle of 52 degrees 13 minutes 58 seconds, an arc distance of 241.58 feet to a non-tangent point of a compound curve, the radius point of which bears North 73 degrees 16 minutes 22 seconds East a distance of 50.00 feet; (4) thence Southeasterly along said curve through a central angle of 55 degrees 01 minutes 58 seconds, an arc distance of 48.03 feet to a point of reverse curve, the radius point of which bears South 18 degrees 14 minutes 24 seconds West a distance of 70.00 feet; (5) thence Southeasterly along said curve, through a radius point of which bears North 84 degrees 44 minutes 01 seconds East a distance of 50.00 feet; (6) thence Southeasterly along said curve, through a central angle of 49 degrees 19 minutes 37 seconds, an arc distance of 43.05 feet to a point of reverse curve, the radius point of which bears South 35 degrees 24 minutes 24 seconds West a distance of 325.00 feet; (7) thence Southeasterly along said curve through a central angle of 00 degrees 06 minutes 38 seconds, an arc distance of 0.63 feet to a 5/8" capped rebar (Gibson); thence South 21 degrees 54 minutes 50 seconds West a distance of 122.76 feet to a 5/8" capped rebar (Gibson); thence South 09 degrees 52 minutes 30 seconds East a distance of 87.51 feet to a 5/8" capped rebar (Gibson); thence South 24 degrees 20 minutes 40 seconds West a distance of 243.73 feet to a 5/8" capped rebar (Gibson); thence South 00 degrees 54 minutes 54 seconds East a distance of 50.00 feet to a 5/8" capped rebar (Gibson); thence South 10 degrees 18 minutes 30 seconds East a distance of 92.35 feet to a 5/8" capped rebar (Gibson); thence South 08 degrees 24 minutes 13 seconds West a distance of 3.94 feet to a 5/8" capped rebar (Gibson); thence South 89 degrees 05 minutes 06 seconds West a distance of 160.35 feet to a 5/8" capped rebar (Gibson); thence South 57 degrees 14 minutes 08 seconds West a distance of 56.85 feet to a 5/8" capped rebar (Gibson); thence South 89 degrees 05 minutes 06 seconds West a distance of 279.60 feet to a 5/8" capped rebar (Gibson); thence North 33 degrees 27 minutes 20 seconds West a distance of 135.56 feet to a 5/8" capped rebar (Gibson); thence North 82 degrees 01 minutes 45 seconds West a distance of 136.70 feet to the West line of said Northeast Quarter and said point being marked by a 5/8" capped rebar (Gibson); thence North 00 degrees 54 minutes 54 seconds West along said West line a distance of 868.93 feet to the Point of Beginning. Containing 18.249 acres more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

This plat consists of fifty-four (54) lots, and common areas designated as 'F', 'G', 'H', 'I', and 'J'. The dimensions are shown in feet and decimal points thereof. Area within the subdivision dedicated to Hancock County for use of dedicated street right-of-way is 2.973 acres more or less.