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**SECTION 1**  
**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**  
**OF**  
**WEST HAVEN AT NOBLE WEST**

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**SECTION 1 DECLARATION OF EASEMENT, COVENANTS AND RESTRICTIONS  
OF  
WEST HAVEN AT NOBLE WEST**

THIS DECLARATION is made as of the 27<sup>th</sup> day of JULY, 2004, by **Maefield Development, LLC**, an Indiana limited liability company ("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 designated on the attached Exhibit A, which is incorporated herein by reference (hereinafter referred to as the "Section 1 Real Estate").

B. Declarant intends to develop the Section 1 Real Estate into lots for single-family homes and to convey such Lots to Secondary Declarant or to third parties.

C. Declarant is, contemporaneously with the recording of this Declaration, recording a plat (the "Plat") of the Section 1 Real Estate, a copy of which is attached hereto as Exhibit B.

D. Declarant, by execution and recording of this Declaration, is subjecting the Real Estate to the terms and provisions of this Declaration and assuring 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 Paragraph 10 of this Declaration.

(b) "Architectural Review Board" shall have the meaning set forth in the Master Declaration.

(c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Section 1 Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(d) "Board of Directors" means the governing body of the Section 1 Corporation elected by the Members in accordance with the Bylaws of the Section 1 Corporation.

(e) "Bylaws" shall mean the Bylaws of the Section 1 Corporation and shall provide for the election of directors and officers and other governing officials of the Section 1 Corporation.

(f) "Common Area" means the area within Section 1 that is designated as such upon the Plat or designated as Common Area in this Declaration and which is to be maintained and controlled by the Section 1 Corporation.

(g) "Common Expense" means expenses for administration of the Section Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Area in the Section 1 Real Estate and all sums lawfully assessed against the members of the Section 1 Corporation.

(h) "Declarant" shall mean and refer to Maefield Development, LLC, and any successors and assigns of it whom it 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 Section 1 Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(i) "Dwelling Unit" means a living unit located upon a Lot.

(j) "Landscape Easement" is defined in Paragraph 6.

(k) "Lot" means any plot of ground designated as such upon the Plat and upon which one (1) Dwelling Unit is constructed, may be constructed or exists thereon. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

(l) "Master Declaration" means the Master Declaration of Easements, Covenants and Restrictions of West Haven at Noble West by Declarant dated \_\_\_\_\_, 2004 and recorded in the Office of the Recorder of Hamilton County, Indiana, as Instrument No. \_\_\_\_\_.

(m) "Member" means a member of the Section 1 Corporation.

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

(o) "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.

(p) "Overall Common Area" means the area designated as such upon the Plat or designated as Overall Common Area in this Declaration.

(q) "Quorum" means Members holding forty percent (40%) of the aggregate voting rights in the Master Association.

(r) "Regular Overall Assessment" means the assessment applicable to Owners in accordance with the terms and provisions of the Master Declaration.

(s) "Secondary Declarant" means any entity to whom Declarant has conveyed two (2) or more Lots in Section 1, where such entity intends to construct Dwelling Units on such Lots for resale.

(t) "Section 1 Corporation" means Section 1 Homeowners Association, Inc., a non-profit corporation whose Members shall be Owners of Lots in Section 1.

(u) "Section 1 Declaration" means this Declaration.

(v) "Streets" shall be as designated on the Plat, shall be private and shall be part of the Overall Common Area or the Common Area as designated on the Plat. Notwithstanding the foregoing, there may be streets and roadways in Section 1 that are public dedicated streets or roadways.

(w) "West Haven at Noble West" shall the meaning set forth in the Master Declaration.

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. Description of Section 1. Section 1 consists of all the Lots developed on the Section 1 Real Estate, together with the Overall Common Area located within the Section 1 Real Estate. The Overall Common Area, Common Area, Streets, Landscape Easement and the size of the Lots within Section 1 are as designated on the Plat.

4. Overall Common Area. The Overall Common Area shall be conveyed to the Master Association and the Master Association shall have the obligation to provide for the maintenance, upkeep, repairs and replacement of the Overall Common Area at all times, even if the Overall Common Area has not yet been conveyed to the Master Association.

5. Common Area. The Common Area shall be conveyed to the Section 1 Corporation. The Section 1 Corporation shall have the obligation to provide for the maintenance, upkeep, repair and replacement of the Common Area, even if the Common Area has not been conveyed to the Section 1 Corporation. Common Area shall be used only for those uses specifically delineated in the Section 1 Declaration or the Plat.

6. Landscape Easement. Pursuant to the Master Declaration, Declarant has created, if shown and designated as such on the Plat, a "Landscape Easement." Notwithstanding any other provision contained herein, the Landscape Easement (whether located in the Overall Common Area or the Common Area) shall be maintained by the Master Association, as provided in the Master Declaration.

7. Ownership of Common Area. The Common Area shall be conveyed to or owned by the Section 1 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) The right of the Section 1 Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 11.

(b) The Common Area shall be conveyed to or owned by the Section 1 Corporation on the Applicable Date or earlier; provided, however, that the conveyance of the Common Area to the Section 1 Corporation shall not prevent Declarant from improving the Common Area as Declarant deems appropriate (including, but not limited to construction of lakes and recreational facilities) at any time prior to the Applicable Date; and further provided the Section 1 Corporation shall be responsible for any costs and expenses related to the Common Area, even if the Common Area or any part thereof has not been conveyed to the Section 1 Corporation.

8. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Section 1 Corporation, his right of enjoyment, and use of the Common Area and facilities to members of his family, or contract purchasers who reside on any Lot.

9. Easements in Common Area.

(a) General. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, cables, conduits, utility lines, drainage facilities, sidewalks, roads and other common facilities, if any, located in the Common Area or otherwise designated in the Plat. Such easement and right to use shall pass with title to such Lot even though not expressly mentioned in the document passing title.

An easement is also granted to the Section 1 Corporation, its officers, agents and employees and to any management company selected by the Master Association to enter in or to cross over the Overall Common Area, Common Area, Landscape Easement and Lots to perform its duties; provided, however, except in the case of an emergency, reasonable notice shall be given to the Owner.

10. Section 1 Corporation; Membership; Voting; Functions.

(a) Membership in Section 1 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 Section 1 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 realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Section 1 Corporation.

(b) Voting Rights. The Section 1 Corporation shall have two (2) classes of membership with the following voting rights:

(i) Class A. Class A Members shall be all Owners. Upon and after the Applicable Date, 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 Section 1 Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but 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, any Secondary Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the Secretary of the Section 1 Corporation. Until the Applicable Date, the Class B Members shall have all voting rights with respect to any matters submitted to the Members of the Section 1 Corporation, and no other class of membership shall have any voting rights. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of (i) the date upon which the written resignation of all Class B Members is delivered to the Secretary of the Section 1 Corporation, or (ii) the date when Declarant, any Secondary Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members no longer own any portion of the Section 1 Real Estate.

(c) Functions. The Section 1 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 and 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 Section 1 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 subparagraph (b) of this Paragraph 11.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the three (3) persons designated by Declarant (herein referred to as the "Initial Board"). 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, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. 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 determined as provided above, 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 Section 1 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. 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 Section 1 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 Section 1 Corporation nor an Owner of a Lots for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Section 1 Corporation).

(c) Additional Qualifications.

(i) 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 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 person at a time.

(ii) After the Initial Board, the Board of Directors shall be composed of three (3) persons who are residents of Section 1.

(d) **Term of Office; Vacancy.** Members of the Board of Directors shall serve for such terms, and vacancies in the Board of Directors shall be filled, as provided in the Bylaws of the Section 1 Corporation.

(e) **Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Section 1 Corporation representing all of the Owners and being responsible for the functions and duties of the Section 1 Corporation, including, but not limited to, providing for the administration of the Section 1 Corporation, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners) and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Section 1 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 the Board's duties and the Section 1 Corporation's responsibilities, which include, but are not limited to:

- (i) Maintenance, repair, upkeep and replacement of the Common Area (except as is otherwise the obligation of an Owner), including but not limited to, the maintenance, repair, upkeep and replacement of the following (if located within the Common Area): (1) street furniture, (2) signage, (3) walls, fences and gates, (4) flowers, plant material, grass and other landscaping, (5) irrigation system, (6) lighting, and (7) Streets;
- (ii) Repair, upkeep, maintenance and replacement of any security system and providing for any security personnel;
- (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 Section 1 Corporation and the Board any 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) Snow removal from any Streets that are part of the Common Area; and
- (ix) Maintenance of any security gates, including any locks and security devices.

(f) 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 Section 1 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 Section 1 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 Section 1 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 Section 1 Real Estate, 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.

(g) 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 \$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 covered in the 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.

(h) 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.

(i) 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 Section 1 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 Section 1 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 Section 1 Corporation.

(j) Additional Indemnity of Directors. The Section 1 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 Section 1 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. The Section 1 Corporation shall also reimburse any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a

vote of the Members constituting sixty percent (60%) of a Quorum that such Director was not guilty of gross negligence or misconduct. 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 Section 1 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 Section 1 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.

(k) Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Section 1 Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Section 1 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 and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

12. Initial Management. The Initial Board of Directors may enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such affiliate of Declarant as appropriate) will provide supervision, management and maintenance of the Common Area (except as such is the obligation of the individual Owners) and in general, perform all of the duties and obligations of the Section 1 Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years. Such management agreement is or will be subject to termination by Declarant (or its affiliate as appropriate) at any time prior to expiration of its term, in which event the Section 1 Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Section 1 Corporation and Declarant (or its affiliate as appropriate) is in effect, Declarant (or its affiliate as appropriate) shall have and Declarant hereby reserves to itself (or to its affiliate as appropriate), the exclusive right to manage the Section 1 Real Estate and perform all the functions of the Section 1 Corporation.

13. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot, the Common Area and to the Overall Common Area and are to be paid as provided in the Master Declaration.

14. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities applicable to the Common Area shall be a Common Expense.

15. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Area (except as such is the obligation of the individual Owners) as provided in Paragraph 11(e) shall be furnished by the Section 1 Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Each Owner (except as otherwise established a Section 1 Corporation's responsibility under this Declaration) shall be responsible for maintaining and keeping his Lot, Dwelling Unit and all other structural improvements located on his Lot (including any sprinkler system) in a good, clean, neat, sanitary and well maintained condition (including the removal of all weeds, underbrush and other unsightly growth) and shall do such work thereon as is required to cause such Lot and structural improvements to be so maintained. The obligation to maintain a Lot shall exist, whether or not a Dwelling Unit exists on such Lot, and the Owner of such Lot (except as otherwise established as Section 1 Corporation's responsibility under this Declaration) shall keep such Lot maintained in the same manner as such Lot would be maintained if a Dwelling Unit existed thereon.

Notwithstanding any obligation or duty of the Section 1 Corporation to repair or maintain the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby, which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Section 1 Corporation, unless such loss is covered by Section 1 Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Section 1 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.

If any Owner shall fail to 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 (if such is the obligation of the Owner), the Section 1 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, and such cost shall be immediately due, and shall be secured by the Section 1 Corporation's lien on the Owner's Lot.

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 Section 1 Corporation, its agents and employees, the right 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. Architectural control shall be governed by the provisions relating to architectural control in the Master Declaration.

17. Assessments

(a) Annual Accounting. Annually, after the close of each fiscal year of the Section 1 Corporation, the Board shall cause to be prepared and a copy furnished to each Owner who so requests a financial statement prepared by an accounting group 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 Section 1 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 Section 1 Corporation for adoption and, if so adopted, shall be the basis for the Regular Overall Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Members, notwithstanding any other provision in this Declaration, the Articles or the Bylaws, 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 Members present either in person or by proxy; provided, however, that in no event shall the annual meeting of the Members 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 Overall Assessments and all sums assessed by the Master Association 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 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, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area shall be maintained by the Section 1 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 County, Indiana selected from time to time by the Board and shall constitute a portion of the Regular Assessment.

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 as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Section 1 Corporation, there is no annual budget approved by the Owners as herein provided for such 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, based on the estimated cash requirement for the Overall Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment, against each Lot. The assessment against each Lot shall be equal to the Overall Common Expenses multiplied by a percentage equal to one (1) divided by the number of Lots in the Section 1 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 Overall 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 as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments with the first payment due on the first day of the month following the date such Lot is platted and prorated to the first day of the month when the next monthly payment is due. Thereafter, payment of the Regular Assessment shall be paid monthly. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, the Board may elect to have the Owners pay assessments quarterly, semi-annually or annually, in advance. 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 credit against future assessments 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 Section 1 Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Section 1 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 Lots as finally determined, and such Owner and his successor as Owner of such Lots shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Master Association pursuant to Paragraph 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. Semi-annual installments or annual installments of Regular Assessments (as applicable) shall be due and payable automatically on their respective due dates without any notice from the Board or the Section 1 Corporation, and neither the Board nor the Section 1 Corporation shall be responsible for providing any notice or statements to Owners for the same.

(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 be the equal obligation of all Owners and shall become a lien on each Lot (herein called "Special Assessment"). The Board shall be obligated to provide the Owners with notice of the date of the Board of Directors' meeting when the vote for any resolution for a Special Assessment is to be made. 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 therefor.

(e) Initial Capital Reserve Contribution. Upon the initial purchase of a Lot by a person, other than a Secondary Declarant, such purchaser shall pay \$400.00 ("Initial Capital") to the Section 1 Corporation for deposit in a capital reserve fund, which fund is to be used for maintenance, repairs or replacement of Common Area that must be repaired and replaced on a periodic basis. Such Initial Capital amount shall be paid by all initial purchasers of Lots (other than Secondary Declarants) even if such purchase occurs after the Applicable Date. In addition, the Initial Board may designate a portion of the Regular Assessment to be put in the capital reserve fund.

The Initial Capital and any portion of the Regular Assessment collected prior to the Applicable Date that is applicable to the replacement reserve shall be held by the Initial Board and if required, applied to the replacement of Common Area. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Section 1 Corporation at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Lot shall commence on the first day of the month following the date that the Lots are platted ("Commencement Date"). The first payment shall be payable on the Commencement Date. Thereafter, payment of the Regular Assessment shall be paid monthly.

Each Owner hereby authorizes the Section 1 Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 12 of this Declaration and to adhere to and abide by the same.

(f) Collection by Section 1 Corporation. The Section 1 Corporation shall include as part of the Regular Assessment (as defined in each Section Declaration) for Section 1 the Regular Overall Assessment applicable to each Lot if such amount is available from the Master Association. Upon collection of the Regular Assessment for Section 1, the Section 1 Corporation shall remit the amount applicable to the Regular Overall Assessment to the Master Association; however, the inclusion of the Regular Overall Assessment in the Regular Assessment for Section 1 and the obligation of the Section 1 Corporation to remit such amount to the Master Association shall not in any way make the Section 1 Corporation liable to the Master Association for the Regular Overall Assessment if such amount is not paid by an Owner nor does it negate the right of the Master Association to exercise directly against an Owner any and all remedies available under this Declaration to collect the Regular Overall Assessment in the event an Owner fails to make such payment.

(g) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular 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 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 or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Section 1 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 or Special Assessment when due the Board may, in its discretion, accelerate the entire balance of unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special

Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Section 1 Corporation shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit 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 Bank One, Indianapolis, NA, from time to time (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 four percent (4%).

(h) 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 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 cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser thereof at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lots from which it arose).

19. Mortgages and Unpaid Assessments.

(a) Notice to Section 1 Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Section 1 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 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 Section 1 Corporation shall, upon request of a Mortgagee who has furnished the Master Association 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 Section 1 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 or Special Assessments or other charges against the Lot, which statement shall be binding upon the Section 1 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 Paragraph 17 hereof.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any mortgagee making such payment shall be owed immediate reimbursement by the Section 1 Corporation.

20. Insurance.

(a) Casualty Insurance. The Section 1 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 Section 1 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 Section 1 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 Section 1 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.

Each Owner shall be solely responsible for loss or damage to his Dwelling Unit and the contents thereof (except as otherwise provided in a Section Declaration), however caused, and his personal property stored elsewhere on the Real Estate and the Section 1 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.

(b) Public Liability Insurance. The Section 1 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 Master Association, the Board of Directors, any committee or organ of the Section 1 Corporation or Board, any Managing Agent appointed or employed by the Section 1 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 Section 1 Corporation or other Owners.

(c) Other Insurance. The Section 1 Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Section 1 Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Section 1 Corporation, the Board of Directors and any Managing Agent acting on behalf of the Section 1 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 or the Section 1 Corporation.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Section 1 Corporation as part of the Common Expenses.

20. Casualty and Restoration of Common Area.

In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Section 1 Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Section 1 Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Section 1 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, or in the event there are no insurance proceeds, 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 Section

1 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 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 Section 1 Real Estate shall be in addition to any other covenants or restrictions contained herein, in the Plat or in the Master Declaration, and 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 Section 1 Corporation. Present or future Owners or the Section 1 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) Each single-story Dwelling Unit shall be at least one thousand eight hundred (1,800) square feet in size and each multi-story Dwelling Unit shall be at least two thousand (2,000) square feet in size, each exclusive of basements, patios, porches and garages.
- (b) Each Lot must include sidewalks situated parallel to each Lot line that adjoins the right-of-way of any public or private street. Sidewalks shall be constructed and located in accordance with plans and specifications provided by the Architectural Review Board. Except to the extent a temporary waiver is obtained from the Architectural Review Board by the affected Owner, completion of all required sidewalks shall be a prerequisite to the occupancy of each Dwelling Unit under this Declaration. Such temporary waiver may be requested only where inclement weather or other causes beyond the affected Owner's reasonable control result in the inability to complete the sidewalks prior to the Dwelling Unit being fully ready for occupancy.
- (c) Each Dwelling Unit must include an attached multiple-car garage consistent in design, construction, and materials with such Dwelling Unit, and a concrete or asphalt driveway connecting the garage entryway with the adjoining public or private street.
- (d) The exterior color and finish materials of every Dwelling Unit, building, structure, and improvement on any Lot shall be as approved by the Architectural Review Board.
- (e) The front and side yards within a Lot must be sodded unless an in-ground irrigation system is installed, in which case hydroseeding is permitted. The rear yard within a Lot may be sodded or seeded. Minimum landscaping requirements shall apply to each Lot.

Any trees provided by the Declarant and/or Secondary Declarant may not be removed unless dead and/or upon approval from the Architectural Review Board. Within thirty (30) days following completion of a house on a lot, the Owner shall landscape the lot weather permitting.

(f) Vegetable, wild flower, and other gardens may be located only in the rear yard of a Lot and may not exceed one hundred (100) square feet in size. Vegetation within the garden area may not exceed three feet (3') in height.

(g) All swimming or wading pools, other than professionally constructed, permanent, in-ground pools, are prohibited. No swimming pool of any type shall be permitted on any Lot except as approved by the Architectural Review Board. Notwithstanding the foregoing, temporary wading pools measuring no more than six feet (6') in diameter are permitted without Architectural Review Board approval. Such temporary wading pools must be drained and stored indoors on a nightly basis.

(h) Trampolines, clotheslines, wells providing water for human or household consumption, septic tanks and systems, and electronic insect eradication devices ("zappers") are prohibited. No trash or glass clippings may be disposed of on any empty Lot in the Section I Real Estate.

(i) Basketball goals are permitted subject to approval by the Architectural Review Board. 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.

(j) Playsets and other recreational equipment or items must be approved by the Architectural Review Board. All approved playsets must be located behind the Dwelling Unit in the rear yard of the affected Lot and must be constructed primarily of wood. No playset may exceed twelve feet (12') in height. All playsets shall be kept in good condition and repair, and shall be stained and/or painted as reasonably necessary as determined by the Architectural Review Board.

(k) Flagpoles must be approved by the Architectural Review Board. No flagpoles 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 flagpole at any time. Only one (1) flagpole will be allowed on each respective Lot.

(l) Overnight parking on any public or private street in the Section I Real Estate is prohibited. Temporary parking of automobiles, SUVs, pickup trucks, and motorcycles is permitted only when the Owner of such Lot hosts a social function for which available driveway space is insufficient to accommodate all guests. Other types of vehicles may not be parked in open public view in the Section I Real Estate.

All other covenants and restrictions applicable to the Lots set forth in the Plat or the Master Declaration. In the event of a conflict between the covenants and restrictions in this Declaration or the Master Declaration, this Declaration shall control.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant or Secondary Declarant shall have, until the Applicable Date, the right to use and maintain any Lots, Dwelling Units owned by Declarant or such Secondary Declarant and other portions of the Section 1 Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant or Secondary Declarants), all of such number and size and at such locations as Declarant or Secondary Declarants in their sole discretion may determine, as Declarant or Secondary Declarants may deem advisable or necessary in their sole discretion to aid in the construction of Dwelling Units and the sale of Lots, Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant or Secondary Declarants shall have the right to relocate any or all of the same from time to time as they desire. At no time shall any of such facilities so used or maintained by Declarant or Secondary Declarants be or become part of the Overall Common Area or Common Area, unless so designated by Declarant or Secondary Declarants, and Declarant and Secondary Declarants shall have the right to remove the same from the Section 1 Real Estate at any time.

23. 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 at which the proposed amendment is to be considered which notice shall be sent at least fourteen (14) days prior to the date of the meeting.
- (ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Members having in the aggregate at least ten percent (10%) of the votes of all Members.
- (iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting 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 sixty percent (60%) in the aggregate of the votes of all Members constituting a Quorum; 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 Paragraph 19 with respect to casualty insurance to be maintained by the Section 1 Corporation, or (3) the provisions of Paragraph 17 of this Declaration with respect to the commencement of assessments on any Lot, or (4) the provisions of paragraph 22 of this Declaration with respect to amendments solely by Declarant, or (5) the provisions of Paragraph 11 relating to the makeup of the Board and the duties of the Board and the Section 1 Corporation without, in each and any of such circumstances, the approval of seventy-five percent (75%) of all Members, 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 shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(b) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Section 1 Corporation, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing & Urban Development, the Federal Housing Association, the Veteran's Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots, Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, (d) to correct clerical, typographical or other errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (e) to clarify Declarant's original intent, or (f) to expand or subject to this Declaration additional portions of the Section 1 Real Estate. In furtherance of the foregoing, a power coupled with an interest is hereby reserved

and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 22 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 22 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Section 1 Real Estate.

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 Lots 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 Section 1 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 Section 1 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 Section 1 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 Section 1 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, subsections, paragraphs and sub-paragraphs 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. No Liability. Declarant, the Board, and any Secondary Declarant may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without liability of any nature to Owner or any other person for any reason whatsoever and any permission or approval granted shall be binding upon all persons.

31. Rules and Regulations. The Board of Directors shall have the right to promulgate and establish rules and regulations relating to the requirements for maintenance of the Common Area and the Lots and any other part of the Section 1 Real Estate.

32. Controlling Document. Except as otherwise expressly provided herein, in the event there is any conflict between the provisions of the Master Declaration and this Declaration (or supplements or amendments thereto) or the Plat (as such may be amended or supplemented), the terms and provisions of the Master Declaration as supplemented or amended shall be controlling, except that this Declaration shall control over the Plat.

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.

36. Development Plan. West Haven at Noble West is subject to the agreements and obligations stated in the development statement and the covenants and commitments contained in the approved Preliminary Planned Unit Development (\_\_\_\_\_) that was approved by the City of Noblesville Planning Commission on \_\_\_\_\_ as such may be amended from time to time.



**EXHIBIT "A"**  
**The Real Estate**

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## LAND DESCRIPTION

Part of the Northeast and Southeast Quarter of Section 16, Township 18 North, Range 4 East, in Noblesville Township, Hamilton County, Indiana, being more particularly described as follows:

COMMENCING at the Northwest Corner of the said Northeast Quarter Section; thence South 89 degrees 49 minutes 36 seconds East (assumed bearing) along the North Line of the said Northeast Quarter Section a distance of 1339.69 feet to the Northeast Corner of the West Half of the said Northeast Quarter Section; thence South 00 degrees 02 minutes 59 seconds West along the East Line of the West Half of the said Northeast Quarter Section a distance of 162.56 feet; thence South 89 degrees 49 minutes 36 seconds East, parallel with the said North Line, a distance of 110.68 feet; thence South 00 degrees 11 minutes 40 seconds West a distance of 41.26 feet; thence South 20 degrees 08 minutes 45 seconds East a distance of 77.24 feet; thence South 10 degrees 11 minutes 20 seconds East a distance of 77.24 feet; thence South 01 degrees 25 minutes 40 seconds East a distance of 69.32 feet; thence South 00 degrees 13 minutes 40 seconds West a distance of 616.07 feet to the BEGINNING POINT (said point also being on a curve having a radius of 627.00 feet, the radius point of which bears South 00 degrees 29 minutes 49 seconds West; thence Southeasterly along said curve an arc distance of 173.16 feet to a point which bears North 16 degrees 19 minutes 13 seconds East from said radius point; thence South 73 degrees 40 minutes 47 seconds East a distance of 229.51 feet to a curve having a radius of 773.00 feet, the radius point of which bears North 16 degrees 19 minutes 13 seconds East; thence Southeasterly along said curve an arc distance of 220.18 feet to a point that bears South 00 degrees 00 minutes 00 seconds West from said radius point; thence South 90 degrees 00 minutes 00 seconds East a distance of 471.79 feet to a curve having a radius of 40.00 feet, the radius point of which bears North 00 degrees 00 minutes 00 seconds East; thence Northeasterly along said curve an arc distance of 62.84 feet to a point which bears North 89 degrees 59 minutes 10 seconds East from said radius point; thence South 00 degrees 00 minutes 50 seconds East, parallel with the East Line of the said Northeast Quarter Section, a distance of 1532.30 feet; thence South 00 degrees 09 minutes 25 seconds West, parallel with the East Line of the said Southeast Quarter Section, a distance of 25.29 feet; thence South 65 degrees 59 minutes 37 seconds West a distance of 40.01 feet; thence North 23 degrees 49 minutes 55 seconds West a distance of 225.65 feet; thence North 76 degrees 11 minutes 04 seconds West a distance of 48.46 feet to a curve having a radius of 227.00 feet, the radius point of which bears North 76 degrees 11 minutes 04 seconds West; thence Northerly along said curve an arc distance of 182.86 feet to a point which bears North 57 degrees 39 minutes 41 seconds East from said radius point; thence North 32 degrees 20 minutes 19 seconds West a distance of 175.79 feet; thence South 57 degrees 39 minutes 41 seconds West a distance of 192.00 feet; thence North 32 degrees 20 minutes 19 seconds West a distance of 76.11 feet; thence North 09 degrees 39 minutes 11 seconds West a distance of 279.87 feet; thence North 28 degrees 15 minutes 18 seconds West a distance of 355.44 feet; thence North 15 degrees 37 minutes 26 seconds West a distance of 236.77 feet; thence North 02 degrees 12 minutes 27 seconds East a distance of 54.00 feet; thence North 88 degrees 21 minutes 44 seconds East a distance of 20.46 feet; thence North 14 degrees 43 minutes 09 seconds East a distance of 115.84 feet; thence North 73 degrees 56 minutes 14 seconds West a distance of 196.03 feet; thence North 72 degrees 12 minutes 03 seconds West a distance of 54.12 feet; thence North 75 degrees 54 minutes 16 seconds West a distance of 20.00 feet to a curve having a radius of 553.00 feet, the radius point of which bears South 14 degrees 33 minutes 54 seconds West; thence Northwesterly along said curve an arc distance of 138.38 feet to a point which bears North 00 degrees 13 minutes 40 seconds East from said radius point; thence North 89 degrees 46 minutes 20 seconds West a distance of 42.73 feet; thence North 00 degrees 13 minutes 40 seconds East a distance of 54.00 feet to a curve having a radius of 627.00 feet, the radius point of which bears South 00 degrees 13 minutes 40 seconds West; thence Easterly along the said curve an arc distance of 2.94 feet to the BEGINNING POINT, containing 18.003 acres, more or less.