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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BAKERY

Marion County, Indiana

Cross Reference Instrument Numbers: A201800054850 and A201900013370

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BAKERY (THE "DECLARATION") IS MADE AS OF MAY 2, 2019 BY LENNAR HOMES OF INDIANA, A DELAWARE CORPORATION, F/K/A CALATLANTIC HOMES OF INDIANA, INC. ("DECLARANT").

RECITALS:

A. Declarant is the owner of a certain parcel of real estate located in Marion County, Indiana, which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

B. Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions executed February 7, 2019 and recorded on February 13, 2019 (the "Original Declaration") as Instrument Number A201900013370 in the Recorder's Office (as defined below); and

C. This Amended and Restated Declaration of Covenants, Conditions and Restrictions amends, restates, replaces and supersedes in its entirety the Original Declaration.

D. Declarant desires to create on the Property a residential community (the "Community") which shall have permanent open spaces and other common facilities for the benefit of the residents of the Community; and

E. Declarant desires to provide for the preservation of the values of the Community and such other areas as may be subjected to this Declaration, and to provide for the maintenance of the open spaces and other facilities, and, to this end, declare and publish its intent to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, it being intended that they shall run with title to the Property and shall be binding on all persons or entities having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner thereof; and

F. Declarant has deemed it desirable for the efficient preservation of the values of the Community to create an association to be known as The Bakery Homeowners' Association, Inc., an Indiana not-for-profit corporation (the "Association"), to which shall be delegated and assigned the powers of owning, maintaining and administering the Block (as defined below), the Common Areas (as defined below) and facilities located within the Property, administering and enforcing the covenants and restrictions made in and pursuant to this Declaration with respect to the Property, collecting and disbursing the assessments and charges hereafter created with respect to the Property, and promoting the recreation, health, safety and welfare of the owners of the Property and all parts thereof; and

NOW, THEREFORE, Declarant, for and in consideration of the premises and the covenants contained herein, grants, establishes and conveys to each owner of each Lot (as herein defined), mutual, non-exclusive rights, privileges and easements of enjoyment on

equal terms and in common with all other owners of Lots in and to the use of the Block, any Common Areas, and facilities; and further, Declarant declares that the Property shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved, and occupied subject to the provisions, agreements, covenants, conditions, restrictions, reservations, easements, assessments, charges and liens hereinafter set forth, all of which are for the purpose of protecting the value and desirability of, and shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their respective successors and assigns, and shall inure to the benefit of Declarant and the successors in title to the Property or any part or parts thereof.

ARTICLE I.
DEFINITIONS

Section 1.1. "Association" shall mean and refer to The Bakery Homeowners' Association, Inc., an Indiana not-for-profit corporation, and its successors and assigns.

Section 1.2. "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

Section 1.3. "Authority Transfer Date" shall have the meaning ascribed thereto in Section 3.1 of this Declaration.

Section 1.4. "Block" shall mean Block "A" as depicted on the Plat.

Section 1.5. "Board of Directors" shall mean the elected body having its normal meaning under Indiana corporate law.

Section 1.6. "Budget Meeting" shall mean the first annual or any special meeting of the Association after the Authority Transfer Date at which the Owners shall be asked to approve the Association's budget for a particular fiscal year.

Section 1.7. "Bylaws" shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

Section 1.8. "City" shall mean the City of Indianapolis, Indiana.

Section 1.9. "Common Area" or "Common Areas" shall mean and refer to all real property (including the improvements thereto) designated as Common Area by Plat, owned by the Association for the common use and enjoyment of the Members, and all of the Property which is not included in any particular Lot, as shown on current or future approved plats of the Property and/or as described herein, whether or not the same is owned by the Association.

Section 1.10. "Common Expenses" shall mean and refer to (i) expenses of administration of the Association, (ii) expenses for the upkeep, maintenance, repair and replacement of Common Areas, (iii) all sums lawfully assessed against the Owners by the Association, and (v) all other sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 1.11. "County" shall mean the County of Marion, Indiana.

Section 1.12. "Declarant" shall mean and refer to Lennar Homes of Indiana, Inc., a Delaware corporation, f/k/a CalAtlantic Homes of Indiana, Inc., or any successors or assigns to whom the foregoing assigns any or all of its rights as Declarant pursuant to this Declaration by assignment recorded in the Recorder's Office.

Section 1.13. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Bakery, which is to be recorded in the Recorder's Office.

Section 1.14. "Development Period"mea ns the period of time commencing with Declarant's acquisition of the Property and ending when Declarant, or an affiliate or subsidiary of Declarant, has completed the development and sale of all of the Lots and the Common Area, and no longer owns, any Lot or any Common Area in the Subdivision.

Section 1.15. "Dwelling Unit" shall mean any improvement to the Property intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) a townhouse.

Section 1.16. "Federal Agencies" shall mean (by way of illustration but not limitation) the Federal Housing Authority, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency.

Section 1.17. "HOA Act" shall mean Article 32.25.5 of the Indiana Code.

Section 1.18. "Local Governing Authority" shall mean the City and/or the County, individually or collectively.

Section 1.19. "Lot" shall mean and refer to any discrete plot of land created by and shown on a lawfully recorded subdivision Plat of the Property upon which a Dwelling Unit could be constructed in accordance with applicable zoning ordinances; provided, however, that where a Dwelling Unit (i) is separated from an adjacent Dwelling Unit by a Party Wall, or (ii) shares a Party Wall with an adjacent Dwelling Unit, the center line of such Party Wall and its vertical extensions shall constitute the common boundary line (lot line) between adjacent Lots, and the closure of the boundary lines of such adjacent Lots shall be accomplished by extending perpendicular lines from the horizontal extremities of such Party Wall to the closest boundary line or lines for such Lots as shown on any Plat or any part thereof, provided, however, further that where any exterior wall of a Dwelling Unit is not a Party Wall, but extends outside the boundary lines (lot lines) of any Lot (as shown on any such Plat or part thereof) upon which such Dwelling Unit is primarily located, the boundary lines of such Lot shall be deemed to include all of the ground area occupied by such Dwelling Unit. It is the intent hereof that, in any and all events in which a boundary line as shown on

any Plat or part thereof does not coincide with the actual location of the respective wall of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reason, this Declaration and any Plat or any part thereof shall be interpreted and construed so that all ground area underlying beneath a Dwelling Unit shall be and constitute part of the Lot upon which such Dwelling Unit is primarily located to the end that all of such ground area shall be subject to fee simple ownership by the Owner of such Dwelling Unit; to the extent necessary to accomplish and implement such intention, interpretation and construction, the boundary lines of the Lots shall be determined in accordance with the foregoing definitional provisions and boundary lines as so determined shall supersede the boundary lines for Lots shown on any Plat or part thereof.

Section 1.20. "Maintenance Costs"means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement, of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to continuous maintenance, operation or improvement of the facility.

Section 1.21. "Member" shall mean and refer to every person or entity who holds a membership in the Association, as more particularly set forth in Article II below.

Section 1.22. "Mortgagee" shall mean and refer to any person or entity holding a first mortgage on any Lot or the Common Area who has notified the Association of this fact in writing. An "Eligible Mortgagee" shall be a Mortgagee who has given notice to the Association of its interest and requested all rights afforded Eligible Mortgagees under Article XII.

Section 1.23. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot, including a contract seller but excluding those holding such interest in a Lot solely by virtue of a contract to purchase a Lot or as security for the performance of an obligation. If more than one (1) person or entity is the record owner of a Lot, the term Owner as used herein shall mean and refer to such owners collectively, so that there shall be only one (1) Owner of each Lot.

Section 1.24. "Party Wall" shall mean each wall that is built as a part of the original construction of a Dwelling Unit and placed on the dividing line between Lots.

Section 1.25. "Permitted Signs" shall mean (i) customary real estate sale or lease signs; and (ii) temporary construction signage.

Section 1.26. "Person" shall mean an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Section 1.27. "Plat" means all surveys of the Property creating the Lots, the Block, Common Areas and easements shown thereon as the same are recorded in the Recorder's Office.

Section 1.28. "Property" shall mean that certain real property located in Marion County, Indiana, which is more specifically described on Exhibit A attached hereto and incorporated herein by reference, as the same has been subdivided and platted, and any additions thereto which, from time to time, may be subjected to the covenants, conditions, restrictions, reservations, easements, charges and liens of this Declaration.

Section 1.29. "Recorder's Office" shall mean the Office of the Recorder of Marion County, Indiana.

Section 1.30. "Regular Assessments"sha ll mean and refer to assessments levied against all Lots to fund Common Expenses.

Section 1.31. "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens, and other provisions set forth in this Declaration with respect to the Property, as the same may be amended from time to time.

Section 1.32. "Special Assessments" shall mean and refer to assessments levied in accordance with Section 5.7 of this Declaration.

Section 1.33. "Structure" shall mean any temporary or permanent improvement or building or portion thereof, including, without limitation, walls, decks, patios, stairs, windows, window boxes, doors, fences, play equipment, trampolines, greenhouses, skylights, address markers, mail boxes, name plates, flag poles, lawn ornaments, trees, hedges, shrubbery, solar panels, satellite dishes, antennae, shutters, awnings, fences, pools, hot tubs, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

Section 1.34. "Subdivision" means The Bakery, a subdivision consisting of approximately thirty-four (34) Lots, located on the Property, as shown on the Record Plat or Plats, as the case may be.

ARTICLE II.
MEMBERSHIP

Every Owner of a Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. No Owner shall have more than one (1) membership in the Association for each Lot it owns.

ARTICLE III.
VOTING RIGHTS

Section 3.1. Organization of Association. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights; provided, however, so long as Declarant owns one or more Lots within the Subdivision, in addition to the

one vote for each Lot owned by Declarant, Declarant shall be assigned four (4) additional votes for each Lot owned by another Owner. Notwithstanding anything herein to the contrary, during the Development Period, Declarant shall appoint the Board and elect all officers of the Association, and all actions of the Association shall otherwise require the prior written approval of Declarant. Declarant may, at its discretion, transfer control of the Association to the Members, and its right to elect the Board and officers of the Association shall terminate, as soon as is practical upon the transfer of a number of Lots equal to eighty percent (80%) of the Lots in the Subdivision (the "Authority Transfer Date"); provided, however, that Declarant may transfer control of the Association at an earlier date at its sole discretion. Notwithstanding such transfer of control during the Development Period, all actions of the Association shall continue to require the prior written approval of Declarant. Declarant shall retain all of its rights and privileges provided for herein from the Authority Transfer Date until Dwelling Units have been constructed on all Lots in the Subdivision.

Section 3.2. Multiple Ownership Interests. When more than one (l) Person constitutes the Owner of a particular Lot, all of such Persons shall be Members of the Association, but all of such Persons, collectively, shall have only one (l) vote for such Lot. The vote for such Lot shall be exercised as such Persons constituting the Owner of the Lot determine among themselves, and may be exercised by any one (1) of the Persons holding such ownership interest, unless any objection or protest by any other holder of such ownership interest is made prior to the completion of a vote, in which case the vote cast for such Lot shall not be counted, but the Member whose vote is in dispute shall be counted as present at the meeting for quorum purposes if the protest is lodged at such meeting. In no event shall more than one (1) vote be cast with respect to any Lot.

ARTICLE IV.
DECLARATION OF RESTRICTIONS AND STATEMENT OF PROPERTY RIGHTS

Section 4.1. Declaration. Declarant hereby expressly declares that the Property and any additions thereto pursuant to this Declaration, shall be held, transferred and occupied subject to these Restrictions. The Owners of each Lot are subject to these Restrictions, and all other Persons, whether (i) by acceptance of a deed from Declarant, or its successors or assigns, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and each other Person for itself, its heirs, personal representatives, successors and assigns, acknowledges the rights and powers of Declarant, the Architectural Review Board and of the Association with respect to these Restrictions, and also, covenants, agrees and consents to and with Declarant, the Architectural Review Board, the Association, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions, to keep, observe, comply with and perform such Restrictions and agreements.

Section 4.2. Property Rights. Every Owner shall have a right and easement of use, access, and enjoyment in and to the Block and the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

(a) this Declaration, as it may be amended from time to time, and to any restrictions, limitations or other matters contained in any deed conveying any part of the Property to the Association;

(b) the right of the Association to limit the number of guests of Members on the Block and the Common Area or to make any part of the Block and the Common Area available to occupants of adjacent real estate or members of the general public;

(c) the right of the Association to adopt and enforce rules and regulations governing the use of the Block and the Common Area and the personal conduct of Owners, occupants and guests thereon, including, without limitation, the imposition of fines for the violation thereof;

(d) the right of the Association to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Block and the Common Area;

(e) the right of the Association to suspend (i) the Members' voting rights, (ii) the Members' right to run for office within the Association, and (iii) rights of a Member to the use of any nonessential services offered by the Association, provided that access and the provision of utilities to the Lot through the Block or the Common Area shall not be precluded, for (x) any period during which any assessment against such Member's Lot remains unpaid for a period of more than six (6) months (or such lesser period as may be permitted under the HOA Act), or (y) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(f) the right of the Association at any time, or upon dissolution of the Association, and consistent with the then-existing zoning and subdivision ordinances of the City and/or the County and consistent with its designation of the Common Area as "open space", to transfer all or any part of the Common Area to an organization conceived and organized to own and maintain common open space, or, if such organization will not accept such a transfer, then to a Local Governing Authority or other appropriate governmental agency, or, if such a transfer is declined, then to another entity in accordance with the laws governing the same, for such purposes and subject to conditions as may be agreed to by the Members. Except in the case of dissolution, any such transfer shall have the assent of at least two-thirds (2/3) of the Members entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, written notice of which must have been sent to all Members not less than twenty-five (25) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. Upon such assent and in accordance therewith, the officers of the Association shall execute the necessary documents to effectuate the transfer under this subparagraph (f). The re- subdivision or adjustment of

the boundary lines of the Block or the Common Area and the granting of easements by the Association shall not be deemed a transfer within the meaning of this Article;

(g) the right of the Association to grant, with or without payment to the Association, licenses, rights-of-way and easements under, across, through or over any portion of the Block or the Common Area;

(h) the right of the Association to lease the Block or the Common Area; provided, however, that such lease(s) must:

(i) be only to non-profit organizations;

(ii) prohibit assignment and subleasing;

(iii) require the prior, written approval of the Association with respect to the lessee(s)' uses of the Block or the Common Area and facilities, all of which must be in accordance with this Declaration;

(iv) be consistent with the then-existing ordinances of the Local Governing Authority; and

(v) be consistent with the open space designation of the Common Area;

(i) the right of Declarant or the Association to re-subdivide and/or adjust the boundary lines of the Block or the Common Area consistent with applicable zoning and subdivision ordinances as either deems necessary for the orderly development of the Subdivision;

(j) all rights reserved by Declarant in Article VIII hereof; and

(k) the right of Declarant to erect, maintain and operate real estate sales and construction offices, displays, signs and other facilities for sales, marketing and construction purposes.

The Association, acting through the Board of Directors, may exercise these rights without the need for any approval from any Member, Mortgagee or any of the Federal Agencies, unless provided otherwise in this Declaration.

Section 4.3. Common Area and Block.

(a) Ownership. Declarant may retain legal title to the Block and the Common Area during the Development Period but shall convey title to the Block and the Common Area to the Association, free and clear of all liens and other financial encumbrances, exclusive of the lien for taxes not yet due and payable, within thirty (30) days following the end of the Development Period. The Block and the Common Areas shall remain private, and neither Declarant's execution, or recording of an instrument portraying the Block or the Common Areas, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Block

or the Common Areas. Declarant or the Association may, however, dedicate or transfer all or any part of the Block or the Common Areas to any public agency or utility for roadways, utility or parks purposes, or for other public purposes.

(b) Maintenance. The Association shall be responsible for maintaining the Block and the Common Areas and the Maintenance Costs thereof shall be included within Common Expenses and assessed as a Regular Assessment against all Lots subject to assessment. Notwithstanding anything to the contrary set forth in this Declaration, beginning upon the date upon which the first Lot is conveyed to an Owner other than or an affiliate, the Association shall be solely responsible for all costs incurred with respect to the maintenance and repair of the Block and the Common Areas, whether or not the Block or such Common Area has then been conveyed to the Association pursuant to this Declaration, and regardless of whether such costs are incurred by Declarant or an affiliate. All Maintenance Costs incurred by Declarant or an affiliate shall be reimbursed by the Association within ten (10) days of the Association's receipt of an invoice from the party incurring such costs.

(c) Control. The Association, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Block and the Common Areas and all improvements thereon and, shall keep the Block and the Common Areas in good, clean, attractive and sanitary condition, order, and repair.

(d) No Permanent Structures. Except for underground utility facilities, and except as provided in this Declaration, no permanent improvements shall be made to or installed on the Block or the Common Area other than lighting, seating, walkways, paved paths, planting structures, fencing, and fountains or other non-recreational water features. The use of the Block and Common Area shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration.

(e) Delegation of Use. Any Member may delegate its right of enjoyment to the Block or the Common Area and facilities to the members of its immediate household, its tenants or contract purchasers who reside on the Member's Lot. However, by accepting a deed to such Lot, each Owner, for itself, individually, covenants that (i) every rental agreement with respect to the Lot shall contain specific conditions which require the tenant thereunder to abide by all Association covenants, rules and regulations, without exception and (ii) each such tenant will be provided, prior to the execution of such lease, a complete set of all Association covenants, rules and regulations.

(f) Damage or Destruction by Owner. In the event the Block or any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot, such Owner authorizes the Association to repair said damaged area, and an amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said

Owner until paid in full. The Association shall repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association.

(g) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Block or the Common Areas or any facilities located thereon.

ARTICLE V.
ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Assessments. Other than the Declarant, each Owner of a Lot covenants and agrees that, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other instrument of conveyance, to pay to the Association: (a) Regular Assessments, (b) Special Assessments, and any other amounts as may be provided for hereunder to be due from any Owner in connection with his ownership of a Lot. Such assessments are to be established and collected as hereinafter provided. The Association's Regular Assessments and Special Assessments, together with interest thereon, late fees (as contemplated in Section 5.6(b) below) and costs of collection thereof, as hereinafter provided, shall be assessed against each applicable Owner's Lot and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment became first due. The Regular Assessments and Special Assessments, when assessed upon resolution of the Board of Directors for each year, shall become a lien on each Lot in the amount of the entire Regular Assessment or Special Assessment, but shall be payable in equal installments collected on a quarterly basis.

Section 5.2. Purpose of Assessment. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents and Owners of the Property, and for the improvement, maintenance, operation, and landscaping of the Block and the Common Areas, including but not limited to the payment of taxes, construction of improvements and maintenance of services, facilities, irrigation/sprinkler systems, trees, lawns, shrubbery and other plantings, and devoted to these purposes or related to the use and enjoyment of the Block and the Common Area or other property which the Association has the obligation to maintain including, but not limited to, the maintenance, repair, payment and reimbursement obligations of the owner of the Property with respect to other property and improvements thereupon and for any and all such other purposes as the Board of Directors may determine to be appropriate, in their sole discretion.

Section 5.3. Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board of Directors shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified

public accountants then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year. Any costs charged to the Association for the preparation of said statements shall be a Common Expense.

Section 5.4. Proposed Annual Budget. Beginning after the Authority Transfer Date prior to which Declarant shall set the annual budget in its sole discretion, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year on or before the date of the annual Budget meeting each year that: (i) estimates the total amount of the Common Expenses for such next ensuing fiscal year; (ii) estimates the total amount of the revenue the Association expects to receive during such next ensuing fiscal year, including Regular Assessments; and (iii) estimates the amount of surplus or deficit at the end of the then current fiscal year. Following the completion of such a budget for a particular fiscal year and prior to its corresponding Budget Meeting, the Association shall either (i) furnish a copy of such proposed budget to each Owner, or (ii) notify each Owner that the proposed budget is available upon request at no additional charge to that Owner. The annual budget shall be submitted to the Owners at the Budget Meeting for adoption and, if so adopted, shall be the basis for the Regular Assessments for the next ensuing fiscal year. At such Budget Meeting, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall such meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, whether it be the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. 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. In the event there is no annual budget approved by the Owners as herein provided for the current fiscal year, whether before or after the Budget Meeting, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board of Directors, Regular Assessments based upon one hundred and ten percent (110%) of such last approved budget.

Section 5.5. Establishment of Regular Assessment. The Association must levy in each of its fiscal years a Regular Assessment against each Lot. The amount of such Regular Assessment shall be established by the Board of Directors, and written notice of the same shall be sent to every Owner at least thirty (30) days in advance of the commencement of each Regular Assessment period. Regular Assessments against each Lot shall be paid in advance, payable in equal quarterly installments. The initial Regular Assessment levied by the Association for each Lot shall be adjusted according to the number of months remaining in the period for which such initial assessment was levied. All payments of Regular Assessments and Special Assessments shall be non-refundable, and all collections and funds held by the Association on account thereof shall be appurtenant to and be applied for the benefit of the respective Lot. In no event shall any Owner be due any rebate or credit from the Association upon resale or other transfer or conveyance for prepaid Regular Assessments or Special Assessments.

Section 5.6. Regular Assessments.

(a) The amount of the Regular Assessment shall be determined as provided in Section 5.5, above.

(b) The Regular Assessment against each Lot shall be paid in quarterly installments, each of which is paid in full in advance by the due dates specified by the Board of Directors, the first of which due date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. Quarterly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board of Directors or the Association, and neither the Board of Directors nor the Association shall be responsible for providing any notice or statements to Owners for the same. If an Owner fails to pay any quarterly installment of any such Regular Assessment on or before the due date established by the Board of Directors, a late fee in an amount equal to the lesser of (i) twelve percent (12%) per annum or (ii) the maximum amount permitted by law of the amount due, and any such installment, together with such late fee, will be and remain, immediately due and payable.

(c) Payment of the Regular Assessment shall be made to the Board of Directors or a managing agent, as directed by the Board of Directors.

(d) The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date.

Section 5.7. Special Assessments. In addition to the Regular Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including the fixtures and personal property related thereto, for Additional Testing (as defined in Section 8.10(d) below), or for any other specified purpose. 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 under the circumstances described in this Declaration. Except in the case of damage or destruction caused by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot as contemplated by Section 4.3(f) and except for Additional Testing as contemplated by Section 8.10(d) any such Special Assessment shall be levied against all of the Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors, which determination shall be final. In

the case of damage or destruction caused by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot as contemplated by Section 4.3(f) or where Additional Testing is performed as contemplated by Section 8.10(d)the Special Assessment may be levied solely against that Owner, as applicable and without a vote of the Members as provided in Section 5.8 below. Notwithstanding the fact that in some instances, this Declaration may provide that certain items of routine and ordinary repair and maintenance should be performed by the Association, the Association shall nevertheless retain the right to assess the costs thereof to any Owner or group of Owners as a Special Assessment. To be effective, any such Special Assessment shall have the assent of more than two-thirds (2/3) of the votes of the Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, and written notice setting forth the purpose of the meeting must have been sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 5.8. Quorum for any Action Authorized Under Sections 5.4 or 5.7. At the first calling of a meeting under Section 5.4 of this Article, the presence at the meeting of Members or proxies entitled to cast two-thirds (2/3) of all the votes with respect to the Members shall constitute a quorum. If the required quorum does not exist at any such meeting, another meeting may be called subject to the notice requirements set forth in Section 5.4 and Section 5.7, subject further to applicable law, and the required quorum at any such subsequent meeting shall be one-half (l/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.9. Working Capital Assessment. In addition to the Regular and Special Assessments authorized above, the Association shall establish and maintain a working capital fund. At the closing of each sale or other transfer of a Lot by Declarant, the purchaser of such Lot shall pay to the Association a working capital assessment in an amount equal to Three Hundred and 00/100 Dollars ($300.00) and at the closing of each future sale or transfer of a Lot by an Owner, the purchaser of such Lot shall pay the Association a working capital assessment in an amount equal to one-sixth (1/6th) of the then current Regular Assessment for said Lot (a "Working Capital Assessment"), which payment shall be non-refundable and shall not be considered as an advance payment of an assessment or other charge owed to the Association with respect to such Lot. The Working Capital Assessment shall be used as determined by Declarant in its sole and reasonable discretion.

Section 5.10. Rate of Assessment. The Regular Assessment shall be fixed at a uniform rate for all Lots, except for Lots owned by Declarant. Except in the case of damage or destruction caused by an Owner as contemplated by Section 4.3(f), and except for Lots owned by Declarant, the Special Assessments shall be fixed at a uniform rate for all Lots which benefit from the construction, reconstruction, repair or replacement of capital improvements giving rise to the Special Assessment, pro rata according to each Lot's benefit, as reasonably determined by the Board of Directors, which determination shall be final. Notwithstanding the foregoing or anything else contained herein, no Regular Assessments or Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot

or other portion of the Property owned by Declarant while the same is owned by Declarant, nor shall any such assessments or charges become a lien on any such Lot or other portion of the Property owned by Declarant.

Section 5.11. Notice of Assessment and Certificate. Written notice of the Regular Assessments and any Special Assessments shall be sent to every Member. The due dates for payment of the Regular Assessments and any Special Assessments shall be established by the Board of Directors. The Association shall, upon written demand by a Member at any time, furnish a certificate in writing signed by an officer or authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid and the amounts of any outstanding assessments. A reasonable charge may be made by the Board of Directors for the issuance of these certificates, which charge shall be paid to the Board of Directors in advance by the requesting Member. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 5.12. Remedies of the Association in the Event of Default. Each Owner shall be personally liable for the payment of all Regular Assessments and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. If any assessment pursuant to this Declaration is not paid within thirty (30) days after its initial due date, the assessment shall bear interest from the date of delinquency at the rate charged by the Internal Revenue Service on delinquent taxes. In addition, in its discretion, the Association may:

(a) impose a penalty or late charge if previously established by the Association;

(b) bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. A suit to recover a money judgment for nonpayment of any assessment levied pursuant to this Declaration, or any installment thereof, may be maintained without perfecting, foreclosing or waiving the lien provided for herein to secure the same;

(c) suspend a Member's right to hold an office within the Association, and right to use nonessential services offered by the Association, provided that access and the provision of utilities to the Lot through the Common Area shall not be precluded. A Member whose rights have been suspended in this manner, shall have no right to any refund or suspension of his obligations to pay such assessments or any other assessments becoming due for the duration of such suspension or otherwise;

(d) accelerate the due date of the unpaid assessment so that the entire balance shall become immediately due, payable and collectible; and

(e) suspend a Member's voting rights if the Owner is more than six (6) months delinquent in the payment of any assessment.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or facilities, abandonment of its Lot, or the failure of the Association or the Board of Directors to perform their respective duties.

In any action to foreclose the lien against a Lot pursuant to Section 5.12(b) above, the Owner and any occupant of the Lot and Dwelling Unit which are the subject of such action shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot and Dwelling Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover any Regular Assessment or Special Assessment, or any other debts, dues or charges owed the Association, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses incurred as a result of such action (including, but not limited to, reasonable attorneys' fees) and interest upon all amounts due at the rate of lesser of (i) twelve percent (12%) per annum or (ii) the maximum amount permitted by law, which shall accrue from the date such assessments or other amounts become first due, until the same are paid in full.

Section 5.13. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any properly recorded first mortgage encumbering a Lot. Notwithstanding anything contained in this Section 5.13 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall not extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance, and that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor; and further provided, that any Person taking title to such Lot in the foregoing manner shall have no right to use the non-essential services or amenities of the Property until such time as all assessments due with respect to such Lot have been paid in full. No such sale, transfer or conveyance shall relieve the Lot, or the purchaser thereof at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien for such assessments.

Section 5.14. Exempt Property. The following portions of the Property shall be exempt from the assessments created by this Declaration: (a) those portions of the Property that are dedicated to and accepted by a local public authority; and (b) the Common Area. Except as otherwise provided in Section 5.10 hereof, no developed or undeveloped Lot, land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 5.15. Replacement Reserve Fund. The Association shall establish and maintain a reserve fund ("Replacement Reserve Fund") for the maintenance, repair and replacement of (i) all water mains, service lines, and meters installed on the Lots, the Block, and the Common Areas, (ii) fencing on Lots, the Block, or the Common Areas, (iii) the improvements installed on the Block and the Common Area; and (iv) irrigation/sprinkler systems installed by Declarant on the Lots, the Block, and the Common Areas by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors, which reserve fund shall be sufficient, in the sole opinion of the Board of Directors, to accommodate such future maintenance, repair and replacement and which shall be a component of the Regular Assessment. In addition to items (i) through (iv) above, the painting of siding and trim on the Dwelling Units shall also be included as a component of the Replacement Reserve Fund. The Replacement Reserve Fund (i) shall be conclusively deemed to be a Common Expense of the Association, (ii) shall be maintained by the Association in a separate, interest bearing account or accounts with any banking institution, the accounts of which are insured by any state or by any agency of the United States of America as selected by the Board of Directors, and (iii) may be expended only for the purpose of effecting repairs to, replacement and maintenance of any improvements within the Block or the Common Area, and the Lots, if applicable, including but not limited to, water mains, service lines, meters, irrigation/sprinkler systems, sidewalks, parking areas, landscape improvements, street or common area lighting, streets or roadways developed as a part of the Property, equipment replacement, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Block or the Common Area. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of the Member's Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

Section 5.16. Books and Records. The Association shall provide Owners with financial information regarding the operation of the Association as and to the extent required under the HOA Act.

ARTICLE VI.
USE RESTRICTIONS AND ARCHITECTURAL CONTROLS

Section 6.1. Residential Use. The Lots shall be used exclusively for residential purposes except as provided in Section 6.30 and Section 6.32 hereof. Declarant reserves the right, pursuant to a recorded Plat or re-subdivision Plat, to alter, amend, and change any Lot line or subdivision Plat. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) Dwelling Unit and appurtenant structures, approved by the Association and appropriate Local Governing Authorities, for use solely by the occupant(s) of the Dwelling Unit.

Section 6.2. Architectural Review Board Approval. Except for Structures or additions to Structures constructed by Declarant, no Structure or addition to a Structure shall be erected,

placed, painted, altered or externally modified or improved on any Lot unless and until (i) the plans and specifications, including design, elevation, material, shape, height, color and texture, and a site plan showing the location of all improvements with grading modifications, shall have been filed with and approved in writing in all respects by the Architectural Review Board (as defined in Article VII below) and, if required, by appropriate Local Governing Authorities; and (ii) all construction permits have been obtained, if applicable or required. In addition, no item of personal property, without regard to whether such item is fixed or attached or moveable, shall be erected or placed forward of the front foundation line of any Dwelling Unit unless approved in writing by the Architectural Review Board. Further, notwithstanding any approval given herein, the Architectural Review Board may revoke its approval as to any item of personal property which is not fixed or attached at any time and for any or no reason, and an Owner shall immediately remove any item of personal property which is not fixed or attached, which is placed forward of the front foundation line of any Dwelling Unit upon request of the Architectural Review Board, without regard to whether the Architectural Review Board may have previously given its approval for such item of personal property.

Section 6.3. Laundry. No clotheslines may be erected on any Lot, and no clothing, sheets, blankets, rugs, laundry or wash shall be hung out, exposed, aired or dried on any portion of the Property within public view.

Section 6.4. Sight Lines. No fence, wall, tree, hedge or shrub shall be maintained in such a manner as to obstruct sight lines for vehicular traffic.

Section 6.5. Lot Maintenance. Each Owner shall, at all times, maintain its Lot and Dwelling Unit and all appurtenances thereto free of debris or rubbish and in good repair and in a state of neat appearance from all exterior vantage points. While the Association will perform all routine maintenance to landscape improvements on each Lot as provided in Article XI below, the Owners, subject to Section 6.6 below, shall be responsible for all routine and extraordinary maintenance to Structures or amenities on his Lot, and all extraordinary items of maintenance to any landscape improvement on his Lot, including, without limitation, trees and shrubs, and for repair of any damage or destruction to any Structure or landscape improvement or amenity on his Lot, including, without limitation, trees and shrubs, whether or not caused by the Owner, a third party, elements of nature, or acts of God.

Section 6.6. Additions to Landscape Improvements. No tree, shrub, or other vegetation or landscape improvement originally installed by Declarant shall be removed or altered unless such item is dead or decayed and dangerous to human health, safety, or welfare, and the removal has been approved in writing in advance by the Architectural Review Board, or removal is ordered by a Local Governing Authority or by the Architectural Review Board to maintain proper sightlines. No approval for removal of any trees or shrubs shall be granted by the Architectural Review Board unless appropriate provisions are made for replacing the removed trees or shrubs. Each Owner is permitted to add to the landscape of his Lot certain landscaping features within approved flowerbeds; however, prior to adding any such landscape, the Owner of such Lot must submit a written landscape plan to the Architectural

Review Board for its review and obtain the written approval of such Architectural Review Board.

Section 6.7. Nuisance. No noxious or offensive activity shall be carried on or permitted to be carried on upon the Property, nor shall anything be done or placed thereon which is or may become an annoyance or nuisance to the neighborhood. Nothing shall be done or kept or permitted to be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Block or the Common Areas, which will cause an increase in the rate of insurance paid by the Association or any other Owner. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Block or the Common Area or any other Owner, or which would be a violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Community or which might be a nuisance, annoyance, or inconvenience, or which might cause damage, to other Owners and occupants of Dwelling Units or neighboring property, including, without limiting the generality of the foregoing, noise by the use of any musical instrument, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machinery. No exterior lighting on a Lot shall be directed outside the boundaries of the Lot. No outside toilets shall be permitted on any Lot (except during a period of construction and then only upon obtaining prior written consent of the Architectural Review Board), and no sanitary waste or other wastes shall be permitted to be exposed.

Section 6.8. Signs. Permitted signs shall include only those (i) professionally constructed signs which advertise a home on a Lot for sale by a licensed and registered real estate broker/company, or (ii) a sign advertising a home on a Lot for lease, both of which must be non-illuminated and less than or equal to six (6) square feet in size ("Permitted Signs"). With the exception of Permitted Signs, all other signs including, but not limited to those advertising a garage sale, must be approved by the Architectural Review Board before being placed upon any Lot or the Block or the Common Area, or displayed from a Dwelling Unit. All Permitted Signs advertising a Lot for sale or lease shall be removed within three (3) business days from the date of the conveyance of the Lot or the execution of the lease agreement, as applicable. The Declarant is expressly exempt from the requirements of this Section 6.8 and may post any signs on the Block or in Common Areas and on any Lots owned by Declarant, as it deems necessary.

Section 6.9. Animals. No domesticated or wild animal shall be kept or maintained on any Lot, except that no more than three (3) common household pets such as dogs and cats may be kept or maintained, provided that they are not kept, bred or maintained for commercial purposes and do not create a nuisance or annoyance to surrounding Lots or the neighborhood and are kept in compliance with applicable laws and ordinances of the Local Governing Authority. Excessive barking of dog(s) or vicious animals shall constitute a nuisance and may be ordered removed from the Property by the Association. Pets will not be permitted outside of a Dwelling Unit unless on a leash and any Owner walking a pet within the Community or on the Block or on any Common Area will immediately clean up any solid animal waste and

properly dispose of the same. Failure to remove any solid animal waste shall subject the owner to a fine not to exceed $50.00 per occurrence as determined by the Board of Directors. Law enforcement and animal control personnel shall have the right to enter the Property to enforce local animal control ordinances.

Section 6.10. Trash Storage. Trash shall be collected and stored in sealed trash receptacles only and not solely in plastic garbage bags. Trash and garbage receptacles shall not be permitted to remain in public view and shall remain inside of each Owner's garage except on days of trash collection, and except for those receptacles designed for trash accumulation located on the Block or in the Common Area. No accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on the exterior of any Dwelling Unit. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot or the Block or the Common Area. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse on any Lot or the Block or the Common Area.

Section 6.11. Antennae Systems. To the extent not inconsistent with federal and state law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Review Board. The Architectural Review Board shall adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible and only when fully screened from public view on the rear and above the eave line of any Dwelling Unit. To the extent not inconsistent with federal law, satellite dishes will not exceed eighteen (18) inches in diameter. It is the intent of this provision that the Architectural Review Board shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Review Board conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 6.12. Painting and Exterior Design. No Owner shall cause or permit any alterations or changes of the exterior design and/or color scheme of any Dwelling Unit, Structure or building including, but not limited to, the exterior paint color scheme and roof shingle color scheme and materials. No person shall paint the exterior of any building, or portion thereof, except contractors and agents employed by Declarant or the Association. Any and all such painting of the exterior of any building or any portion thereof shall be done by the Association, and the costs thereof will be assessed to the Owners either as a part of the Regular Assessments due hereunder or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion under Article V above. All Dwelling Units will, at all times, be painted in a uniform color, without variation. By way of example only, in the event the Board of Directors or Declarant, as applicable, deems it necessary to paint only a portion of a building (i.e., in the case of damage affecting only one Dwelling Unit), and, if matching paint cannot be located or if, when applied, the paint does not match the finish on the adjacent Dwelling Units, the Board of Directors, in its sole discretion, may cause the exterior of the entire building to be painted, with the costs thereof being assessed to the Owners of the Dwelling Units in the building, either as a part of the Regular Assessments due hereunder, or, if necessary, as a Special Assessment, as determined by the Board of Directors in its discretion.

Section 6.13. Finished Exteriors. The exteriors of all Structures, including, without limitation, walls, doors, windows and roofs, shall be kept in good maintenance and repair by the Owners of Dwelling Units within that Structure. No Structure shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the commencement of construction. In the event of fire, windstorm or other damage, the exterior of a Structure shall not be permitted to remain in a damaged condition for longer than three (3) months, unless expressly excepted by the Board of Directors in writing. If the Board of Directors determines that any Structure or Dwelling Unit is not in compliance with the provisions of this Section 6.13, the Association shall send written notice to the Owner of that Structure or Dwelling Unit identifying, with reasonable specificity, the items in need of repair or maintenance (a "Repair Notice"). If an Owner fails to comply with the provisions of this Section 6.13 after its receipt of such a Repair Notice, the Association shall be entitled to enforce the provisions of this Section 6.13 in the manner contemplated under Section 12.1, below, and in any other manner permitted hereunder or by applicable law.

Section 6.14. Fences. No fence or similar enclosure shall be erected or built on the Property, except for any fencing constructed by Declarant, which shall be maintained, repaired, and replaced by the Association.

Section 6.15. Vehicles. No inoperable, junk, unregistered or unlicensed vehicle shall be kept on the Property. No portion of the Property shall be used for the repair of a vehicle.

Section 6.16. Commercial Vehicles. Except upon the prior written approval of the Architectural Review Board, no commercial or industrial vehicle, including, but not limited to, moving vans, trucks, tractors, trailers, vans, wreckers, tow trucks, hearses and buses, shall be parked overnight or regularly or habitually parked on the Property, nor shall any such vehicle be located on the Property for longer than twenty-four (24) hours.

Section 6.17. Recreational Vehicles. No recreational vehicles or equipment, including, but not limited to, boats, boating equipment, jet-skis, wave runners, travel trailers, fuel tanks, camping vehicles or camping equipment, shall be parked on the Property without the prior, written approval of the Architectural Review Board, as to location, size, screening and other criteria deemed to be relevant by the Architectural Review Board. The Association shall not be required to provide a storage area for these vehicles.

Section 6.18. Towing. The Board of Directors shall have the right to tow any vehicle parked or kept in violation of the covenants contained within this Article VI or Article IX upon twelve (12) hours' written, telephonic or verbal notice and at the vehicle owner's sole expense.

Section 6.19. Garage Usage. Any conversion of any garage that will preclude the parking of vehicles within that garage is prohibited. Owners shall keep and maintain their garages at all times in a manner that will permit the usage of such garage for parking of passenger automobiles, vans and/or trucks.

Section 6.20. Initial Construction and Marketing. Declarant or its assigns may, during its construction and/or sales period, erect, maintain and operate real estate sales and construction offices, model homes, displays, signs and special lighting on any part of the Property and on or in any building or Structure now or hereafter erected thereon and shall not be bound by the provisions of this Article to the extent application thereof would delay, hinder or increase the cost of construction and/or marketing of Dwelling Units for sale in the Community by Declarant.

Section 6.21. Dusk to Dawn Lights. Each Owner shall maintain any and all lights installed as a part of the initial construction of each Dwelling Unit in good order, condition and repair, including, without limitation, any necessary repairs or maintenance as may be required for the effective operation of all "dusk to dawn" photocell switches and replacement of light bulbs so that those coach lights remain continuously operational from dusk to dawn.

Section 6.22. Garages. Garage doors shall remain closed except when entering and exiting or otherwise accessing the garage.

Section 6.23. Storage Facilities. No permanent, temporary or portable storage facilities shall be permitted on any Lot, except for portable storage facilities that are located wholly within the Owner's garage area and are removed within twenty-four (24) hours. No portable storage facility is permitted in any driveway, the Block, the Common Area, or public right-of-way.

Section 6.24. Awnings. Except with respect to Lots upon which Declarant maintains a sales office or model home, or as otherwise approved by the Architectural Review Board, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on the Property.

Section 6.25. Mailboxes. No individual mailboxes at curb or on any Dwelling Unit shall be allowed or permitted. Declarant shall install a common postal facility, with individual mailboxes, for all attached Dwelling Units.

Section 6.26. Address Markers. Declarant shall install uniform address markers on each Lot and no Person, except the Association, shall remove, alter, change, or add to such address markers.

Section 6.27. Pools and Hot Tubs. No pools or hot tubs shall be permitted on any Lot.

Section 6.28. Play Equipment. No children's play equipment such as playhouses, sandboxes, swing and slide sets, and trampolines, shall be permitted on any Lot.

Section 6.29. Basketball Goals. No basketball goals, hoops, or backboards shall be permitted on any Lot.

Section 6.30. Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant resident on a Lot may conduct business activities within a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) no sign or display is erected that would indicate from the exterior that the Dwelling Unit is being utilized in part for any purpose other than that of a residence; (c) no commodity is sold upon the premises; (d) no person is employed other than a member of the immediate family residing in the Dwelling Unit; (e) no manufacture or assembly operations are conducted; (f) the business activity conforms to all zoning requirements for the Property; (g) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (h) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board of Directors. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this Section 6.30. This Section 6.30 shall not apply to any activity conducted by Declarant or its affiliates with respect to the sale of the Property or the use of any Dwelling Units which Declarant owns within the Property for such activities.

Section 6.31. Landscaping of Common Areas. No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with prior, express written permission from the Board of Directors.

Section 6.32. Declarant's Use. Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, Declarant shall have, until the end of the Development Period, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Property (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 the sale of Lots and the construction of Dwelling Units, or for the conducting of any business or activity attendant thereto, or for the construction and maintenance of Common Areas, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. 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 Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

Section 6.33. Non-applicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in this Article VI shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Block and the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Block and the Common Areas.

Section 6.34. Additional Rules and Regulations. The Association shall have the authority to adopt such rules and regulations regarding this Article VI as it may from time to time consider necessary or appropriate.

Section 6.35. Personal Property Forward of the Front Foundation Line of a Dwelling Unit. Subject to the approval of the Architectural Review Board and the right to revoke its approval at any time and for any or no reason, certain items of personal property may be permitted forward of the front foundation line of a Dwelling Unit. Items of personal property which may be permitted include high quality wrought iron or similar metal bistro tables, chairs, lounges, chaises, bench gliders, and accessories; provided however, that in all cases such times of personal property proposed to be located forward of the front foundation line shall be (1) suitable and appropriately sized for the space provided; (2) black or dark bronze in color; (3) weather resistant; (4) properly maintained; and (5) harmonious with the exterior colors and architecture of the Dwelling Unit. Exterior pots for flowers and plants not exceeding 24 inches in height may also be permitted provided that they are (1) weather resistant, (2) properly maintained, and (3) harmonious with the exterior colors and architecture of the Dwelling Unit. Notwithstanding any other provision of this Declaration to the contrary, the following items of personal property are expressly prohibited forward of the front foundation line of any Dwelling Unit: any items of bold or bright color, patio swings, patio furniture with awing covers, canopies, umbrellas and stands, any item constructed of wicker, plastic or resin material, cooking grills and other cooking devices, coolers and refrigerators, lawn ornaments, area heaters, water features, firewood, electric bug zappers, vegetable gardens, free standing candles, torches or citronella candles, temporary furniture, folding law chairs, picnic tables, hammocks, children's play equipment, wind chimes, hanging baskets, and bird and squirrel feeders. In addition, no Owner shall conduct any obnoxious or indecent behavior forward of the front foundation line of any Dwelling Unit.

ARTICLE VII.
ARCHITECTURAL REVIEW BOARD

Section 7.1. Architectural Review Board. As used herein, the term "Architectural Review Board" will mean and refer to a group of individuals who will administer the duties described in Section 7.4 below. During the Development Period, the Declarant alone shall have all the powers and authority to administer the duties described in Section 7.4 below. Upon the expiration of the Development Period, the number of members of the Architectural Review Board shall automatically be increased to equal the number of members on the Board of

Directors, and the individuals who are appointed or elected, as applicable, as members of the Board of Directors at the first annual meeting after the end of the Development Period shall automatically be deemed to be the members of the Architectural Review Board, without the necessity for further action. The term of membership for each member of the Architectural Review Board will be coterminous with the term of such individual's membership on the Board of Directors, unless otherwise determined by such Board of Directors.

Section 7.2. Removal and Vacancies. After the Architectural Review Board is established, a member of the Architectural Review Board may only be removed in the event such member is removed from or otherwise ceases to be a member of the Board of Directors. Appointments to fill vacancies in unexpired terms on the Architectural Review Board shall be made in the same manner as members are appointed or elected to the Board of Directors.

Section 7.3. Officers. At the first meeting of the Architectural Review Board following each annual meeting of Members, the Architectural Review Board shall elect from among themselves a chairperson, a vice-chairperson and a secretary who shall perform the usual duties of their respective offices.

Section 7.4. Duties. The Architectural Review Board shall regulate the external design and appearance of the Property and the external design, appearance and location of the improvements thereon in such a manner so as to preserve and enhance property values and to maintain harmonious relationships among Structures and the natural vegetation and topography in the Community. During the Development Period, the Architectural Review Board shall regulate all initial construction, development and improvements on the Property and all modifications and changes to existing improvements on the Property. In furtherance thereof, the Architectural Review Board shall:

(a) review and approve or disapprove written applications of Owners for proposed alterations or additions to Lots;

(b) periodically inspect the Property for compliance with adopted, written architectural standards and approved plans for alteration;

(c) adopt and publish architectural standards subject to the confirmation of the Board of Directors;

(d) adopt procedures for the exercise of its duties; and

(e) maintain complete and accurate records of all actions taken by the Architectural Review Board.

No request for approval by the Architectural Review Board or any committee thereof will be reviewed or otherwise considered unless submitted in writing by the Owner requesting such approval. Approval by the Architectural Review Board of a correctly filed application shall not be deemed to be an approval by Local Governing Authorities nor a waiver of the Association's right to require an applicant to obtain any required approvals from any such

Local Governing Authorities or to otherwise comply with applicable laws, rules, regulations and local ordinances. No approval by the Architectural Review Board or any committee thereof shall be effective unless in writing and signed by all of the members of the Architectural Review Board or the applicable committee whose approval is required hereunder.

Section 7.5. Failure to Act. Failure of the Declarant, the Architectural Review Board, the Board of Directors, or any committee thereof, as applicable, to respond to any request for approval, enforce the architectural standards contained in this Declaration or to notify an Owner of noncompliance with architectural standards or approved plans for any period of time shall not constitute a waiver by the Declarant, the Architectural Review Board, the Board of Directors, or any committee thereof, as applicable, of any provision of this Declaration requiring such approval hereunder or otherwise prevent the Declarant, the Architectural Review Board, the Board of Directors, or any committee thereof, as applicable, from enforcing this Declaration at any later date. If approval has not been issued in writing within thirty (30) days after submission of an application to the Declarant, the Architectural Review Board, the Board of Directors, or any committee thereof, as applicable, then any such request shall be deemed to be denied.

Section 7.6. Discretion. Declarant intends that from the time the members of the Architectural Review Board, and all committees thereof, are appointed, such members exercise discretion in the performance of their duties, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by the members of the Architectural Review Board and such committees.

Section 7.7. Enforcement. Any exterior addition, change or alteration made without a written application to, and prior written approval of, the Declarant, the Architectural Review Board or the Board of Directors, or any committee thereof, as applicable, shall be deemed to be in violation of this Declaration and the Board of Directors shall have the right to require such exterior to be immediately restored to its original condition at the offending Owner's sole cost and expense.

Section 7.8. Appeal. After the Architectural Review Board is established, any aggrieved party may appeal a decision of the Architectural Review Board to the Board of Directors by giving written notice of such appeal to the Association or any member of the Board of Directors within twenty (20) days of the adverse ruling.

Section 7.9. Liability of the Architectural Review Board, Declarant and Association. Neither the Architectural Review Board, nor any committee nor any agent thereof, nor Declarant, nor the Association, shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Review Board nor any committee thereof, nor any agent thereof, nor Declarant, nor the Association, be responsible in any way for any defects in any plans, specifications or other materials submitted to any of them, or for any defects in any work done according thereto. Further, the Architectural Review Board, its committees, Declarant, and the Association make no representations or warranties as to the suitability or

advisability of the design, engineering, method of construction involved, or materials to be used. Each Owner should seek professional construction advice, engineering, and inspections with respect to such Owner's Lot, at such Owner's sole cost and expense, prior to proposing plans for approval by the Architectural Review Board, its committees or the Board of Directors.

Section 7.10. Inspection. The Architectural Review Board and Declarant, as applicable, may but shall not be obligated to, inspect work being performed on a Lot or Dwelling Unit to assure compliance with the Restrictions, the Restrictions contained in any Plat of the Property and applicable regulations. However, neither the Architectural Review Board, nor any committee nor member thereof, nor Declarant, nor any agent or contractor employed or engaged by any of the foregoing, shall be liable or responsible for defects or deficiencies in any work inspected or approved by any of them, or on behalf of any of them. Further, no such inspection performed or approval given by or on behalf of the Architectural Review Board, any committee thereof or Declarant shall constitute a warranty or guaranty of the work so inspected or approved.

ARTICLE VIII.
EASEMENTS

Section 8.1. General Easement Rights. Declarant hereby grants a non-exclusive blanket easement over, across, through and under the Property to the Association, its directors, officers, agents and employees, to any manager employed by or on behalf of the Association, and to all police, fire, ambulance and all other emergency personnel and government, to enter upon the Property, in the exercise of the functions provided for by this Declaration, Articles, Bylaws and rules and regulations of the Association, and in the event of emergencies or in the performance of governmental functions. Declarant further grants a non-exclusive blanket easement over, across, through and under the Property to utility service providers for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including, but not limited to, water, sewer, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the utility service provider to install, maintain and repair facilities and equipment on the Property if such utility service provider promptly restores the disturbed area, if any, as nearly as is practicable to the condition in which it was found, provided, however, that no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated except as proposed and approved in advance and in writing by Declarant or, after the Authority Transfer Date, the Association. Should any utility providing a service to the Property request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement with respect to the Property without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Dwelling Unit has been constructed.

Section 8.2. Limitation on General Easement Rights. The rights accompanying the easements provided for in Section 8.1 of this Article VIII shall, except in the event of an

emergency, be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to any Owner or tenant directly affected.

Section 8.3. Plat Easements. In addition to such easements as are or may hereafter be created elsewhere in this Declaration and as may have been or may hereafter be created by Declarant pursuant to written instruments recorded in the Recorder's Office, all Lots are or shall be subject to drainage easements, sewer easements, other utility easements and the Block, and any Common Area access easements, which easements may be granted by Declarant (prior to the Authority Transfer Date) or the Association (from and after the Authority Transfer Date), as applicable, which grants may be made separately or in any combination thereof, as shown on any Plat, and which grants shall benefit Declarant, Owners, the Association, the Architectural Review Board and any committee thereof, and public utility companies or governmental agencies, as follows:

(a) Drainage Easements (designated as "D.E." on the Plat) (each, a "Drainage Easement") are hereby granted for the mutual use and benefit of Declarant and the Owners and are intended to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Community and adjoining ground and/or public drainage systems. Under no circumstance shall said easements be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. The drainage easements and facilities are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, or by Declarant, the Association or the Architectural Review Board; provided, however, that Declarant, the Association and the Architectural Review Board shall have no duty to undertake any such construction or reconstruction. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the Drainage Easement on such Owner's Lot.

(b) Sanitary Sewer Easements (designated as "S.S.E." on the Plat) may be granted for the use and benefit of the local governmental agency or public utility Company having jurisdiction over any sanitary sewer disposal system designed to serve the Community, for the purpose of installation and maintenance of sewers that are a part of said system.

(c) Access Easements (designated as "I.E.E." on the Plat) may be granted for the benefit of Declarant, the Association and the Owners and each of their guests, tenants, contractors, subcontractors, licensees, agents, or members of their families, for purposes of ingress and egress to the Lots, and for purposes of ingress and egress to the Common Areas.

(d) Utility Easements (designated as "U.E." on the Plat) may be granted for the benefit of Declarant, the Association and all public or municipal utility companies, not including transportation companies, for the installation, maintenance and repair of mains, ducts, poles, lines and wires, and other facilities related to the specific utility.

(e) Landscape Easements (designated as "L.S.E." on the Plat) may be granted for the benefit of Declarant, the Architectural Review Board and all committees thereof, and the Association, for the planting, installation, repair and maintenance of trees, shrubs and other landscaping, wherever located on the Property.

(f) Sign Easements (designated as "SI.E." on the Plat) may be granted for the benefit of Declarant, the Architectural Review Board and all committees thereof, and the Association for the installation, repair and maintenance of signs wherever located on the Property.

All easements described in this Section 8.3 shall include the right of ingress and egress for the exercise of the respective rights granted. No structure shall be built on any drainage, sewer or utility easement if such structure would (i) materially interfere with the utilization of such easement for the purpose intended, (ii) violate any applicable legal requirement, or (iii) violate the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Recorder's Office, except that neither paved drives necessary to provide access to a Lot from a public street nor sidewalks or fences installed by or at the direction of Declarant (and replacements thereof) shall be deemed to be a "structure" for the purpose of the foregoing restriction.

Section 8.4. Encroachments. If any improvement on a Lot, the Block, or the Common Area now or hereafter encroaches on any other Lot or the Block or the Common Area, by reason of (a) the original construction thereof by Declarant or its assigns, which shall include, but not be limited to, any Party Wall or drive which encroaches over a Lot's boundary line and any drainage of stormwater from roofs and gutters, (b) deviations within normal construction tolerances in the maintenance, repair, replacement or reconstruction of any improvement, or (c) the settling or shifting of any land or improvement, an easement is hereby granted over the encroached-upon portion of such Lot or the Block or the Common Area in favor of the Owner of the encroaching improvements, solely to the extent of such encroachment and solely for the period of time the encroachment exists (including replacements thereof), for the limited purposes of use, repair, replacement and maintenance of the encroaching improvement.

Section 8.5. Ingress/Egress Easement. Declarant, its agents and employees, shall have a right of ingress and egress over the Block or the Common Area, and any other roadways and drives within the Community as required for construction of improvements and development of the Property, and otherwise as Declarant deems to be necessary or for access to or ingress and egress to and from any Dwelling Unit.

Section 8.6. Reservation of Right to Grant Future Easement. Declarant reserves the right to (a) grant non-exclusive easements over any Lot or the Block or the Common Area for the purposes of installing, repairing and/or maintaining utility lines of any sort, including, but not limited to, storm drains and drainage swales, sanitary sewers, gas lines, electric lines and cables, water lines, telephone lines, telecommunication lines and cables, and the like, and (ii) obtaining the release of any bonds posted with a municipality, governmental agency or regulatory agency, (b) non-exclusive easements over the Block or the Common Area to any

municipal agency or private entity for any other purpose consistent with the "open space" designation thereof, and (c) in its sole discretion, grant licenses and non-exclusive easements over, under, across or through the Property in favor of owners of adjoining real property, and their tenants, successors and assigns, for purposes of providing access and utilities benefiting such adjoining real property.

Section 8.7. Bonds and/or Dedication Requirements. Declarant reserves the right to grant and reserve easements or to vacate or terminate easements across all Lots or the Block or the Common Area as may be required by any governmental agency or authority or utility in connection with the release of improvement bonds or the dedication of public streets for maintenance by governmental agencies.

Section 8.8. Easements for Corrective Work. Declarant reserves a non-exclusive easement over, across, under, through and above all Lots and the Block and the Common Area for the purposes of correcting drainage, maintenance, landscaping, mowing and erecting street intersection signs, directional signs, temporary promotional signs, entrance features, lights and wall features, if any, and for the purpose of executing any of the powers, rights, or duties granted to or imposed upon the Association in this Declaration.

Section 8.9. Reciprocal Cross-Easements for Adjoining Dwelling Units. Subject to Section 10.1 below, there is hereby created in favor of the Owner of each Lot an easement and right of entry onto each adjoining Lot permitting such Owner to repair and maintain all encroaching Party Walls, roofs, roof overhangs, eaves, downspouts, gutters, and splash blocks at reasonable times; provided, however, that the Owner exercising this right of entry upon the adjoining Owner's Lot shall be solely responsible for preserving and restoring the adjoining Owner's Lot to the same condition such adjoining Lot was in prior to the exercise of the right of entry.

Section 8.10. Prior Agreement, Covenants and Restrictions. In addition to this Declaration, the Property is subject to that certain Environmental Restrictive Covenant, dated May 11, 2018 and recorded on May 16, 2018 in the Recorder's Office as Instrument No. A201800048504 (the "ERC") (a copy of which is attached hereto as Exhibit B). Pursuant to the ERC, the Declarant is to install in each Dwelling Unit, at the time of its original construction, a vapor intrusion mitigation system. The Association and Owners shall comply with the covenants and restrictions set forth in the ERC, including, but not limited to, the following:

(a) Neither the Association nor any Owner shall use or allow the use or extraction of ground water anywhere on the Property for any purpose without the prior written approval of the Indiana Department of Environmental Management (the "Department"), except as permitted by the ERC.

(b) The Owners shall maintain in good operating order the vapor intrusion mitigation system installed by Declarant, pursuant to the ERC, in their respective Dwelling Unit.

(c) The Association shall on or before July 31 of each year, unless the ERC has been terminated by the Department pursuant to the terms of the ERC, provide the Department with a written report that lists the names and mailing addresses of all of the Owners of the Lots as of June 30 of that year.

(d) In the event the Department requires future or ongoing testing, sampling, inspecting, and monitoring of the vapor intrusion mitigation system and reporting of the results of such testing and monitoring ("Additional Testing") of any individual Dwelling Unit, the Association shall be responsible for arranging such Additional Testing and to pay for the costs of such Additional Testing. The Association will have the right to assess the individual Dwelling Unit Owner for the costs all such Additional Testing by Special Assessment as provided in Section 5.7 above.

(e) At the request of the Department, the Owners shall grant the Association and/or Department and the designated representatives of each the right to enter into their respective Dwelling Unit at all reasonable times for the purpose of determining whether the land use restrictions set forth in the ERC are being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety or welfare and the environment or to perform Additional Testing as contemplated in Section 8.10(d) above. This right to enter specifically includes the right to take samples, monitor the compliance with the "Work Plan", including any required operation, maintenance, and monitoring control plan, attached to the ERC (if applicable) and inspect records.

(f) Each Owner shall, in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds and leases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), including the following notice provision:

> NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO ANY ENVIRONMENTAL RESTRICTIVE COVENANT, DATED MAY 11, 2018, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON MAY 16, 2018, INSTRUMENT NUMBER A201800048504 IN FAVOR OF AND ENFORECABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

ARTICLE IX.
PARKING

No Owner, tenant, or any other Person shall park any type of vehicle on the Block or in any Common Area. Notwithstanding the foregoing, visitors, guests and invitees shall be permitted to park in those portions of the Block or the Common Area designated by Declarant or the Association as visitor parking areas; provided, however, that such parking shall be permitted only on a temporary and intermittent basis and no such parking shall be permitted

in any portion of the Block or the Common Area which has not been designated as a visitor parking area. Temporary parking on or within any public right-of-way within or adjacent to the Property is prohibited except to the extent expressly permitted by Local Governing Authorities, and shall be subject to any restrictions or limitations relating thereto, including, without limitation, fees assessed by any Local Governing Authorities. The Board of Directors may promulgate such additional rules and regulations as it deems appropriate to regulate the use of the Block or any Common Areas for parking purposes, which rules and regulations may include the towing of any vehicles parked in violation of this Declaration, with no notice of towing required and at the vehicle owner's sole expense.

ARTICLE X.
PARTY WALLS

Section 10.1. General Rules of Law to Apply. Each wall built as part of the original construction of a Dwelling Unit and situated upon the dividing line between two Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article X, the general rules of law regarding Party Walls and liability of Owners for property damage due to negligence or willful acts or omissions in connection with Party Walls shall apply thereto.

Section 10.2. Sharing of Repair and Maintenance and Destruction by Fire or Other Casualty. If any Party Wall is damaged or destroyed by (i) fire or other casualty, or (ii) ordinary wear and tear and deterioration from lapse of time, or (iii) or by some cause other than the act of one of the adjoining Owners, its agents, family, household or guests, then both adjoining Owners shall proceed forthwith to rebuild or repair the structural components of such Party Wall, sharing equally the cost thereof, and each individual Owner shall proceed forthwith to rebuild or repair the non-structural components of such wall in proportion to their respective uses of the Party Wall. Any and all such reconstruction and/or repairs shall be completed immediately to the extent that the failure to commence and/or complete such reconstruction and/or repairs would result in an immediate risk to human health and/or safety. All other reconstruction and/or repairs shall be completed within three (3) months following the casualty or other event that damaged or destroyed such Party Wall, unless a longer period of time is approved in writing by the Association. If a Party Wall is in a condition that is of such a nature that it has or will (if left uncorrected) result in further damage or destruction of such Party Wall, the reconstruction and/or repairs shall be completed within a reasonable time, not exceeding six (6) months following the initial discovery of the condition. Any and all such reconstruction and/or repair shall be made in a good and workmanlike manner, in compliance with all requirements of Local Governing Authorities and otherwise in compliance with all applicable laws, ordinances, rules and regulations, to the same or better condition as existed prior to such condition, damage or destruction. However, in the event of substantial destruction to the Party Wall and adjoining Dwelling Units (i.e. where eighty percent (80%) or more of the Party Wall and the adjoining Dwelling Units are destroyed by fire or otherwise), neither Owner shall be obligated to repair or restore the Party Wall. Each Owner shall have an easement over that part of the other Owner's Lot that is necessary or desirable in order to repair, restore or replace the Party Wall.

Section 10.3. Repairs for Damage Caused by One Owner. If any such Party Wall is damaged or destroyed through the act of one or more adjoining Owners, or their respective agents, families, households, tenants, or guests (collectively the "Offending Parties"), whether or not such act is negligent or otherwise culpable, so as to deprive another adjoining Owner of the use and enjoyment of the Party Wall, then the Owner(s) of the Dwelling Unit(s) from whence the Offending Parties committed the act that caused the damage or destruction, shall forthwith proceed to rebuild and repair the same, in the manner required under Section 10.2 above, without cost to the adjoining Owner.

Section 10.4. Use; Other Changes. Either Owner shall have the right to use the side of the Party Wall facing the Owner's Dwelling Unit in any lawful manner, including attaching structural or finishing materials to it; however, in addition to meeting the other requirements of these Restrictions and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild its Dwelling Unit in any manner which involves the alteration of any Party Wall shall first obtain the written consent of the adjoining Owner, whose consent shall not be unreasonably withheld, conditioned or delayed. If the adjoining Owner has not responded in writing to the requesting Owner within twenty-one (21) days of its receipt of any such written request, given by registered or certified mail, return receipt requested, such consent of the adjoining Owner shall be deemed to have been given.

Section 10.5. Right to Contribution Runs with the Land; Failure to Contribute. The right of any Owner to contribution from any other Owner under this Article X shall be appurtenant to the land and shall pass to such Owner's successors in title. If either Owner shall neglect or refuse to pay the Owner's share under this Article X, or all of the cost in case of the negligence or willful misconduct of such Owner, the other Owner may have the Party Wall repaired or restored and shall be entitled to have a mechanic's lien on the property of the Owner failing to pay for the amount of its share of the repair or replacement cost.

Section 10.6. Dispute. In the event of a dispute between or among Owners with respect to the repair or rebuilding of a Party Wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute and whose decision shall be final.

ARTICLE XI.
POWERS AND DUTIES OF THE ASSOCIATION

Section 11.1. Discretionary Powers and Duties. The Association shall have the following powers and duties which may be exercised in its discretion:

(a) to enforce any covenants or restrictions which are imposed by the terms of this Declaration or which may be imposed on any part of the Property. Nothing contained herein shall be deemed to prevent the Owner of any Lot from enforcing any building restriction in its own name. The foregoing rights of enforcement shall not prevent (i) changes, releases or modifications of the restrictions or reservations placed upon any part of the Property by any party having the right to make such changes,

releases or modifications in the deeds, contracts, declarations or plats in which such restrictions and reservations are set forth; or (ii) the assignment of the foregoing rights by the proper parties wherever and whenever such rights of assignment exist. Neither the Association nor the Board of Directors shall have a duty to enforce the covenants by an action at law or in equity if either party believes such enforcement is not in the Association's best interest. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association; provided, however, that the foregoing authorization to use the general fund for such enforcement proceedings shall not preclude the Association from collecting such costs from the offending Owner;

(b) to build facilities upon the Block or the Common Area;

(c) to use the Block or the Common Area and any improvements, Structures or facilities erected thereon, subject to the general rules and regulations established and prescribed by the Association and subject to the establishment of charges for their use;

(d) to exercise all rights, responsibilities and control over all easements which the Association may from time to time acquire, including, but not limited to, those easements specifically reserved to the Association in Article VIII above;

(e) to create, grant and convey easements and licenses upon, across, over and under the Block and all Common Areas, including but not limited to easements for the installation, replacement, repair and maintenance of utility lines serving the Property;

(f) subject to the limitations set forth in Section 11.3 hereof, to employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;

(g) to retain, as an independent contractor or employee, a manager of the Association and such other employees or independent contractors as the Board of Directors deems necessary, and to prescribe the duties of employees and scope of services of independent contractors;

(h) to enter upon any Lot to perform emergency repairs or to do other work reasonably necessary for the proper maintenance or protection of the Property;

(i) to enter (or have the Association's agents or employees or contractors enter) upon any Lot to repair, maintain or restore the Lot or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions, if such is not performed by the Owner of the Lot, and to assess the Owner of the Lot the costs thereof, such assessment to be a lien upon the Lot equal in priority to the lien provided for in Article V herein; provided, however, that the Board of Directors shall only exercise this right after giving the Owner written notice of its intent at least fourteen (14) days prior to such entry.

Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage, which may result from any maintenance work performed hereunder;

(j) to re-subdivide and/or adjust the boundary lines of the Block or the Common Area, to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(k) to adopt, publish and enforce rules and regulations governing the use of the Block or the Common Area and facilities and with respect to such other areas of responsibility assigned to it by this Declaration, except where expressly reserved herein to the Members. Such rules and regulations may grant to the Board of Directors the power to suspend a Member's right to use non-essential services for non-payment of assessments and to assess charges against Members for violations of the provisions of the Declaration or rules and regulations;

(l) to remove a member of the Board of Directors and declare such member's office to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(m) to arrange for the collection of trash and recyclable items on a weekly basis from approved locations and from appropriate receptacles in the manner contemplated in Section 6.10 above; and

(n) to enter into contracts on behalf of the Association, subject to the limitations and requirements contained within subsection 4 of the HOA Act, as the same may be amended.

Section 11.2. Mandatory Powers and Duties. The Association shall exercise the following powers, rights and duties:

(a) to unconditionally accept title to the Block and the Common Area upon the transfer thereof by Declarant to the Association as provided hereunder, and to hold and administer the Block and the Common Area for the benefit and enjoyment of the Owners and occupants of Lots, and to cause the Block and the Common Area and facilities to be maintained in accordance with the standards adopted by the Board of Directors;

(b) to transfer part of the Block and the Common Area to or at the direction of Declarant, for the purpose of adjusting boundary lines or otherwise in connection with the orderly subdivision or development of the Property, but only to the extent such re-subdivision or adjustment does not contravene the requirements of zoning and other ordinances applicable to the Property;

(c) after the Authority Transfer Date, to obtain and maintain without interruption liability coverage for any claim against a director or officer for the exercise of its duties and fidelity coverage against dishonest acts on the part of directors, officers, trustees, managers, employees or agents responsible for handling funds collected and held for the benefit of the Association. The fidelity bond shall

cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in place. The fidelity bond coverage shall be in an amount as may be determined to be reasonably prudent by the Board of Directors;

(d) to obtain and maintain without interruption a comprehensive coverage of public liability and hazard insurance covering the Block and the Common Area and easements of which the Association is a beneficiary, if available at reasonable cost. Such 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 Association or other Owners. The scope of coverage shall include all coverage in kinds and amounts commonly obtained with regard to projects similar in construction, location and use as determined by the Board of Directors. Further, the public liability insurance must provide coverage of at least $1,000,000.00 for bodily injury, including death, and property damage for any single occurrence;

(e) to provide for the maintenance of any and all (i) improvements, Structures or facilities which may exist or be erected from time to time on the Common Area; (li) easement areas of which the Association is the beneficiary and for which it has the maintenance responsibility; and (iii) facilities, including, but not limited to, fences and signs, authorized by the Association and erected on any easements granted to the Association;

(f) to pay all proper bills, taxes, charges and fees on a timely basis;

(g) to maintain its corporate status;

(h) to maintain all private streets within the Block, open space and landscaping within the Block and the Common Area;

(i) to paint, maintain, repair, and replace all fencing on the Block, on a Lot, or in the Common Area;

(i) to mow, trim, re-sow, re-seed or re-sod lawn areas and fertilize lawn areas at least three (3) times each year within the Common Areas and on each Lot and to operate and maintain in-ground irrigation/sprinkler systems in the Common Areas and on each Lot;

(j) to maintain, irrigate, spray, trim, protect, plant, fertilize, edge, mulch, apply preemergent and bug control, replace and prune trees, shrubs and all other landscaping located within the Lots and the Common Areas, maintenance and upkeep of the Common Area and to pick up and remove from the Common Area all loose material, rubbish, filth and accumulation of debris; and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Area in neat appearance and in good order, including, but not limited to, cleaning the private streets and maintaining any street lights located in the Property;

(k) to arrange for plowing and/or removal of snow from (i) private streets located within the Block, (ii) community walkways located within the Block or the Common Areas, (iii) driveways located upon Lots; and (iv) walkways extending from the community walkways to the front door of the Owner's Dwelling Unit;

(l) to paint all hardi-plank siding (if applicable) and exterior wood trim of all Dwelling Units on a routine schedule, but the Association shall not be responsible for any other maintenance of the exterior of a Dwelling Unit;

(m) to maintain, repair and replace all sidewalks and streets located on any Lot, the Block or in any Common Area;

(o) to maintain, repair and replace water mains, service lines, and meters installed on any Lot, the Block or in any Common Area; and

(n) to be solely responsible for all costs incurred in connection with the maintenance and repair of the Block and the Common Area in accordance with Section 4.3(b) hereof.

Section 11.3. Limitation on Association Action. The Association shall hold a duly authorized, duly noticed special meeting of the Members of the Association prior to commencing or prosecuting any judicial or administrative proceeding, and no judicial or administrative proceeding shall be commenced or prosecuted by the Association except upon the affirmative vote of at least seventy-five percent (75%) of the votes cast at said special meeting by Members entitled to vote authorizing the commencement and prosecution of the proposed action. Provided, however, the Association shall not have the power to institute, defend, intervene in, settle or compromise proceedings in the name of any Owner or Member. This Section 11.3 shall not apply to (a) actions brought by the Association to enforce the provisions of the HOA Act, this Declaration, the Bylaws, or rules and regulations adopted by the Board of Directors (including, without limitation, any action to recover Regular Assessments or Special Assessments or other charges or fees or to foreclose a lien for such items); (b) the imposition and collection of Annual Assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in connection with proceedings instituted against it. The rights and powers of the Association shall at all times be subject to the requirements of the HOA Act. Any proposed amendment to the provision of this Section 11.3 shall be adopted only upon an affirmative vote of Members holding one-hundred percent (100%) of the total number of votes of the Association and the Declarant.

Section 11.4. Board of Directors Authority to Act. Unless otherwise specifically provided in the Association's documents, all rights, powers, easements, obligations and duties of the Association may be performed by the Board of Directors. Notwithstanding anything to the contrary contained herein, any rules or regulations which are promulgated by the Board

of Directors may be repealed or amended by a majority vote of the Members cast, in person or by proxy, at a meeting convened for such purpose in accordance with the Bylaws.

Section 11.5. Compensation. No director or officer of the Association shall receive compensation for services as such director or officer except to the extent expressly authorized by a majority vote of the Members.

Section 11.6. Non-liability of Directors, Officers and Board Members. The directors and officers of the Association and members of the Architectural Review Board, and all committees thereof, shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association or members of the Architectural Review Board, or any committee thereof, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association and members of the Architectural Review Board, and all committees thereof, shall have no personal liability with respect to any contract made by them in good faith on behalf of the Association, and the Association shall indemnify and hold harmless each of the directors, officers, Architectural Review Board members, or committee members against any and all liability to any person, firm or corporation arising out of contracts made in good faith on behalf of the Association.

Section 11.7. Indemnity of Directors and Officers and Members of the Architectural Review Board. Except with respect to matters (i) as to which it is adjudged in any civil action, suit, or proceeding that such person is liable for gross negligence or willful misconduct in the performance of his or her duties, or (ii) to which it is adjudged in any criminal action, suit or proceeding that such person had reasonable cause to believe that such person's conduct was unlawful or that person had no reasonable cause to believe that such person's conduct was lawful, the Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding, or subject to any claim, by reason of the fact that he or she is or was a director or officer of the Association or member of the Board of Directors of the Architectural Review Board, or any committee thereof, from and against (1) all liability, including, without limitation, the reasonable cost of settlement of, or the amount of any judgment, fine, or penalty rendered or assessed in any such claim, action, suit, or proceeding; and (2) all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such claim, action, suit or proceeding, or in connection with any appeal thereof. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer of the Association, or member of the Board of Directors or the Architectural Review Board, or any committee thereof, shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer of the Association, or member of the Architectural Review Board, or any committee thereof, relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any director, officer or member of the Association, of any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director, officer or member had actual knowledge of the falsity or incorrectness thereof; nor

shall a director, officer or member be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Association, the Board of Directors or the Architectural Review Board, or any committee thereof. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this Article XI.

ARTICLE XII.
GENERAL PROVISIONS

Section 12.1. Enforcement. The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association documents unless such right is specifically limited herein or therein. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Section 12.2. Severability; Headings; Conflicts. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles and this Declaration, this Declaration shall control; in the case of any conflict between this Declaration and the Bylaws, this Declaration shall control; in the case of any conflict between this Declaration and the HOA Act, the HOA Act shall control.

Section 12.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited herein, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of twenty (20) years each, unless terminated by a written and recorded instrument approved in advance by the affirmative and unanimous vote of all Members of the Association and their respective Mortgagees.

Section 12.4. Material Amendment/Extraordinary Action.

(a) Approval Requirements. In accordance with Federal Agencies' requirements, material amendments ("Material Amendments") or extraordinary actions ("Extraordinary Actions"), as each such term is defined below, must be approved by Members entitled to cast at least sixty-seven percent (67%) of the votes of Members present and voting, in person or by proxy, at a meeting held in accordance with the notice and quorum requirements for Material Amendments and Extraordinary Actions contained in the Bylaws, such vote including the vote of a majority of the Members present and voting, in person or by proxy, at such meeting.

(b) Material Amendment. A Material Amendment includes adding, deleting or modifying any provision regarding the following:

(i) assessment basis or assessment liens;

(ii) any method of imposing or determining any charges to be levied against individual Owners;

(iii) reserves for maintenance, repair or replacement of the Block and the Common Area improvements;

(iv) maintenance obligations;

(v) allocation of rights to use the Block and the Common Areas, except as provided in Article III and Article IV herein;

(vi) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Lots;

(vii) reduction of insurance requirements;

(viii) restoration or repair of the Block and the Common Area improvements;

(ix) the annexation or withdrawal of land to or from the Property;

(x) voting rights;

(xi) restrictions affecting leasing or sale of a Lot; or

(xii) any provision which is for the express benefit of Mortgagees.

(c) Extraordinary Action. Alternatively, an Extraordinary Action includes:

(i) merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to this Association);

(ii) determining not to require professional management if that management has been required by the Association documents, a majority of eligible Mortgagees or a majority vote of the Members;

(iii) expanding the Association to include land not previously described as annexable which increases the overall land area of the project or number of Lots by more than ten percent (10%);

(iv) abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring the Block or the Common Area except for (i) granting easements; (ii) dedicating the Block or the Common Area as required by public authority; (iii) re-subdividing or adjusting the boundary lines of the Common Area; or transferring the Block or the Common Area pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Association;

(v) using insurance proceeds for purposes other than reconstruction or repair of the insured improvements; or making capital expenditures (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget.

(d) Amendments. Any Material Amendment which changes the rights of any Members must be approved by Members entitled to cast at least fifty-one percent (51%) of the votes of all Members present and voting, in person or by proxy, at a meeting held in accordance with the requirements contained in the Bylaws.

(e) Material Amendment and/or Extraordinary Actions Amendments. The following Material Amendments and Extraordinary Actions must be approved by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Association, including at least a majority of the total authorized votes entitled to be cast by Members:

(i) termination of this Declaration;

(ii) dissolution of the Association, except pursuant to a consolidation or merger; and

(iii) conveyance of the Block or all Common Areas.

Section 12.5. Amendment. Notwithstanding anything contained herein to the contrary, amendments to this Declaration other than Material Amendments or Extraordinary

Actions shall be approved by at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and voting, in person or by proxy, at any duly called and conveyed meeting, or in writing by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members.

Any amendment to this Declaration must be properly executed and acknowledged by the Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records.

Section 12.6. Special Amendment. Declarant may make any amendment required by any of the Federal Agencies or by the Local Governing Authorities, as a condition of the approval of this Declaration, by the execution and recordation of such amendment following notice to all Members.

Notwithstanding anything herein to the contrary, Declarant hereby reserves the right prior to the end of the Development Period to unilaterally amend and revise the standards, covenants and restrictions contained in this Declaration for any reason. No such amendment, however, shall restrict or diminish materially the rights or increase or expand materially the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Lots at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot. All amendments to this Declaration shall be in writing and recorded among the appropriate land records, and until the end of the Development Period, require Declarant's approval.

Section 12.7. Waiver of Restrictions. Declarant hereby expressly reserves unto itself (so long as these Restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the written consent of Declarant and the then-Owner of the Lot(s) (if other than Declarant) as to which some or all of said restrictions are to be waived or altered; such written consent shall be duly acknowledged and recorded in the Recorder's Office.

Section 12.8. Casualty Insurance. Notwithstanding anything to the contrary contained in this Declaration, each and every Owner shall maintain a casualty insurance policy affording fire and extended coverage insurance insuring such Owner's respective Lot and structures constructed thereupon including, but not limited to, the Dwelling Unit in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Unit, including, without limitation, any Party Walls. Each and every Owner shall, in addition, also procure endorsements naming the Association as an additional insured under such insurance policies and requiring each such insurer to provide (i) immediate written notice to the Association of any cancellation of such policy, and (ii) at least thirty (30) days' written notice to the Association prior to any termination or material modification of such policy. Each Owner of each Lot and/or Dwelling Unit (regardless of whether or not its ownership is encumbered or is to be encumbered by a mortgage, deed of trust or similar

indenture) will furnish to the Association, at or prior to the closing of its acquisition of that Lot or Dwelling Unit, a certificate of insurance and endorsement, in form and content acceptable to the Association, evidencing the insurance coverage described herein. Each such Owner shall, prior to the expiration of the term of any such insurance policy, procure and deliver to the Association a renewal or replacement policy in form and content acceptable to the Association, including an endorsement naming the Association as an additional insured. If any such Owner fails to provide evidence of such coverage satisfactory to the Association, the Association will have the right, but no obligation, to procure such coverage at the expense of the applicable Owner, and the cost of procuring such insurance will be assessed to that Owner as a Special Assessment and shall be immediately due and payable upon demand. Owners shall not do or permit any act or thing to be done in or to a Lot or Dwelling Unit which is contrary to law or which invalidates or is in conflict with the Owner's policy of insurance. An Owner who fails to comply with the provisions of this paragraph shall pay all costs, expenses, liens, penalties, or damages which may be imposed upon the Owner, Declarant or the Association by reason thereof.

Section 12.9. Withdrawable Real Estate.

(a) Prior to the date which is five (5) years after the date of the recordation of this Declaration, Declarant shall have the unilateral right, without the consent of the other Members or any Mortgagee, to execute and record an amendment to this Declaration withdrawing any portion of the Property upon which Dwelling Units have not been constructed.

(b) Upon the dedication or the conveyance to any public entity or authority of any portion of the Property for public street purposes, this Declaration shall no longer be applicable to the land so dedicated or conveyed.

Section 12.10. Management Contracts. The Board of Directors may enter into professional management contract(s) for the management of the Property, in accordance with the Articles and Bylaws.

Section 12.11. Dissolution. Subject to the restrictions and conditions contained in Article XI and this Article XII, the Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of the Members and in accordance with Article 13 of the Act. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Indiana law. Any such dedication or transfer of the Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space".

Section 12.12. Prevailing Party and Damages. Except as otherwise provided in this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be

amended from time to time, each party shall bear its own costs and expenses, including attorneys' fees, for any proceeding of a dispute under this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended or supplemented from time to time. Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of any proceeding, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. In addition, if a party fails to abide by the terms of any settlement or award, the other party shall be awarded reasonable attorneys' fees and expenses incurred in enforcing such settlement or award. Further, all present and future Owners of the Lots and Dwelling Units, and other Persons claiming by, through or under them, agrees that such Owner has waived and shall be deemed to have waived the right to any award of damages in connection with any dispute under this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended or supplemented from time to time.

Section 12.13. 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, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by violation of any of the Restrictions by such Owner, any member of his family or their respective guests, employees, agents, invitees or tenants.

Section 12.14. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Architectural Review Board, or any committee thereof, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, 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 bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Property, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Property in any manner shall be subject to this and guidelines applicable thereto as each may be amended or supplemented from time to time.

Section 12.15. Waiver. The waiver by any party of a breach of or noncompliance with any provision of this Declaration shall not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.

Section 12.16. Notice of Defects. Until the Development Period has expired, the Association shall send to the applicable developer, contractor, subcontractor, supplier or design

professional, and the Declarant a notice of any claim alleging any construction or design defect with respect to improvements on the Block or in any Common Area (the **"Defect Notice"**) prior to commencing any administrative or judicial proceeding with respect to such defects. The Defect Notice shall identify the alleged defect in reasonable detail, and Declarant shall have the right to inspect and to correct any such defect set forth in the Defect Notice within ninety (90) days (or such longer reasonable time as may be required as a result of the nature of the defect or force majeure events) following Declarant's receipt of such Defect Notice (the **"Defect Cure Period"**). If the Association does not submit a claim with respect to the defects alleged in the Defect Notice (each a **"Defect Claim"**) to mediation as provided in Section 12.17 of this Declaration within sixty (60) days after expiration of the Defect Cure Period, or does not appear for the mediation, then the party making such Defect Claim shall be deemed to have waived the Defect Claim, and the Declarant shall be released and discharged from any and all liability on account of such Defect Claim.

Section 12.17.Alter native Dispute Resolution. Except with respect to any claim as set forth in Indiana Code Section 32-25.5-5 of the HOA Act which is governed by those provisions of Indiana law, each and every Claim brought under this Declaration shall be subject to the following procedures:

(a) Any Claim (as defined in the HOA Act) shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§1 et seq.) and not by or in a court of law or equity.

(b) If the parties are unable to agree to a mediator, the parties will utilize the American Arbitration Association ("AAA") for this role. The parties expressly agree that the mediator's charges shall be equally shared and that each party shall be responsible for its own costs and fees, including attorneys' fees and consultant fees incurred in connection with the mediation.

(c) If the Claim is not fully resolved by mediation, the Claim shall be submitted to binding arbitration and administered by the AAA in accordance with the AAA's Construction Industry Arbitration Rules. In no event shall the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute(s) of limitations, which such statute(s) of limitations the parties expressly agree apply to any Claim. The decision of the arbitrator(s) shall be final and binding on both parties. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds $250,000.00 or includes a demand for punitive damages, the Claim shall be heard and determined by three arbitrators; however, if mutually agreed to by the parties, then the Claim shall be heard and determined by one arbitrator. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s). Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the

existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Unless otherwise recoverable by law or statute, each party shall bear its own costs and expenses, including attorneys' fees and paraprofessional fees, for any mediation and arbitration. Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of arbitration in a court of law or equity, the non-contesting party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in defending such contest, including such fees and costs associated with any appellate proceedings. In addition, if a party fails to abide by the terms of a mediation settlement or arbitration award, the other party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in enforcing such settlement or award.

(d) IN THE EVENT THAT ANY COURT OF COMPETENT JURISDICTION DETERMINES THAT THE PROVISIONS OF THIS DECLARATION REQUIRING SUBMITTAL OF ANY CLAIM TO ARBITRATION IS VOID, DECLARANT, THE ASSOCIATION AND EACH OWNER ARE HEREBY DEEMED TO HAVE WAIVED THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY SUCH PARTY AGAINST THE OTHER, ARISING IN CONNECTION WITH A CLAIM.

Section 12.18. Damages. Notwithstanding any other provision of this Declaration to the contrary, no Owner shall be entitled to any punitive, exemplary, consequential or special damages. By taking title to a Lot, each Owner acknowledges and agrees that such Owner has waived and shall be deemed to have waived the right to any award of damages in connection with the arbitration of a Claim other than such Owner's actual damages.

Section 12.19. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code 32-17-8, et seq. as amended from time to time.

[signature on following page]

WITNESS the following signatures:

DECLARANT:

Lennar Homes of Indiana, Inc., a Delaware corporation

By: _____
Keith Lash
Vice President

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Keith Lash, Vice President of Lennar Homes of Indiana, Inc, who acknowledged the execution of the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Bakery, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 2nd, day of May, 2019.

Wanda Wooldridge

Wanda Wooldridge, Notary Public
Resident of Hamilton County, IN
My Commission Expires 8-27-22

WANDA K WOOLDRIDGE
My Comm. Expires 08/27/2022
Comm. # 657414
NOTARY SEAL PUBLIC
HAMILTON COUNTY
STATE OF INDIANA

This instrument was prepared by and after recording return to: Wanda Wooldridge, 9025 North River Road, Suite 100, Indianapolis, IN 46240. 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. *Wanda Wooldridge*

DEPT. OF METROPOLITAN DEVELOPMENT
DATE 5-9-19
PER
ADMINISTRATOR

REVIEWED AND APPROVED
MARION COUNTY ASSESSOR
MAY 09 2019
MAP DEPARTMENT REVIEWER

EXHIBIT A

Legal Description of Property

Lots 101 through 105, inclusive;
Lots 201 through 207, inclusive;
Lots 301 through 305, inclusive;
Lots 401 through 405, inclusive;
Lots 501 through 505, inclusive;
Lots 601 through 607, inclusive;
Block "A";
C.A. #1; and
C.A. #2

of The Bakery Final Plat recorded February 13, 2019 as Instrument No. A201900013371 in the Office of the Recorder of Marion County, Indiana.

"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."

Prepared by: Audrey Schieber

EXHIBIT B

The ERC

A201800048504

05/16/2018 09:39 AM
KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER
FEE: $ 35.00
PAGES: 32
By: ER
KB

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 11th day of May, 2018, by Monte L. Froehlich ("Owner"). a/k/a Monte Froehlich

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 1555 Bellefontaine Street in Indianapolis and more particularly described in the attached **Exhibit "A"** ("Real Estate"), which is hereby incorporated and made a part hereof. The Real Estate was acquired by deed on 07-18-2013, and recorded on 07-31-2013, as Deed Record A201300091804, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately 1.67 acres and is identified by the State by parcel identification number 49-06-36-101-016.000-101. The Real Estate to which this Covenant applies is depicted on a map attached hereto as **Exhibit "B"**.

WHEREAS: A Comment Letter, a copy of which is attached hereto as **Exhibit "C"**, was prepared and issued by the Indiana Department of Environmental Management ("the Department" or "IDEM") pursuant to the Indiana Brownfields Program's ("Program") recommendation at the request of CalAtlantic Homes of Indiana, Inc., a prospective purchaser of the Real Estate, to address the redevelopment potential of the Real Estate which is a brownfield site resulting from a release of hazardous substances and petroleum relating to historical operations on or in the vicinity of the Real Estate, Program site number BFD #4170903.

WHEREAS: Soil, ground water, soil gas, and indoor air on the Real Estate were sampled for volatile organic compounds ("VOCs"), polyaromatic hydrocarbons ("PAHs"), and/or lead. Investigations detected levels of contaminants of concern ("COCs") above applicable screening levels established by IDEM in the *Remediation Closure Guide* ("RCG") (March 22, 2012 and applicable revisions). The COCs are trichloroethylene ("TCE") detected in ground water and 1,3-butadiene, chloroform, and TCE detected in subslab and/or exterior soil gas. Ground water and soil gas analytical results above applicable RCG screening levels are summarized on Tables 1 and 2, attached hereto as **Exhibit "D"**. A site map, attached hereto as **Exhibit "E"**, depicts sample locations on the Real Estate at which the COCs were detected in ground water and soil gas above applicable RCG screening levels.

WHEREAS: The Comment Letter, as approved by the Department, provides that certain COCs were detected in ground water, subslab soil gas, and/or exterior soil gas on the Real Estate, but will not pose an unacceptable risk to human health at the detected concentrations provided that the land use restrictions contained herein are implemented and maintained to ensure the protection of public health, safety, or welfare, and the environment.

WHEREAS: The Department has not approved closure of environmental conditions on the Real Estate under the *Remediation Closure Guide*. However, the Department has determined that the land use restrictions contained in this Covenant will enable the Real Estate to be used safely for conditional residential use.

WHEREAS: Environmental reports and other documents related to the Real Estate are hereby incorporated by reference and may be examined at the Public File Room of the Department, which is located in the Indiana Government Center North at 100 N. Senate Avenue, 12th Floor East, Indianapolis, Indiana. The documents may also be viewed electronically by searching the Department's Virtual File Cabinet on the Web at: http://www.in.gov/idem/4101.htm.

NOW THEREFORE, Monte L. Froehlich, the current Owner, subjects the Real Estate to the following restrictions and provisions, which shall be binding on Monte L. Froehlich and all future owners of the Real Estate or any portions thereof:

I. RESTRICTIONS

1. Restrictions. The Owner and all future owners, with respect to the Real Estate or applicable portion thereof:

   (a) Shall not occupy any residential or commercial/industrial building(s) constructed on the Real Estate after the effective date of this Covenant without first completing one of the following: (i) obtaining approval from the Department that a vapor mitigation system is not necessary based upon achievement of the objectives stated in the detailed work plan approved by the Department, attached hereto as **Exhibit "F"**, that outlines activities to be completed to evaluate and mitigate potential vapor intrusion risk and to determine the effectiveness of any operating vapor mitigation system(s) installed for each building constructed at the Real Estate after the date hereof ("VI Work Plan"); or (ii) installing, operating and maintaining a vapor mitigation system (in accordance with *U.S. EPA Brownfield Technology Primer Vapor Intrusion Considerations for Redevelopment* (EPA 542-R-08-001) (March 2008) and *IDEM Draft Interim Guidance Document: Vapor Remedy Selection and Implementation* (February 2014)) within any residential or commercial/industrial building(s) constructed on the Real Estate after the date hereof as provided for in paragraph 1(b) of this Covenant, unless the Department concurs that a vapor mitigation system(s) is no longer necessary based upon achievement of the applicable IDEM RCG subslab soil gas screening levels (Res SGss SLs) or commercial/industrial subslab soil gas screening levels (Indus SGss SLs) and/or residential indoor air vapor exposure screening levels ("Res IA VESLs") or commercial/industrial indoor air vapor exposure screening levels ("Indus IA VESLs") based upon the then-current use of the Real Estate (residential or commercial/industrial) or site-specific action levels approved by the Department.

(b) The Department-approved VI Work Plan, attached hereto as **Exhibit "F"**, outlines activities to be completed to evaluate and mitigate potential vapor intrusion risk and to determine the effectiveness of any operating vapor mitigation system(s) installed for each building constructed at the Real Estate after the date hereof and to operate such systems after occupancy of such building to the extent required pursuant to paragraph 1(a)(ii) of this Covenant. After installation of the approved vapor mitigation system(s), Owner shall operate such vapor mitigation system(s) in accordance with the Department-approved VI Work Plan for the purpose of mitigating the COCs potentially impacting indoor air in any building on the Real Estate per the *IDEM Draft Interim Guidance Document: Vapor Remedy Selection and Implementation* (February 2014) until the Department a) concurs that a vapor mitigation system(s) is no longer necessary based upon demonstrated achievement under the VI Work Plan of the applicable IDEM RCG Res SGss SLs, Indus SGss SLs, Res IA VESLs and/or Indus IA VESLs, based on then-current land use; and, b) makes a determination regarding acceptable risk under Paragraph No. 9 of this Covenant based upon the RCG screening levels applicable to the then-current land use. The Department's determination in concert with Paragraph No. 9 shall not be unreasonably withheld. In the event that the vapor intrusion mitigation system(s) malfunction(s) or cease(s) operation, the Department shall afford the Owner a reasonable opportunity to repair or replace the vapor intrusion mitigation system(s) prior to the Department exercising whatever rights it may have under Paragraph No. 8.

(c) Shall not use or allow the use or extraction of ground water at the Real Estate for any purpose, including, but not limited to, human or animal consumption, gardening, industrial processes, or agriculture, without prior Department approval, except that groundwater may be extracted for investigation, monitoring or remediation of the ground water, for extraction in conjunction with construction or excavation activities or maintenance of subsurface utilities, such as to dewater a trench.

II. GENERAL PROVISIONS

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate (or its respective portion thereof) and of the Owner's successors, assignees, heirs and lessees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control ("Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. This Covenant shall be binding upon the Owner, during the time that the Owner owns the Real Estate or any portion thereof, and upon all assigns and successors in interest of such Owner during such person or entity's fee ownership of any portion of the Real Estate (such then current owner shall be referred to as "Owner" herein). No transfer, mortgage, lease, license, easement, or other conveyance of any interest in all or any part of the Real Estate by any person shall

limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof. Notwithstanding anything in this Covenant to the contrary, this Covenant shall impose no obligations whatsoever on any persons or entities, including Owner or any subsequent owner, once those persons or entities have divested themselves of their fee interest(s) in the Real Estate or any portion thereof, except to the extent such person or entity has violated this Covenant during its ownership of all or a portion of the Real Estate.

3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.

4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of determining whether the land use restrictions set forth in paragraph 1 above are being properly maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety, or welfare and the environment. This right of entry includes the right to take samples, monitor compliance with the VI Work Plan (if applicable), and inspect records.

5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds and leases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED_____ 20__, RECORDED IN THE OFFICE OF THE RECORDER OF MARION COUNTY ON _____, 20__, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within thirty (30) days of the conveyance and include (a) a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if the instrument has been recorded, its recording reference(s), and (c) the name and business address of the transferee. Owner contemplates that the Real Estate will be developed into a residential subdivision, which will result in the creation of a homeowners' association (the "HOA"). Following the formation of the HOA and in lieu of the foregoing requirement, the

HOA shall provide the Department with the names and mailing addresses of all the Owners of the individual lots within the Real Estate on an annual basis. Each annual report shall be effective as of June 30 of that year and shall be submitted to the Department by July 31 of that year. If an HOA is not established as part of future use of the Real Estate, the Owner(s) shall fulfill the notice requirement in accordance with the terms of this provision.

7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate the Department if any Owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any Owner of the Real Estate, or any Owner's Related Parties, breach this Covenant or otherwise default hereunder, the Department shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall be perpetual, unless the Department determines that COCs on the Real Estate no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment without implementation and maintenance of the land use restrictions contained herein.

10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Marion County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.

12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.

13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.

14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:
Monte L. Froehlich
129 North 10th Street, Apartment 107
Lincoln, Nebraska 68508

To Department:
Indiana Brownfields Program
100 N. Senate Avenue, Rm. 1275
Indianapolis, Indiana 46204
ATTN: Kyle Hendrix

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph. Following any transfer of a fee simple interest in the Real Estate, the subsequent Owner shall notify the Department of a current address for the purpose of receiving notice; provided, however, that this sentence shall automatically terminate following the formation of the HOA as provided in Section 6, above, and the provisions of Section 6, above, shall control.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, Monte L. Froehlich a/k/a Monte Froehlich, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 11TH day of May, 2018.

Monte L. Froehlich
a/k/a Monte Froehlich

STATE OF Nebraska)
) SS:
COUNTY OF Lancaster)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Monte Froehlich, the ~~of the~~ Owner, _____, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 11 day of May, 2018.

Jessica Lindersmith, Notary Public

Residing in Cass County, NE

My Commission Expires:

GENERAL NOTARY - State of Nebraska
JESSICA LINDERSMITH
My Comm. Exp. Apr. 22, 2019

This instrument prepared by:

Richard J. Dick
Mitchell Dick McNelis, LLC
9247 N. Meridian St., #350
Indianapolis, IN 46260

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.

Richard J. Dick (Printed Name of Declarant)

EXHIBIT A

Deed for the Real Estate

A201300091884

07/31/2013 07:02 AM
JULIE L. VOORHIES
MARION COUNTY IN RECORDER
FEE: $ 21.50
PAGES: 2
By: ER

BB

CORPORATE WARRANTY DEED

THIS INDENTURE WITNESSETH, THAT

Carsen Corporation, an Indiana corporation, as trustee under the provisions of a Trust Agreement dated January 2, 1995, known as Trust 19

("Grantor"), a corporation organized and existing under the laws of the State of Indiana CONVEYS AND WARRANTS to

Monte Frochlich

("Grantee") of Marion County, in the State of Indiana, for the sum of Ten and no/100 Dollars ($10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Marion County, in the State of Indiana.

Lots 19, 20, 21, 22 and 23 in Ovid Butler's Addition to College Corner, now in the City of Indianapolis, the plat of which is recorded in Plat Book 3, page 92, in the Office of the Recorder of Marion County, Indiana, except 35 feet by parallel line off the entire West ends of 19, 20, 21, 22 and 23 taken for the opening and widening of Rohampton, now Bellfountaine Street; together with 7 1/2 feet South of and adjoining said Lots 19 and 21 being part of a vacated alley and 7 1/2 feet North of and adjoining said Lot 20 being part of the first alley South of 16th Street, vacated; together with 18 feet East of and adjoining said Lots 19, 20, 21, 22, 23 and said vacated alleys being part of Bundy Place, vacated.

ALSO Lots 1, 2, 3, 4 and 5 and 15 feet by parallel lines off the entire East side of Lot 6 in William Lane's Subdivision of Lot 24 in Ovid Butler's College Corner Addition, now in the City of Indianapolis, the plat of which is recorded in Plat Book 4, page 228, in the Office of the Recorder of Marion County, Indiana; together with the vacated alley lying West of and adjoining said Lots 1, 2, 3 and East of and adjoining Lot 4 in said William Lane's Subdivision; together with the vacated alley lying South of and adjoining Lots 4, 5 and part of 6 in William Lane's Subdivision; together with 18 feet East of and adjoining Lots 1, 2 and 3 in William Lane's Subdivision, being part of Bundy Place, vacated.

EXCEPTING, however, from the real estate described above, the following:

A part of Lot 19, a part of the North 7.50 feet of a vacated alley and a part of a vacated 18.00 foot strip of Bundy Place in Ovid Butler's Addition to College Corner in the City of Indianapolis, Indiana, the plat of which is recorded in Plat Book 3, page 92, in the Office of the Recorder of Marion County, Indiana, described as follows:

Beginning at the Northeast Corner of said Lot 19; thence North 19 degrees 25 minutes 18 seconds East 53.24 feet to the East line of said vacated 18.00 foot strip of Bundy Place; thence Southerly 126.88 feet along said East line to the South line, prolonged, of the North 7.50 feet of said vacated alley; thence Westerly 96.00 feet along said South line; thence North 44 degrees 54 minutes 11 seconds East 109.85 feet to the point of beginning.

Subject to any and all easements, agreements and restrictions of record. The address of such real estate is commonly known as **1555 Bellefontaine Street, Indianapolis, IN 46202.**

13-1078

Marion County Assessor
Jul 30 2013
Received CB

E009185 BS

JOSEPH P. O'CONNOR
MARION COUNTY ASSESSOR
Jul 30 2013 PM 03:47
DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

CORPORATE WARRANTY DEED

THIS INDENTURE WITNESSETH, THAT

Carsen Corporation, an Indiana corporation, as trustee under the provisions of a Trust Agreement dated January 2, 1995, known as Trust 19

("Grantor"), a corporation organized and existing under the laws of the State of Indiana CONVEYS AND WARRANTS to

Monte Froehlich

("Grantee") of Marion County, in the State of Indiana, for the sum of Ten and no/100 Dollars ($10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Marion County, in the State of Indiana.

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ALSO Lots 1, 2, 3, 4 and 5 and 16 feet by parallel lines off the entire East side of Lot 6 in William Lane's Subdivision of Lot 24 in Ovid Butler's College Corner Addition, now in the City of Indianapolis, the plat of which is recorded in Plat Book 4, page 228, in the Office of the Recorder of Marion County, Indiana; together with the vacated alley lying West of and adjoining said Lots 1, 2, 3 and East of and adjoining Lot 4 in said William Lane's Subdivision; together with the vacated alley lying South of and adjoining Lots 4, 5 and part of 6 in William Lane's Subdivision; together with 18 feet East of and adjoining Lots 1, 2 and 3 in William Lane's Subdivision, being part of Bundy Place, vacated.

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Subject to any and all easements, agreements and restrictions of record. The address of such real estate is commonly known as **1555 Bellefontaine Street, Indianapolis, IN 46202.**

13-1078

The undersigned persons executing this deed on behalf of Grantor represent and certify that they are duly elected officer of Grantor and have been fully empowered, by proper resolution of the Board of Directors of Grantor, to execute and deliver this deed; that Grantor has full corporate capacity to convey the real estate described herein; and that all necessary corporate action for the making of such conveyance has been taken and done.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this 18 day of July, 2013

Carsen Corporation, an Indiana corporation, as trustee under the provisions of a Trust Agreement dated January 2, 1995, known as Trust 19

By: Margaret L. Young

Title: Pres, Sec, Treas., Director

State of Indiana
County of Marion

Before me, a Notary Public, in and for said County and State, personally appeared Margaret L. Young, Pres, Sec Treas, Director, **of Carsen Corporation, an Indiana corporation, as trustee under the provisions of a Trust Agreement dated January 2, 1995, known as Trust 19** who acknowledged the execution of the foregoing Corporate Warranty Deed, and stated that the foregoing representations are true.

Witness my hand and Notarial seal, this July 18, 2013.

Signature

Susan R. Jones
NOTARY PUBLIC INDIANA
MARION COUNTY
My Commission Expires
May 15, 2015

_____ - Notary Public
Printed Name

My Commission expires:_____
County of Residence:_____

Return deed to: **Royal Title Services, 365 East Thompson Road, Indianapolis, IN 46227-1624**

Send tax bills to: 129 N. 10th St, Lincoln, NE 68508

Grantee's mailing address: 129 N. 10th St, Lincoln, NE 68508

This instrument prepared by: Jennifer E. Jones, Attorney at Law

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

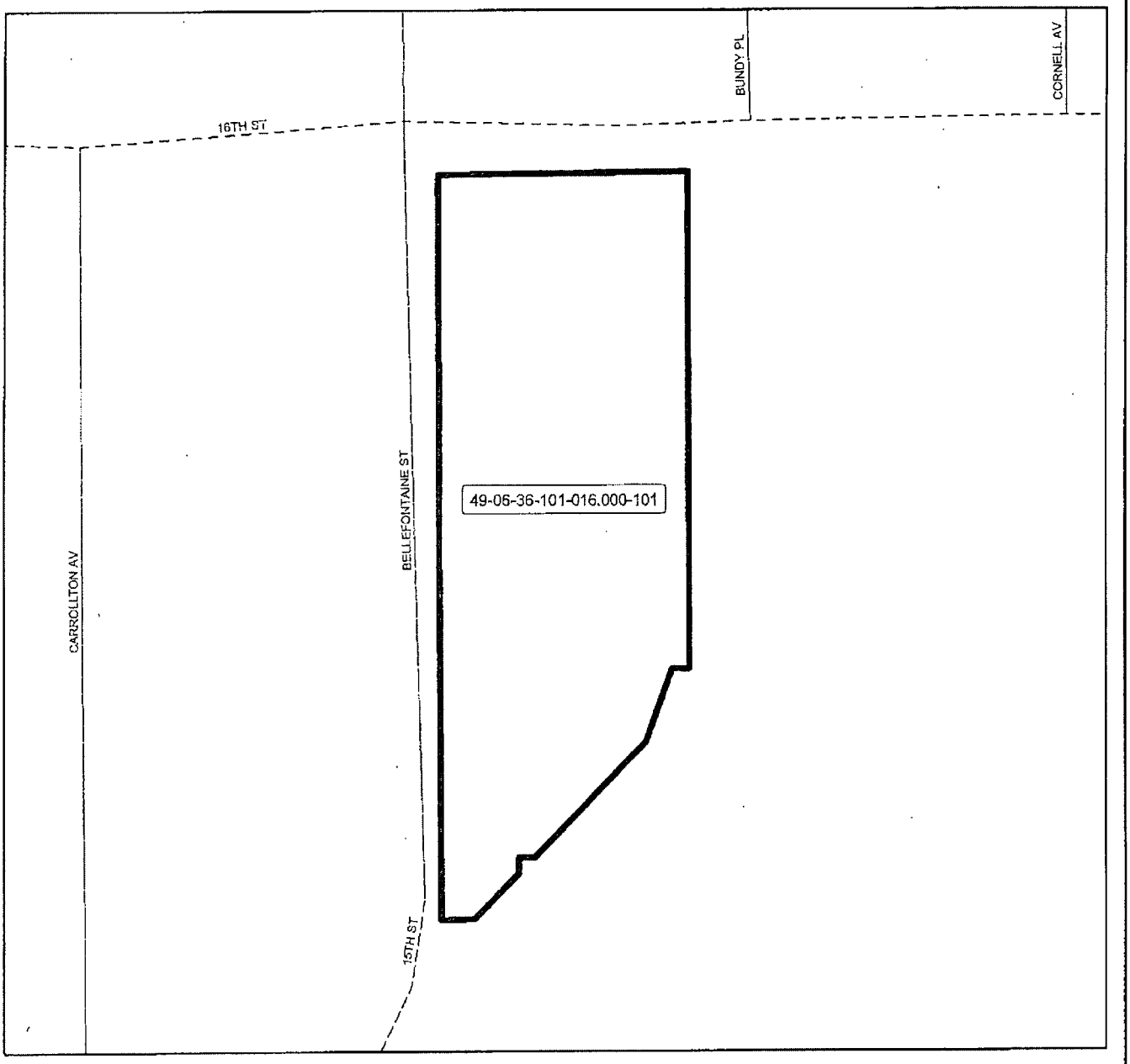
Della Popp
Printed Name

13-1078

EXHIBIT B

Map of the Real Estate

Indiana Brownfields Program # 4170903 - Real Estate



Mapped By: Mike Hill, IDEM, Office of Land Quality, Science Services Branch, Engineering & GIS Services, October 11, 2017

Legal Description Info: Legal description used: ALTA/NSPS Land Title Survey, "The Above-Described Real Estate was Found by this Survey Being More Particularly Described as Follows", Sheet 2 of 2, by Stoeppelwerth, dated 2/28/17.

Parcel ID: 49-06-36-101-016.000-101

PLSS Info: Section 36, T16N, R3E, Center Township, Marion County, IN

Property: 1555 Bellefontaine Street, Indianapolis, IN

Disclaimer: This map is intended to serve as an aid in graphic representation only. This information is not warranted for accuracy or other purposes.

Real Estate
Street

IDEM

N
W E
S

0 50 100 Feet
0 10 20 Meters

Marion County

Project Area

Marion County

EXHIBIT C

Copy of Comment Letter

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We Protect Hoosiers and Our Environment.
100 N. Senate Avenue • Indianapolis, IN 46204
(800) 451-6027 • (317) 232-8603 • www.idem.IN.gov

Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

February 9, 2018

Keith Lash
CalAtlantic Homes of Indiana, Inc.
9025 North River Road Suite 100
Indianapolis IN 46240

Re: **Comment Letter –**
Comfort Letter Request
Omar Bakery – Warehouse
1555 Bellefontaine Street
Indianapolis, Marion County
BFD# 4170903

Dear Mr. Lash:

In response to a September 2017 request by August Mack Environmental, Inc. (August Mack), on behalf of CalAtlantic Homes of Indiana, Inc. (CalAtlantic Homes), to the Indiana Brownfields Program (Program) for a Comfort Letter concerning the property located at 1555 Bellefontaine Street, Indianapolis, Marion County (Site), this Comment Letter is being provided. The Comment Letter is based upon the Program's review of documentation included with the Comfort Letter request, information collected from Indiana Department of Environmental Management (IDEM) databases and other publicly available information, and is in response to CalAtlantic Homes' subsequent request for interim documentation of the land use restrictions anticipated to be necessary to allow for the development of single family homes on the property.

Site Description and History

The 1.67-acre Site is one parcel identified by the State by parcel identification number (PIN) 49-06-36-101-016.000-101 and is developed with one 73,230 square-foot industrial and warehouse building with a partial basement originally constructed circa 1936 with a loading dock and parking area added in the 1950s. The structure is currently vacant and will be demolished as part of the planned redevelopment of the Site with single-family townhomes.

Historical records indicate the Site was developed as residential and commercial parcels from at least 1887 through 1920. From approximately 1920 through 1925, the City Baking Company operated an industrial baking facility on the northern portion of the Site. An apartment building was located on the southern portion of the Site from approximately 1936 through the 1950s, when it was demolished. The Omar Baking Company continued the industrial baking operations from approximately 1930 through

1964. The building was subsequently used by various companies for industrial, storage, and warehousing purposes from 1970 through 2006. Users and operations of note during this time period include: Color Craft Corporation operated an aluminum manufacturing facility on the Site in 1970; Taylor Tire Treading operated a tire retreading facility from approximately 1975 through 1980; Cotton Tool & Die Co., Inc. operated a tool and die manufacturing facility in 1980; and, Johnson Metal Services operated a machine shop and metal spraying facility in 1990. The Site has been vacant since approximately 2006.

Historical records indicate that adjoining property uses have included: residential on all sides in 1887; and commercial/industrial development to the north and east from the 1930s through the 1950s. Multiple commercial and residential structures on the adjoining properties to the east and south were removed during the 1960s and 1970s and replaced by a park. The surrounding area appeared similar to its current configuration by 2005, following additional residential development on the west adjoining properties.

Environmental Conditions

As part of the request for assistance in determining any existing environmental contamination and potential liability at the Site, Program staff reviewed the following documents. These documents may be viewed electronically by searching online by the document number 80527191 in IDEM's Virtual File Cabinet (VFC) accessible through IDEM's website.

- *Draft Phase I Environmental Site Assessment* (Draft June 2016 Phase I ESA), dated June 30, 2016, prepared by Alt & Witzig Consulting Services (Alt & Witzig) (page 77)
- *Draft Phase II Environmental Site Assessment* (Draft Phase II), dated August 23, 2016, prepared by Alt & Witzig (page 122)
- *Draft Phase I Environmental Site Assessment* (Draft December 2016 Phase I ESA), dated December 2016, prepared by August Mack (page 311)
- *Phase I Environmental Site Assessment* (September 2017 Phase I ESA), dated September 1, 2017, prepared by August Mack (page 24)
- *Phase II Subsurface Investigation* (Phase II), dated September 1, 2017, prepared by August Mack (page 359)

For purposes of this letter, sample analytical results from on-Site investigations were compared to IDEM's Remediation Closure Guide (RCG) (March 22, 2012 and applicable revisions) screening levels as follows: soil samples collected at depths between 0 and 10 feet below ground surface (bgs) were compared to RCG residential and commercial/industrial direct contact screening levels (RDCSLs and IDCSLs, respectively); soil samples collected between 0 and 18 feet bgs were compared to the excavation worker direct contact screening levels (EX DCSLs); and, soil samples collected at depths greater than 18 feet bgs were not evaluated for purposes of closure

because of the unlikely risk of exposure to soil at that depth. Ground water samples were compared to residential tap ground water screening levels (Res TAP GWSLs) and residential vapor exposure ground water screening levels (Res VE GWSLs), as well as commercial/industrial vapor exposure ground water screening levels (Indus VE GWSLs). Indoor air samples were compared to residential indoor air vapor exposure screening levels (Res IA VESLs) and commercial/industrial indoor air vapor exposure screening levels (Indus IA VESLs). Subslab soil gas samples were compared to calculated RCG residential subslab soil gas screening levels (Res SGss SLs) and calculated commercial/industrial subslab soils gas screening level (Indus SGss SLs). Exterior soil gas samples were compared to calculated RCG residential exterior soil gas screening levels (Res SGe SLs) and calculated commercial/industrial exterior soil gas screening levels (Indus SGe SLs).

Draft Phase I ESA - June 2016

The Draft June 2016 Phase I ESA identified the following recognized environmental conditions (RECs) associated with the Site:

- Potential releases from the historical industrial users of the Site, including: Cotton Tool & Die Co. Inc., Johnson Metal Service, Taylor Tire Treading-VW Corporation, and Color Craft Corporation.
- Documented ground water contamination from numerous off-Site facilities, specifically located east, north and northeast of the Site. These facilities include: 19th Street Groundwater Plume, Big Four Metals/Tinker Flats, Wash-Rite/Rough Riders motorcycle club, All American Threaded Products /Threaded Rod/Former Von Duprin, Former Machine Shop, Vacant Lot & Quonset Hut and Bellefontaine Cleaners/Bruce Walter Cleaner/Overall Cleaning & Supply. The documented chlorinated solvent ground water contamination represents a vapor encroachment condition (VEC)

Draft Phase II - August 2016

This report documented soil, ground water, soil gas, and indoor air investigation activities that occurred on the Site in June 2016. Activities included the following:

- Advancement of four soil borings (B-1 through B-4) to depths of 22 to 24 feet bgs on the east portion of the Site from which six soil and four ground water samples were collected and analyzed for volatile organic compounds (VOCs) and/or polynuclear aromatic hydrocarbons (PAHs).
- Advancement of four soil borings (SG-1 through SG-4) to five feet bgs from which four soil gas samples were collected and analyzed for VOCs using US EPA Method TO-15.
- Collection of four paired indoor air (IA-1 through IA-4) and subslab (SS) soil gas samples (SS-1 through SS-4) and one ambient outdoor air sample (AA-1) over a 24-hour period which were analyzed for VOCs.

Analytical results detected the following:

- Soil analytical results did not detect any sampled constituents at concentrations above applicable RCG screening levels.
- Ground water analytical results detected trichloroethylene (TCE) concentrations above its Res TAP GWSL, Res VE GWSL, and/or Indus VE GWSL at borings B-1 and B-2. All other sampled constituents were below applicable RCG screening levels. Refer to Table 1, below, for a summary of ground water analytical data above applicable RCG screening levels.
- Exterior soil gas analytical results detected concentrations of 1,3-butadiene at SG-3 and TCE at SG-1 above their respective calculated Res SGe SLs but below their respective calculated Indus SGe SLs. All other sampled constituents were below their respective RCG screening levels. Refer to Table 2, below, for a summary of soil gas analytical data above applicable RCG screening levels.
- Subslab soil gas analytical results detected concentrations of chloroform and TCE in subslab soil gas at multiple locations above their respective calculated Res SGss SLs and/or calculated Indus SGss SLs. Refer to Table 2, below, for a summary of subslab soil gas analytical data above applicable RCG screening levels.
- Indoor air analytical results did not detect any sampled constituents above applicable RCG screening levels.

TABLE 1
Ground Water Analytical Results Above RCG Screening Levels

Sample Information		Detected Constituents & Results (parts per billion (ppb))
Location	Date	Trichloroethylene (TCE)
B-1	6/2016	***21.2***
B-2		***59.7***
SB-5	11/2016	***12.6***
SB-6		***40.7***
Res TAP GWSL		5
Res VE GWSL		9.1
Ind VE GWSL		38

Notes: **bold** = above RCG Residential Tap Ground Water Screening Level
italics = above RCG Residential Vapor Exposure Ground Water Screening Level
underline = above RCG Commercial/Industrial Vapor Exposure Ground Water Screening Level

TABLE 2
June 2016 Exterior and Subslab Soil Gas Concentrations Exceeding Calculated IDEM RCG Screening Levels

Sample Information		Detected Constituents & Results (Micrograms per cubic meter (µg/m³))		
Location	Depth (feet bgs)	1,3-Butadiene	Chloroform	TCE
SG-1	5	<0.99	<1.1	**277**
SG-3		**41.7**	<1.1	<1.3
SS-1	NA	<0.6	**40.4**	***10,200***
SS-3		<0.67	**133**	<0.82
SS-4		<0.7	**48.2**	***411***
Calculated Residential Exterior and Subslab Soil Gas Screening Level**		31	40	70
Calculated Commercial/ Industrial Exterior and Subslab Soil Gas Screening Level**		136	176	293

Notes: ** = calculated by dividing the applicable RCG residential/commercial/industrial indoor air screening levels by an attenuation factor of 0.03
bold = above calculated RCG Residential Deep or Subslab Soil Gas Screening Level
italics = above calculated RCG Commercial/Industrial Deep or Subslab Soil Gas Screening Level
bgs = below ground surface NA = not applicable TCE = Trichloroethylene
SS = subslab soil gas sample location SG = exterior soil gas sample location

Draft Phase I ESA - December 2016

The Draft December 2016 Phase I ESA identified the following RECs:

- Presence of a heating oil aboveground storage tank (AST) located in the basement of the Site building, not investigated as part of the August 2016 – Draft Phase II.
- Presence of an underground storage tank (UST) on the eastern portion of the Site, not investigated as part of the August 2016 – Draft Phase II.
- Documented TCE ground water plume present on the east adjoining property, O'Bannon Park.

Phase I ESA - September 2017

The September 2017 Phase I ESA identified one REC:

- Documented TCE concentrations in ground water above its Res TAP GWSL, Res VE GWSL, and Indus VE GWSL. In addition, documented TCE concentrations in subslab soil gas and exterior soil gas samples above its Res SGss SL, Indus SGss SL, Res SGe SL, and Indus SGe SL. The source of the chlorinated solvent contamination is likely from the known TCE plume

on the east adjoining property (O'Bannon Park). The extent of the contamination is unknown.

The previously identified RECs associated with the AST and UST located on the Site were no longer considered RECs in the September 2017 Phase I ESA because:

- The 1,000-gallon heating oil UST was removed in April 2017. Six soil confirmation samples (SW-W, SW-S, SW-N, SW-E, FL-1, and BF-1) collected from the excavation pit were analyzed for VOCs and PAHs. Analytical results did not detect any sampled constituents in soil above applicable RCG screening levels.
- The 15,000-gallon heating oil AST was removed in June 2017. Three soil confirmation samples (1, 2, and 3) collected were analyzed for VOCs, PAHs, and lead. Analytical results did not detect any sampled constituents in soil above applicable RCG screening levels.
- Analytical data from subsequent confirmation sampling, further discussed below, did not identify any sampled constituents above applicable RCG screening levels.
- No constituents of concern were detected above applicable IDEM screening levels in confirmatory soil samples collected from the fill port area after removal of the AST or within the UST excavation.

Phase II – September 2017

In November 2016, seven soil borings (SB-1 through SB-7) were advanced to depths ranging from 12 to 24-feet bgs across the Site. With the exception of SB-4, all borings were converted into temporary monitoring wells. Seven soil and six ground water samples were collected and analyzed for VOCs and PAHs.

Soil analytical results did not detect any sampled constituents above applicable RCG screening levels. Ground water analytical results detected TCE concentrations above its Res TAP GWSL, Res VE GWSL, and/or Indus VE GWSL at borings SB-5 and SB-6. All other sampled constituents were not detected above their applicable RCG screening levels. Refer to Table 1, above, for a summary of ground water analytical data above applicable RCG screening levels.

Comments

As of the date of this letter, based on a review by IDEM technical staff of available analytical data from Site sampling and discussions with August Mack, IDEM offers the following recommendations pertaining to known environmental conditions on the Site:

- The subsurface conditions in the areas of SB-5 and SS-1 should be investigated to determine if there is an on-Site source contributing to the documented TCE contamination in ground water.
- Although not listed as a REC, a large diameter open pipe in the basement noted in a December 2015 Site visit contained standing water. This pipe should be abandoned as if it were a ground water well to eliminate it as a potential conduit for contamination.
- An investigation work plan to evaluate soil conditions from 0 to 10 feet bgs, ground water contamination, and soil gas conditions should be developed for Program approval to determine appropriate risk mitigation for the intended end use of the Site as single-family housing and for any contamination originating on the Site and potentially migrating onto adjacent properties. The scope of the proposed assessment work should include mutually agreed upon uninvestigated areas of the Site and in the vicinity of SB-4 to delineate the TCE contamination detected in soil gas. After Program approval, the approved work plan should be fully implemented.
- Prior to purchasing the Site, the September 2017 Phase I ESA should be updated or a new Phase I ESA obtained that meets the American Society for Testing and Materials (ASTM) Practice E1527-13, Standard Practice for Environmental Site Assessment, which satisfies the federal "All Appropriate Inquiries" (AAI) rule set forth in 40 CFR Part 312.

Conclusion

Per August Mack's request on your behalf, a proposed environmental restrictive covenant (ERC) outlining land use restrictions that would enable residential redevelopment of the Site is enclosed for your review. Since levels of TCE detected in ground water and levels of 1,3-butadiene, chloroform, and TCE detected in subslab and/or exterior soil gas on-Site are above applicable RCG residential screening levels, an ERC recorded on the deed for the Site is the preferred institutional control to ensure no exposure to on-Site contamination. As a condition of the issuance and effectiveness of a comfort letter issued by the Program under the IDEM "*Brownfields Program Comfort and Site Status Letters*" Non-rule Policy Document, W-0051 (April 18, 2003), CalAtlantic Homes, as the owner of the Site, would need to abide by the land use restrictions in the enclosed draft ERC, which are summarized below:

- Determine through sampling at the time of construction that soil conditions from 0 to 10 feet bgs meet RCG RDCSLs.
- Not occupy any human-occupied structures without IDEM concurrence that there is no risk of exposure to the documented chlorinated-solvent contamination through the intrusion of contaminated vapors in indoor air (vapor intrusion (VI)) or mitigate any VI exposure risk prior to occupancy using an IDEM-approved VI mitigation system.
- Not use the on-Site ground water.

If the enclosed ERC is finalized by the Program with agreement of the current owner of the Site and then recorded by the current owner of the Site, the land use restrictions would become immediately applicable to CalAtlantic Homes at the time it acquires the Site. Should additional information gathered in conjunction with future Site investigations and/or remediation demonstrate that a particular restriction is no longer necessary to protect human health and the environment or that Site conditions are appropriate for unrestricted use, IDEM will, upon request, consider modification or termination of the ERC recorded on the deed for the Site pursuant to its terms and conditions. Conversely, it is also possible that additional land use restrictions may be necessary in the future due to new information or changed circumstances at the Site.

Should you have any questions or comments about this correspondence, please contact Kyle Hendrix at 317-234-4860. He can also be reached via email at: lhendrix@ifa.in.gov.

Sincerely,

Andrea Robertson Habeck
Technical Staff Coordinator
Office of Land Quality

cc: Jan Pels, U.S. EPA Region 5 (*electronic copy*)
Meredith Gramelspacher, Indiana Brownfields Program (*electronic copy*)
Kyle Hendrix, Indiana Brownfields Program (*electronic copy*)
Brian Wilson, August Mack (*electronic copy*)

EXHIBIT D

TABLE 1
Omar Bakery - Warehouse, Indianapolis – BFD #4170903
Ground Water Analytical Results Above RCG Screening Levels

TABLE 2
Omar Bakery - Warehouse, Indianapolis – BFD #4170903
June 2016 Exterior and Subslab Soil Gas Concentrations
Exceeding Calculated IDEM RCG Screening Levels

TABLE 1

Omar Bakery - Warehouse, Indianapolis – BFD #4170903

Ground Water Analytical Results Above RCG Screening Levels

Sample Information		Detected Constituents & Results (parts per billion (ppb))
Location	**Date**	**Trichloroethylene (TCE)**
B-1	6/2016	***21.2***
B-2		***59.7***
SB-5	11/2016	***12.6***
SB-6		***40.7***
Res TAP GWSL		5
Res VE GWSL		9.1
Ind VE GWSL		38

Notes: **bold** = above RCG Residential Tap Ground Water Screening Level
italics = above RCG Residential Vapor Exposure Ground Water Screening Level
underline = above RCG Commercial/Industrial Vapor Exposure Ground Water Screening Level

TABLE 2

Omar Bakery - Warehouse, Indianapolis – BFD #4170903

June 2016 Exterior and Subslab Soil Gas Concentrations Exceeding Calculated IDEM RCG Screening Levels

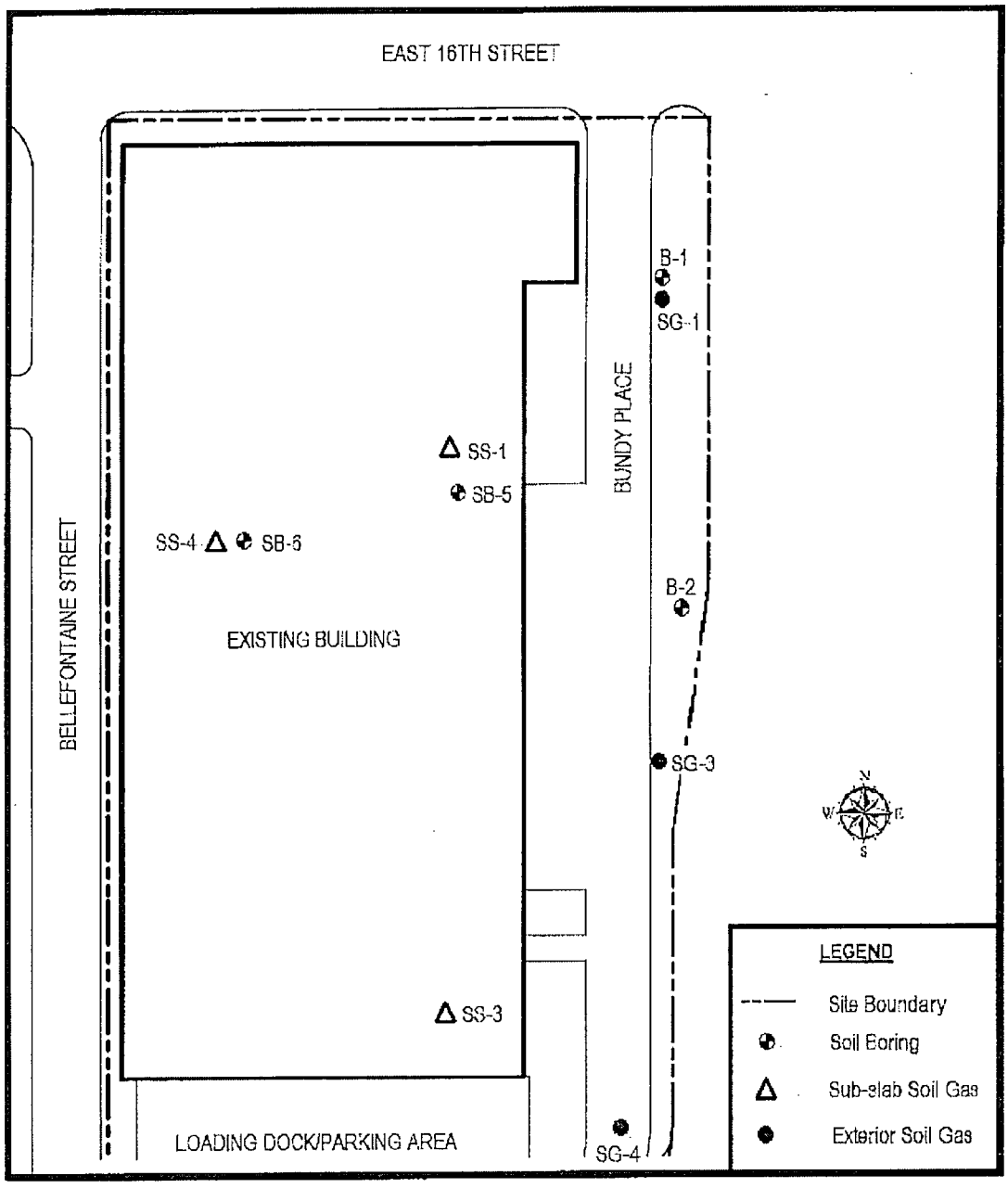
Sample Information		Detected Constituents & Results (Micrograms per cubic meter ($\mu g/m^3$))		
Location	**Depth (feet bgs)**	**1,3-Butadiene**	**Chloroform**	**TCE**
SG-1	5	<0.99	<1.1	**277**
SG-3		**41.7**	<1.1	<1.3
SS-1	NA	<0.6	**40.4**	***10,200***
SS-3		<0.67	**133**	<0.82
SS-4		<0.7	**48.2**	***411***
Calculated Residential Exterior and Subslab Soil Gas Screening Level**		31	40	70
Calculated Commercial/ Industrial Exterior and Subslab Soil Gas Screening Level**		136	176	293

Notes: ** = calculated by dividing the applicable RCG residential/commercial/industrial indoor air screening levels by an attenuation factor of 0.03
bold = above calculated RCG Residential Deep or Subslab Soil Gas Screening Level
italics = above calculated RCG Commercial/Industrial Deep or Subslab Soil Gas Screening Level
bgs = below ground surface NA = not applicable TCE = Trichloroethylene
SS = subslab soil gas sample location SG = exterior soil gas sample location

EXHIBIT E

Omar Bakery - Warehouse, Indianapolis – BFD #4170903
Site Map Depicting Sampling Locations At Which COCs Were Detected Above Applicable IDEM RCG Screening Levels

DISCLAIMER: Information on this map is being provided to depict environmental conditions on the Real Estate that are the subject of the land use restrictions contained in the Covenant to which this map is attached and incorporated. The land use restrictions contained in the Covenant were deemed appropriate by the Department based on information provided to the Department by the Owner or another party investigating and/or remediating the environmental conditions on the Real Estate. This map cannot be relied upon as a depiction of all current environmental conditions on the Real Estate, nor can it be relied upon in the future as depicting environmental conditions on the Real Estate.



Omar Bakery - Warehouse, Indianapolis

Parcel #49-06-36-101-016.000-101 - BFD #4170903

Site Map Depicting Soil Sampling Locations At Which COCs Were Detected Above Applicable IDEM RCG Screening Levels

EXHIBIT F

Vapor Intrusion Work Plan
The Bakery Redevelopment
1555 Bellefontaine Street
Indianapolis, Indiana
Indiana Brownfields Program Number 4170903

Dated May 10, 2018

Prpeared By August Mack Environmental, Inc.

Vapor Intrusion Work Plan
The Bakery Redevelopment
1555 Bellefontaine Street
Indianapolis, Indiana
Indiana Brownfields Program Number 4170903

August Mack Project Number JS0448.740

SUBMITTED TO:
Indiana Brownfields Program
100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204

ON BEHALF OF:
CalAtlantic Homes of Indiana, Inc.
9025 North River Road Suite 100
Indianapolis, Indiana 46240

PREPARED BY:
August Mack Environmental, Inc.
1302 North Meridian Street, Suite 300
Indianapolis, Indiana 46202

ISSUE DATE:
May 10, 2018

August Mack
ENVIRONMENTAL

AugustMack
ENVIRONMENTAL

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May 10, 2018

Mr. Kyle Hendrix
Indiana Brownfields Program
100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204

Re: **Revised Vapor Intrusion Work Plan**
The Bakery Redevelopment
1555 Bellefontaine Street
Indianapolis, Indiana
Indiana Brownfields Program Number 4170903
August Mack Project Number JS0448.740

Dear Mr. Hendrix:

On behalf of CalAtlantic Homes of Indiana, Inc. (CalAtlantic), August Mack Environmental, Inc. (August Mack) is pleased to provide you with this Vapor Intrusion (VI) Work Plan for The Bakery Redevelopment site (Site) located at 1555 Bellefontaine Street, Indianapolis, Indiana. Two (2) 7-unit townhomes and four (4) 5-unit townhomes are proposed for construction at the Site. Due to trichloroethene (TCE) concentrations in groundwater above the Indiana Department of Environmental Management (IDEM) Remediation Closure Guide (RCG) Residential Screening Levels on the northern portion of the Site, an Environmental Restrictive Covenant (ERC) is proposed as an institutional control on the Site. In general, the ERC will provide that the owner and all future owners of the Site shall not use groundwater for any purpose with certain exceptions, and must perform the following actions prior to occupancy of any newly constructed building:

- Install, operate, and maintain a vapor mitigation system within any newly constructed, human-occupied buildings on-Site, unless the Department concurs that a vapor mitigation system(s) is not necessary based upon the achievement of applicable IDEM *Remediation Closure Guide* residential or commercial/industrial sub-slab soil gas (SG_{ss}) Screening levels, and/or residential or commercial/industrial indoor air vapor exposure screening levels based upon the then-current use of the Real Estate, or Site specific action levels approved by the Department.

So as not to impede with planned re-development at the Site, each townhome will include the installation of VI mitigation components including a sub-slab vapor barrier, sub-slab ventilation piping and an active sub-slab depressurization blower.

To meet the requirements of the ERC and possibly eliminate the need for long-term stewardship related to operating a VI system and ongoing indoor air sampling, August Mack proposes to evaluate the sub-slab vapor concentrations post building slab construction. This VI Work Plan provides details on the methods for sub-slab soil gas (SG_{ss}) sampling, and if necessary based on those results, the development of an operation, maintenance, and monitoring plan (OM&M) and associated indoor air (IA) sampling.

SUB-SLAB SOIL GAS SAMPLING (SG_{ss}) AND ANALYSIS PLAN

In accordance with the IDEM *Vapor Remedy Selection and Implementation Guidance* dated February 2014 and to satisfy the requirements of the ERC, SG_{ss} sampling will be conducted to demonstrate and document that the vapor intrusion exposure pathway is incomplete.

Based on the development plans, six (6) residential buildings with individual slabs ranging in size from approximately 5,400 to 7,500-square feet are proposed for the Site. In accordance with the IDEM *Remediation Closure Guide* dated March 22, 2012, August Mack proposes to collect the following one-time SG_{ss} samples:

- Four (4) samples from under each slab foundation totaling approximately 5,400-square feet.
- Five (5) samples from under each slab foundation totaling approximately 7,500-square feet.
- One (1) duplicate SG_{ss} sample per every 20 samples will be collected for quality assurance/quality control (QA/QC) purposes.

Prior to sampling August Mack will perform a leak test to ensure that ambient air is not entering into the sample. The SG_{ss} samples will be collected over a twenty-four (24)-hour sampling period. All SG_{ss} samples will be analyzed for the following parameters:

- A short list of Volatile Organic Compounds (VOCs) using U.S. EPA Method TO-15, including the following compounds:
  - Trichloroethene
  - 1,1-Dichloroethane
  - 1,1-Dichloroethene
  - cis-1,2,-Dichloroethene
  - trans-1,2-Dichloroethene
  - 1,2-Dichloroethane
  - Chloroethane

- Vinyl chloride
- Chloroform

The Department will be given a 10-days' notice by the site owner prior to sampling activities.

A SG_{ss} sampling report will be prepared after SG_{ss} sampling activities have been completed. The report will contain the sampling methods, findings, and conclusions. The report will contain maps of sampling locations, tabulated analytical results, and laboratory data with attachments containing pertinent information used to evaluate the data.

INDOOR AIR SAMPLING AND OM&M PLAN

If SG_{ss} sample results are found to be above applicable screening levels, August Mack proposes to conduct IA sampling to demonstrate and document that the vapor mitigation system is operating effectively and the vapor intrusion pathway is incomplete, in accordance with the IDEM *Vapor Remedy Selection and Implementation Guidance* dated February 2014 and to satisfy the ERC requirements

Based on the development plans, six (6) residential buildings are proposed for the site. The buildings will contain between five (5) and seven (7) individual 3-story townhome units. Each townhome will consist of three (3) floors with slab on-grade construction and individual forced air residential heating, ventilation and air conditioning (HVAC) units. During construction, each townhome will include the installation of VI mitigation components including a sub-slab vapor barrier, sub-slab ventilation piping and an active sub-slab depressurization blower.

One-time indoor air verification sampling will be performed post system installation/building construction once the HVAC system has been allowed to operate under normal conditions and prior to occupancy (if possible). A second round of indoor sampling will be performed if the initial indoor air sampling was not performed under worst case conditions (i.e. during the winter months).

Based on discussions with Brownfields, IA sampling is required within each of the townhome units. The townhome units are to be constructed individually as the lots are purchased. Therefore, August Mack proposes to complete the following:

- Prior to conducting IA sampling activities, August Mack personnel will conduct a pre-sampling walkthrough of the Site to document building characteristics and potential indoor contaminant sources. An *Indoor Air Building Survey Checklist*, referenced in the IDEM RCG, will be completed prior to sampling.
- Collection and analysis of the following IA samples in each townhome building:

- One (1) sample from the first floor of each townhome unit;
- One (1) sample per building from a townhome unit second floor located closest to documented groundwater impacts; and,
- One (1) duplicate IA sample per building for quality assurance/quality control (QA/QC) purposes.

The air samples will be collected over a twenty-four (24)-hour sampling period. All IA samples will be analyzed for the following parameters:

- A short list of Volatile Organic Compounds (VOCs) using U.S. EPA Method TO-15, including the following compounds:
  - Trichloroethene
  - 1,1-Dichloroethane
  - 1,1-Dichloroethene
  - cis-1,2,-Dichloroethene
  - trans-1,2-Dichloroethene
  - 1,2-Dichloroethane
  - Chloroethane
  - Vinyl chloride
  - Chloroform

The Department will be given 10-days' notice by the site owner prior to sampling activities.

An IA Sampling Confirmation Report will be prepared after IA sampling activities have been completed. The report will contain the sampling methods, findings, and conclusions. The report will contain maps of sampling locations, tabulated analytical results, and laboratory data with attachments containing pertinent information used to assess the data. Based on the results of the SG_{ss} and IA sampling, August Mack will prepare a Site-specific OM&M plan that will specify the ongoing inspection and sampling intervals for the Site.

We appreciate the opportunity to provide you with this VI Work Plan and trust that this submittal is in accordance with your needs. Please feel free to contact us if you have any questions or comments or require additional information.

Sincerely,

Matt Brandvik
Environmental Site Assessor

Brian Wilson
Principal, Transaction Services

cc: Keith Lash, CalAtlantic Homes of Indiana, Inc.