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DECLARATION OF COVENANTS AND RESTRICTIONS

OF

SCOFIELD FARMS

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Exhibit A – Real Estate

Exhibit B – Zoning Commitments

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF
SCOFIELD FARMS**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS made this ____ day of _____, 2017, by M/I Homes of Indiana, L.P., an Indiana limited partnership (“Declarant”).

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to certain real estate located in Hamilton County, Indiana, more particularly described in the attached Exhibit A, which is incorporated herein by reference (the “Real Estate”), which lots and land will be subdivided for the development of Scofield Farms, a single family housing development in Hamilton County, Indiana (the “Development”) and will be more particularly described on the plats to be recorded in the office of the Recorder of Hamilton County, Indiana (the “Plats”).

B. Declarant hereby subjects the Real Estate to the provisions of this Declaration.

C. Declarant by execution of this Declaration assures that all properties which are conveyed which are a part of the Real Estate shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) “Applicable Date” means the date determined pursuant to Section 10 of this Declaration.

(b) “Architectural Review Board” means that committee of the Corporation established pursuant to Section 16 for the purpose of establishing architectural standards and approving changes and improvements to Dwelling Units and Lots.

(c) “Articles” or “Articles of Incorporation” means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(d) “Board of Directors” means the governing body of the Corporation elected by the Members in accordance with the Bylaws of the Corporation.

(e) "Bylaws" shall mean the Bylaws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation.

(f) "Common Area" means the area designated as such upon the Plat and all improvements located thereon.

(g) "Common Expense" means expenses for administration of the Corporation, expenses for the upkeep, leasing, maintenance, repair and replacement of the Common Area and all sums lawfully assessed against the Members of the Corporation.

(h) "Corporation" means Scofield Farms Homeowners Association, Inc., its successors and assigns, a nonprofit corporation, whose Members shall be the Owners of Lots, or appointees as provided in Section 10 of this Declaration; such Corporation being more particularly described in Section 10 of this Declaration.

(i) "Declarant" shall mean and refer to M/I Homes of Indiana, L.P., an Indiana limited partnership and any successors and assigns whom Declarant designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(j) "Drainage and Utility Easements" means the areas of ground on the Plat marked Drainage, Utility and Sewer Easement, Drainage and Utility Easement, Drainage Easement and Sewer Easement.

(k) "Dwelling Unit" means one of the living units located upon a Lot.

(l) "Easements" means all of the easements shown on a Plat or described herein as a Landscape Easement, Drainage and Utility Easement and No Access Easement.

(m) "Landscape Easement" shall mean and refer to those areas identified on the Plat to be burdened by such easement.

(n) "Lot" or "Lots" means any parcel(s) of the Real Estate (excluding the Common Areas) which are designated and intended for use as a building site, or developed and improved for use as a single family residence identified by number on the Plats. No Lot shall be further subdivided for development purposes, except as may be reasonably necessary to adjust for minor side or rear yard encroachments or inconsistencies. Per the Zoning Commitments (as defined herein) the maximum number of Lots to be developed is 235 on the Real Estate.

(o) "Member" means a member of the Corporation.

(p) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(i) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(q) "Scofield Farms" means the name by which the Real Estate which is the subject of this Declaration, shall be known.

(r) "Zoning Commitments" means those commitments and agreements contained in the Commitments Concerning the Use and Development of Real Estate recorded on January 24, 2017 as Instrument No. 2017003273, in the Hamilton County Recorder's office, a copy of which is attached hereto as Exhibit B.

2. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Scofield Farms. The legal description for each Lot shall be as follows:

Lot ___ in Scofield Farms, a subdivision in Hamilton County, Indiana, as per plat thereof recorded _____ as Instrument Number _____, in the Office of the Recorder of Hamilton County, Indiana.

4. Lot Boundaries and Access. The boundaries of each Lot shall be as shown on the Plat.

5. Common Area. Common Area includes all the area designated as such on the Plat, including, but not limited to, the ponds, drainage areas, and recreational areas, but excluding all Lots and Easements located on the Lots. Declarant has the right, but not the obligation, to construct recreational facilities in any of the Common Area, and if such facilities are constructed, such facilities shall be part of the Common Area.

6. Ownership and Use of Common Area. The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) Except as otherwise provided in Section 11(f)(xi), the right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, two-thirds of all Class B Members and by two-thirds of all first mortgagees to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Corporation. Notwithstanding the foregoing, the Declarant or the Corporation may, without any approval of any of the Members, convey any walking or recreational trails constructed in Scofield Farms to the City of Westfield or Hamilton County or its respective designee.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Section 11.

(c) The Common Area in Scofield Farms shall be conveyed to the Corporation upon the recording of a Plat, by quitclaim deed, free and clear of all liens and encumbrances except the Zoning Commitments, the lien of non-delinquent real estate taxes and any recorded or platted easements; provided, however, that the conveyance of the Common Area to the Corporation shall not prevent Declarant from improving the Common Area as Declarant deems appropriate at any time prior to the Applicable Date.

(d) Pursuant to the Zoning Commitments, subject to the rights of the Corporation to adopt rules and regulations and except for any pool, clubhouse and/or playground equipment installed by Declarant, only passive recreational activities including walking, biking and running shall be allowed in the Common Areas.

7. Delegation of Use of the Common Area by Member. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment and use of the Common Area to members of his family, his tenants or contract purchasers who reside on any Lot.

8. Easements in Common Area. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in the Common Area and Easements. Such easement and right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

An easement is also granted to the Corporation, its officers, agents and employees and to the Managing Agent (as defined in Section 11(f)) to enter in or to cross over the Common Area, Easements and Lots to perform its duties; provided, however, reasonable notice shall be given the Lot Owner, except in the case of an emergency. An easement is also granted to Declarant, for so long as Declarant owns a Lot or any of the Real Estate across the Lots, the Real Estate and the Common Areas, for the purpose: (i) to erect signs on the Common Area and any Lot or Real Estate owned by Declarant, and to maintain sales offices, management offices and model homes; (ii) to construct, maintain, repair or replace any Dwelling Units, Common Area facilities, or any other improvements on the Real Estate; and (iii) to comply with the Zoning Commitments.

9. Easements.

(a) Landscape Easement. Declarant hereby declares, creates, grants and reserves the Landscape Easement as shown on the Plat as a non-exclusive easement for the use of the Declarant and the Corporation for installation, maintenance and removal of trees, shrubbery, flowers and other plantings, entryway, neighborhood and community identification signage, earth mounds, screening material, fencing, walls, directions, lighting, irrigation systems walking trails and additional similar landscape improvements. Except as installed by the Declarant or the Corporation, and except for any utility facilities or drainage facilities which may be installed in any easement that may now or hereafter be declared, granted or reserved in or upon any portion of the Real Estate and designated on the Plat as a Landscape Easement, no structures or other improvements shall be installed or maintained in or upon any Landscape Easements. Notwithstanding

the foregoing provisions of this Section and the provisions of any Plat or other recorded instrument executed by Declarant designating a Landscape Easement, a Landscape Easement shall automatically terminate as to that portion of such easement area that is located within or upon any public right-of-way hereafter dedicated to the public upon the recording of a Plat or other instrument creating such public right-of-way. All improvements and landscaping located within the Landscape Easement shall be maintained by the Corporation and the Corporation shall have an easement of ingress and egress on and over the Lots adjacent thereto for the purpose of satisfying this maintenance obligation. The landscaping and other improvements planted or installed by the Declarant and/or the Corporation within the Landscape Easement may not be removed by any Owner, nor may any Owner add any landscaping or improvements to such easement area without the prior approval of the Architectural Review Board.

(b) Drainage and Utility Easements. The Drainage and Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Corporation for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Drainage and Utility Easements include all Sewer Easements, Drainage Easements and Utility Easements as shown on the Plat. The Drainage and Utility Easements are hereby created and reserved for (i) the use of Declarant for access to and construction, maintenance, operation, repair and control of any retention and detention ponds and improvements comprising and/or related to the storm water drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) the use of the Corporation for access to and maintenance, repair and replacement of such drainage system. The Owner of any Lot subject to a Drainage and Utility Easement shall be required to keep the Easement area on his Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without the appropriate governmental and prior written approval of the Declarant. The Drainage and Utility Easements are hereby created and reserved for the use of Declarant and the City of Westfield and/or Hamilton County for installation and maintenance of an underground sanitary sewer system. The delineation of the Drainage and Utility Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any portion of any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Section.

(c) Gas Main Easement. The Real Estate is further subject to a gas main easement pursuant to the terms and provisions of a grant of easement to lay pipelines together with ingress/egress in favor of Socony-Vacuum Oil Company, Inc. dated May 5, 1939 and recorded June 17, 1939 in Book 34, page 238; assigned to Magnolia Pipe Line Company by assignment dated July 1, 1942 and recorded July 13, 1942 in Book 128, pages 494-496; and, assigned to Marathon Pipe Line Company by assignment dated March 1, 1967 and recorded March 14, 1967 in Book 97, pages 11-20 (the "Gas Main Easement"). A portion of the Real Estate contains a gas pipeline pursuant to the Gas

Main Easement. With respect to the Gas Main Easement, and notwithstanding anything to the contrary contained herein, the following additional restrictions apply:

- (i) there shall be no physical disturbance of trees, soils or vegetation within the Gas Main Easement;
- (ii) only passive activities which do not disturb the Gas Main Easement shall be allowed thereon;
- (iii) no improvements (including but not limited to landscaping, fences, pools, and playground equipment) shall be constructed within the Gas Main Easement; and
- (iv) the Corporation shall be responsible for mowing the portion of the Gas Main Easement within the Common Area.

(d) Power Line Easement. The Real Estate is further subject to a power line easement pursuant to the terms and provisions of a Right of Way Easement in favor of Public Service Company of Indiana dated January 13, 1982 and recorded January 27, 1982 in Book 329, page 442 (the "Power Line Easement"). A portion of the Real Estate contains a power line pursuant to the Power Line Easement. With respect to the Power Line Easement, and notwithstanding anything to the contrary contained herein, the following additional restrictions apply:

- (i) there shall be no physical disturbance of trees, soils or vegetation within the Power Line Easement;
- (ii) only passive activities which do not disturb the Power Line Easement shall be allowed thereon;
- (iii) no improvements (including but not limited to landscaping, fences, pools, and playground equipment) shall be constructed within the Power Line Easement; and
- (iv) the Corporation shall be responsible for mowing the portion of the Power Line Easement within the Common Area.

10. Corporation; Membership; Voting; Functions.

(a) Membership in Corporation. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases at which time his membership shall terminate and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a

Member until and unless he acquires fee simple title to such Lot, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons together shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine. In no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to ten (10) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date. The "Applicable Date" is the first to occur of (i) the date upon which the written resignation of the Class B Members is delivered to the resident agent of the Corporation, (ii) within one hundred twenty (120) days after the date when eighty percent (80%) of all Lots have been conveyed by Declarant to third party purchasers who will reside on such Lots, or (iii) December 31, 2023.

(iii) Appointment of Declarant as Owner's Agent. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any method shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the Bylaws or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area, to pay taxes assessed against and payable with respect to the Common Area, to pay any other necessary expenses and costs in connection with the Common Area and to perform such other functions as may be designated for it to perform under this Declaration.

11. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or is a person appointed by Declarant as provided in subsection (b) of this Section 11.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of three (3) persons as designated in the Articles, to-wit: Kenneth E. Windler, Jonathan Isaacs and David Funkhouser (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in this Declaration, the Articles or the Bylaws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee of such Owner shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one (1) person at a time.

(d) Term of Office and Vacancy. Subject to the provisions of subsection (b) of this Section 11, at least one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date. After the Applicable Date, the Board of Directors will consist of three (3) members, elected by the Owners. Each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date (which, if appropriate, may be a special meeting) one (1) member of the Board of Directors shall be elected for a three (3) year term, one (1) member for a two (2) year term, and one (1) member for a one (1) year term so that the terms of at least one (1) of the members of the Board shall expire annually. If such election is at a special meeting, the term of each of the Directors elected at the special meeting shall include the time from the special meeting to the applicable annual meeting. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of subsection (b) of

this Section 11 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subsection (e) of this Section 11. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or with respect to whom there has otherwise been a vacancy.

(e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, a replacement Director shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Corporation, the management, maintenance, repair, upkeep and replacement of the Common Area and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties. The Board's duties include, but are not limited to:

(i) Protection, surveillance and replacement of the Common Area; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(ii) Landscaping, maintenance and upkeep of the Common Area, such maintenance obligation specifically includes, but is not limited to, signage, gang mailboxes, drainage areas and related facilities, ponds and lakes, and recreational facilities.

(iii) Assessment and collection from the Owners of each Owner's respective share of the Common Expenses;

(iv) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;

(v) Preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be

delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

(vi) Procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(vii) Paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area;

(viii) Comply with the Zoning Commitments;

(ix) Comply with any Operation & Maintenance Manuals relating to storm water and drainage facilities on the Real Estate; and

(x) Comply with all contracts, leases and other agreements related to street lights.

(xi) Resolving any eminent domain action with respect to any Common Area; provided however that any resolution involving an offer of greater than Five Thousand and 00/100 Dollars (\$5,000.00) shall require the consent of a majority of Owners.

(g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

(i) To employ a Managing Agent to assist the Board in performing its duties;

(ii) To purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(iii) To employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

(iv) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;

(v) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(vi) To open and maintain a bank account or accounts in the name of the Corporation;

(vii) To promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners. Such rules and regulations may provide that an Owner's failure to comply with such rules and regulations may result in (i) the imposition of fines by the Corporation against such Owner; and/or (ii) such Owner losing the right to use the Common Area and related facilities.

(h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Ten Thousand Dollars (\$10,000.00) without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

(i) Contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget; and

(iii) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

(i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party

to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in actions, suits or proceedings where such Director is adjudged liable for bad faith, gross negligence or willful misconduct in the performance of his duties. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

(l) Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors. Any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. A Managing Agent shall provide such bond at its expense. For all officers and directors, the expense of any such bonds shall be a Common Expense.

(m) HOA Act. Notwithstanding any provision of this Declaration to the contrary, the Corporation shall be run with due regard and in compliance with the Homeowner's Association Act, Indiana Code Section 32-25.5-3-1 et seq. (the "HOA Act"). As a part of this obligation, the Corporation shall (i) maintain the roster and other information regarding the Owners and make such information available to the Owners as required under Section 32-25.5-3-1 of the HOA Act, (ii) shall prepare and adopt an annual budget consistent with the requirements and procedures of Section 32-25.5-3-3 of the HOA Act, (iii) not enter into any contract or borrow funds in violation of Section 32-25.5-3-4 and Section 32-25.5-3-5 of the HOA Act, and (iv) maintain a grievance resolution procedure required under Section 32-25.5-3-6 of the HOA Act, which procedure is set forth in the By-Laws.

12. Initial Management. The Initial Board of Directors has entered or may hereafter enter into a management agreement with Declarant or a corporation or other entity affiliated with Declarant or a third party management company for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice. Declarant, such affiliate of Declarant or such third party management company will provide supervision, management and maintenance of the Common Area and in general, perform all of the duties and obligations of the Corporation. Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement and to adhere to and abide by

the same. Until the Applicable Date, Declarant hereby reserves the exclusive right to manage the Real Estate and perform all the functions of the Corporation.

13. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Real Estate or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate or that part thereof that is assessed as a whole. Such Owner's proportionate share shall be the ratio that the square footage of his Lot bears to the total square footage of all the land comprising the Real Estate or part thereof assessed as a whole. Real estate taxes assessed on the improvements on the Real Estate shall be paid by the Owner of such improvements. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

14. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation. Utilities for the Common Area shall be a Common Expense.

15. Maintenance, Repairs and Replacements.

(a) By the Corporation. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses. After the Applicable Date and for so long as the Declarant owns any Lot(s), Declarant may, upon five (5) days' notice to the Corporation, undertake any maintenance, repair or upkeep which the Corporation is obligated, but has failed, to undertake. Declarant may then bill the Corporation for the cost of such maintenance, repair or upkeep. Such bill, if not paid by the Corporation within thirty (30) days of receipt, shall bear interest at the rate of twelve percent (12%) per annum.

(b) By Owners. Each Owner shall be responsible for maintaining and keeping his Lot, Dwelling Unit, and all other structural improvements located on his Lot in a good, clean, neat, sanitary and well maintained condition. The obligation to maintain a Lot shall exist, whether or not a Dwelling Unit exists on such Lot, and the Owner of such Lot shall keep such Lot maintained in the same manner as such Lot would be maintained if a Dwelling Unit existed thereon.

Each Owner shall also maintain, to the extent applicable, (i) the dusk-to-dawn lights installed on his Lot in good working condition, including but not limited to, replacement of photo cells; (ii) the mailbox and post installed on his Lot in good working condition; and (iii) any trees originally planted on his Lot in the area adjacent to the sidewalk ("Street Trees"). Any repair or replacement of mailboxes and/or posts shall be of the same design and quality as originally installed by Declarant. Each Owner shall be responsible for the maintenance of the Street Trees located on his Lot. In the event any Street Tree dies, the Owner of such Lot shall be responsible for replacing, at Owner's

expense, the Street Tree with a substantially similar tree. Such tree replacement must be approved by the Architectural Review Board.

(c) Damage to Common Area. If, due to the willful, intentional or negligent acts or omissions of an Owner, a member of his family or a guest, tenant, invitee or other occupant or visitor of such Owner, any Common Area is damaged, then such Owner shall pay for such damage and necessary maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(d) Owner's Failure to Maintain. If any Owner shall fail (i) maintain and keep his Lot, Dwelling Unit and other structural improvements located on his Lot in a good, clean and sanitary condition as determined by the Board of Directors or (ii) comply with the terms of this Section 15, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment. Such cost shall be immediately due and shall be secured by the Corporation's lien on the Owner's Lot.

(e) Corporation's Easement over Lots. So long as the Real Estate is subject to this Declaration, each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Declarant for so long as Declarant owns a Lot or any part of the Real Estate and to the Corporation, its agents and employees, the right, in the form of a permanent easement, to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair, landscaping or other work contemplated herein.

16. Architectural Control.

(a) The Architectural Review Board. There shall be, and hereby is, established an Architectural Review Board consisting of three (3) persons as a standing committee of the Corporation. The Architectural Review Board may delegate its rights and obligations as the Architectural Review Board to the Management Agent.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate (including the Common Area, Easements and Lots) and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures and improvements and comply with the Zoning Commitments.

(c) Conditions. No improvements, alterations, excavation or changes in grade or other work which in any way alters any Lot or the exterior of any Dwelling Unit or other improvement thereon shall be made or done without the prior written approval of the Architectural Review Board. No building, fence, wall, pool, spa, hot tub, fire pit, pergola or other structure or improvement shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the

plans by the Architectural Review Board. Additional restrictions and prohibitions regarding pools, fences, spas, decks, playground equipment, basketball goals, flag poles, storage sheds, mini-barns, fire pits and exterior painting are set forth in Section 21. Plans must comply with the requirements of this Section 16, Section 21, the Zoning Commitments, any rules and regulations adopted by the Architectural Review Board, and all applicable municipal rules, regulations and ordinances. Notwithstanding the foregoing, Architectural Review Board approval is not required for the initial construction of a Dwelling Unit by Declarant or any work by Declarant to comply with the Zoning Commitments or Declarant's obligations under this Declaration.

(d) Procedures.

(i) Approval Process. The Architectural Review Board has prepared and promulgated, on behalf of the Board of Directors, design and development guidelines and application and review procedures. Copies are on file in the office of the Declarant (or the Corporation, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Architectural Review Board, and the Architectural Review Board shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Real Estate and such Owners and builders shall conduct their operations strictly in accordance therewith. The Architectural Review Board, or its designee, must give written approval for any building contractor selected by the Lot Owner for construction.

Prior to any construction on any Lot (except for construction by Declarant), the approval of the Architectural Review Board must be obtained after written application has been made to the Architectural Review Board by the Owner of the Lot requesting authorization from the Architectural Review Board. Such written application shall be made in the manner and form prescribed from time to time by the Architectural Review Board in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the Architectural Review Board.

(ii) Power of Disapproval. The Architectural Review Board may refuse to grant permission to construct, place or make the requested improvement, when:

(1) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of this Declaration, the plat restrictions or any rules, regulations or guidelines adopted by the Architectural Review Board;

(2) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Architectural Review Board;

(3) the proposed improvement, or any part thereof, would, in the sole opinion of the Corporation, be contrary to the interest, welfare or rights of all or part of other Owners; or

(4) the removal or placement of landscaping or structure is in any easement.

(iii) Duties of the Architectural Review Board. The Architectural Review Board shall approve or disapprove proposed improvements within thirty (30) calendar days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Architectural Review Board for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons therefore. In the event that the Architectural Review Board fails to provide written notice of approval or to request written notice for additional information within forty-five (45) days after submission of all required or requested information, the plans shall be deemed and presumed denied. **MUST HAVE WRITTEN APPROVAL BY ARCHITECTURAL REVIEW BOARD. NO VERBAL APPROVALS ALLOWED.**

(iv) No Waiver of Future Approvals. The approval of the Architectural Review Board of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Architectural Review Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatsoever subsequently or additionally submitted for approval or consent.

(v) Variance. The Architectural Review Board may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Architectural Review Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the Architectural Review Board shall not be considered hardships warranting a variance.

(vi) Compliance with Guidelines. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the Architectural Review Board may be excluded by the Architectural Review Board from the Real Estate without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by Declarant or the Architectural Review Board.

(vii) Non-Liability of Declarant, Architectural Review Board. Neither the Declarant, nor the Architectural Review Board shall be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Architectural Review Board, or Declarant does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with this Declaration, any recorded plat governing the Real Estate or any applicable code, regulation or law.

(viii) Inspection. The Architectural Review Board and the Declarant and/or any property management organizations personnel may inspect work being performed to assure compliance with this Declaration, the plat restrictions and applicable regulations. However, neither the Architectural Review Board, nor any Member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Architectural Review Board, or Declarant, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Architectural Review Board, or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

(ix) No Compensation. Neither the Corporation nor any of its Members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

17. Assessments.

(a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by an accountant approved by the Board, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual

budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments as that term is defined in Section 17(c) below for the next fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of those Owners present either in person or by proxy; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include (1) Regular Assessments; and (2) the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area that must be repaired and replaced on a periodic basis. The replacement reserve fund shall be used for these purposes and not for usual and ordinary maintenance expenses. By way of example only, the replacement reserve fund will be used for repairing and replacing items such as pumps, filters, landscaping (other than annual plantings and mulch), equipment, playground facilities and clubhouse furnishings and equipment. Usual and ordinary expenses which will not be paid out of the replacement reserve fund include but are not limited to, snow removal, fertilization, annual plantings, mulch, and preventive maintenance contracts. Such replacement reserve funds for capital expenditures and replacement and repair of the Common Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hamilton or Marion County, Indiana as selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses. If an annual budget is not approved by the Owners as herein provided for the then current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget, as adopted by the Owners, shall contain a proposed assessment against each Lot equal to the Common Expenses multiplied by a percentage equal to one divided by the total number of Lots in the Real Estate. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted

by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds. The Regular Assessment against each Lot shall be paid in advance in equal annual installments, with payments due on the first day of January. Payment of the annual installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. An Owner may elect to pay assessments annually, in advance. Annual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget:

(i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 18 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in

which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations.

The budget and Regular Assessment shall increase at such time(s) as Declarant installs or constructs any recreational areas, including but not limited to, pool(s), clubhouse, trails, basketball courts and/or playgrounds.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

(e) Additional Assessments. In addition to the Regular Assessment, every Owner of a Maintained Lot will be charged an Additional Assessment for the services provided by the Corporation pursuant to Section 11(f). Furthermore, in the event that Declarant constructs any recreational or similar facilities that are for the sole benefit and use of the Owners of Lots in a particular section, the expenses associated therewith shall be an Additional Assessment. Any Additional Assessment will be assessed only against benefited Lots in an amount equal to the expenses multiplied by a percentage equal to one (1) divided by the total number of Lots. Additional Assessments shall be included in the annual budget and shall be due monthly, on the first day of each month.

(f) Replacement Reserve Fund. Prior to the Applicable Date, ten percent (10%) of the Capital Contribution (as defined in Section 17(h) below) shall be deposited into the replacement reserve fund (as established by Section 17 (b)) until the balance of such replacement reserve fund is Twenty-Five Thousand Dollars (\$25,000.00). Thereafter, deposits into the replacement reserve fund will cease unless and until expenditures are made from such fund, at which time fifty percent (50%) of the Capital Contribution will again be deposited into such fund until the balance of such fund again reaches Twenty-Five Thousand Dollars (\$25,000.00). After the Applicable Date, one hundred percent (100%) of the Capital Contribution will be deposited into the replacement reserve fund regardless of the balance of such fund.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve fund shall be held by the Initial Board and used for those expenses described in Section 17(b). To the extent that such replacement reserve fund is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Lot shall commence on the date of conveyance of such Lot by Declarant or current owner to a new owner ("Commencement Date"). The first payment shall be payable on the Commencement Date prorated to the first day of the month when the next payment is due. Thereafter, payment of the Regular Assessment shall be paid semi-annually.

(g) Payment of Assessments by Declarant. The Declarant shall not be assessed any portion of any Regular, Special or Additional Assessment. Prior to the Applicable Date, Declarant hereby covenants and agrees to pay to the Corporation an amount equal to the difference, if any, between the expenditures of the Corporation made pursuant to this Declaration and the aggregate amount of all Regular, Special and Additional Assessments collected by the Corporation. Any such payment by the Declarant shall not establish any precedent for further or additional payments. Further, Declarant may advance funds to offset deficits on terms and conditions acceptable to the Board of Directors and Declarant.

(h) Capital Contribution. At the closing of the purchase of a Lot containing a Dwelling Unit, the purchaser is required to pay an amount equal to fifty percent (50%) of the Regular Assessment due on such Lot as purchaser's initial contribution to the replacement reserve fund and working capital fund of the Corporation. This sum is not an advance payment of Regular Assessments, but is allocated to the reserve fund and working capital fund to meet unforeseen expenditures and operating expenses and to purchase additional equipment and services. After the Applicable Date, the balance of the working capital fund shall be transferred to the Corporation. At such times as the balance of the working capital fund is Twenty-Five Thousand Dollars (\$25,000.00), Declarant may reimburse itself from such capital contributions for any subsidies paid or advances made to offset deficits. Once Declarant is reimbursed, such amounts shall be deposited into the working capital fund, regardless of the balance of such working capital fund.

(i) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments, Additional Assessments and Special Assessments or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular, Additional and Special Assessments. 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 Regular Assessment, Additional Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment, Additional Assessment or Special Assessment, the Board may, in its discretion, accelerate the entire balance of unpaid assessments and declare the same immediately due and payable. The Board may, at its option, bring suit to recover a money judgment for any unpaid Regular Assessment, Additional Assessment or Special Assessment without foreclosing or

waiving the lien securing the same. In any action to recover a Regular Assessment, Special Assessment or Additional Assessment, whether by foreclosure or otherwise, the Corporation shall be entitled to recover from such Owner the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due until paid at the rate equal to the prime interest rate as announced by Chase Bank, Indianapolis, NA, from time to time by (or if said bank is no longer in existence then such rate charged by a national bank in Hamilton County, Indiana, selected by the Board of Directors) during the unpaid period plus twelve percent (12%).

(j) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment, Additional Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien will not relieve the prior owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments, Additional Assessments or Special Assessments thereafter becoming due or from the lien therefore. Any such unpaid Regular Assessments, Additional Assessments or Special Assessments shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

18. Mortgages and Unpaid Assessments.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of the Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee, as may be otherwise required by this Declaration, the Bylaws or otherwise, shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments, Additional Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 17 hereof.

19. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Common Area in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Common Area, unless the Board determines that a lesser amount of insurance is appropriate. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to Mortgagees.

(b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

(c) Other Insurance. The Corporation shall purchase officers' and directors' liability insurance in such amounts as the Board of Directors shall deem appropriate. The

Corporation shall also obtain any other insurance required by law to be maintained and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, for example, liability insurance on vehicles owned or leased by the Corporation and workman's compensation insurance. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board of Directors or the Corporation.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses.

(e) Owners to Maintain Insurance. Each Owner shall be solely responsible for loss or damage to his Dwelling Unit and the contents thereof, however caused, and his personal property stored elsewhere on the Real Estate and the Corporation shall have no liability to the Owner for such loss or damage. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

20. Casualty and Restoration of Common Area. In the event of damage to or destruction of any of the Common Area or Landscape Improvements due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area or Landscape Improvements to as near as possible the same condition as it existed immediately prior to the damage or destruction.

21. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units, Real Estate and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Plat. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Corporation. An Owner and/or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall

be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family. No Lot shall be subdivided to form lots of less area. No use shall be made of any Lot except as permitted by the Zoning Commitments and applicable zoning and subdivision control ordinances under which the Real Estate is developed.

(b) All Dwelling Units shall have the minimum square footage of finished living area (exclusive of garages, carports, basements and porches) required by the Zoning Commitments.

(c) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(d) No nuisance shall be permitted on any Lot. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot; nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

(e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building. Except for features originally constructed by Declarant as part of a Dwelling Unit, no awning, canopy or shutter or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit without the prior written consent of the Architectural Review Board.

(f) No sign of any kind shall be displayed to the public view on any Lot, except that one sign of not more than six (6) square feet may be displayed to public view on any Lot at any time solely for the purpose of advertising a property for sale. Declarant may use larger signs during the sale and development of the Real Estate.

(g) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. All such pets shall be kept reasonably confined so as not to become a nuisance.

Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Corporation to be removed from the property.

(h) No outdoor animal kennels or quarters can be constructed on any Lot.

(i) All rubbish, trash or garbage shall be stored in closed sanitary containers, shall be regularly removed from the Lots, and shall not be allowed to accumulate. Trash may be placed at the curb of each Lot no earlier than 8:00 p.m. the night before scheduled collection, and trash receptacles shall not be permitted to remain outside for more than twenty-four (24) consecutive hours. The burning of trash and open fires not contained within a cooking grill for the purpose of preparing food or in a fire pit approved by the Architectural Review Board under Section 16 are prohibited.

(j) No industry, trade, or other commercial activities shall be conducted on the Real Estate; provided, however, that notwithstanding the foregoing, home offices and home business activities conducted by the Owner of such Dwelling Unit are permissible provided all of the following conditions are met:

(i) there is not significant increased traffic in and around the Real Estate as a result of such use or activity;

(ii) no signs, billboards, or other advertising materials are displayed or posted on the exterior of any Dwelling Unit or anywhere else on the Real Estate;

(iii) the use or activity does not violate existing laws, including zoning laws;

(iv) the use or activity does not violate any of the other provisions of this Declaration, including, but not limited to, this Section 21;

(v) the Owner of the Dwelling Unit shall maintain all necessary casualty and public liability insurance; and

(vi) such use or activity is conducted during reasonable hours.

(k) No structure of a temporary character, tent, shack, basement, garage, barn or other outbuilding shall be maintained on any Lot, nor shall any garage or other building, except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters either temporarily or permanently.

(l) All Owners and members of their families, their guests, tenants, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area.

(m) No boat docks, decks, rafts or similar structures or improvements shall be permitted on or near the lakes ("lakes" shall include all ponds and all other bodies of

water in the Common Area). No Owner of any Lot and none of their families, guests, tenants or invitees or occupants of any Dwelling Unit or other persons entitled to use the same shall do or permit to be done any action or activity which could result in the pollution of the lakes, diversion of water, change in elevation of the water level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management or otherwise impair or interfere with the use of the lake for drainage and related purposes. No Owner, members of their families, guests or invitees or occupants of any Dwelling Unit or other persons entitled to use the same, may swim, boat, ice skate or engage in similar activities on the lakes. No individual using a lake has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Corporation, subject to the rights of the Declarant, the Corporation, their employees, successors and assigns as set forth in the Declaration with respect to maintenance and repair of lakes and Common Area.

(n) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trailers, trucks (larger than 3/4 ton), semi-tractor trucks, semi-trucks, semi-tractors trailers, disabled vehicles and/or trailers, motorcycles, minibikes, mopeds or personal watercraft shall be permitted, parked or stored anywhere within the Real Estate, unless stored completely enclosed within a garage or necessary or incidental to Declarant's or the Corporation's business. No repair work shall be done on the Real Estate on any vehicles, including passenger automobiles, unless completely enclosed within a garage.

(o) Except as required in Section 15(b) with respect to an Owner's maintenance of Street Trees, no Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area or Easements, except with express prior written permission from the Architectural Review Board.

(p) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease for a term of not less than six (6) months which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

(q) There are designated on the Plat building lines. Except as required for utilities to serve the Real Estate or a Lot, no building or structure will be permitted within this no-build area.

(r) Except for fences installed by Declarant as part of the construction of a model or sales office, any fences to be constructed on a Lot must be constructed in accordance with the Zoning Commitments and applicable laws and must be approved by the Architectural Review Board. All fences must be no higher than five feet (5'), be black in color and be either wrought iron or aluminum, but wrought iron in appearance. All fences must be in the rear yard of a Lot (the fence shall adjoin the rear side of the dwelling). All fences must also comply with any rules and regulations adopted by the Architectural Review Board. All fences must be kept in good repair by the Owner.

Pursuant to the requirements of the City of Westfield, no fences may be constructed within a Drainage Easement.

Any Owner who receives approval of the Architectural Review Board to construct a fence or other improvement within an Easement constructs such fence or other improvement at such Owner's sole risk. In the event work is required in such Easement, Declarant, any third party so authorized in this Declaration and/or any authorized municipal body or utility provider may undertake such work without liability to repair or replace any damage to any fence or other improvement. Any fence or other improvement which impedes or restricts drainage may be modified or removed by the Corporation or applicable municipal entity or utility provider. The cost thereof shall be the Owner's expense and treated as an Additional Assessment against such Owner's Lot.

(s) No antenna, satellite dishes or other device for the transmission or reception of radio, television or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground whether attached to a Dwelling Unit or otherwise on any Lot without the written approval of the Architectural Review Board. Notwithstanding the foregoing, any such device may be installed and maintained on any Lot without the written approval of the Architectural Review Board if (i) it is not visible from neighboring Lots, streets or Common Area; or (ii) the Owner prior to installation has received the written consent of the Owners of all Lots who would have views of the device from their Lots and presented such consents to the Architectural Review Board; or (iii) the device is virtually indistinguishable from structures, devices or improvements such as heat pumps, air conditioning units, barbeque grills, patio furniture and garden equipment which are allowed by this Declaration; or (iv) it is a satellite dish two (2) feet or less in diameter.

(t) No above ground swimming pools shall be erected, constructed or installed on any Lot. The construction of any in ground pool, decks, hot tub or spa requires the prior written approval of the Architectural Review Board. Notwithstanding the foregoing, temporary wading pools measuring no more than six feet (6') in diameter are permitted without approval of the Architectural Review Board. Such temporary wading pools must be drained and stored indoors on a nightly basis.

(u) Any change to an exterior color of a Dwelling Unit must be approved by the Architectural Review Board and must satisfy the Zoning Commitments.

(v) No clotheslines, equipment, garbage cans, woodpiles or storage piles shall be kept outside of a Dwelling Unit.

(w) In order to maintain the standards of Scofield Farms, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or allowed to remain anywhere on a Lot. An Owner's failure to comply with this requirement shall allow the Declarant or the Corporation to cut weeds or clear the refuse from such Lot at the expense of the Owner thereof, and there shall be a lien against said Lot for the expense thereof, which lien shall be due and payable immediately. If such lien is not

promptly paid, the Corporation or the Declarant may file suit and recover such amount, together with reasonable attorneys' fees and costs of collection.

(x) Notice is hereby given of the Zoning Commitments, which are certain written commitments made in connection with the zoning of the Property to the City of Westfield.

(y) Nothing contained in this Declaration, including but not limited to this Section 21, shall be construed or interpreted to restrict the activities of Declarant in connection with the development of the Real Estate and sale of Lots. For so long as Declarant owns any of the Real Estate, Declarant shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities upon any portion of the Real Estate at any time owned or leased by Declarant, as in the sole opinion of Declarant may be reasonably required, or convenient or incidental to the development of the Real Estate and sale of the Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices, canopies, awnings and flag poles.

(z) No playground or recreational equipment shall be placed or constructed upon a Lot until after such equipment and its location have been approved by the Architectural Review Board. All such playground or recreational equipment shall be constructed of wood and not metal and maintained by the Owner thereof in a safe and functional manner.

(aa) Basketball goals are permitted subject to approval by the Architectural Review Board. Only permanent goals with black posts and glass or white/translucent fiberglass backboards may be considered for approval. No basketball goal positioned in a manner likely to result in the use of an adjoining public or private street in connection with the use of such goal may be approved.

(bb) Mini-barns and storage sheds are prohibited.

(cc) Vegetable, wild flower and other gardens may be located only in the rear yard of a Lot, may not exceed one hundred (100) square feet in size, must not be visible from any street, must be entirely behind the Dwelling Unit and not visible from the sight lines, and may not be located within five feet (5') of a property line. Compost containers and/or compost piles are prohibited outside of a Dwelling Unit.

(dd) Except for flag poles installed by Declarant, flag poles must be approved by the Architectural Review Board and there may be no more than one (1) flag pole on each Lot. No flag poles shall exceed twenty feet (20') in height. Flags exceeding thirty (30) square feet are prohibited. No more than two (2) flags may be flown from a single flag pole at any time.

(ee) Each Owner of a Lot shall comply at all times with the provisions of any drainage plan as approved for the development of all or any part of the Real Estate. It shall be the duty of every Owner of a Lot to keep any storm drainage ditches and/or swales on such Lot open, unobstructed, and in good condition and repair. Water

discharged from sump pumps, geo-thermo systems or other sources located on any Lot may be discharged only into underground drainage facilities located thereon. Under no circumstances shall such water be discharged above ground and/or into any adjoining street or onto any adjacent Lot or Common Area. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

(ff) Each Owner shall install and/or maintain the street address of the Lot on the front of the Dwelling Unit utilizing numbers not less than four inches (4") in height which are permanently attached to the Dwelling Unit.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, Declarant shall have, for so long as Declarant owns any Lot or any of the Real Estate, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant), as Declarant may deem advisable or necessary in its sole discretion to aid in (i) the construction of Dwelling Units; (ii) the sale of Lots and Dwelling Units; and (iii) the conducting of any business or activity attendant thereto. Such Declarant's rights shall include, but not be limited to, construction and use of model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices on the Real Estate. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

22. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the Members of the Corporation at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the Members of the Corporation duly called and held in accordance with the provisions of the Bylaws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners; provided however, that prior to the Applicable Date all proposed amendments shall require the written consent of the Declarant. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an

Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Section 19 with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Section 20 of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Section 16 of this Declaration establishing the Architectural Review and providing for its functions, or (5) the provisions of Section 17 of this Declaration with respect to the commencement of assessments on any Lot, or (6) the provisions of Section 22(b) of this Declaration with respect to amendments solely by Declarant without, in each and any of such circumstances, the unanimous approval of all Owners, including Declarant so long as Declarant owns any Lot, and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and by Declarant if required herein. Each amendment shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(b) Amendment. Prior to the conveyance of the first Lot to an Owner, Declarant may unilaterally amend this Declaration. After such conveyance, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is: (a) necessary to bring any provision thereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwelling Units; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Development; or (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, that any amendment permitted under subsections (a) through (f) above shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, prior to the Applicable Date, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

23. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this

Declaration, the Articles, and the Bylaws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Real Estate in any manner shall be subject to the Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

24. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation.

25. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

26. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

27. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the Bylaws, and each shall be enforced to the greatest extent permitted by law.

28. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

29. Interpretation. The captions and titles of the various articles, sections and subsections of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

30. Controlling Document. In the event there is a conflict between the provisions of this Declaration and the Plat, the terms of this Declaration shall be controlling. Conflict, as used herein, shall mean a situation where the application of the language in one document contradicts

the language in another document. Conflict does not occur where language in one document is simply more restrictive than language in another document.

[Signature page follows]

EXHIBIT A

Real Estate

The East half of the Northeast Quarter of Section 29, Township 19 North Range 4 East Washington Township, Hamilton County, Indiana.

EXCEPT: Beginning at the Northeast corner of the Northeast Quarter of Section Twenty-nine, Township Nineteen North, Range Four East, in Washington Township; thence North 89 degrees 9 minutes West with North Line of said Section Twenty-nine, 408 feet to corner of this tract; thence, South 908 feet to corner of this tract; thence, South 89 degrees, 9 minutes East 408 feet to corner in Section line; thence, North with Section line 908 feet to the place of beginning, said exception containing 8.4 acres, more or less.

ALSO EXCEPT: Commencing at a 5/8 inch iron marking the Northeast corner of the East half of the Northeast quarter of Section 29, Township 19 North, Range 4 East thence South 00 degrees 00 minutes 37 seconds East 380.00 feet with the East line of said East half quarter to a mag nail and the true point of beginning of the real estate herein described; thence South 00 degrees 50 minutes 37 seconds East 250.00 feet with said East line to a mag nail; thence North 89 degrees 09 minutes 51 seconds West 408.00 feet to a 5/8 inch iron; thence North 00 degrees 50 minutes 37 seconds West 250.00 feet to a 5/8 inch iron marking the Southwest corner of an 8.4 acre tract; thence South 89 degrees 09 minutes 51 seconds East 408.00 feet with the South line of said 8.4 acre tract to the point of beginning, containing 2.34 acres, more or less.

TOGETHER WITH:

A part of the West Half of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana, being bounded as follows:

BEGINNING at the southwest corner (Pik nail found) of the Northeast Quarter of Section 29, Township 19 North, Range 4 East; thence North 90 degrees 00 minutes 00 seconds East 650.90 feet on and along the south line of said Northeast Quarter to a point said point being South 90 degrees 00 minutes 00 seconds West 677.11 feet from the southeast corner of the west half of said Northeast Quarter; thence North 00 degrees 33 minutes 50 seconds West 525.71 feet; thence North 90 degrees 00 minutes 00 seconds East 670.64 feet parallel with the south line of said Northeast Quarter to the east line of the west half of said Northeast Quarter said point being North 00 degrees 23 minutes 50 seconds West 525.70 feet from the southeast corner of the west half of said Northeast Quarter; thence North 00 degrees 23 minutes 50 seconds West 538.08 feet on and along the east line of the west half of said Northeast Quarter, said point being South 00 degrees 23 minutes 50 seconds East 1597.01 feet from the northeast corner of the west half of said Northeast Quarter; thence North 89 degrees 33 minutes 00 seconds West 1328.28 feet parallel with the north line of said Northeast Quarter to the west line of said Northeast Quarter; thence South 00 degrees 21 minutes 15 seconds East 1072.08 feet on and along the west line of said Northeast Quarter to the POINT OF BEGINNING. Containing 24.95 acres, more or less, being subject to all applicable easements and rights-of-way of record.

ALSO:

A part of the West Half of the Northeast Quarter of Section 29, Township 19 North, Range 4 East located in Washington Township, Hamilton County, Indiana, being bounded as follows:

Commencing at a point on the West line of the Northeast Quarter of Section 28, Township 19 North, Range 4 East, said point being North 00 degrees 24 minutes 15 seconds West 1072.08 feet from the Southwest corner (PK nail found) of said Northeast Quarter; thence South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the point of beginning of this description; thence continue South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the East line of the West Half of said Northeast Quarter, said point being North 00 degrees 23 minutes 50 seconds West 1061.78 feet from the Southeast corner of the West Half of said Northeast Quarter; thence North 00 degrees 23 minutes 50 seconds West 1597.01 feet on and along the East line of the West Half of said Northeast Quarter to the North line of said Northeast Quarter; thence North 89 degrees 33 minutes 19 seconds West 664.225 feet on and along the North line of said Northeast Quarter to a point, said point being South 89 degrees 33 minutes 19 seconds East 664.225 feet from the Northwest corner (railroad spike found) of said Northeast Quarter; thence South 00 degrees 24 minutes 03 seconds East 1597.01 feet to the point of beginning, containing 24.35 acres, more or less.

EXCEPTING THEREFROM:

A part of the West Half of the Northeast Quarter of Section 28, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana, being bounded as follows:

Commencing at a point on the West line of the Northeast Quarter of Section 28, Township 19 North, Range 4 East, said point being North 00 degrees 24 minutes 15 seconds West 1072.08 feet from the Southwest corner (PK nail found) of said Northeast Quarter; thence South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the point of beginning of this description; thence continue South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the East line of the West Half of said Northeast Quarter, said point being North 00 degrees 23 minutes 50 seconds West 1061.78 feet from the Southeast corner of the West Half of said Northeast Quarter; thence North 00 degrees 23 minutes 50 seconds West 393.57 feet on and along the East line of the West Half of said Northeast Quarter; thence North 89 degrees 33 minutes 19 seconds West 664.13 feet, more or less to a point that bears North 00 degrees 24 minutes 03 seconds West from the point of beginning; thence South 00 degrees 24 minutes 03 seconds East 393.57 feet to the point of beginning, containing 6.00 acres, more or less.

ALSO:

A part of the West Half of the Northeast Quarter of Section 28, Township 19 North, Range 4 East located in Washington Township, Hamilton County, Indiana, being bounded as follows:

BEGINNING at a point on the West line of the Northeast Quarter of Section 28, Township 19 North, Range 4 East, said point being North 00 degrees 24 minutes 15 seconds West 1072.08 feet from the Southwest corner (PK nail found) of said Northeast Quarter; thence South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter; thence North 00 degrees 24 minutes 03 seconds West 1597.01 feet to the North line of said Northeast Quarter, said point being North 89 degrees 33 minutes 19 seconds West 664.225 feet from the Northeast corner of the West half of said Northeast Quarter; thence North 89 degrees 33 minutes 19 seconds West 664.225 feet on and along the North line of said Northeast Quarter to the Northwest corner (railroad spike found) of said Northeast Quarter; thence South 00 degrees 24 minutes 15 seconds East 1597.01 feet on and along the West line of said Northeast Quarter to the **POINT OF BEGINNING**. Containing 24.35 acres, more or less, being subject to an

easement for the Ellis Baker Drain, also being subject to all other easements and rights-of-way of record.

ALSO:

A part of the West Half of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana, being bounded as follows:

Commencing at a point on the West line of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, said point being North 00 degrees 24 minutes 10 seconds West 1072.08 feet from the Southwest corner (FK nail found) of said Northeast Quarter, thence South 89 degrees 33 minutes 19 seconds East 864.13 feet parallel with the North line of said Northeast Quarter to the POINT OF BEGINNING of this description; thence continue South 89 degrees 33 minutes 19 seconds East 864.13 feet parallel with the North line of said Northeast Quarter to the East line of the West Half of said Northeast Quarter, said point being North 03 degrees 23 minutes 50 seconds West 1063.78 feet from the Southeast corner of the West Half of said Northeast Quarter; thence North 00 degrees 23 minutes 50 seconds West 3935.7 feet on and along the East line of the West Half of said Northeast Quarter, thence North 89 degrees 33 minutes 19 seconds West 864.15 feet, more or less to a point that bears North 03 degrees 24 minutes 03 seconds West from the point of beginning; thence South 00 degrees 24 minutes 03 seconds East 3935.57 feet to the point of beginning, containing 6.00 acres, more or less.

EXHIBIT B

[Zoning Commitments]

2817883273 ORDINANCE #63.00
01/24/2017 09:10 928 27 PGS
Jennifer Hayden
HAMILTON County Recorder IN
Recorded as Presented
10017810000000000000000000000000

ORDINANCE NUMBER 16-42

AN ORDINANCE OF THE CITY OF WESTFIELD AND WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA CONCERNING AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE

This is a Planned Unit Development District Ordinance (to be known as the "SCOTFIELD FARMS PUD DISTRICT") to amend the Unified Development Ordinance of the City of Westfield and Washington Township, Hamilton County, Indiana (the "Unified Development Ordinance"), created by the City of Westfield pursuant to its authority under the laws of the State of Indiana, Ind. Code § 36-7-4 et seq., as amended.

WHEREAS, the City of Westfield, Indiana (the "City") and the Township of Washington, both of Hamilton County, Indiana are subject to the Unified Development Ordinance;

WHEREAS, the Westfield-Washington Advisory Plan Commission (the "Commission") considered a petition (Petition No. 1611-PUD-22), requesting an amendment to the Unified Development Ordinance and the Zoning Map real estate more particularly described in Exhibit A attached hereto (the "Real Estate");

WHEREAS, the Commission forwarded Petition No. 1611-PUD-42 to the Common Council of the City of Westfield, Hamilton County, Indiana (the "Common Council") with a favorable recommendation in accordance with Indiana Code § 36-7-4-608, as required by Indiana Code § 36-7-4-1505;

WHEREAS, the Secretary of the Commission certified the action of the Commission to the Common Council on December 21, 2016;

WHEREAS, the Common Council is subject to the provisions of the Indiana Code §36-7-4-1507 and Indiana Code § 36-7-4-1512 concerning any action on this request; and

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Westfield, Hamilton County, Indiana, meeting in regular session, that the Unified Development Ordinance and Zoning Map are hereby amended as follows:

Section 1. Applicability of Ordinance.

- 1.1 The Unified Development Ordinance and Zoning Map are hereby changed to designate the Real Estate as a Planned Unit Development District to be known as the "SCOTFIELD FARMS PUD District" (the "District")
- 1.2 Development of the Real Estate shall be governed by (i) the provisions of this Ordinance and its exhibits, and (ii) the provisions of the Unified Development Ordinance, as amended and applicable to the Underlying Zoning District as a Planned Unit Development District, except as modified, revised, supplemented

or expressly made inapplicable by this Ordinance.

1.3 Chapter ("Chapter") and Article ("Article") cross-references of this Ordinance shall hereafter refer to the section as specified and referenced in the Unified Development Ordinance.

1.4 All provisions and representations of the Unified Development Ordinance that conflict with the provisions of this Ordinance are hereby made inapplicable to the Real Estate and shall be superseded by the terms of this Ordinance.

Section 2. Definitions. Capitalized terms not otherwise defined in this Ordinance shall have the meanings ascribed to them in the Unified Development Ordinance.

2.1 **Area A.** The part of the Real Estate depicted on the Concept Plan as Area A.

2.2 **Area B.** The part of the Real Estate depicted on the Concept Plan as Area B.

2.3 **Underlying Zoning District.** The Zoning District of the Unified Development Ordinance that shall govern the development of this District and its various subareas, as set forth in Section 4 of this Ordinance.

Section 3. Concept Plan. The Concept Plan, attached hereto as **Exhibit B**, is hereby incorporated in accordance with Article 10.9(F)(2) Planned Unit Development Districts; PUD District Ordinance Requirements; Concept Plan. The Real Estate shall be developed in substantial compliance with the Concept Plan.

Section 4. Underlying Zoning District(s). The Underlying Zoning District shall be the SF4: Single Family High Density District.

Section 5. Permitted Uses. The permitted uses shall be as set forth below:

5.1 All uses permitted in the Underlying Zoning District, as set forth in Chapter 4 and Chapter 13 of the UDO, shall be permitted.

5.2 **Maximum Dwellings.** The total number of Dwellings permitted in the District shall not exceed two hundred and thirty-five (235).

Section 6. General Regulations. The standards of Chapter 4: Zoning Districts, as applicable to the Underlying Zoning District, shall apply to the development of the District, except as otherwise modified below. The standards for Area A and Area B shall be applied to the areas as depicted on the Concept Plan.

Standard	AREA A	AREA B
Minimum Lot Area	30,000 SF	8,500 SF
Minimum Lot Frontage	40'	40'
Minimum Building Setback Lines		
Front Yard	20'	20'
Side Yard	6'	4'
Rear Yard	20'	20'
Minimum Lot Width	72'	62'
Maximum Building Height	*1 ½ stories	2 ½ stories
Minimum Living Area (Total)		
One Story Dwellings	**1,400 SF	***1,800 SF
Two Story Dwellings	N/A	***2,000 SF

- * All Dwellings in Area A shall be One Story Dwellings and may have a maximum of seven hundred (700) square feet of finished living area above the first story ("1 ½ stories").
- ** The Homes in Area A along the 196th Street frontage shall be a minimum of 1,900 square feet of living area.
- *** The Homes in Area B backing up to 191st Street and Mountown Road (Lots M1-18 on the Concept Plan) shall be a minimum of 2,000 square feet for one-story homes and 2,400 square feet living area for 2-story homes.

Section 7. Development Standards. The standards of Chapter 6: Development Standards shall apply to the development of the District, except as otherwise modified below.

7.1 **Article 6.3 Architectural Standards:** shall apply, except as modified below:

- A. **Character Exhibit:** The Character Exhibit, attached hereto as **Exhibit C**, is hereby incorporated as a compilation of images designed to capture the intended architecture of structures to be constructed in the District. It is not the intent to limit the architecture shown in the Character Exhibit, but to encourage a diversity in architecture of Dwellings within the District.
- B. **Additional Architectural Standards:** The following shall apply to all Dwellings:
 - i. **Minimum Overhang:** The roof overhang or eaves shall be a minimum of twelve (12) inches, as measured prior to the installation of Masonry Materials.

ii. Garage Composition and Orientation:

- a) All Dwellings shall have a minimum two (2) car attached garage.
- b) Garage door designs shall include a variety of design elements including windows and/or hardware in order to vary the appearance of garage doors based on the architectural style of the dwelling. Garage doors with different window designs shall qualify as a different style.

iii. Building Materials: In addition to Article 6.3(C)(3) Building Materials, vinyl and aluminum siding shall be prohibited.

iv. Front Building Façade Requirements: At a minimum each Dwelling shall utilize the following architectural elements on the Front Building Façade:

- a) Wood, Fiber Cement Siding, or equivalent trim at corners, frieze boards, window and door wraps, and as transitional material between two different exterior materials.
- b) A minimum of two (2) two-foot (2') deep offsets which is a minimum height equivalent to one-story, excluding relief for doors, windows, and garages (homes incorporating two (2) or more architectural breaks shall be deemed to have met two (2) of the element requirements).
- c) Roof design featuring a hip roof; dormers (a minimum of two (2) dormers); a reverse gable; a shed roof accent; or, two (2) or more roof planes.
- d) Architecturally-treated entrances (for homes without a front porch).

v. Side Building Façade Requirements: Each Dwelling shall utilize a minimum of one (1) of the following architectural elements on each Side Building Façade. Side Building Façades that face Internal Streets shall utilize a minimum of two (2) of the following architectural elements on the Side Building Façade.

- a) Side level or angled garage.
- b) Hip roof.
- c) Roofline direction change or roofline height change greater than sixteen (16) inches or two (2) or more roof planes.
- d) A minimum of two (2) two-foot (2') deep offsets which is a minimum height equivalent to one-story, excluding relief for doors, windows, and porches.

- e) Masonry Materials on a minimum of eighteen (18) inches in height the entire length of the Side Building Façade, or a minimum four (4) foot deep return from the corner of the Front Building Façade that is a minimum height of the first floor.
- f) A minimum of three (3) or more windows with an aggregate minimum of forty-five (45) square feet in size, on the Side Building Façade.
- g) Bay window (a minimum of six (6) feet wide).
- h) Architecturally-enhanced trim a minimum of five and one-half inches (5-1/2") wide. Alternative decorative trim or masonry detailing (i.e. arches, cornices, crossheads, ornate moldings, pediments) may be considered by the Director if the trim otherwise results in a comparable visual contrast that enhances the architectural interest of the Front Building Façade.
- i) Exterior (projects from the Building Façade) fireplace chase that extends above the roof line.
- j) Architectural treatment (e.g., brackets, louvers, change in material pattern, etc.) on gable ends.
- k) Screened or screened porch (a minimum of one hundred and forty-four (144) square feet in size).

7.2. Article 6.8 Landscaping Standards: Shall apply, except as otherwise modified or enhanced below.

A. Lot Landscaping: Article 6.8(E) Minimum Lot Landscaping Requirements shall apply except as modified and enhanced below;

- i. All Single-family Residential Lots shall be landscaped with the following Plant Materials; Two (2) Shade Trees, two (2) Ornamental Trees and eight (8) Shrubs.
- ii. At a minimum the Lot's Established Front Yard shall be seeded and the remainder of the Lot shall be seeded.

Section 8. Infrastructure Standards. The District's infrastructure shall comply with the Unified Development Ordinance and the City's Construction Standards (see Chapter 7: Subdivision Regulations), unless otherwise approved by the Plan Commission or Department of Public Works in consideration to the preservation of the natural topography and environment and in consideration to the unique design intent of the District.

Section 9. Design Standards. The standards of Chapter 8: Design Standards shall apply to the development of the District, except as otherwise modified below.

9.1 Article 8.6 Open Space and Amenity Standards: Shall apply except as otherwise modified or enhanced below.

- A. Minimum Open Space: Shall be enhanced to require a minimum of thirty percent (30%) of the Real Estate, as generally shown on the Concept Plan
- B. Common Areas shall not be subject to the minimum lot acreage provisions of the underlying Zoning District; however, Article 8.6(C) shall apply.
- C. Amenities: The following amenities shall be provided:
 - i. Passive Amenities: A central open space including trails shall be provided for passive recreation opportunities, as generally depicted on the Concept Plan. Trails, including an eight-foot (8') wide multi-use path shall be installed in substantial compliance with the locations depicted on the Concept Plan. The final locations are subject to existing easements and final engineering. If trails are prevented from being installed as generally shown, then alternative trail locations may be approved by the Director that still provide access and connectivity to the District's Open Space
 - ii. Playground: Playground equipment, as generally depicted on Exhibit D shall be provided within the area depicted on the Concept Plan.
 - iii. Pool & Pool House: A swimming pool, pool house and parking lot shall be constructed within the Open Space area, as generally depicted on Exhibit D shall be provided within the area depicted on the Concept Plan. An alternative pool and pool house location within the Open Space area may be approved by the Director.

Section 9. Annexation. The Real Estate, or parts thereof that may be the subject of a secondary plat approval, shall be annexed into the corporate limits of the City of Westfield prior to the approval and recording of a secondary plat for that part of the Real Estate.

(Remainder of page intentionally left blank, signature page follows)

ALL OF WHICH IS ORDAINED/RESOLVED THIS 9 DAY OF Jan, 2017.

WESTFIELD CITY COUNCIL

Voting For

Voting Against

Abstain


Jim Ake

Jim Ake

Jim Ake

~~~~
~~James J. Edwards~~


James J. Edwards

James J. Edwards


Steven Hoover

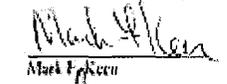
Steven Hoover

Steven Hoover


Robert L. Horkey

Robert L. Horkey

Robert L. Horkey


Mark F. Keen

Mark F. Keen

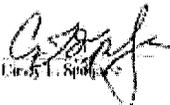
Mark F. Keen


Charles Lehman

Charles Lehman

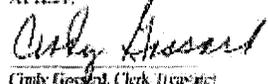
Charles Lehman


Cindy L. Spuljaric


Cindy L. Spuljaric

Cindy L. Spuljaric

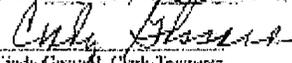
ATTEST:


Cindy Gossard, Clerk/Treasurer

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. Jon C. Doboszewicz

I hereby certify that ORDINANCE 16-42 was delivered to the Mayor of Westfield

on the 10 day of ~~July~~ 2017, at 9:30 a.m.


Candy Glass, Clerk-Treasurer

I hereby APPROVE ORDINANCE 16-42

this 11 day of ~~July~~ 2017.


J. Andrew Cook, Mayor

I hereby VETO ORDINANCE 16-42

this ___ day of ___, 2017.

J. Andrew Cook, Mayor

This document prepared by: James E. Shauver and Jan C. Dobosiewicz, Nelson & Frank/Benger
330 Congressional Blvd. Suite 210, Council Bluffs, IA 51503 (317) 844-0166

4/20/17 10:00 AM

SCHEDULE OF EXHIBITS

- Exhibit A Real Estate (Legal Description)
- Exhibit B Concept Plan
- Exhibit C Character Exhibits
- Exhibit D Playground Equipment / Pool Amenity

EXHIBIT A
REAL ESTATE

The East half of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, Washington Township, Hamilton County, Indiana.

EXCEPT: Beginning at the Northeast corner of the Northeast Quarter of Section Twenty-nine, Township Nineteen North, Range Four East, in Washington Township; thence North 89 degrees 9 minutes West with North Line of said Section Twenty-nine, 408 feet to corner of this tract; thence, South 500 feet to corner of this tract; thence, South 89 degrees, 9 minutes East 408 feet to corner in Section line; thence, North with Section line 800 feet to the place of beginning, said exception containing 8.4 acres, more or less.

ALSO EXCEPT: Commencing at a 5/8 inch rebar marking the Northeast corner of the East half of the Northeast quarter of Section 29, Township 19 North, Range 4 East, thence South 00 degrees 50 minutes 37 seconds East 950.00 feet with the East line of said East half quarter to a mag nail and the true point of beginning of the real estate herein described; thence South 00 degrees 50 minutes 37 seconds East 250.00 feet with said East line to a mag nail; thence North 89 degrees 59 minutes 51 seconds West 408.00 feet to a 5/8 inch rebar, thence North 00 degrees 50 minutes 37 seconds West 250.00 feet to a 5/8 inch rebar, the King the Southwest corner of an 8.4 acre tract; thence South 89 degrees 59 minutes 51 seconds East 408.00 feet with the South line of said 8.4 acre tract to the point of beginning, containing 2.94 acres, more or less.

TOGETHER WITH:

A part of the West Half of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana, being bounded as follows:

BEGINNING at the southwest corner (PX nail found) of the Northeast Quarter of Section 29, Township 19 North, Range 4 East; thence North 90 degrees 00 minutes 00 seconds East 650.90 feet on and along the south line of said Northeast Quarter to a point said point being South 90 degrees 00 minutes 00 seconds West 677.11 feet from the southeast corner of the west half of said Northeast Quarter; thence North 00 degrees 33 minutes 59 seconds West 525.71 feet, thence North 90 degrees 00 minutes 00 seconds East 678.64 feet parallel with the south line of said Northeast Quarter to the east line of the west half of said Northeast Quarter; said point being North 00 degrees 23 minutes 59 seconds West 626.70 feet from the southeast corner of the west half of said Northeast Quarter; thence North 00 degrees 23 minutes 50 seconds West 639.08 feet on and along the east line of the west half of said Northeast Quarter; said point being South 00 degrees 23 minutes 50 seconds East 1397.01 feet from the northeast corner of the west half of said Northeast Quarter; thence North 89 degrees 33 minutes 19 seconds West 1328.26 feet parallel with the north line of said Northeast Quarter to the west line of said Northeast Quarter; thence South 00 degrees 21 minutes 15 seconds East 1077.08 feet on and along the west line of said Northeast Quarter to the **POINT OF BEGINNING**, containing 24.95 acres, more or less, being subject to all applicable easements and rights-of-way of record.

ALSO:

A part of the West Half of the Northeast Quarter of Section 29, Township 19 North, Range 4 East located in Washington Township, Hamilton County, Indiana, being bounded as follows:

Commencing at a point on the West line of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, said point being North 00 degrees 24 minutes 15 seconds West 1072.08 feet from the Southwest corner (PK nail found) of said Northeast Quarter; thence South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the point of beginning of this description; thence continue South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the East line of the West Half of said Northeast Quarter, said point being North 00 degrees 23 minutes 50 seconds West 1061.78 feet from the Southeast corner of the West Half of said Northeast Quarter; thence North 00 degrees 23 minutes 50 seconds West 1567.01 feet on and along the East line of the West Half of said Northeast Quarter to the North line of said Northeast Quarter; thence North 89 degrees 33 minutes 19 seconds West 664.225 feet on and along the North line of said Northeast Quarter to a point, said point being South 89 degrees 33 minutes 19 seconds East 664.225 feet from the Northwest corner (railroad spike found) of said Northeast Quarter; thence South 00 degrees 24 minutes 03 seconds East 1567.01 feet to the point of beginning, containing 24.35 acres, more or less.

EXCEPTING THEREFROM:

A part of the West Half of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana, being bounded as follows:

Commencing at a point on the West line of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, said point being North 00 degrees 24 minutes 15 seconds West 1072.08 feet from the Southwest corner (PK nail found) of said Northeast Quarter; thence South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the point of beginning of this description; thence continue South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the East line of the West Half of said Northeast Quarter, said point being North 00 degrees 23 minutes 50 seconds West 1061.78 feet from the Southeast corner of the West Half of said Northeast Quarter; thence North 00 degrees 23 minutes 50 seconds West 393.57 feet on and along the East line of the West Half of said Northeast Quarter; thence North 89 degrees 33 minutes 19 seconds West 664.15 feet, more or less to a point that bears North 00 degrees 24 minutes 03 seconds West from the point of beginning; thence South 00 degrees 24 minutes 03 seconds East 393.57 feet to the point of beginning, containing 6.00 acres, more or less.

ALSO:

A part of the West Half of the Northeast Quarter of Section 29, Township 19 North, Range 4 East located in Washington Township, Hamilton County, Indiana, being bounded as follows:

BEGINNING at a point on the West line of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, said point being North 00 degrees 24 minutes 15 seconds West 1072.08 feet from the Southwest corner (PK nail found) of said Northeast Quarter; thence South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter; thence North 00 degrees 24 minutes 03 seconds West 1567.01 feet to the North line of said Northeast Quarter, said point being North 89 degrees 33 minutes 19 seconds West 664.225 feet from the Northeast corner of the West half of said Northeast Quarter; thence North 89 degrees 33 minutes 19 seconds West 664.225 feet on and along the North line of said Northeast Quarter to the Northwest corner (railroad spike found) of said Northeast Quarter; thence South 00 degrees 24 minutes 15 seconds East 1567.01 feet on and along the West line of said Northeast Quarter to the **POINT OF BEGINNING**. Containing 24.35 acres, more or less, being subject to an

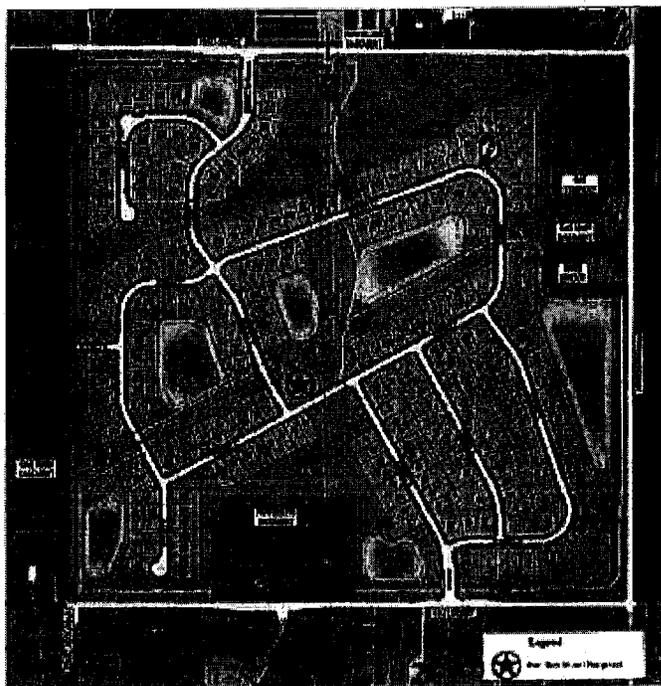
easement for the Ellis Barker Drain, also being subject to all other easements and rights-of-way of record

ALSO:

A part of the West Half of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana, being bounded as follows:

Commencing at a point on the West line of the Northeast Quarter of Section 29, Township 19 North, Range 4 East, said point being North 00 degrees 24 minutes 10 seconds West 1072.00 feet from the Southeast corner (PK nail found) of said Northeast Quarter, thence South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the POINT OF BEGINNING of this description; thence continue South 89 degrees 33 minutes 19 seconds East 664.13 feet parallel with the North line of said Northeast Quarter to the East line of the West Half of said Northeast Quarter, said point being North 00 degrees 23 minutes 50 seconds West 1061.76 feet from the Southeast corner of the West Half of said Northeast Quarter; thence North 00 degrees 23 minutes 50 seconds West 393.57 feet on and along the East line of the West Half of said Northeast Quarter, thence North 89 degrees 33 minutes 18 seconds West 664.15 feet, more or less to a point that bears North 00 degrees 24 minutes 03 seconds West from the point of beginning; thence South 40 degrees 24 minutes 03 seconds East 393.57 feet to the point of beginning, containing 6.00 acres, more or less.

EXHIBIT B
CONCEPT PLAN
(Page 1 of 2)



Note: Larger scale paper and digital copies of the Concept Plan are on file with the Department of Economic and Community Development under Docket Number 16E1-PUD-42.

EXHIBIT B
CONCEPT PLAN
(Page 2 of 2)

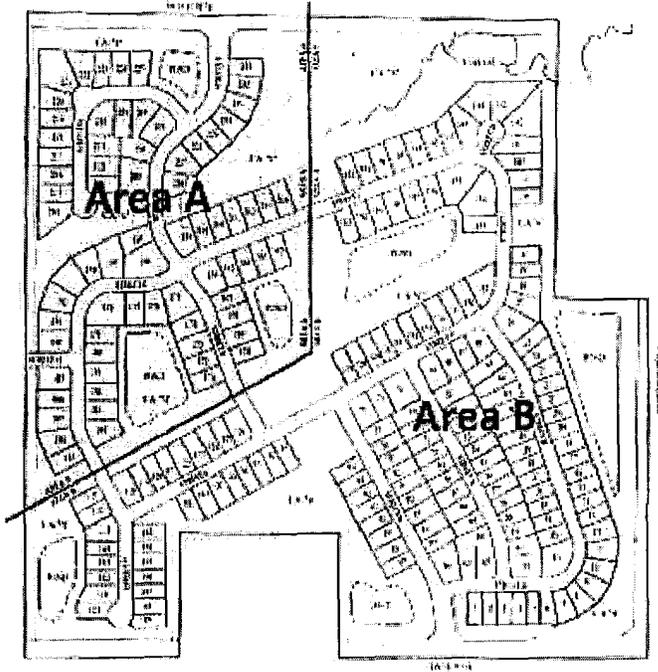


EXHIBIT C
CHARACTER EXHIBITS
(Page 1 of 12)



EXHIBIT C
CHARACTER EXHIBITS
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CHARACTER EXHIBITS
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EXHIBIT C
CHARACTER EXHIBITS
(Page 11 of 12)



1220 East Kuykendall 08/11/2010



EXHIBIT C
CHARACTER EXHIBITS
(Page 12 of 12)

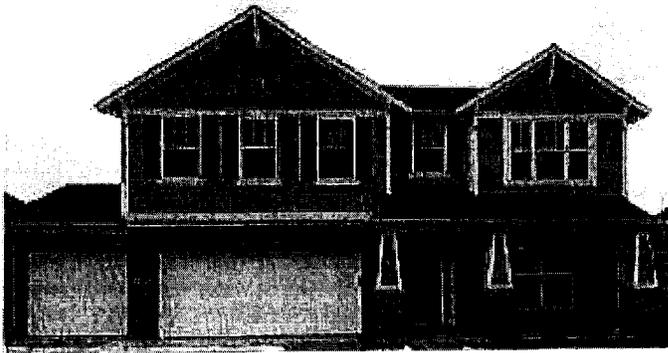


EXHIBIT B
Playground Equipment / Pool Amenity
(Page 1 of 1)



2024022155 AMEN \$25.00
06/24/2024 04:07:06PM 7 PGS
Trini Beaver
Hamilton County Recorder IN
Recorded as Presented

CDH

Cross References: 2018008136



**AMENDMENT TO THE DECLARATION OF COVENANTS
AND RESTRICTIONS OF SCOFIELD FARMS**

This Amendment to the Declaration of Covenants and Restrictions of Scofield Farms was executed as of the date set forth below.

WITNESSETH that the following facts are true:

The Scofield Farms subdivision located in Hamilton County, Indiana was established by a "Declaration of Covenants and Restrictions" (the "Declaration") that was filed in the Office of the Recorder of Hamilton County, Indiana on February 28, 2018, as Instrument No. 2018008136; and

Plats filed with the Office of the Recorder of Hamilton County, Indiana established the Lots and Common Areas comprising said subdivision; and

Section 22 of the Declaration allows for the amendment of the Declaration upon the approval of at least seventy-five percent (75%) of the votes of the Lot Owners; and

The Board of Directors of the Scofield Farms Homeowners Association, Inc. ("Association") recommended that the Declaration of Covenants be further amended as set forth below; and

After notice was duly given, a vote of the members of the Association was held for the stated purpose of considering and voting upon this amendment; and

The Owners of one hundred seventy five (175) of the two hundred thirty-three (233) Lots in Scofield Farms voted in favor of amending the Declaration pursuant to the terms below; and

Said Owners constitute more 75.10% of all Owners; and

NOW, THEREFORE the Declaration which is applicable to all Owners and residents within Scofield Farms is hereby amended as follows:

I. Section 21(p) shall be deleted in its entirety and a new Section 31 of the Declaration is hereby added to the end of the Declaration of Covenants to read as follows:

31. Leasing Restrictions.

Section 31.1. General Purposes of Leasing Restrictions. The Association's members wish to ensure that the residents within Scofield Farms share the same proprietary interest in and respect of the Lots and the Common Areas. They also want to encourage residents to not only maintain property values but also to improve them. Thus, the provisions of this Section 31 shall be applicable.

Section 31.2. Limits on the Number of Leased Lots ("Rental Cap"). No more than twelve (12) of the Lots (which is about 5% of the total number of Lots) may be leased or rented to non-Owner occupants at any given time, except as may be otherwise provided in this Section 31. The "Grandfathered Lots" defined and described in Section 31.3 below shall count towards the twelve (12) Lot "Rental Cap". If at any time such number of Lots are leased or rented, an Owner who wants to rent or lease his or her Lot which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner of that Lot shall immediately notify the Board of Directors or Managing Agent of such fact and shall have thirty (30) days from the date on which the existing tenant moves out to enter into a new lease agreement with another tenant, and to provide a copy of such lease to the Board of Directors or Managing Agent. If the Owner does not enter into a new lease agreement and provide a copy of such lease to the Board or Managing Agent within thirty (30) days, then the Lot cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Lots. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors or the Managing Agent as to that Owner's intent to lease his or her Lot. After receiving such notice, the Board of Directors or the Managing Agent shall advise the Owner if the Lot may be leased or whether the maximum number of Lots within Scofield Farms is currently being leased. If the maximum number of Lots is being leased, the Board of Directors or the Managing Agent shall also notify the Owner of that Owner's position on the waiting list.

Section 31.3. Effective Date of "Rental Cap" on Existing Rentals. Within thirty (30) days after the date on which this Section 31 is filed with the County Recorder (the "Recording Date"), the Board of Directors or Managing Agent shall provide written notice to all Owners setting forth the Recording Date and the mailing address of the Association. The provisions of Section 31.2 (the "Rental Cap") shall not apply to the Owner of any Lot in Scofield Farms which, as of the Recording Date, is rented or leased by its Owner to a non-Owner occupant, so long as the Owner-landlord mails or otherwise delivers to the Board of Directors of the Association (at the address shown in the notice of the Recording Date), within sixty (60) days

after the Recording Date, a copy of each executed lease of such Owner-landlord's Lot (or Lots) which is in effect as of the Recording Date. Such Lots shall be referred to as "Grandfathered Lots." Such lease copies may have the rental amount deleted as well as any personal identifying information such as social security numbers. The Owners of such Grandfathered Lots shall not be subject to the provisions of Section 31.2, but shall be subject to the remaining provisions of this Section 31. However, when the legal Owners of record of any of the Grandfathered Lots sell, transfer, or convey such Lot(s) to another Owner after the date of recording of this Section 31, such Lot(s) shall immediately become subject to the Rental Cap.

If any such Owner-landlord of a leased or rented Lot fails to deliver a copy of such pre-Recording Date lease within said sixty-day period to the Board of Directors, that will result in said Owner-landlord's Lot being subject to the Rental Cap (from and after the date of expiration of such pre-Recording Date lease). However, in no event shall the Rental Cap apply to any lease executed prior to the Recording Date or to any renewals thereof provided for in any such leases, so long as the Lot continues to be occupied by one or more of the non-Owner occupants in possession of the Lot as of the Recording Date. Any Lot that falls under the exception of this Section 31.3 shall, nevertheless, be counted as one of the twelve (12) Lots that may be rented at any given time even though such maximum does not apply to restrict the Owner of such pre-Recording Date leased Lot.

Section 31.4. Hardship Exceptions and Waiver. Notwithstanding anything else herein, if an Owner wishes to rent or lease his or her Lot, but the maximum number of Lots is currently being leased, the Owner may request the Board of Directors to waive the "Rental Cap" and approve a proposed lease if the Owner establishes to the Board's satisfaction that the "Rental Cap" will cause undue hardship. If a majority of the entire Board of Directors approves the Owner's request in writing, the Board of Directors shall permit the Owner to rent or lease said Lot, subject to any further conditions or limitations imposed by the Board in the Board's discretion, but only if the Owner satisfies all other requirements of this Section 31. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (a) death, dissolution or liquidation of an Owner;
- (b) divorce or marriage of an Owner;
- (c) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Scofield Farms due to a change of employment or retirement of at least one (1) of such Owners;
- (d) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (e) other similar circumstances.

Section 31.5. General Lease Conditions.

- (a) All leases, including renewals, shall be in writing, and no lease shall be entered into for an initial term of less than one (1) year without the prior written approval of the Board of Directors. Owners may not lease, rent, or otherwise operate their home and Lot on a hotel, transient or short-term rental basis. For the purpose of this Section 31.5, "short-term rental" is defined as any term of less than one (1) year. This short-term rental prohibition includes, but is not limited to, the use of a short-term rental platform through which unaffiliated parties offer to rent a home and Lot or portion thereof to an occupant and collects consideration for the rental from the occupant (for example, Airbnb or VRBO).
- (b) A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted as well as personal identifying information) shall be provided to the Board of Directors or the Managing Agent by the Owner within thirty (30) days after execution.
- (c) No portion of any Lot other than the entire Lot shall be leased for any period.
- (d) No subleasing shall be permitted.
- (e) All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the By-Laws, and the rules and regulations adopted by the Board of Directors, as amended (collectively referred to hereafter as the "Governing Documents"), to the same extent as if the tenant were an Owner and a member of the Association.
- (f) All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease.
- (g) The Owner shall supply copies of the Governing Documents to the tenants prior to the effective date of the lease.
- (h) The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner's right to lease the Owner's Lot, even if during the term of a lease.
- (i) Owners must provide the Board of Directors or Managing Agent with the name of the tenant(s) and any other residents living in the Lot, together with the phone number of the tenant(s). Also, the Owner must provide the Board of Directors or Managing Agent with the Owner's contact information such as address and phone number.
- (j) To be eligible to lease his or her Lot, the Owner cannot be in violation of any provisions of the Governing Documents. If at any time an Owner violates any such provisions through the actions or omissions of the Owner's tenant, the Board shall

have the right to revoke said Owner's right to lease the Owner's Lot, even if during the term of a lease.

Section 31.6. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of the Governing Documents, or from the Owner's liability to the Association for payments of assessments or any other charges.

Section 31.7. Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Section 31 shall be voidable at the election of the Association's Board of Directors or any other Owner, except that neither party to such lease may assert this provision to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity, including the right to recover from the violating Owner all attorneys fees, costs and expenses.

Section 31.8. Institutional Mortgagees. The provisions of this Section 31 shall not apply to any institutional mortgagee of any Lot which comes into possession of the Lot by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Lot is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser or Owner shall be bound by the provisions of this Section 31.

Section 31.9. Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Lot is not occupied by one of the Owners thereof, there shall be a presumption that the Lot is being leased and subject to the provisions of this Section 31 and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Section 31, including but not limited to the delivery to the Board of Directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy.

Section 31.10. Two Year Waiting Period; Hardship Exceptions and Waiver. For a period of at least two (2) years after an Owner's acquisition of a Lot, said Owner cannot lease or rent such Lot. After such time, said Lot will be eligible to be leased if the Rental Cap has not been reached and all other conditions of this Section 31 are satisfied, and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. Notwithstanding this Section 31.10, if an Owner wishes to lease a Lot prior to the end of the two-year waiting period, the Owner may apply to the Board of Directors for a hardship exception and waiver as described in Section 31.4 above.

Section 31.11. Certain Lots Not Counted as Rentals. The provisions of this Section 31 will not apply to any situation where a Lot is occupied by one or more family members of the Lot Owner (persons related by blood, marriage, adoption, foster care, or guardianship). Thus, this kind of occupancy will not be considered a “rental.” Likewise, any Lot owned by a Trust or an Estate will not be considered a “rental” if the resident is (i) the Trustee, (ii) the Fiduciary of an Estate, or (iii) a beneficiary of the Trust or Estate.

2. Acceptance and Ratification. The acceptance of a deed of conveyance or the act of occupancy of any one Lot shall constitute a ratification of this Amendment, together with the Declaration, and all such provisions shall be covenants running with the land and shall bind any person having at any time having any interest or estate in a Lot or the Scofield Farms subdivision as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

3. Certification. The undersigned officers of the Association hereby represent and certify that all requirements for and conditions precedent to this Amendment of the Declaration have been fulfilled and satisfied.

[the reminder of this page is intentionally left blank; signature page follows]

Executed this 20 day of June, 2024.

Scofield Farms Homeowners Association, Inc., by:

Stacy Meyers
Stacey Meyers, President

Attest:

Kate Lynch
Kate Lynch, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF Hamilton)

Before me, a notary public, in and for said County and State, personally appeared Stacey Meyers and Kate Lynch, the President and Secretary, respectively, of Scofield Farms Homeowners Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the representations made herein are true. Witness my hand and notarial seal this 20 day of June, 2024.



Angela M. Davis
Notary Public - Signature
Angela M. Davis
Printed

My Commission Expires:

September 16, 2027

Residence County: Hamilton

"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." /s/ Kimberly M. Sutter.

This instrument prepared by: Kimberly M. Sutter, Esq., Eads, Murray, & Pugh, P.C., 9515 E. 59th St., Suite B, Indianapolis, IN 46216. (317) 536-2565 Kim@IndianaHOALaw.com