



PC 8/26/14BCD

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF ROSEMONT AT WYNNE FARMS**

THIS Declaration of Covenants, Conditions and Restrictions of Rosemont at Wynne Farms (hereafter "Declaration"), made this 8<sup>th</sup> day of September, 2014, by WYNNE FARMS DEVELOPER, LLC, an Indiana limited liability company (hereafter "Declarant");

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain Property, located in Hendricks County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A" (hereafter, the "Property"), upon which a residential subdivision known as Rosemont at Wynne Farms (hereafter the "Development") will be developed;

**WHEREAS**, Declarant desires to subdivide and develop the Property;

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

**ARTICLE I**

**DEFINITIONS**

The following are the definitions of the terms as they are used in this Declaration:

Section 1.1 "Association" shall mean the *Rosemont at Wynne Farms Homeowners Association, Inc.*, a not-for-profit corporation, the membership and power of which are more fully described in Article IX of this Declaration.

Section 1.2 "Board" or "Board of Directors" shall mean the Board of Directors of the *Rosemont at Wynne Farms Homeowners Association, Inc.*

Section 1.3 "Builder" means a person or entity regularly engaged in the business of constructing single-family residences for sale and responsible for the original construction of a residence on a Lot.

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Section 1.4 "Committee" shall mean the *Development Standards and Architectural Control Committee*, as more fully described in Article VI of this Declaration.

Section 1.5 "Common Area" shall mean those areas (i) designated on current and future Plats as a "Block", "Common Area", "C.A.", "Limited Common Area", "LCA", and (ii) any other areas designated by the Declarant for the common use and enjoyment of the residents of the Development.

Section 1.6 "Declarant" shall mean Wynne Farms Developer, LLC, and any successors and assigns of it that it designates in one or more written recorded instruments to have the rights of Declarant under the Declaration.

Section 1.7 "Declaration" shall mean this Declaration, as from time to time amended.

Section 1.8 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property.

Section 1.9 "Drainage Board" means the Hendricks County Drainage Board.

Section 1.10 "Federal Agencies" shall mean (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.

Section 1.11 "Grievance Committee" means the Grievance Committee established in Section 12.1 below.

Section 1.12 "Lot" shall mean any parcel of residential Property designated on a Plat that is recorded in the Office of the Recorder of Hendricks County, Indiana.

Section 1.13 "Mortgagee" shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the Common Area who has notified the Association of this fact in writing.

Section 1.14 "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant and a Builder.

Section 1.15 "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 1.16 "Plat" shall mean the subdivision plats of the Property which are recorded with the Recorder of Hendricks County, Indiana.

Section 1.17 "Pond Area" means any Common Area on which a Pond now exists or is later constructed by Declarant and "Pond" means a body of water which now exists or is later constructed by Declarant in a Pond Area.

Section 1.18 "Residence" shall mean any structure intended exclusively for occupancy by single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single family residential lot.

Section 1.19 "Special Use" shall mean any use defined or identified in any applicable zoning ordinance as a "Special Use".

Section 1.20 "Zoning Ordinance" shall mean the ordinance titled Wynne Farms (PUD – Planned Unit Development) Zoning Ordinance and Subdivision Controls, as annexed into the Town of Brownsburg, Indiana pursuant to Ordinance No. 2008-25 of the Town of Brownsburg, Indiana.

## ARTICLE II

### CHARACTER OF THE DEVELOPMENT

Section 2.1. In General. No structure shall be erected, placed or permitted to remain upon any Lot except a Residence. All Property located within a Plat which has not been designated by numbering shall be used in a manner determined by the Declarant. Lots may be used only for single-family residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Property than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 2.2. Other Restrictions. All Property shall be subject to the easements, restrictions, and limitations of record appearing on a Plat and 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.

## ARTICLE III

### EASEMENTS

Section 3.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a plat:

(A) Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, electric lines, gas lines, telephone lines, fiber optic cable, high speed internet lines, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved by any entity to which the easement is dedicated shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated.

Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

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

(B) Designated Mounding, Landscaping, and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, and/or landscape maintenance access easements are hereby reserved unto Declarant, during the Development Period, and, thereafter, unto the Association, for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground. 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 during the Development Period, and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association.

(C) Easement Work. Notwithstanding any architectural approval under Article VI below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any Owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.1 (A) above and without any obligation of replacement.

Section 3.2 General Drainage, Utility, Sewer and other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Residence or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and

pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(A) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit the installation and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Residence. Any Drainage, Utility and Sewer Easement shall include all areas of the Property outside any Residence, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a Pond(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

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

(C) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

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

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

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

(iii) Describe more specifically or to change the description of any Drainage, Utility and Sewer Easement, Pond Easement, and/or Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hendricks County, Indiana.

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

#### **ARTICLE IV**

##### **ADDITIONAL PROVISIONS RESPECTING OF SANITARY SEWER UTILITY**

Section 4.1 Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and give utility companies, whether public or private, as well as any governmental authorities, the right of ingress/egress.

Section 4.2 No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or right-of-ways may be removed, damaged, or destroyed by the applicable utilities without an obligation of repair or replacement.

Section 4.3 No mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, or other improvements shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of these which are placed within easements or right-of-ways may be removed by the applicable utilities without the obligation of replacement.

Section 4.4 All Owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the residence to its connection to the sanitary sewer main.

Section 4.5 The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains to the sanitary sewers is prohibited.

Section 4.6 Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

#### **ARTICLE V**

##### **COVENANTS AND RESTRICTIONS**

Section 5.1 Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning

Ordinance of the municipality having zoning jurisdiction over the Property may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Property than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 5.2 Address Identification. The numbers representing the address of each Residence will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Committee.

Section 5.3 Lighting. All homes will have two dusk to dawn lights located on the sides of the garage doors. Street lights may be installed by Declarant in the utility easements on Lots and in the Common Areas. Street lights shall be operated and maintained by the Association. The Association reserves the right to remove street lights deemed no longer necessary by the Board of Directors.

Section 5.4 Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

Section 5.5 Driveways. All driveways in the Property shall be concrete in material.

Section 5.6 Water Systems. Each Owner shall connect to the water main maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability, or other charges lawfully established with respect to connections thereto.

Section 5.7 Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot 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 Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such Swale. Lots within the Property may be included in a legal drain established by the Drainage Board. In such event, each Lot 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 the Lot. The elevation of a Lot 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.

Section 5.8 Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the identification of development of the Property and the sale of Lots therein, no sign of any kind shall be displayed to the public view of any Lot except that one (1) sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a Builder to advertise the property during construction and sale.

Section 5.9 Fencing. 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 eighteen (18) inches shall be permitted between the front property line and the front building set back 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 shall be (i) unpainted cedar, dog-eared shadow box on both sides of the fence, (ii) wrought iron, or (iii) wrought iron in appearance but made with aluminum or other acceptable material, unless otherwise approved by the Committee. All fencing shall have a maximum height of 48 inches above grade, except (i) if the Lot contains an in-ground swimming pool, then the maximum height of the fencing shall be 72 inches above grade, and (ii) if the Lot abuts a Pond, then the maximum height of the fencing shall be 42 inches above grade starting at a point that is 24 feet behind the rear foundation line of the house. All fencing on a Lot shall be uniform in height, style, and color and substantially similar in material. All fencing shall not extend past the rear foundation line of the house towards the street, unless approved by the Committee. 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 Committee, which shall approve or disapprove the location of all fences; provided, however, that all fencing erected on a Lot must be erected either (i) within six (6) inches of the property line of such Lot, or (ii) more than four (4) feet from the property line of such Lot. Owners of Lots adjoining Lots on which a fence is erected within six (6) inches of the property line shall have the right to connect a fence to the fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Committee. The Committee 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 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.

Section 5.10 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. 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, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs may constitute a nuisance. In the event of successful enforcement by an Owner, the Declarant, or the Association of the provisions thereof, 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.

Section 5.11 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view from the street (either within the garage or behind a Committee-approved fence or screen), except not more than 24 hours prior to, and 12 hours after its removal thereof, when it may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 5.12 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted



pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs and cats shall so control or confine them so as to avoid barking and/or roaming which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than two (2) of the same type (dog, cat, bird) of pet nor 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 without the unanimous consent of the Architectural Review Committee and 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 Members at any meeting.

Section 5.13 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot unless the smoke therefrom would not blow upon any other Lot. Owners shall use appropriate incinerators and shall at all times be in compliance with all applicable legal requirements for outside burning.

Section 5.14 Antenna Systems. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Committee. The Committee may adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible from public view from the street. It is the intent of this provision that the Committee shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Committee conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 5.15 Exterior Lights. Except on Lots 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 rear lot line so as to shine or reflect directly upon another Lot.

Section 5.16 Electric Bug Killers. Electric Bug Killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

Section 5.17 Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot 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 cost incurred by the Association shall be assessed to the Owner. The Owner shall reimburse the Association within thirty (30) days of the date on which the Owner is invoiced by the Association. The Association shall have the right to collect any outstanding maintenance assessments in the manner described in Article XI. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

Section 5.18 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, or as approved by the Committee, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on the Property.

Section 5.19 Diligence in Construction. Subject to inclement weather, every Residence shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming.

Section 5.20 HVAC Units. No heat pumps, air conditioning units or gas meters will be installed in the front of the Residence.

Section 5.21 Pond and Pond Area(s). Except as otherwise provided, no individual using a Pond, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in 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 (i) drainage of the Property and (ii) fishing from the shoreline of the Pond by Owners and their family members and guests, 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 and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Pond.

Section 5.22 Mailboxes. All mailboxes and posts must be approved by the Committee and, within each Section of the Development, shall be standard as to size, location, post, design, height, material, composition and colors. The Builder upon the initial Lot closing to the homeowner shall install the initial mailbox for each Lot, which meets the above criteria. The Owner agrees to maintain and paint said mailbox and post in conformance with all other mailboxes.

Section 5.23 Maintenance of Lots and Improvements. Each Owner shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (B) Remove all debris or rubbish from the Lot;
- (C) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;
- (D) Cut down and remove dead trees from the Lot; and,
- (E) Within sixty (60) days following completion of a Residence, the Owner shall

landscape the lot in accordance with the provisions set forth in this Declaration, weather permitting.

Section 5.24 Clothes Lines. No clotheslines may be erected on any Lot.

Section 5.25 Outbuildings and Animal Quarters. Any and all forms of outbuildings, including but not limited to, sheds, storage sheds, pool houses, animal quarters, and play houses, which are not directly connected to the main house on any Lot are prohibited, unless the same are necessary or incident to the Declarant's, Builder's or Association's business or activities upon the Property. Animal quarters or kennels which are connected to the Residence must be approved by the Committee.

Section 5.26 Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, swing and slide sets, and trampolines shall not require approval by the Committee, provided that (i) such equipment is not more than eight (8) feet high (to the highest point of the structure) and properly painted and maintained by the Owner in good repair, (ii) 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 (iii) such swing and slide sets are constructed of wood. Metal swing and slide sets are prohibited. Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee.

Section 5.27 Plumbing. All plumbing vent stacks are to be located on the rear of the Residence.

Section 5.28 Subsurface Drains and Sump Pump Discharges. Subsurface drains have been provided in certain areas within drainage easements 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 the Builder on such Lots shall connect all sump pump discharge lines to such laterals. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Lot Owner in accordance with the following:

(A) The limits of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the home 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 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 said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs 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 shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XI of this Declaration.

Section 5.29 Swimming Pools and Hot Tubs. Only permanent, in-ground pools with professional construction, approved by the Committee, shall be permitted upon a Lot. All submittals to the Committee shall include landscape plans. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Committee approvals. Hot Tubs must also be approved by the Committee.

Sections 5.30 Tennis Courts, Racquetball Courts, Paddleball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities will not be permitted without approval from the Committee. All submittals to the Committee shall include landscape plans. Basketball goals may be installed on a lot adjacent to driveway without Committee approval provided that they have white fiberglass or translucent fiberglass or glass backboards. Independent basketball courts may not be constructed on a Lot without written Committee approval. 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 prohibited. Temporary or portable basketball goals and courts are not permitted.

Section 5.31 Vents. All metal and PVC roof or range vents will be painted to blend with roof color.

Section 5.32 Windows-Doors. If storm doors are installed, they must be painted to match or compliment the exterior of the Residence. No unfinished aluminum doors or windows will be allowed.

Section 5.33 Street Signs. Decorative street signs that do not conform to applicable municipal 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.

Section 5.34 Fuel Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

Section 5.35 Garbage and Other Refuse. No Lot Owner in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse, including compost on his or her Lot.

Section 5.36 Home Occupations. No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, 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 applicable Zoning Ordinance, may be permitted: any use conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, which use is clearly incidental and secondary to the use of the Residence 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 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; 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 shall be permitted to operate sales trailers, model homes, and sales offices.

Section 5.37 Open Drainage Ditches and Swales. 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 easements, 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. Property Owners must maintain these swales as grassways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Lot Owner.

(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 said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs 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 Article XI of this Declaration.

Section 5.38 Roofing Materials. The roofing materials on all Residences within each Section of the Development shall be similar in color, and shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Committee.

Section 5.39 Solar Panels. No solar panels shall be permitted on any Residence.

Section 5.40 Temporary Structures. No temporary house, trailer, garage or other outbuilding shall be placed or erected on any Lot, except by Declarant or a Builder.

Section 5.41 Vehicles Parking. No trucks one (1) ton or larger in size, campers, trailer, motor homes, boats, snowmobiles, jet ski or similar vehicles shall be parked on any street in the Property. Any recreational vehicle or trailer, camper, snowmobile, jet ski, or boat shall not be permitted to remain on any driveway or Lot except within a closed garage and shall not be regularly parked upon unpaved areas. There shall be no outside storage of commercial trucks, trailers, boats, junk or inoperable cars, or fuel tanks. At no time shall any vehicle be parked in such a way as to block pedestrian access along the public sidewalk adjacent to the street, or prevent mail delivery, or prevent access to any driveway. Each Owner shall be responsible for his or her own vehicles as well as those vehicles belonging to the Owner's guests.

Section 5.42 Wells. Water wells shall not be drilled on any of the Lots except as required to irrigate common areas.

Section 5.43 Occupancy or Residential Use of Partially Completed Residence Prohibited. No Residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy has been issued.

Section 5.44 Streets, Sidewalks, and Street Landscaping.

(A) Maintenance. Declarant shall maintain all streets and curbs in good condition satisfactory for the purpose for which they were constructed until their dedication has been accepted by the controlling municipality.

(B) Landscaping. All landscaping within the street rights-of-way is subject to the approval of the appropriate governmental authority. Each Owner shall cut all grass and trim all other landscaping in the rights-of-way adjoining his Lot lines and shall maintain all sidewalks in the rights-of-way nearest his Lot lines. Each Owner shall immediately replace any street trees and lighting required by this Declaration, the Plat, or any other document controlling maintenance of Lots.

(C) Street Lights and Decorative Street Signs. All street lights and decorative street signs located within the right-of-way of any street shall be maintained by the Association.

Section 5.45 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system shall be installed or maintained on any Lot.

ARTICLE VI

ARCHITECTURAL CONTROLS

Section 6.1 Approvals. 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 Committee, by one (1) member thereof.

Section 6.2 Development Standards and Architectural Control Committee. A Development Standards and Architectural Control Committee, composed of at least three (3) members, shall exist and shall be appointed by the Declarant until the end of the Development Period, and appointed by the Board of Directors thereafter. Such members shall be subject to removal by the Declarant at any time, with or without cause until the end of the Development Period, and subject to removal by the Board of Directors at any time, with or without cause, thereafter. Any vacancies from time to time shall be filled by appointment of the Declarant until the end of the Development Period, and by appointment of the Board of Directors thereafter. The Declarant may, at its sole option, at any time hereafter, relinquish for a period of time to the Association the power to appoint and remove one or more members of the Committee.

Section 6.3 Intentionally deleted.

Section 6.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. The Committee for its permanent files shall retain one copy of submitted material. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered DENIED.

Section 6.5 Exercise of Discretion. Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every

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

Section 6.6 Inspection. The Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Section 6.7 Liability of Committee, Declarant, Association. Neither the Committee nor any agent thereof, nor the Declarant, or Association 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 plans submitted to it, nor shall the Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee, Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, the compliance of proposed plans with laws and zoning ordinances, or the materials to be used. All parties should seek professional construction advise, engineering, and inspections on each Lot prior to proposing construction.

Section 6.8 Common Areas Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the Committee: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, and/or sign landscape easement, (ii) any entrance monument or signage identifying the Development or any section thereof and/or (iii) street signage.

Section 6.9 Lot Improvements. No dwelling, building structure, fence, deck, driveway, swimming pool, rear yard tennis or basketball courts, or improvement of any type or kind (including significant landscaping or stacking of wood) shall be constructed or placed on any Lot without the prior approval of the Committee. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed construction. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, set backs, and rights-of-way and (iii) any landscape plans required by the Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 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 Committee shall deem appropriate. It is also recommended that a certified survey be prepared to insure that a resident is not encroaching on an adjacent homeowner or in a Common Area. If Owner has encroached on an adjacent Owner's property or in a common area, the encroaching Owner will, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the Committee in the Committee's sole and absolute

discretion, the Committee may pre-approve a Builder's plans and specifications for the original construction of a Residence and, in the event of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots without further approvals from the Committee.

No fence or screen of any kind will be permitted if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties shall be considered by the Committee when reviewing applications for approval.

Section 6.10 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

(A) The plans, specifications, drawings or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of this 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.

Section 6.11 Power to Grant Variances. The Committee may allow reasonable variances or adjustments of 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, no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development, and any such variance granted shall not be considered as precedent setting.

Section 6.12 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography, and in keeping with the intent of the Declarant.

## ARTICLE VII

### CONTIGUOUS LOTS

Section 7.1 Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, such Owner must apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house 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 single-dwelling house. In addition, the Owner must obtain all requisite and necessary permits and approvals from the municipality having zoning jurisdiction over the Property; provided, however, that with respect to the Lots so combined, the Owner of the combined Lots shall be obligated to pay Annual Assessments, One-Time Assessments, and/or Special Assessments for each originally platted Lot together constituting the combined Lots, and such Annual Assessments, One-Time Assessments, and Special Assessments shall be a lien on the combined Lots, all per the terms and conditions of Article X below.



## ARTICLE VIII

### USE AND OWNERSHIP OF COMMON AREA

Section 8.1 Ownership. A license upon such terms, conditions, rules and regulations as the Declarant, and successor, assigns or licensees of the Declarant, shall from time to time grant, for the use and enjoyment of the Common Area, is granted to the Persons who are from time to time members of the Association; provided, however, that no residential development shall occur in the Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment in common with all other Owners, in and to the Common Areas which nonexclusive right and easement of enjoyment shall be appurtenant to and pass with the title to every Lot. The Common Areas shall be conveyed by quitclaim deed to the Association. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Area to the Association.

Section 8.2 Use. Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Association. Any Common Area depicted on the recorded plats of the Development or designated by the Declarant as a Common Area shall remain for the exclusive use of the Owner(s), and their family members, guests, tenants, or contract purchaser who reside on the Lot(s). Neither the Declarant's execution or recording of the plats nor the doing of any other act by the Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area.

Section 8.3 Use by Owners of Pool Facility Located in the Northfield at Wynne Farms Subdivision. Declarant is the developer of the single-family, residential subdivisions within the Wynne Farms PUD real estate project called (i) Northfield at Wynne Farms, (ii) Birch Run at Wynne Farms, (iii) Mapleton at Wynne Farms, (iv) Rosemont at Wynne Farms and (v) Grand Haven at Wynne Farms. Declarant, as the developer of the Northfield at Wynne Farms subdivision, intends to construct a pool facility located within the Northfield at Wynne Farms subdivision (the "Pool"), which shall be owned and operated by the Northfield and Birch Run at Wynne Farms Homeowners Association, Inc. (the "Northfield and Birch Run HOA"). Pursuant to that certain Declaration of Covenants, Conditions and Restrictions of Northfield and Birch Run at Wynne Farms dated June 9, 2005 and recorded May 3, 2006 as Instrument Number 200600011333 in the Office of the Recorder of Hendricks County, Indiana (the "Northfield and Birch Run Declaration"), as amended from time to time, the Pool shall be available for use not only to the members of the Northfield and Birch Run HOA, but also to the owners of all residences in Mapleton at Wynne Farms, Rosemont at Wynne Farms and Grand Haven at Wynne Farms (each a "Pool-Related Community", and collectively, the "Pool-Related Communities"; the owners of residences in the Pool-Related Communities hereinafter referred to as the "Other Owners") and their family members, guests, tenants, and contract purchasers, on the terms and conditions which follow:

(A) On or before the 31<sup>st</sup> day of May of each calendar year after the date that construction of the Pool is completed and the Pool is available for use, the Other Owners shall be permitted, at their option, to deliver to the Northfield and Birch Run HOA an annual pool fee (the "Pool Fee"). The Pool Fee for calendar year 2015 shall be \$250.00 per residence in the Pool-Related Communities, and may be increased, each calendar year thereafter, in an amount no greater than the percentage increase, if any, in the consumer price index (all Urban Consumers, United States average, all items 1967 = 100), or its successor index (the

“Consumer Price Index”), over the prior calendar year. If in any year, the Northfield and Birch Run HOA does not increase the Pool Fee by the full amount of the percentage increase in the Consumer Price Index, the Northfield and Birch Run HOA is not allowed to “catch up” in any subsequent year by increasing the Pool Fee by an amount greater than the percentage increase in the Consumer Price Index over the prior calendar year.

(B) Only those Other Owners who deliver the Pool Fee to the Northfield and Birch Run HOA on or before the 31<sup>st</sup> day of May of each calendar year shall be permitted to utilize the Pool for the calendar year in which said Pool Fee is received, except that Other Owners who purchase a residence in a Pool-Related Community after the 31<sup>st</sup> day of May, can pay a reduced Pool Fee and use the Pool for the remainder of that year, where the reduced Pool Fee shall be pro-rated based on the period of time from the date that the Other Owner closes on its purchase of his residence to Labor Day of that year, but the reduced Pool Fee shall be no less than \$100.

(C) In the use and enjoyment of the Pool, the Other Owners shall be subject to the same rules and regulations to which the members of the Northfield and Birch Run HOA are subject.

(D) The terms and conditions related to the use of the Pool that are contained in the Northfield and Birch Run Declaration may not be amended, modified or eliminated without the consents of the boards of directors of all homeowners associations existing in the Pool-Related Communities.



## ARTICLE IX

### ROSEMONT AT WYNNE FARMS HOMEOWNERS ASSOCIATION, INC.

Section 9.1 Association Duties. The duties of the Association shall include the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the Property, (ii) the maintenance and repair of the Common Area including, but not limited to, any and all lighting, landscaping, amenity areas, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments and signage, and the landscaping surrounding such entrances monuments and signage, (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and/or any sign landscape easement, (v) the performance of any other obligations and duties of the Association specified herein.

Section 9.2 Board of Directors. Prior to the end of the Development Period, members of the Board of Directors shall be appointed by the Declarant, vacancies in the Board of Directors shall be filled by the Declarant, and members of the Board of Directors may be removed and replaced by the Declarant, at any time and for any reason. After the end of the Development Period, the Owners shall elect a Board of Directors as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 9.3 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

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

(B) Class B. The Class B member shall be the Declarant. At all times prior to expiration of the Class B Membership, as provided below in this Section 9.3 (B), the Class B member shall have the same number of votes at any meeting in which votes are to be taken as is held collectively by all Class A members, plus one hundred (100) additional votes. The Class B Membership shall terminate and be converted to Class A Membership and the Development Period shall expire upon the happening of the earlier of the following:

- (i) When the Class B member no longer owns any portion of the Property;
- or
- (ii) December 31, 2050; or
- (iii) When, in its sole discretion, the Declarant expressly specifically terminates and waives in writing its right to Class B Membership. The Declarant reserves the right to assign some of its rights and obligations under this Declaration without terminating the Development Period and without terminating or waiving its right to Class B Membership.

Section 9.4 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 9.5 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less. The Association shall at all times be managed by a professional management company.

Section 9.6 Limitations on Rights of the Association. As long as there is a Class B Member, the Association may not use its resources, nor take a public position in opposition to future phases of the Development proposed by the Declarant or changes to current phases of the Development proposed by the Declarant. Nothing in this paragraph shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name, or on the behalf of the Association.

## ARTICLE X

### ASSESSMENTS

Section 10.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant and any Builder, 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 to the Association the following:

- (A) Annual Assessments (hereafter defined);
- (B) One-Time Assessment (hereafter defined);
- (C) Special Assessments (hereafter defined) for costs of enforcement of the Declaration, capital improvements and operating deficits, copies of Association documents if requested by a member, and such assessments to be established and collected as hereinafter provided or established by the Board; and
- (D) Violation Assessments (hereafter defined) levied for a violation of this Declaration.

Section 10.2 Annual Budget. By majority vote of the Board of Directors, the Board of Directors 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 and all Supplemental Declarations can effectively be met.

#### Section 10.3 Annual Assessment.

(A) Amount. The Annual Assessment provided for herein shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an Owner other than Declarant or a Builder. The Annual Assessment, commencing during the calendar year in which the first Lot is conveyed to an Owner other than the Declarant or a Builder, shall be Five Hundred Twenty-Five Dollars (\$525.00) per year per Lot. The Annual Assessment for the calendar year shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the Annual Assessment at least thirty (30) days in advance of the effective date of such increase. The initial due date for Annual Assessments shall be January 1<sup>st</sup> of each calendar year, and such assessment shall be subject to collection and late charges beginning on January 31<sup>st</sup> of each calendar year.

(B) Purpose of Assessments. The Annual Assessment levied by the Association shall be used in the reasonable discretion of the Board of Directors to fulfill the duties and obligations of the Association specified in this Declaration.

(C) Method of Assessment. By a vote of a majority of the Board of Directors, the Board of Directors shall, on the basis specified in Section 10.7 below, fix the Annual Assessment for each assessment year at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board during any calendar year shall be entitled to increase the Annual Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners. The Board of Directors shall establish the date(s) the Annual Assessment shall become due, and the manner in which it shall be paid.

After the end of the Development Period, the Annual Budget must reflect the estimated revenues and expenses for the budget year, and the estimated surplus or deficit as of the end of the current budget year. The Association shall provide each Owner with: (1) a copy of the proposed Annual Budget; or (2) written notice that a copy of the proposed Annual Budget is available upon request at no charge to the Owner. At the same time, the Association shall provide each Owner with a written notice of the amount of any increase or decrease in the Annual Assessment paid by the Owners that would occur if the proposed Annual Budget is approved. After all of the foregoing take place, the Association shall hold a meeting pursuant to the following subparagraph (i) and (ii):

(i) After the end of the Development, and subject to subparagraph (ii) below, the Annual Budget must be approved at a meeting of the Members by a majority of the Members of the Association in attendance at a meeting called and conducted in accordance with the requirements of this Declaration, the Association's Articles and the Association's By-Laws. For purposes of this meeting, a Member is considered to be in attendance at the meeting if the Member attends: (1) in person; (2) by proxy; or (3) by any other means allowed under Indiana law or under this Declaration, the Association's Articles or the Association's By-Laws.

(ii) If the number of Members in attendance at the meeting held under subparagraph (i) above does not constitute a quorum as defined in the Association's By-Laws, the Board may adopt an Annual Budget for the Association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved annual budget last approved by the Association.

Section 10.4 One-time Assessment. Upon (i) the closing of the initial conveyance of each Lot by Declarant to an Owner other than a Builder, or (ii) the sale of each Lot by a Builder (either by deed or by installment sale, conditional sale or land-contract sale), the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of Two Hundred Fifty Dollars (\$250.00) against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation of the Development, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

Section 10.5 Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, other activity that is the responsibility of an Owner hereunder but which such Owner has not undertaken as required hereunder, for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain and/or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 10.6 Violation Assessment. In addition to all other assessments as may be authorized herein, the Board of Directors may levy a Violation Assessment to an Owner, (i) for a violation against this Declaration or (ii) for damages if any portion of the Common Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee. In the event of such damage, the Board shall

have the right to undertake the necessary maintenance, repair or replacement. The choice between repair or replacement is in the sole discretion of the Board.

Section 10.7 Basis for Assessment.

(A) Lots Generally. Each Lot owned by a person other than Declarant or a Builder shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(B) Lots Owned by Declarant or Builder. Declarant and any Builder shall not be required to pay the Annual Assessment, the One-Time Assessment and the Special Assessment so long as any Residence constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Residence as a residence or leased to an individual or an entity for use as a Residence.

Section 10.8 Notice and Due Date. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors.

Section 10.9 Assessment Liens. 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 against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

Section 10.10 Failure of Owner to Pay Assessments. No Owner, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Residence belonging to such Owner, may exempt himself or herself from paying Annual Assessments or Special Assessments, or from contributing toward the expenses of administration and/or maintenance and repair of the Common Areas and toward any other expense lawfully agreed upon. Each Owner shall be personally liable for the payment of all Annual Assessments, Special Assessments, Violation Assessments and all other charges. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Annual Assessments, Special Assessments, or Violation Assessments when due, the lien for such assessment on the Owner's Residence may be foreclosed by the Board of Directors for and on behalf of the Association, as provided by law. Upon the failure of an Owner to make payments of any Annual Assessments, Special Assessments, or Violation Assessments within ten (10) days after such are due, the Board of Directors, in its discretion and regardless of whether litigation is commenced, may:

- (A) impose a uniform monthly late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board of Directors 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, notwithstanding any other provisions hereof to the contrary;
- (C) require that, in addition to the delinquent assessment and any applicable late charge, the Owner of the respective Residence also pay (i) any attorney's fees incurred

incident to the collection of the delinquent assessment and (ii) collection costs incurred by the Association to the managing agent for processing delinquent owners' accounts;

- (D) suspend such Owner's right to use the Common Areas as provided in the Indiana Nonprofit Association Act of 1991, as amended; and
- (E) suspend such Owner's right to vote as provided in the Indiana Nonprofit Association Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Annual Assessments, Special Assessments, and/or Violation Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Annual Assessments, Special Assessments, and/or Violation Assessments without foreclosing or waiving the lien securing the same. In any action to recover an Annual Assessment, Special Assessment, and/or Violation Assessments, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to collection costs incurred by the Association to the managing agent for processing delinquent owners' accounts and reasonable attorney's fees, from the Owner of the respective Residence.

Section 10.11 Certificates. The Association shall, upon reasonable request by an Owner, at any time, furnish a letter in writing signed by an officer of the Association, indicating the accounting status of assessments on a Lot showing the balance due the Association, if any.

Section 10.12 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of assessments levied under this Article X. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessments which became due or are attributable to the period of time prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE XI

### BORROWING AND CONTRACTURAL LIMITS

Section 11.1 Approval of Certain Contracts; Meeting; Vote by the Members. The Board may not enter into any contract that would result in a Special Assessment or the increase in the existing Annual Assessment, payable by the affected Owner, in the amount of more than five hundred dollars (\$500.00) per year for each affected Owner unless: (1) the Board holds at least two (2) Association meetings of the members concerning the contract; and (2) the contract is approved by the affirmative vote of at least two-thirds (2/3) of the affected members. The Board shall give notice of the first such Association meeting to each member of the Association at least ten (10) calendar days before the date the meeting occurs. The provisions in this Subsection 11.1 do not apply to a contract entered into by a Board that would resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law.

Section 11.2 Borrowing, Money, Approval by the Members. The Association may not borrow money during any calendar year on behalf of the Association in an amount that exceeds the greater of:

- (A) five thousand dollars (\$5,000) during any calendar year; or
- (B) if the Association operated under an Annual Budget in the previous calendar year, an amount equal to at least ten percent (10%) of the previous Annual Budget of the Association;

unless borrowing the money is approved by the affirmative vote of a majority of the members of the Association voting under this Subsection 11.2. A vote held under this Subsection 11.2 must be conducted by paper ballot. The Association shall distribute paper ballots to persons eligible to vote at least thirty (30) days before the date the votes are to be opened and counted. Votes cast under this provision shall be opened and counted at a public meeting held by the Association. None of the provisions and requirements in this Subsection 11.2 shall apply to money borrowed by the Association that is needed to: (1) resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law; or (2) address an emergency that affects the public health, safety, or welfare.

## ARTICLE XII

### GRIEVANCE PROCEDURES

The following grievance procedure shall apply to disputes or claims other than Exempt Claims (defined below):

Section 12.1 Composition and Term of Grievance Committee. The Board shall establish a Grievance Committee consisting of three (3) persons, each of whom must be a member who is not on the Board or on the Architectural Control Committee. The term of office for each member on the Grievance Committee shall be for not more than one (1) year, and may be staggered as the Board deems appropriate. The members of the Grievance Committee shall select among themselves a chair member, who shall lead the meetings of the Grievance Committee but who shall have no greater authority than any other member on the Grievance Committee. The Board shall notify all members of the identities of the members of the Grievance Committee, including its chair.

Section 12.2 Purpose. The purpose of the Grievance Committee shall be to receive complaints and disputes, other than Exempt Claims (defined below) by and between (i) two or more members, whether arising out of a purported breach of the restrictions set forth in the Declaration in the use of a particular Lot or Lots, or otherwise; and (ii) one or more members and the Association.

Section 12.3 Meetings of the Grievance Committee. Although the Grievance Committee may meet without all members of the Grievance Committee present, it may only act if two members of the Grievance Committee are present. The Grievance Committee shall not be required to meet more than once per calendar month.

Section 12.4 Authority and Procedure. The Grievance Committee's authority shall be limited to the informal mediation of the matters that may come before it, but the Grievance Committee shall have no authority to render legally binding decisions upon those that come before it. Individuals shall submit matters to be presented to the Grievance Committee in writing to either the chair of the Grievance Committee or the President of the Board. Individual meetings of the Grievance Committee shall be conducted using Roberts Rules of Order or other procedures the Grievance Committee may adopt in writing from time to time. Minutes from the meetings of the Grievance Committee shall be delivered to the Secretary of the Board for inclusion in the records of the Association.



Section 12.5 Conflict of Interest. A member of the Grievance Committee shall have a conflict of interest if such member has a direct financial interest in the outcome of the subject grievance procedure or if such member determines, in such member's sole discretion, that he or she is biased or prejudiced with respect to the subject grievance. In the event of a conflict of interest involving one member of the Grievance Committee, the other two members of the Grievance Committee shall act on behalf of the committee. If two or more members of the Grievance Committee have a conflict of interest, the Grievance Committee shall so notify the Board and the Board shall appoint replacements for the limited purpose of hearing that particular matter.

Section 12.6 Consultation with Manager. The Grievance Committee may consult with any outside firm or individual hired by the Association to manage the Association (the "Manager") on any complaints and disputes except for those referenced in subsection 12.2 above, and may invite the Manager to attend or otherwise participate in the meetings of the Grievance Committee.

Section 12.7 Exempt Claims. Claims regarding any of the following (collectively the "Exempt Claims") are exempt from this Article XII and, as such, shall not be heard by the Grievance Committee:

- (A) Claims relating to determinations by, or matters delegated by this Declaration to, the Committee;
- (B) The Association's Claim for Assessments and any action by the Association to collect Assessments;
- (C) Claims arising out of or pertaining to any matter made the subject of litigation pending in or concluded by a court of competent jurisdiction.

Section 12.8 Litigation. Claimants shall not, as a condition to the commencement of litigation, be required to first commence, follow or conclude the Grievance Procedures set forth in this Article XII, and the determinations of the Grievance Committee regarding any particular claim shall not be legally binding upon the parties to such claim or prevent the parties from initiating litigation regarding such claim. If litigation regarding a claim is commenced (i) prior to the filing of a claim with the Grievance Committee or (ii) while the Grievance Committee is hearing a pending claim, then the Grievance Committee shall discontinue its process regarding such claim.

Section 12.9 Release. All members and any and all Claimants, by filing a claim with the Grievance Committee or by participating in the Grievance Procedure set forth above, hereby release the Declarant, the Association, the Board, the officers of the Association, the Grievance Committee and the members of the Grievance Committee from any and all determinations of and actions by the Grievance Committee.

## **ARTICLE XIII**

### **REMEDIES**

Section 13.1 Delay or Failure to Enforce. 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.

Section 13.2 In General. 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 these Restrictions, or to compel compliance with these Restrictions and Covenants, 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.

## ARTICLE XIV

### EFFECT ON BECOMING AN OWNER

Section 14.1 The Owner(s) of any Lot 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 XV

### TITLES

Section 15.1 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 be taken to mean or apply to the feminine or to the neuter.

## ARTICLE XVI

### GENERAL PROVISIONS

Section 16.1. Enforcement and Declarant's Exemption. The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the 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 the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Notwithstanding anything in this Declaration to the contrary, (i) the Declarant and any Builder reserves a right to carry on construction, development, and sales activities, to place equipment, machinery, supplies and signs, construct and maintain models or other structures, and park vehicles of prospective or actual purchasers, lessees, or employees and personnel of the Declarant and Builder, on any part of the Property owned by the Declarant, a Builder, or the Association and (ii) none of the terms, conditions, provisions, and restrictions set forth in this Declaration shall be construed, in any manner, to limit any activity of the Declarant or a Builder in the construction, development, and sales activities pertaining to the Property.

Section 16.2. Severability; Headings; Conflict. Invalidation of any one of the provisions 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, the Declaration shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.

Section 16.3 Statute of Frauds. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States of America.

Section 16.4 Duration. This Declaration and its covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and Declarant, and shall run with the last and shall be binding on all parties and all Persons claiming under them until January 1, 2070, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless changed per the terms of Section 16.5 below.

Section 16.5. Amendment. Until after the occurrence of the end of the Development Period, 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 and, therefore, for instance only and not by way of limitation, the Declarant reserves the right to amend this Declaration to comply with any requirements of the Federal Agencies. After the end of the Development Period, modifications and amendments to this Declaration may be made from time to time upon the affirmative vote of seventy-five percent (75%) of all Members of the Association at any Annual or Special meeting called for that purpose; provided, however, that the full text of any proposed amendments shall be included in the notice of such Annual or Special meeting and the voting requirements specified for any action under any provisions of this Declaration shall also apply to any amendment of such provisions, and no amendment shall be effective which is in contravention of the duties, responsibilities or obligations of the Association or the Members as provided in this Declaration.

## ARTICLE XVII

### DECLARANT'S RIGHTS

Section 17.1 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 Hendricks County, Indiana.

Section 17.2 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 any Builders authorized by Declarant may maintain and carry upon portion of the Common Area, and other portions of the Property and Lots 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 including, but not limited to, business offices, signs, model units, sales offices, and sales trailers.





## EXHIBIT "A"

### LAND DESCRIPTION

A part of the South Half of the Northeast Quarter of Section 26, Township 16 North, Range 1 East of the Second Principal Meridian in the Town of Brownsburg, Lincoln Township, Hendricks County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Northeast Quarter; thence North 01 degrees 04 minutes 25 seconds West on and along the west line of said Northeast Quarter Section 452.45 feet to the Point of Beginning of this description; thence continue North 01 degrees 04 minutes 25 seconds West on and along the west line of said Northeast Quarter Section 879.72 feet to the northeast corner (established per record documents) of the South Half of said Northeast Quarter Section; thence North 88 degrees 17 minutes 32 seconds East on and along the north line of said Half-Quarter Section 2,520.70 feet; thence South 36 degrees 36 minutes 25 seconds West 113.76 feet; thence South 72 degrees 12 minutes 52 seconds West 152.01 feet; thence South 63 degrees 07 minutes 33 seconds West 389.74 feet; thence South 08 degrees 16 minutes 59 seconds West 423.41 feet; thence North 88 degrees 05 minutes 06 seconds West 416.53 feet; thence South 69 degrees 44 minutes 01 seconds West 114.41 feet; thence South 31 degrees 29 minutes 45 seconds West 103.37 feet; thence South 18 degrees 39 minutes 15 seconds West 110.61 feet; thence South 37 degrees 27 minutes 36 seconds West 81.14 feet; thence South 01 degrees 21 minutes 50 seconds East 192.48 feet; thence South 88 degrees 12 minutes 59 seconds West 148.76 feet; thence North 85 degrees 33 minutes 19 seconds West 99.80 feet; thence North 89 degrees 03 minutes 04 seconds West 118.49 feet; thence North 17 degrees 55 minutes 17 seconds West 27.64 feet; thence North 86 degrees 53 minutes 35 seconds West 70.00 feet; thence South 22 degrees 01 minutes 18 seconds West 24.49 feet; thence North 89 degrees 28 minutes 22 seconds West 116.97 feet to the point of curvature of a non-tangent curve concave northeasterly having a central angle of 10 degrees 21 minutes 42 seconds and a radius of 1,750.00 feet; thence Northwesterly on and along said curve an arc distance of 316.48 feet (said arc being subtended by a chord having a bearing of North 75 degrees 44 minutes 59 seconds West and a length of 316.05 feet); thence North 70 degrees 34 minutes 08 seconds West 358.65 feet; thence North 71 degrees 42 minutes 53 seconds West 137.26 feet to the Point of Beginning containing 46.07 acres, more or less.



**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS OF ROSEMONT AT WYNNE FARMS**

This First Amendment to Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms (the "First Amendment") is made and entered into this 23<sup>rd</sup> day of September, 2014 (the "Effective Date"), by Wynne Farms Developer, LLC, an Indiana limited liability company ("WFD");

WITNESSETH:

WHEREAS, WFD is the Declarant pursuant to the Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms recorded with the Recorder of Hendricks County, Indiana on September 22, 2014 as Instrument No. 201419724 (the "Declaration");

WHEREAS, unless otherwise defined in this First Amendment, all capitalized terms in this First Amendment shall have the meaning ascribed to them in the Declaration; and

WHEREAS, WFD desires to amend the Declaration in order to clarify the terms of Section 5.9 of the Declaration, pursuant to this First Amendment.

NOW, THEREFORE, in consideration of the foregoing preambles and recitations, the Declaration is hereby amended as follows:

1. Preambles and Recitations. The foregoing preambles, recitations, and definitions are made a part of and incorporated into this First Amendment as though fully set forth herein.
2. Section 5.9. Section 5.9 of the Declaration is hereby deleted in its entirety and replaced with the following:

"Section 5.9 Fencing. 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 eighteen (18) inches shall be permitted between the front property line and the front building set back line except where such planting is part of Residence landscaping approved by the Committee and the prime root thereof is within six (6) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". All fencing shall be (i) unpainted cedar, dog-eared shadow box on both sides of the fence, (ii) wrought iron, or (iii) wrought iron in appearance but made with aluminum or other acceptable material, unless otherwise approved by the Committee. All fencing shall have a maximum height of 48 inches above grade, except (i) if the Lot contains an in-ground swimming pool, then the maximum height of the fencing shall be 72 inches above grade, and

(ii) if the Lot abuts a Pond, then the maximum height of the fencing shall be 42 inches above grade starting at a point that is 24 feet behind the rear foundation line of the house. All plans for approval of fencing which are submitted to the Committee shall identify all corners of the subject Lot, and the Lot Owner shall be responsible for installing the fence in accordance with the approved plans. All fencing on a Lot shall be uniform in height, style, and color and substantially similar in material. All fencing shall not extend past the rear foundation line of the house towards the street, unless approved by the Committee. No fence or wall 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 or wall. No fence may be erected on a Lot without prior approval of the Committee, which shall approve or disapprove the location of all fences. All fencing erected on a Lot must be erected either (i) within six (6) inches of the property line of such Lot, or (ii) more than four (4) feet from the property line of such Lot. Each Owner who has a fence erected that is located within six inches of the property line of its Lot, hereby approves of each applicable adjacent Lot Owner to encroach upon the Owner's Lot up to a maximum of six (6) inches in order for (x) the applicable adjacent Lot Owner to connect its adjacent Lot Owner's fence to the Owner's fence already erected, (y) for such applicable adjacent Lot Owner to subsequently maintain its adjacent Lot Owner's fence within the encroached area of the Owner's Lot, and (z) for the applicable adjacent Lot Owner to subsequently mow and/or otherwise maintain the portion of the Owner's Lot located between the Owner's fence and the property line of the applicable adjacent Lot Owner. Under no circumstances shall such encroachment give rise to a claim of adverse possession or easement by prescription. In the event that a fence is already erected on an adjoining Lot within six (6) inches of the property line, then the Owner of a Lot desiring to install a new fence shall either (i) connect the Owner's new fence to the existing fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Committee, or (ii) install the Owner's new fence more than four (4) feet from the property line so that the gap between the Owner's new fence and the existing fence on the adjoining Lot will be at least four (4) feet wide. The Committee may establish further restrictions and design standards with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Pond. All fences shall be kept in good repair. Each Owner shall properly maintain, mow, and trim grass on all portions of such Owner's Lot, including the portions of the Lot located on the other side of a fence installed upon such Lot."

3. First Amended Declaration. The Declaration, as amended by this First Amendment, shall remain in full force and effect.

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APPEAR ON NEXT PAGE.



IN WITNESS WHEREOF, the parties have executed this First Amendment to Declaration of Covenants, Conditions and Restrictions of Rosemont at Wynne Farms as of the date first above written.

DECLARANT:

Wynne Farms Developer, LLC, an Indiana limited liability company

By: Platinum Properties Management Company, an Indiana limited liability company, its Manager

By: Steven R. Edwards  
Steven R. Edwards, Vice President - Chief Financial Officer

STATE OF INDIANA )  
) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public, in and for said County and State, personally appeared Steven R. Edwards, Vice President – Chief Financial Officer of Platinum Properties Management Company, LLC, an Indiana limited liability company, the Manager of Wynne Farms Developer, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing First Amendment to Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms this 23<sup>rd</sup> day of September, 2014.

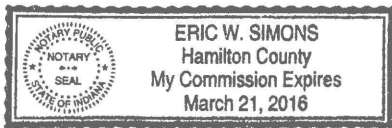
My Commission Expires:

\_\_\_\_\_

Eric W. Simons  
Notary Public

Residing in \_\_\_\_\_  
County, Indiana

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



This instrument was prepared by Steven R. Edwards, Platinum Properties Management Company, LLC, 9757 Westpoint Drive, Suite 600, Indianapolis, Indiana 46256.

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 – Steven R. Edwards.



**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS OF ROSEMONT AT WYNNE FARMS**

This First Amendment to Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms (the "First Amendment") is made and entered into this 23<sup>rd</sup> day of September, 2014 (the "Effective Date"), by Wynne Farms Developer, LLC, an Indiana limited liability company ("WFD");

WITNESSETH:

WHEREAS, WFD is the Declarant pursuant to the Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms recorded with the Recorder of Hendricks County, Indiana on September 22, 2014 as Instrument No. 201419724 (the "Declaration");

WHEREAS, unless otherwise defined in this First Amendment, all capitalized terms in this First Amendment shall have the meaning ascribed to them in the Declaration; and

WHEREAS, WFD desires to amend the Declaration in order to clarify the terms of Section 5.9 of the Declaration, pursuant to this First Amendment.

NOW, THEREFORE, in consideration of the foregoing preambles and recitations, the Declaration is hereby amended as follows:

1. Preambles and Recitations. The foregoing preambles, recitations, and definitions are made a part of and incorporated into this First Amendment as though fully set forth herein.
2. Section 5.9. Section 5.9 of the Declaration is hereby deleted in its entirety and replaced with the following:

"Section 5.9 Fencing. 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 eighteen (18) inches shall be permitted between the front property line and the front building set back line except where such planting is part of Residence landscaping approved by the Committee and the prime root thereof is within six (6) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". All fencing shall be (i) unpainted cedar, dog-eared shadow box on both sides of the fence, (ii) wrought iron, or (iii) wrought iron in appearance but made with aluminum or other acceptable material, unless otherwise approved by the Committee. All fencing shall have a maximum height of 48 inches above grade, except (i) if the Lot contains an in-ground swimming pool, then the maximum height of the fencing shall be 72 inches above grade, and

(ii) if the Lot abuts a Pond, then the maximum height of the fencing shall be 42 inches above grade starting at a point that is 24 feet behind the rear foundation line of the house. All plans for approval of fencing which are submitted to the Committee shall identify all corners of the subject Lot, and the Lot Owner shall be responsible for installing the fence in accordance with the approved plans. All fencing on a Lot shall be uniform in height, style, and color and substantially similar in material. All fencing shall not extend past the rear foundation line of the house towards the street, unless approved by the Committee. No fence or wall 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 or wall. No fence may be erected on a Lot without prior approval of the Committee, which shall approve or disapprove the location of all fences. All fencing erected on a Lot must be erected either (i) within six (6) inches of the property line of such Lot, or (ii) more than four (4) feet from the property line of such Lot. Each Owner who has a fence erected that is located within six inches of the property line of its Lot, hereby approves of each applicable adjacent Lot Owner to encroach upon the Owner's Lot up to a maximum of six (6) inches in order for (x) the applicable adjacent Lot Owner to connect its adjacent Lot Owner's fence to the Owner's fence already erected, (y) for such applicable adjacent Lot Owner to subsequently maintain its adjacent Lot Owner's fence within the encroached area of the Owner's Lot, and (z) for the applicable adjacent Lot Owner to subsequently mow and/or otherwise maintain the portion of the Owner's Lot located between the Owner's fence and the property line of the applicable adjacent Lot Owner. Under no circumstances shall such encroachment give rise to a claim of adverse possession or easement by prescription. In the event that a fence is already erected on an adjoining Lot within six (6) inches of the property line, then the Owner of a Lot desiring to install a new fence shall either (i) connect the Owner's new fence to the existing fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Committee, or (ii) install the Owner's new fence more than four (4) feet from the property line so that the gap between the Owner's new fence and the existing fence on the adjoining Lot will be at least four (4) feet wide. The Committee may establish further restrictions and design standards with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Pond. All fences shall be kept in good repair. Each Owner shall properly maintain, mow, and trim grass on all portions of such Owner's Lot, including the portions of the Lot located on the other side of a fence installed upon such Lot."

3. First Amended Declaration. The Declaration, as amended by this First Amendment, shall remain in full force and effect.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK AND SIGNATURES  
APPEAR ON NEXT PAGE.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Declaration of Covenants, Conditions and Restrictions of Rosemont at Wynne Farms as of the date first above written.

DECLARANT:

Wynne Farms Developer, LLC, an Indiana limited liability company

By: Platinum Properties Management Company, an Indiana limited liability company, its Manager

By:   
Steven R. Edwards, Vice President - Chief Financial Officer

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public, in and for said County and State, personally appeared Steven R. Edwards, Vice President – Chief Financial Officer of Platinum Properties Management Company, LLC, an Indiana limited liability company, the Manager of Wynne Farms Developer, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing First Amendment to Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms this 23<sup>rd</sup> day of September, 2014.

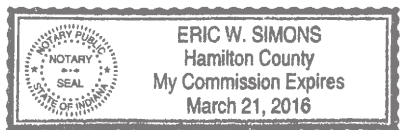
My Commission Expires:

\_\_\_\_\_

  
Notary Public

Residing in \_\_\_\_\_  
County, Indiana

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



This instrument was prepared by Steven R. Edwards, Platinum Properties Management Company, LLC, 9757 Westpoint Drive, Suite 600, Indianapolis, Indiana 46256.

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 – Steven R. Edwards.

**SECOND AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS OF ROSEMONT AT WYNNE FARMS**

This Second Amendment to Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms (the "Second Amendment") is made and entered into this 15<sup>th</sup> day of March, 2018 (the "Effective Date"), by Wynne Farms Developer, LLC, an Indiana limited liability company ("WFD");

WITNESSETH:

WHEREAS, WFD is the Declarant pursuant to the Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms recorded with the Recorder of Hendricks County, Indiana on September 22, 2014 as Instrument No. 201419724, as amended by that certain First Amendment to Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms recorded with the Recorder of Hendricks County, Indiana on October 3, 2014 as Instrument No. 201420767 (collectively, the "Declaration");

WHEREAS, unless otherwise defined in this Second Amendment, all capitalized terms in this Second Amendment shall have the meaning ascribed to them in the Declaration; and

WHEREAS, WFD desires to amend the Declaration in order to clarify the terms of Section 9.1 of the Declaration, pursuant to this Second Amendment.

NOW, THEREFORE, in consideration of the foregoing preambles and recitations, the Declaration is hereby amended as follows:

1. Preambles and Recitations. The foregoing preambles, recitations, and definitions are made a part of and incorporated into this Second Amendment as though fully set forth herein.
2. Section 9.1. Section 9.1 of the Declaration is hereby deleted in its entirety and replaced with the following:

"Section 9.1 Association Duties. The duties of the Association shall include the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the Property; (ii) the maintenance and repair of the Common Area including, but not limited to, any and all lighting, landscaping, amenity areas, and sidewalks located thereon; (iii) the maintenance and repair of any and all entrance monuments and signage, and the landscaping surrounding such entrances monuments and signage; (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and/or any sign landscape easement; (v) maintenance of that certain fence installed by Declarant in the rear yards of Lots

numbered 14 through 20 as shown on the plat of Rosemont at Wynne Farms, Section 1 recorded on September 22, 2014 as Instrument Number 201419723 in the Office of the Recorder of Hendricks County, Indiana, and such fence continuing westbound in the rear yards of Lots numbered 21 through 28 as shown on the plat of Rosemont at Wynne Farms Section 3 recorded on September 29, 2016 as Instrument Number 201622761 in the Office of the Recorder of Hendricks County, Indiana (collectively, the “North Fence”) plus maintenance of the portion of such Lots that is located on the northside of such North Fence; and (vi) the performance of any other obligations and duties of the Association specified herein.”

3. Second Amended Declaration. The Declaration, as amended by this Second Amendment, shall remain in full force and effect.

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APPEAR ON NEXT PAGE.



IN WITNESS WHEREOF, the parties have executed this Second Amendment to Declaration of Covenants, Conditions and Restrictions of Rosemont at Wynne Farms as of the date Second above written.

DECLARANT:

Wynne Farms Developer, LLC, an Indiana limited liability company

By: Platinum Properties Management Company, an Indiana limited liability company, its Manager

By:

Steven R. Edwards, Vice President - Chief Financial Officer

STATE OF INDIANA )  
 )SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public, in and for said County and State, personally appeared Steven R. Edwards, Vice President – Chief Financial Officer of Platinum Properties Management Company, LLC, an Indiana limited liability company, the Manager of Wynne Farms Developer, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Second Amendment to Declaration of Covenants, Conditions, and Restrictions of Rosemont at Wynne Farms this 15<sup>th</sup> day of March, 2016.

My Commission Expires:

\_\_\_\_\_

Notary Public

Residing in \_\_\_\_\_  
County, Indiana

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

This instrument was prepared by Steven R. Edwards, Platinum Properties Management Company, LLC, 9757 Westpoint Drive, Suite 600, Indianapolis, Indiana 46256.

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 – Steven R. Edwards.