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**DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS, AND
RESTRICTIONS
FOR
ABERDEEN OF WESTFIELD**

CROSS REFERENCE: 2022012082 AND 2021066554

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND
RESTRICTIONS FOR ABERDEEN OF WESTFIELD**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR ABERDEEN OF WESTFIELD (the “**Declaration**”) dated as of the 21st day of December, 2022, is made by Lennar Homes of Indiana, LLC, a Delaware limited liability company (“**Declarant**”) and consented by the landowner DRP IN 1, LLC (“**DRP**”).

RECITALS:

A. DRP is the owner of all of the land contained in the area described on Exhibit A attached hereto and made a part hereof (the “**Real Estate**”), which lots and land will be subdivided for the development of Aberdeen of Westfield, a single-family housing development in Hamilton County, Indiana (the “**Development**”), and will be more particularly described on the plats to be recorded in the Office of the Recorder of Hamilton County, Indiana (collectively, the “**Plat**”).

B. As provided herein, DRP has retained and reserved the right, privilege, and option to submit to the provisions of this Declaration at a later time, and from time to time as a part of the Development of additional property and has retained and reserved the right to withdraw and remove, any portion of the Real Estate from the control and provisions of this Declaration.

C. DRP will sell and convey all or certain of the residential lots situated within the platted areas of the Development. Before doing so DRP consents to Declarant's desire to subject and impose upon all real estate within the platted areas of the Development to the mutual and beneficial restrictions, covenants, conditions, and charges contained herein and as set forth in the Plat under a general plan or scheme of improvement for the benefit and complement of the lots and land in the Development and future owners thereof.

TERMS:

NOW, THEREFORE, Declarant, for itself, its successors and assigns in title to the Real Estate, hereby declares that all of the Real Estate located within the Development is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and land in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein, all of the Restrictions shall run with the land and shall be binding upon DRP subject to Declarant's rights hereunder, and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of DRP's successors in title to any Real Estate in the Development.

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ARTICLE I

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

Section 1.1. "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special Assessments, as determined, and levied pursuant to the provisions of Article V hereof.

Section 1.2. "Association" shall mean the Aberdeen of Westfield Homeowners' Association, Inc., or an entity of similar name, its successors and assigns, which shall be created as an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended (the "Act").

Section 1.3. "Board" shall mean the Board of Directors of the Association, as the same may be amended from time to time.

Section 1.4. "Budget Meeting" shall mean the first annual or any special meeting of the Association after the Transfer Period at which the Owners shall be asked to approve the Association's budget for a particular fiscal year.

Section 1.5. "Committee" shall mean the Architectural Control Committee which shall be appointed by the Board and have such duties as provided in Article VI hereof.

Section 1.6. "Common Area(s)" shall mean those areas and all improvements located therein or thereon which are identified on the Plat, irrespective of whether such Common Areas have been conveyed to the Association.

Section 1.7. "Common Expenses" shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association or the Development.

Section 1.8. "Declarant" shall mean Lennar Homes of Indiana, LLC and its successors and assigns in title to the Real Estate (other than Owners).

Section 1.9. "Development Period" shall mean the period of time during which DRP or Declarant owns at least one (1) lot in the Development or ending on such earlier date as Declarant may designate.

Section 1.10. "Dwelling Unit" shall mean and refer to any structure (or portion thereof) designed or intended for use and occupancy as a residence by one (1) family on a Lot located within the Development, irrespective of whether such dwelling is detached or attached to another Dwelling Unit.

Section 1.11. "Easement Area" shall mean any portion of the Real Estate which is subject to an easement as more particularly described in Article III hereof.

Section 1.12. "Lake" or "Lakes" shall mean and refer to the water retention pond(s) or lake(s), whether or not such are also a Common Area, together with the shoreline area thereof, as shown on the Plat.

Section 1.13. “Lot” or “Lots” shall mean any parcel(s) of the Real Estate (excluding the Common Areas) which are designated and intended for use as a building site or developed and improved for use as a single-family residence identified by number on the Plat. No Lot shall be further subdivided for development purposes, except as may be reasonably necessary to adjust for minor side or rear yard encroachments or inconsistencies.

Section 1.14. “Member” shall mean any person or entity holding membership in the Association.

Section 1.15 “Owner” shall mean the record owner, whether by one or more persons of the fee simple title to any Lot, but excluding those persons having such interest merely as security for the performance of an obligation (such as mortgagees having those rights as provided elsewhere in this Declaration).

Section 1.16 “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 Real Estate, as the same may amended from time to time.

Section 1.17. “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, greenhouses, skylights, address markers, mail boxes, name plates, flag poles, lawn ornaments, trees, hedges, shrubbery, solar panels, satellite dishes, antennae, shutters, awnings, pools, hot tubs, pavement, walkways, driveways, garages and/or garage doors, or appurtenances to any of the aforementioned.

Section 1.18. “Supplemental Declaration” shall mean an amendment or supplement to this Declaration or a Plat executed by or consented to by DRP or by the Association pursuant to Article II hereof, and recorded in the public records of the county in which the Declaration was originally recorded, which subjects additional real estate to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on all of or a part of the Real Estate or the land described therein. A Supplemental Declaration may also remove any portion of the Real Estate then owned by DRP or Declarant from the control and provisions of this Declaration.

ARTICLE II **DEVELOPMENT OF THE REAL ESTATE**

Section 2.1. Development of the Real Estate. All Lots shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in this Declaration. DRP with the consent of Declarant shall have the right, but not the obligation, during the Development Period, to submit additional real estate which is contiguous (without regards to existing roadway) to any portion of the Real Estate now existing or added in the future to the provisions of this Declaration as set forth in Section 2.3 below, or exclude any portion of the Real Estate from the provisions of this Declaration, and to make and maintain improvements, repairs, and changes to any Common Area and all Lots owned by Declarant, including, without limitation: (a) installation and maintenance of improvements in and to the Common Areas; (b) changes in the location of the boundaries of any Lots owned by Declarant or of the Common Areas; (c) installation and maintenance of any water, sewer, and other utility systems and facilities; (d) installation of security or refuse systems; and/or (e) additions or changes to the boundaries of any Common Area or Easement Area.

Section 2.2. Public Streets. The streets and public rights-of-way shown on the Plat are, upon recording of the Plat, dedicated to the public use, to be owned and maintained by the governmental body having jurisdiction, subject to construction standards and acceptance by such governmental body; provided, however, until such dedication and acceptance has occurred, such streets shall be Common Areas for which Common Expenses may be charged. All Lots shall be accessed from the interior streets of the Development.

Section 2.3. Development of Additional Property. Declarant hereby reserves the right and option, to be exercised at its sole discretion and without further approval by any party, to submit at any time and from time to time during the Development Period, additional real estate to the provisions of this Declaration.

Section 2.4. Annexation of Additional Real Estate by Members. After the Development Period, the Association may annex additional real property into the provisions of this Declaration and jurisdiction of the Association. Such annexation shall require the affirmative vote of at least two-thirds (2/3) of the Members. Annexation by the Association shall be accomplished by the appropriate filing of record of an amendment to this Declaration or a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the owner of the property being annexed and any such annexation shall be effective upon filing unless otherwise provided therein.

Section 2.5. Withdrawal of Property. Declarant hereby reserves the right and option during the Development Period, to be exercised at its sole discretion and without further approval by any party, except DRP, to withdraw and remove any portion of the Real Estate then owned by Declarant from the control and provisions of this Declaration. Such removal by Declarant shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which shall be filed in the public records of county in which the Declaration was originally recorded, together with a legal description of the Real Estate being withdrawn.

ARTICLE III **PROPERTY RIGHTS AND EASEMENTS**

Section 3.1. General. Each Lot shall, for all purposes, constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The Owner of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement contained in this Declaration (and any Supplemental Declaration applicable to such Lot). By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Declarant with respect to this Declaration and also for itself, its heirs, personal representatives, successors, and assigns. Each Owner shall be entitled to the exclusive ownership and possession of its Lot subject to the provisions of this Declaration, including, without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Common Areas as established hereunder and membership in the Association. Each Owner shall automatically become a Member of the Association and shall remain a Member thereof until such time as such Member's ownership ceases for any reason, at which time such Member's membership in the Association shall automatically pass to such Member's successor-in-title. Lots shall not be subdivided

by any Owner and the boundaries between Lots and between the Development and other neighborhoods shall not be relocated, unless the relocation thereof is made with the approval of the Board and, during the Development Period, of Declarant.

Section 3.2. Owner's Easement of Enjoyment. Every Owner, such Owner's family, tenants, guests, and invitees shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws of the Association (the "By-Laws") and subject to the following provisions:

(a) The right of the Association to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas.

(b) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate, and the right of the Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an Easement Area is done at the Owner's risk and is subject to possible removal by the Association or the grantee of such easement.

(c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by Declarant during the Development Period or thereafter by ninety-five percent (95%) approval of the Members in accordance with the HOA Act.

(d) The rights of the Association and Declarant reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Real Estate.

(e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

Section 3.3. Easement for Declarant.

(a) During the Development Period, Declarant shall have an easement for access to the Real Estate, including any and all Lots and any and all Common Areas, for the purpose of constructing structures and other improvements in, on, to or for the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described in Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements therein and thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development.

(b) In addition to the easement set forth in Section 3.3(a) above, Declarant hereby retains, reserves and is granted for the benefit of Declarant an exclusive perpetual easement over, above, across,

upon, along, in, through, and under the Utility Easement Areas, as such is defined in Section 3.4 below, (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service, including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe, conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area; (ii) to provide access to, and ingress and egress to and from, the Real Estate for the purposes specified in subsection (i) above; and (iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to Declarant under this Section 3.3(b) shall be transferable by Declarant to any person or entity solely at the option and benefit of Declarant, its successors and assigns, and without notice to or the consent of the Association, the Owners, or any other person or entity. Declarant may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, Declarant, and others to whom Declarant may grant such similar or lesser easements, rights, or privileges, may so use any portion of the Real Estate to supply exclusive telecommunications services to each Lot. The easements, rights, and privileges reserved under this Section shall be for the exclusive benefit of Declarant, its successors and assigns and may not be impaired, limited, transferred, sold, or granted to any person or entity by the Association or any of the Owners.

Section 3.4. Drainage, Utility, Sewer and Force Main Easements.

(a) There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any of the following providers and their respective successors and assigns, upon, over, under, and across those portions of all Lots and Common Areas designated on the Plat as “D. & U.E.”, “D.E.”, “D.U. & S.S.E.”, “D.U. & S.E.”, “D.U. & L.E.”, “S.S.E.”, “S.S.D.”, “W.E.”, “U.E.” or any other combination thereof and as otherwise are reasonably necessary (such areas herein referred to collectively as the “Utility Easement Areas”) for installing, replacing, repairing, and maintaining the following specified services, and no other:

Specific Service

Electricity
Water
Sewer
Natural Gas
Internet
Telephone
Cable

Declarant, the Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power to hereafter grant and accept nonexclusive easements within the Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Development or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including, without limitation, master television antenna and/or cable systems, security, and similar systems, shall be made by Declarant in accordance with the rights reserved to Declarant

under Section 3.3(b) hereof. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, lift stations, mains, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) Declarant hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Development with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over and across all the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Development as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall be created sanitary sewer easements in those areas designated on the Plat, which easements shall run in favor of Declarant and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps, and other equipment necessary for the sanitary sewer system.

Section 3.5. Regulated Drainage Easements. There is hereby reserved an easement for the benefit of Declarant, the Association, and their respective successors and assigns for access to and installation, repair, maintenance or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate; provided, however, that the Owner of any Lot subject to a regulated drainage easement shall be required to maintain the portion of said regulated drainage easement on or under such Owner's Lot (as shown on any Plat) in the condition originally provided by Declarant and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Declarant, in its sole discretion, may make any changes. No permanent Structures shall be erected or maintained upon said drainage easements.

Section 3.6. Landscape Easements. Landscape Easements, as may be designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of Declarant and the Association, for access to and installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Declarant or the Association, no improvements or permanent Structures shall be erected or maintained in or upon said Landscape Easements without the written consent of the Board and provided such are in accordance with all applicable zoning laws. Notwithstanding the reservation of this easement, the Owners of Lots that are subject to such Landscape Easement (which does not extend along adjoining streets or roads) shall have the exclusive right to use such area, subject to the restrictions set forth in this Landscape Easement and to any other easement affecting such Lot. The Association shall maintain the Landscape Easements, including but not limited to, the mowing of turf and the replacement of any dead trees.

Section 3.7. Tree Preservation Areas and Easements. Tree preservation areas and easements, as may be designated on a Plat of all or any part of the Real Estate, are hereby created and reserved. Except as installed by Declarant or the Association, no improvements or permanent Structures shall be erected or maintained in or upon said Tree Preservation Areas and Easements

without the written consent of the Board and provided such are in accordance with all applicable zoning laws.

Section 3.8. Lake Maintenance Access Easement and Emergency Access Easement. There may be strips of grounds, as may be designated on a Plat of all or any part of the Real Estate, identified as Lake Maintenance Access Easement and/or Emergency Access Easement, which are created and reserved: (a) for the use of Declarant for access at any time to the Common Areas or the Lakes or another portion of the Real Estate, and (b) for the non-exclusive use of the Association or any applicable governmental authority for access to the Common Areas or the Lakes or another portion of the Real Estate. The Owner of any Lot which is subject to a Lake Maintenance Access Easement or an Emergency Access Easement shall be required to keep the portion of its Lot which is subject to such easement free from obstructions so that access will be unimpeded.

Section 3.9. Wetland Conservation and Wetland Mitigation Areas. Certain portions of the Real Estate may contain wetland preservation, conservation or mitigation areas and upland buffers that will contain special wetland vegetation and that are or may be designated as conservation areas on a Plat for the Real Estate or pursuant to separate written instruments (“**Conservation Areas**”), and any such Conservation Areas will be protected by and be subject to conservation easements in favor of Indiana Department of Environmental Management and/or the U.S. Army Corps of Engineers, as and to the extent applicable (“**Conservation Easements**”). If so applicable, the terms of the Conservation Easements shall provide that the Conservation Areas shall be maintained and managed in perpetuity by the Association, its successors and assigns, and the Association shall enforce the terms and conditions of the Conservation Easements. In accordance with the terms of the Conservation Easements, the Association shall be responsible for the installation and perpetual maintenance of permanent physical signs/markers designating the Conservation Areas as required. No trees, shrubs and other vegetation located within a Conservation Easement may be altered from their natural or permitted condition, with the exception of exotic or nuisance vegetation removal which shall only be done in accordance with terms of the Conservation Easement.

If and to the extent there are any Conservation Areas within the Real Estate, the following activities shall be prohibited upon the lands of such Conservation Areas: (a) construction or placing of buildings, signs, billboards or other advertising, utilities or other structures on or above the ground; (b) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials; (c) removal or destruction of trees, shrubs or other vegetation, except for the removal of exotic vegetation; (d) excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface; (e) surface use, except for purposes that permit the land or water area to remain in its natural condition; (f) activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation, including, but not limited to, ditching, diking, and fencing; (g) construction or placing of utilities on, below or above the ground without appropriate local, state and federal permits or other authorization; (h) application of herbicides, pesticides, or fertilizers; (i) acts or uses detrimental to such aforementioned retention of land or water areas; and (j) acts or uses which are detrimental to the preservation of any features or aspects of the Real Estate having historical or archaeological significance.

Section 3.10. Medians and Entry Features. There may be landscaped medians and/or islands located within the Development and within the public right-of-way of the streets which are not otherwise labeled as Common Areas or as a Landscape Easement. These areas are created and reserved for installation and maintenance of landscaping and entry features, including, without limitation,

permanent or temporary walls, signs, fences, lighting, irrigation systems, if any, and landscaping material. These landscaped areas and features shall be maintained by the Association as if such were a Common Area.

Section 3.11. Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, during the Development Period, and for a reasonable time thereafter, there is hereby reserved and created for the use of Declarant, its successors and assigns, and persons constructing improvements within the Development, an easement for access to the Real Estate for the maintenance of signs, sales offices, construction offices, business offices, and model houses, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots and the Common Areas.

Section 3.12. Maintenance Easement. There is hereby reserved and created for the use of Declarant, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush weeds, stumps or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

Section 3.13. Best Management Practices Easement. There is hereby reserved an easement for the benefit of Declarant, the Association, and their respective successors and assigns for access to and installation, repair, maintenance, or removal of a B.M.P. as part of the approved stormwater drainage system for the Real Estate. The Owner of any Lot subject to a B.M.P. Easement shall be required to maintain the portion of said B.M.P. Easement on or under its Lot (as shown on any Plat) in the condition originally provided by Declarant and free from obstructions so that the volume of the surface water storage and drainage will be unimpeded. The B.M.P. Easement is designed to temporarily retain water during heavy rain events. Absolutely no changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Declarant, in its sole discretion, may make any changes it deems necessary at any time. No permanent Structures shall be erected or maintained upon any B.M.P. Easement.

ARTICLE IV **ORGANIZATION AND DUTIES OF ASSOCIATION**

Section 4.1. Organization of Association. The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the articles of incorporation which have been filed or will be filed by Declarant and the By-Laws of the Association, both of which are incorporated herein by reference. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot; provided, so long as DRP or Declarant owns one or more Lots within the Development, in addition to the one vote for each Lot owned by DRP or 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.

Section 4.2. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, operation, and replacement of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the terms, covenants, conditions, and restrictions contained in the Plat. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

(a) *Responsibilities of the Association.* The Association shall operate, maintain, and keep in good condition and repair the Common Areas, Lakes, and Landscape Easements within Common Areas. This operation and maintenance shall include, without limitation, maintenance, repair, operation, and replacement of all landscaping and other flora, light fixtures, fencing, signs, irrigation systems, if any, structures, recreational facilities including, but not limited to, a pool, pool house, club house, if any, play equipment and gazebos, cluster mailboxes, if any, and all other improvements and appurtenances thereto, along with all private streets situated upon or within the Common Areas, landscaping easements along the primary roads through the Development, medians and rights of ways of public streets within the Real Estate, entry features for the Development, and such portions of any other real property included within the Common Areas as may be provided in this Declaration or by a contract or agreement for maintenance with any other person or entity by the Association. The Association shall also maintain and keep in good condition and repair the light fixtures, streetlights, street signs, and street trees along Common Areas installed by Declarant in the Development. The Association may contract for services for the Development or any part thereof as it deems necessary or advisable.

(b) *Maintenance by Owners.* Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of such Owner's Lot and Dwelling Unit, and all Structures, parking areas, lawns, landscaping, street trees between the curb and sidewalk in front of the Lot, if any, grounds, and other improvements comprising the Lot and Dwelling Unit in a manner consistent with all applicable covenants.

(c) *Association's Remedies if Owner Fails to Maintain Lot.* In the event Declarant or the Association determines that: (i) any Owner has failed or refused to properly discharge such Owner's obligations with regard to the maintenance, cleaning, repair, or replacement of items for which is such Owner's responsibility hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or such Owner's family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner as the case may be, shall have ten (10) days within which to complete such maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement within said ten (10) day period and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with any provision hereof after such notice

(except that no notice shall be required in the event of an emergency), Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, and said cost shall include administrative costs or other costs expended to cure each violation and shall become a lien against the individual Owner's Lot, together with the cost of attorneys' fees, if any, in connection with the enforcement of the Owner's obligations and/or the collection of such charges owed by the Owner (with respect to any matter relating to an individual Owner's responsibility), and such cost shall become a part of the costs of the Association (until such time as reimbursement is received from the individual Lot Owner). In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses, including, without limitation, attorneys' fees and filing fees.

(d) *Management Company.* The Association may hire a professional management company to administer the day-to-day operations of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of a minimum of ninety (90) days.

Section 4.3. Insurance. The Association shall maintain in force adequate commercial general liability insurance protecting the Association against liability for property damage and personal injury. The Association may maintain in force adequate officers' and directors' insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under a standard "extended coverage" provision, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, Declarant, any property manager, their respective employees and agents, and the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and/or the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, or employee of the Association or anyone else who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the development, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association and all mortgagees who have requested such notice before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason, to the extent such coverages are available for such insurance policies.

Section 4.4. Owners' Insurance Requirements. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the

Association that each Owner shall carry blanket all-risk casualty insurance on its Lot(s), Dwelling Units, and Structures constructed thereon. The Board may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of its Dwelling Unit and Structures located on any Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged Dwelling Unit and Structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article VI and Article VII hereof and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that a Dwelling Unit and Structures are totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall promptly clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and thereafter the Owner shall continue to maintain the Lot in a neat, safe, and attractive condition.

Section 4.5. Condemnation or Destruction. In the event that any of the Common Areas shall be condemned or taken by any public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, second, to the costs incurred by the Association (such as attorneys' fees, appraisal costs, accounting fees, etc.) in connection with such condemnation, damage or destruction, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to such Owner's Pro-Rata Share (as hereinafter defined), whichever may be determined by a majority vote of the Members of the Association. Each Owner shall be responsible for pursuing its own action for damages to its Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

Section 4.6. Transfer of Control of Association. Declarant may, at its sole discretion, transfer control of the Association to the Members, and its right to elect the Board and officers of the Association shall terminate, no later than the date that is ten (10) calendar years after the date of recordation of this Declaration ("**Transfer Period**"); provided, however, that Declarant may, at its sole discretion transfer control of the Association at an earlier date (subject to DRP approval to the extent DRP still owns Real Estate that is part of or intended to be part of the Development). Notwithstanding such transfer of control during the Development Period, all actions of the Board and 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 Transfer Period until Dwelling Units have been constructed on all Lots in the Development.

Section 4.7. Interim Advisory Committee. Declarant may, in its sole discretion, establish and maintain until such time as Declarant shall transfer control of the Association pursuant to Section 4.6 hereof, an Interim Advisory Committee (the "**Advisory Committee**"). If established: (a) the Advisory Committee shall serve as a liaison between the Owners (other than Declarant) and the Association, and advise the Association from time to time during such period; (b) The Advisory Committee shall consist of three (3) members, each of whom must be an Owner (other than Declarant or an officer, director or employee of Declarant); (c) The members of the Advisory Committee shall serve without compensation; (d) The Advisory Committee members shall be elected for a term of

one (1) year by the Owners (other than Declarant) at a meeting thereof called for such purpose; and
(e) The Owners (other than Declarant) may remove any member of the Advisory Committee with cause, and elect a successor at a meeting thereof called for such purpose.

Section 4.8. Mortgagees' Rights. Any mortgagees of any Lots shall have the right, at their option, jointly or severally, upon not less than ten (10) days' prior written notice to the Association, to pay taxes or other charges which are in default, or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

ARTICLE V ASSESSMENTS

Section 5.1. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety, and welfare of the Development and the Owners, users, and occupants of the Real Estate and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, without limitation, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided, that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except DRP and Declarant) hereby covenants and agrees to pay to the Association:

- (a) A Pro-Rata Share of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.
- (b) A one-time Assessment, as hereinafter provided.
- (c) A reserve Assessment, as hereinafter provided.
- (d) A Pro-Rata Share of any special Assessments fixed, established, and determined from time to time, as hereinafter proved.
- (e) A Violation Assessment, as hereinafter provided.

Section 5.2. Deficit. Declarant hereby covenants and agrees to pay to the Association during the Development Period, but not beyond the Transfer Period, an amount equal to the difference, if any, between the expenditures of the Association made pursuant to Section 5.1 and the aggregate amount of the annual Assessment collected by the Association.

Section 5.3. Basis for Assessments.

- (a) Each Lot owned by a person, other than DRP and Declarant, shall be assessed at a uniform rate without regard to whether a Dwelling Unit has been constructed upon the Lot.
- (b) DRP and Declarant shall at no time be assessed or required to pay any Assessment of any type.

Section 5.4. Liability For Assessment. Each Assessment, together with any interest thereon and any cost of collection thereof, including 'attorneys' fees, shall be a charge on each Lot (other than Lots owned by DRP and Declarant) and shall constitute a lien upon each such Lot from and after the due date thereof in favor of the Association. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due.

Section 5.5. Subordination of a Lien to Mortgage. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of and from the personal liability hereby imposed. The personal obligation is expressly assumed by such successor.

Section 5.6. Pro-Rata Share. The pro-rata share of each Owner for purposes of this Article V shall be the percentage obtained by dividing one by the total number of Lots shown on the Plat of the Development (“Pro-Rata Share”).

Section 5.7. Basis For Annual Assessments. Until the Transfer Period, Declarant shall set the amount of the annual budget and assessments in its sole discretion. Beginning after the Transfer Period, the Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the annual Budget Meeting of the Association. Such budget shall serve as the basis for establishing the annual Assessments for the Development. Notwithstanding anything in this Article V to the contrary, at least thirty (30) days before Assessments become due, a copy of the budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association in accordance with the requirements and procedures of Section 32-25.5-3-3 of the HOA Act. Such budget shall serve as the basis for establishing the annual Assessments. As used herein, “HOA Act” means Article 32-25.5 of the Indiana Code, as the same may be amended from time to time.

Section 5.8. Annual Assessments. The annual Assessments provided for herein shall be per fiscal year, as established by the Board, and shall commence for each Lot on the day of closing of the initial conveyance of each Lot by Declarant or another builder to an Owner other than Declarant or another builder. The amount of the annual Assessments shall be established by the Board.

Section 5.9. One Time Assessment. Upon the closing of the initial conveyance of each Lot by Declarant or another builder to an Owner other than Declarant or another builder, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount equal to fifty percent (50%) of the annual Assessment, not including any Assessment pursuant to a Supplemental Declaration, assessed against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed to the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of or reimbursement to Declarant for advances made to pay expenses of the Association for its early period of operation of the Development, to enable the Association to have cash available to meet unforeseen expenditures, and/or to acquire additional equipment or services deemed necessary by the Board.

Section 5.10. Reserve Assessment. Upon the closing of the conveyance of each Lot by an Owner to a subsequent Owner, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount equal to fifty percent (50%) of the annual Assessment, not including any Assessment pursuant to a Supplemental Declaration, against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital shall be held and used by the Association for payment of or reimbursement to Declarant for advances made to pay expenses of the Association for its early period of operation of the Development, to enable the Association to have cash available to meet unforeseen expenditures, and/or to acquire additional equipment or services deemed necessary by the Board.

Section 5.11. Basis For Special Assessments. Should the Board at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time and from time to time, levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

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, which determination shall be final. 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 at least sixty-seven percent (67%) of the votes of the Board at a meeting of the duly called for this purpose.

Section 5.12. Violation Assessment. In addition to all other assessments authorized or accounted for herein, the Board may levy on an Owner an assessment, (i) for an uncured violation of this Declaration, or (ii) for damages, if any portion of the Common Area that the Association is obligated to maintain, repair, and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee (each a "**Violation Assessment**"). In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair, or replacement. The choice between repair and replacement is in the sole discretion of the Board. The Violation Assessment shall be a minimum of \$150.00 per occurrence or the actual total amount expended to cure each violation, whichever is greater.

Section 5.13. Fiscal Year; Date of Commencement of Assessments; Due Date. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The liability of an Owner, other than Declarant, for Assessments under this Article V shall commence as of the date such Owner acquires its interest in a Lot. The first annual Assessment within the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association or as otherwise established by the Board of Directors. Annual Assessments shall be due and payable in full as of the above date, except that the

Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 5.14. Duties of the Association Regarding Assessments.

(a) The Board shall keep proper books and records of the levy and collection of each annual, one-time, reserve and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(b) The Association shall promptly furnish to any Owner or any mortgagee of any Lot, upon request, a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may assess an administrative fee for each such certificate, in the amount of \$125.00, or such amount otherwise approved by the Board.

(c) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any Owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

Section 5.15. Notice and Due Date. Written notice of special Assessments and such other notices of Assessment as the Board shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all Assessments shall be established by the Board.

Section 5.16. Collection. All Assessments, together with interest thereon, if any, attorneys' fees, and other costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due.

Section 5.17. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) If any Assessment is not paid on or prior to the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in subparagraph (b) below; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, a late fee in the amount of \$25.00 per month shall be applied to such Assessment until paid and Owner shall be responsible for all cost of collection thereof, including attorneys' fees. The Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including but not limited to the Association's attorneys' fees, late fees, and administrative costs; in the event a judgment is obtained, such judgment shall include late fees, costs, and attorneys' fees. Additionally, such Owner shall reimburse the Association for all costs, including administrative costs and filing fees, incurred by the Association in filing assessments liens against the respective Owner's Lot.

(c) Notwithstanding any other provision contained herein, the Board shall have the right to suspend the voting rights, if any, and the services to be provided by the Association, together with the right to use the Common Areas, of any Member.

Section 5.18. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association.

ARTICLE VI **ARCHITECTURAL STANDARDS AND REQUIREMENTS**

Section 6.1. Purpose. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Real Estate, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article VI and in Article VII. Notwithstanding the foregoing, neither this Article VI nor Article VII shall apply to the activities of Declarant, nor to construction or improvements or modifications of or to the Common Areas by or on behalf of the Association. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee. Notwithstanding anything in this Declaration to the contrary, neither the Committee or the Board may modify the terms of Article VI or Article VII of this Declaration, or any restrictions set forth in any Supplement until after the end of the Development Period without Declarant's prior written approval.

Section 6.2. Architectural Control Committee. Until the end of the Transfer Period, Declarant alone shall have all the powers and authority to administer the duties of the Committee and such powers and authority shall not be vested in such Committee unless Declarant elects to appoint the members of the Committee during the Transfer Period or assigns such powers and authorities to the Committee during the Transfer Period. After the power and authority of the Committee has been transferred by Declarant, the Board shall establish a Committee to consist of at least three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board and each of which shall be an Owner. Members of the Committee may or may not be members of the Board.

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Association. Any Committee member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or

successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee shall elect a Chairperson and Vice Chairperson, and the Chairperson, or in the Chairperson's absence, the Vice Chairperson, shall be presiding officer at its meetings. The Committee shall meet upon the call of the Chairperson, and all meetings shall be held at such places as may be designated by the Chairperson. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. Any meeting of the Committee may be held in person or by video and audio conference or by audio conference only, or any combination of the same, as the Committee deems necessary and proper so long as all parties in attendance at such meeting are able to hear and be heard by all others in attendance. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions or alterations made on or to existing Lots, Dwelling Units, or Structures and the open space, if any, appurtenant thereto excluding Lots owned by DRP or Declarant. The Committee shall promulgate a Common Interest and Community Information Disclosure Document (the "CICID"), which may contain additional architectural standards and guidelines for the Development. In addition to such standards, the following shall apply: plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and as to harmony of external design with existing Dwelling Units and Structures and location in relation to surroundings, topography, and finished grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of its Dwelling Unit, or to paint the interior of its Dwelling Unit any color desired. The Committee shall endeavor to approve or to disapprove such plans or to request additional information within thirty (30) days after submission of completed plans, proposals, specifications, or drawings. If Owner fails to submit all requested materials as described, the application shall be considered not approved after thirty (30) days. Owner may resubmit later for approval. Owner must complete all work approved by the Committee within one hundred twenty (120) days of approval, unless otherwise approved by the Committee.

Section 6.3. Architectural Approval. To preserve the architectural and aesthetic appearance of the Development, no construction of improvements of any nature whatsoever, with the exception of vegetative landscaping, shall be commenced or maintained by an Owner, other than Declarant, with respect to the construction of, or affecting the exterior appearance of, any Dwelling Unit or with respect to any other portion of the Real Estate, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios; courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, or outbuildings, nor shall any exterior addition to or change or alternation therein be made (excluding repainting in the original color but otherwise including, without limitations, painting or staining of any exterior surface), unless and until a written application in the manner and form prescribed from time to time by the Committee and two (2) copies of the plans and specifications and related data (including, if required by Committee, a survey showing the location of trees of six (6) inches or more in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, composition, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of

such plans and specifications with such standards as may be published by the Committee from time to time, including the harmony of external design, location, and appearance in relation to surrounding Dwelling Units and Structures and topography.

All plans and drawings required to be submitted to the Committee shall be drawn to a scale of $\frac{1}{4}'' = 1'$ and all plot plans shall be drawn by a professional to a scale of $1'' = 30'$, or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to ensure that an improvement is not encroaching onto an adjacent Lot or any Common Area. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved." If the Committee has not returned the copy of such plans, specifications, and related data so submitted with an "approved, "approved as noted", or "disapproved" within thirty (30) days after full submittal, the request shall be deemed DISAPPROVED.

(a) *Approval Process.* Approval of the Committee shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed installation or construction.

(b) *Power of Disapproval.* The Committee may refuse to grant permission to construct, place or make the requested improvement, when: (i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of the restrictions contained in this Declaration; (ii) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or Dwelling Units or Structures, including trim, siding, roof and brick colors, or with the Development in general; (iii) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners; and/or (iv) The Committee is otherwise authorized to disapprove the requested improvement in this Declaration or in the CICID.

(c) *Powers Following Approval.* Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right, during reasonable hours, to enter upon and inspect any Lot or other improvements with respect to which construction is underway to determine whether or not the plans and specifications there for have been approved and are being complied with. In the event the Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

(d) *Exercise of Discretion.* Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members of the Committee. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Committee is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

Section 6.4. Non-Vegetative Landscaping Approval. To preserve the aesthetic appearance of the Development, no material modification to the grading, excavation or filling of any Lot shall be

implemented by an Owner, unless and until the plans there for have been submitted to and approved in writing by the Committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal shall also be applicable to approvals required under this Section 6.4.

Section 6.5. Approval Not a Guarantee. No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the Committee shall be responsible or liable for: (a) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article VI; (b) loss or damages to any person arising out of the approval or disapproval of any plans or specifications; (c) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor (d) any defects in construction undertaken pursuant to such plans and specifications.

Section 6.6. Building Restrictions. All improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions and requirements. Prior to any grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines, or restriction shall make such filings, and obtain such authorizations and permits as are required hereunder, and further, shall receive the prior written approval of the Committee.

ARTICLE VII USE RESTRICTIONS

Section 7.1. Standards and Restrictions. The Association, acting through its Board, shall have the authority to make and to enforce standards and restrictions governing the use of the Real Estate, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting of the Association by a majority of members entitled to vote thereon; any such cancellation or modification of regulations or use restrictions shall be subject to the prior written consent of Declarant during the Development Period.

Section 7.2. Use of Lots. Except as permitted by Section 7.26 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried therein. The use of a portion of a Dwelling Unit as a home office by Owner, or its tenant shall not be considered to be a violation of this covenant if Owner complies with Section 7.26 hereof. No building or structure shall be located on any Lot outside of the setback lines designated on the Plat.

Section 7.3. Diligence in Construction. Subject to inclement weather and other force majeure events, every Dwelling Unit shall be completed within twelve (12) months after the commencement of its construction or placement. No improvement which has been partially or totally destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is requested.

Section 7.4. Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot shall fail to maintain its Lot and any improvements situated thereon in accordance with the provisions of this Declaration after notice from the Association and a cure period set forth in such notice, the Association shall have the right, but not the obligation, by and through its agents, employees, or contractors, to enter upon said Lot and maintain, repair, mow, clean or perform such other acts as may be reasonably necessary to ensure that such Lot and improvements situated thereon, if any, conform to the requirements of this Declaration. The cost incurred by the Association shall be assessed and billed to the Owner. The Association shall have the right to collect any outstanding maintenance assessments in the manner described in Article V. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any work performed hereunder.

Section 7.5. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent any unclean, unhealthy, unsightly, or unkempt condition on its Lot. The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be permitted on any part of the Real Estate. Nothing which would result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation, shall be permitted in the Development. Any Owner, or its family, tenants, guests, invitees, representatives, or agents, who dump or place any trash or debris upon any portion of the Development, shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any Assessment next becoming due to which such Owner and its Lot are subject.

Section 7.6. Maintenance of Lots and Improvements. Unless any of the following responsibilities and obligations are otherwise delegated pursuant to a Supplemental Declaration, each Owner shall at all times maintain its Lot and any improvement situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (a) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. In no event shall the grass on any Lot exceed the lesser of six (6) inches or the maximum height required by applicable statute or ordinance. Notwithstanding the foregoing, vacant Lots owned by DRP or Declarant shall be mowed by Declarant at such times as necessary so that the maximum height of the grass on those Lots shall not exceed twelve (12) inches.
- (b) Remove all debris or rubbish from the Lot.
- (c) Maintain the landscaping on a regular basis and replace any dead tree or shrub that is part of required landscaping including street trees planted between the sidewalk and roadway, if any.
- (d) Cut down, remove, and replace dead trees from the Lot.
- (e) Within sixty (60) days following completion of a Dwelling Unit, the Owner shall landscape the Lot, weather permitting.

Section 7.7. Awnings and Window Screens. No foil or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes. No metal, fiberglass or similar type awnings or patio covers shall be permitted unless approved by the Committee.

Section 7.8. Signs. No signs of any kind shall be erected within the Development, or permitted within any windows, without the written consent of the Board, except for such signs as may be required by legal proceedings and except for a single standard real estate “for sale” or “for rent” sign may exist on a Lot if such does not exceed six (6) square feet in area. Declarant may use such signs as it deems necessary or appropriate during the Development Period. No business signs, flags, banners, or similar items (except those placed and used by Declarant) which advertise or provide directional information shall be erected by any Owner. If permission is granted to any Owner to erect a sign, including name and address signs within the Development, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

Section 7.9. Parking and Prohibited Vehicles.

(a) *Parking.* Vehicles shall be parked in the garages or on the driveways serving the Lots. Each Dwelling Unit shall have an attached garage with space for not less than two (2) automobiles. No motor vehicle, whether or not utilized by an Owner, shall be parked on any street or public right-of-way, except on a temporary and non-recurring basis. Garages shall be used for parking of vehicles, and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed. Vehicles may be parked on a street in the Development for no more than forty-eight (48) consecutive hours, and such an occurrence shall not occur more than one time during any thirty (30) day period. No Owners or other occupants of any portion of the Development shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. Notwithstanding anything in this Section 7.9 to the contrary, construction vehicles used by Declarant during the Development Period are not subject to the restrictions set forth herein.

(b) *Prohibited Vehicles.* Vehicles labeled or classified as commercial by the State of Indiana, vehicles registered with the Indiana Department of Transportation in the State of Indiana, tractors, buses, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Real Estate except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Real Estate during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section 7.9 or parking rules promulgated by the Board may be towed at the expense of the Owner. Notwithstanding the foregoing, recreational vehicles, campers, camper trailers, boats and other watercraft may be parked in the driveway of a Lot for a period of time not to exceed forty-eight (48) hours in any calendar month for cleaning, loading, and unloading but for no other purposes.

Section 7.10. Animals and Pets. No domestic animals for commercial purposes and no farm animals or fowls (including, without limitation, any pigs, goats, or chickens) shall be kept or permitted on any Lot or Lots in the Development. No animals shall be kept or maintained on any Lot except for the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of a dog(s) or vicious animal(s) shall constitute a nuisance as determined by the Association and may be ordered removed from the Real Estate by the Association. All pets shall remain under the control and supervision of an adult Owner and shall not be permitted off of such Owner's respective Lot unless on a leash or other restraint. The owner of any

pet shall be responsible to clean up or repair any waste or damage caused by such pet and assure that such pet does not create any unreasonable disturbance. Animal quarters, kennels, and runs are specifically prohibited.

Section 7.11. Quiet Enjoyment. No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition. No noxious or illegal activity shall be carried on upon any portion of the Real Estate. No hunting of any nature shall be permitted within the Development. With the exception of a gas or wood burning fire pit and/or outdoor fireplace, which if permanently affixed to the ground must be approved by the Committee, there shall be no outside open burning of wood, leaves, trash, garbage, or household refuse within the Real Estate. However, Declarant may permanently affix on Common Area during the Development Period for the benefit of the Owners a gas or wood burning fire pit and/or outdoor fireplace without any approvals by the Committee, Declarant, or the Association may at any time order the relocation of any wood piles which, in the sole opinion of any or all, are unsightly. No horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Development.

Section 7.12. Antennas, Aerials, and Satellite Dishes. No exterior antennas, aerials, satellite dishes, or other apparatus larger than thirty-six (36) inches in diameter and intended for the reception of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained upon any portion of any Lot. Any such antennas, aerials, satellite dishes or other such apparatus that do not exceed thirty-six (36) inches in diameter shall be permitted on a Lot only if such will be aesthetically concealed by landscaping or by other means and shall be installed so as not to be visible from front elevation street view or constitute a nuisance or offensive effect on other Lot Owners. Under no circumstances shall any such antennas, aerials, satellite dishes, or other such apparatus be installed without the approval of the Committee. No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Development, provided, however, that Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Real Estate, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

Section 7.13. Garbage Cans, Tanks, Etc. No storage tanks of any kind shall be allowed upon a Lot with the exception of a small propane tank used exclusively for residential gas grills. The propane tank shall be stored on the gas grill, within the Dwelling Unit on the Lot, or completely out of view of other Owners. No rubbish, trash or garbage containers shall be stored or maintained outdoors except for such temporary storage necessary for immediate pick up of the trash and, in that event, trash shall be stored in appropriate containers. At the option of the Association, trash and refuse disposal for each Dwelling Unit will be provided by the Association on a weekly basis. No dumpsters or other forms of general or common trash accumulation shall be permitted within the Development, except to facilitate or in connection with construction activities by Declarant. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage, and other waste shall be kept in sanitary containers at all times and all equipment for storage or disposal of such materials shall be kept clean. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse.

Section 7.14. Pools. No above ground swimming pools shall be erected, constructed, or installed on any Lot; provided, that nothing herein shall preclude installation and use of hot tubs, spas, or in-ground pools with prior approval from the Committee as provided herein.

Section 7.15. Storage Sheds and Temporary Structures. Except as may be utilized by Declarant during the Development Period, no tent, shack, trailer, storage shed, mini-barn, or other similar detached or attached structure shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Committee or Declarant and children's overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours. Any and all forms of outbuildings, including, without limitation, sheds, storage sheds, and playhouses, which are not directly connected to a Dwelling Unit, are prohibited unless the same are necessary or incident to Declarant's or Association's business or activities.

Section 7.16. Drainage, Water Wells, and Septic Systems.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) No private water wells may be drilled or maintained, and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot.

Section 7.17. Traffic Regulation and Sight Distance at Intersections. All Lots located at street intersections shall be landscaped so as to permit safe sight lines across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Development shall be subject to the provisions of the laws of the State of Indiana or any applicable political subdivision (including all zoning and other land use ordinances), and any other applicable governmental agency, concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Development. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of Indiana or by any other state in the United States may operate any type of motor vehicle within the Development. All vehicles of any kind and nature which are operated on the streets in the Development shall be operated in a careful, prudent, safe, and quiet manner and with due consideration for the rights of all residents of the Development.

Section 7.18. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Development, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

Section 7.19. Clotheslines. No clothesline of any kind may be erected, maintained, or permitted on or at any Lot. Clothing, rugs, or other items which are visible to others in the Development shall not be hung on any railing, fence, hedge, or wall.

Section 7.20. Air Conditioning Units. No window air conditioning units may be installed in or at any Lot.

Section 7.21. Mailboxes. Each Owner of a Lot shall maintain the mailbox and structure which was originally installed by Declarant or a builder and shall replace same as necessary with a mailbox

and structure which is substantially the same in appearance as that which was originally provided to the Dwelling Unit. Nothing may be attached to the mailbox structure which will affect the uniformity thereof with other such structures in the Development. The Committee shall have the discretion to require the replacement of any mailbox within the Development at the expense of the Owner of the Lot served thereby.

Section 7.22. Solar Panels. No solar energy collector panels or attendant hardware or other energy conservation equipment (collectively, “**Solar Equipment**”) shall be constructed or installed on any Lot without the prior review and approval of the Committee. All such Solar Equipment shall be located on the rear side of the roof of the Dwelling Unit and shall not be visible from the street facing the front of the Lot upon which such Solar Equipment is located. It is the intent of this provision that the Committee shall be able to strictly regulate all elements of exterior Solar Equipment to the fullest extent of the law and should any regulations adopted herein or by the Committee conflict with federal law or state law, such rules as do not conflict with federal law or state law shall remain in full force and effect.

Section 7.23. Exterior Flags and Sculptures. Exterior sculptures, fountains, flags, and similar items must be approved by the Committee.

Section 7.24. Driveways and Sidewalks. All driveways will be constructed by a builder of the Dwelling Unit which it serves. Owners shall maintain and replace the driveway of their Lot thereafter so as to maintain the same appearance as provided at the time of original construction, ordinary wear and tear excepted. Each Dwelling Unit shall have a continuous sidewalk from driveway to the front porch or entry. Any modification or extension of driveways and sidewalks beyond those constructed by a builder are subject to Committee approval as provided in Article VI. In no event will concrete, blacktop, gravel, or dirt side drives or parking areas be permitted on any Lot or Common Area except where Declarant, during the Development Period, may deem necessary.

Section 7.25. Fences. Unless otherwise governed and regulated by a Supplemental Declaration, the following shall apply to all Lots subjected to this Declaration. The Committee, prior to installation, must approve any fencing, walls, mounds, and landscape screening on or at any Lot. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Committee when reviewing fences, walls, mounds, and screening for approval. No front yard fencing, walls, mounds, or screening are permitted, except on a Lot on which there is maintained a sales office or model home by Declarant. All plans for approval of fencing which are submitted to the Committee shall identify all corners of the subject Lot, and the Owner shall be responsible for installing the fence in accordance with the approved plans. If approved by the Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Committee.

Non-professionally installed fences may be inspected by the Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of such final review. All fences shall be kept in good repair by the Owner. Each Owner shall properly maintain, mow, and trim grass on all portions of such Owner's Lot, including the portions of the Lot located on either side of a fence installed upon such Lot. No fence shall be located any closer to the front Lot line than five (5) feet forward from a back foundation corner of the Dwelling Unit, exclusive of a covered porch. No fence on a side property line shall be located

closer than five (5) feet from the side of the Dwelling Unit. On a corner Lot, no fence will be allowed between the side building line and the adjacent street or right-of-way. No fences shall be installed in easements without the prior written approval of the Committee and any public authority or agency having jurisdiction over the easement. The Committee, in its sole discretion, may prohibit fences in easements and/or impose restrictions on fences in easements. If approved by the Committee and applicable public agency, a fence erected in an easement is erected at the sole risk of the Owner, as such fences run the risk of being partially or completely removed at the Owner's expense. Notwithstanding any other provision in this Declaration to the contrary, invisible electronic fences designed to restrict the movement of animals are expressly permitted.

Declarant, during the Development Period, and the Committee, after the Development Period, may reasonably amend or change any of the following restrictions:

(a) *Height Restriction.* The Committee shall determine the height of fences and walls; provided, however, that the maximum heights of walls and fences shall never exceed the following:

- (i) No fence shall exceed forty-eight (48) inches in height;
- (ii) Lot fencing and walls shall not exceed forty-eight (48) inches above grade;
- (iii) Patio screens adjoining the rear of a Dwelling Unit shall not exceed six (6) feet in height; and
- (iv) Any fence enclosing an in-ground pool shall (A) not exceed six (6) feet in height (unless a greater height is required by any applicable zoning ordinance or building code), (B) be black wrought iron or black wrought iron in appearance, (C) be installed immediately adjacent to the pool and not along the perimeter of the Lot, and (D) be approved by the Committee.

(b) *Materials and Finish.*

- (i) Fences are to be black wrought iron or black wrought iron in appearance. Wood fences, PVC fences, chain link fences and stockade style fences are prohibited. The Committee must approve all fencing materials, design, and location.
- (ii) Walls above-grade must be constructed of natural stone, masonry, wrought iron or wrought iron in appearance fencing, or a combination thereof.
- (iii) The Committee will approve landscape screening materials, design, and location on an individual basis.

(c) *Location.* All fencing erected on a Lot must be erected either (i) within six (6) inches of the property line of such Lot, or (ii) more than four (4) feet from the property line of such Lot. Each Owner who has a fence erected that is located within six (6) inches of the property line of its Lot, hereby approves of each applicable adjacent Lot Owner to encroach upon the Owner's Lot up to a maximum of six (6) inches in order for (x) the applicable adjacent Lot Owner to connect its adjacent Lot Owner's fence to the Owner's fence already erected, (y) such applicable adjacent Lot Owner to subsequently maintain its adjacent Lot Owner's fence within the encroached area of the Owner's Lot, and (z) the applicable adjacent Lot Owner to subsequently mow and/or otherwise maintain the portion of the Owner's Lot located between the Owner's fence and the property line of the applicable adjacent Lot Owner. Under no circumstances shall such encroachment give rise to a claim of adverse possession or

easement by prescription. In the event that a fence is already erected on an adjoining Lot within six (6) inches of the property line, then the Owner of a Lot desiring to install a new fence shall either (i) connect the Owner's new fence to the fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Committee, or (ii) install the Owner's new fence more than four (4) feet from the property line so that the gap between the Owner's new fence and the existing fence on the adjoining Lot will be at least four (4) feet wide.

(d) *Approval.* The exact location, material, color, and height of the fence and rendering or photograph thereof shall be submitted to the Committee for written approval at least thirty (30) days prior to proposed installation or construction. If, however, approval has not been received by the applicant in writing within thirty (30) days after submission, then said request shall be deemed DENIED.

Section 7.26. Business Uses. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the 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) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Development; and (d) the business activity (i) is consistent with the residential character of the Development and (ii) does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

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 involve 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 there for. 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 7.26. This Section 7.26 shall not apply to any commercial property within the Development, nor shall it apply to any activity conducted by Declarant, or a builder approved by Declarant with respect to its development and sale of the Real Estate or its use of any Lots or Dwelling Units which it owns within the Real Estate.

Section 7.27. Basketball Goals, Tennis Courts, Racquetball Courts, and Paddleball Courts. Unless otherwise governed and regulated by a Supplemental Declaration, the following shall apply to all Lots subject to this Declaration. No basketball goals shall be permitted on any Lot without the prior review and approval of the Committee, except as provided for in this Section 7.27. No basketball goals shall be permitted to be used along any curb or in any street of the Development. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities will not be permitted on any Lot without approval from the Committee. All submittals to the Committee shall include landscape plans. Permanent basketball goals may be installed on a Lot immediately adjacent to a driveway without Committee approval, provided that such goals have translucent fiberglass or glass backboards and are professionally installed. Non-permanent basketball goals or courts are prohibited. No basketball goal or backboard shall be permitted to hang from or be affixed to any part of the Dwelling Unit. Lighted courts of any kind are prohibited.

Temporary or portable basketball goals located on streets or in cul-de-sacs or in the right-of-way of any public street are a safety hazard and are strictly prohibited.

Section 7.28. Playground Equipment and Trampolines. Unless otherwise governed and regulated by a Supplemental Declaration, the following shall apply to all Lots subject to this Declaration. No playground equipment shall be installed on any Lot without the prior review and approval of the Committee. All such equipment shall be located at least then (10) feet from any adjacent property lines and in the rear yard of a Lot (being the portion of such Lot behind the rear corners of the Dwelling Unit on such Lot). Notwithstanding the foregoing, in the event such Lot is located on a corner in the Development, the Committee may, in its discretion, approve a location for such equipment other than a rear yard, provided such is not closer than ten (10) feet from any public sidewalk. Children's play equipment, such as temporary sandboxes and temporary swimming pools having a depth of eighteen (18) inches or less, shall not require approval of the Committee, provided that such equipment is maintained by the Owner in good repair and such equipment is located in the rear yard. Equipment higher than eighteen (18) inches shall require approval of the design, location, color, material and use by the Committee and in no cases, if approved, is allowed to be up for more than forty-eight (48) hours. Aluminum or metal play equipment is prohibited. Free standing plastic or metal playhouses are prohibited, while forts or playhouses that are incorporated as an integral part of a residential play system are permitted but must be approved by the Committee. Trampolines, whether above ground or in-ground, are strictly prohibited.

Section 7.29. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Real Estate, except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of gas grills, lawn mowers, and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

Section 7.30. Contiguous Lots. Whenever two (2) or more contiguous Lots shall be owned by the same Owner, such Owner shall not be permitted to use two (2) or more of said Lots as a site for a single dwelling, subject to applicable zoning and other regulations and restrictions. Each Lot shall be, and shall remain, improved with a single Dwelling Unit, and each Lot shall be subject to Assessments.

Section 7.31. Control of Lakes and Common Areas.

(a) *Control by the Association.* As part of its general duties, the Association shall regulate the Lakes and Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Lakes and Common Areas. No improvements, excavation, changes in grade or other work shall be done upon the Lakes or Common Areas by any Owner, nor shall the Lakes or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Committee.

(b) *Restrictions of Use of Lakes and Common Areas.* The following covenants and restrictions on the use and enjoyment of the Lots, the Lakes and the Common Areas shall be in addition to any other covenants or restrictions contained herein or in the Plat and all such covenants and restrictions are for the mutual benefit and protecting of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners of the Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting

from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (i) No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests, or invitees, may use the Lakes or the Common Areas.
- (ii) No nuisance shall be permitted to exist on or at any Lot and no waste shall be committed on or at any Lot which shall or might damage or cause injury to the Lakes or the Common Areas.
- (iii) All Owners and members of each Owner's family, its guests, or invitees, and all occupants of any Lot or other persons entitled to use the same and to use and enjoy the Lakes and the Common Areas, shall observe, and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Lakes and the Common Areas.
- (iv) No Owner shall be allowed to plant trees, landscape, or do any gardening in any part of the Lakes or the Common Areas without the express permission from the Committee.
- (v) The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage system serving the Development. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. Recreational activity shall be permitted in or on the Lakes as determined by the Board. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. No Owner or other person shall take or remove any water from or out of the Lakes or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts, or other improvements shall be built, constructed, or located on any Lot or on the Real Estate, which extend into, or to within twenty-five (25) feet of the shoreline of any Lake, except those installed by Declarant or the Association.
- (vi) The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of Lakes, ponds, or streams within the Real Estate.

Section 7.32. Laws and Ordinances. Every Owner and occupant of any Lot or Dwelling Unit, together with such Owner's family, guests, and invitees, shall comply with all laws, statutes, ordinances, and rules of federal, state, and municipal governments applicable to the Real Estate and any violation thereof may be considered a violation of this Declaration; provided, however, that the Board shall have no obligation to take action to enforce such laws, statutes, ordinances, or rules.

Section 7.33. Sales and Construction. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwelling Units or the developing of Lots, Dwelling Units and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model houses, all as may be approved by Declarant from time to time, provided that the location of any construction trailer of any assignees of Declarant's rights under this Section 7.33 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities, as provided herein, shall include specifically the right to use Dwelling Units as model residences and to use any Dwelling Unit as an office for the sale of Lots and Dwelling Units and for related activities.

Section 7.34. Owners Bound. All provisions of this Declaration, the By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners, and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot and Dwelling Unit. Every Owner shall cause all occupants, guests and invitees of its Lot or Dwelling Unit to comply with this Declaration, the By-Laws, and rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, guests and invitees, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of this Declaration, the By-Laws and rules and regulations adopted pursuant thereto.

Section 7.35. Rental Agreements. No Owner may rent or lease such Owner's Dwelling Unit for transient or hotel purposes. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease, which shall provide that the lease is subject to the provisions of this Declaration and any failure of the lessee to comply with the terms of this Declaration, shall be a default under the lease. A copy of any lease must be provided to the Association upon the Association's request.

ARTICLE VIII RULEMAKING AND REMEDIES FOR ENFORCEMENT

Section 8.1. Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots and Dwelling Units, and the amendments thereto shall be furnished by the Association to all Members prior to their effective date upon the Owners, Owners' families, tenants, guests, invitees, representatives, and agents, until and unless any such rule or regulations be specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Association by a majority of the Members as set forth in the By-Laws, subject to Declarant's consent during the Development Period.

Section 8.2. Authority and Enforcement.

(a) Upon a violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Association shall have the power, after ten (10) days' written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation: (i) to cause the Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or occupant who is guilty of such violation; (ii) to suspend Owner's right to vote in the Association; and (iii) to suspend an Owner or occupant's right (and the right of its family, guests, and tenants) to use of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. Such sanctions are in addition to the Association's remedies under Section 4.2 hereof relating to maintenance. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by it or its family, guests, tenants, or invitees. Any such suspension of rights may be for the duration of the infraction and/or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding Section 8.2(a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the articles of incorporation or By-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by Declarant, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations. declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by Declarant, the Association, or any Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either Declarant or the Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations; further provided that no Owner may bring an action for injunctive relief or recovery of damages on any matter if the Association has already instituted an action for the same.

(c) Notwithstanding any provision in this Article VIII, the Association shall not have the power to institute, defend, intervene in, settle or compromise proceedings in the name of any Owner or Member, and notwithstanding any provision in Section 9.2 or any other section in this Declaration to the contrary, any proposed amendment to the provisions of this Section 8.2 (c) 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 Declarant.

ARTICLE IX GENERAL PROVISIONS

Section 9.1. Term. The covenants and restrictions of this Declaration shall run with and bind the Real Estate, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by more than ninety-five percent (95%) of the then Owners has been recorded within the year preceding the beginning of each successive period often (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

Section 9.2. Amendment. Prior to the conveyance of the first Lot to an Owner, Declarant may, with consent from DRP, unilaterally amend this Declaration or subject all or any part of the Real Estate to a Supplemental Declaration. After such conveyance, Declarant may, with consent from DRP, unilaterally amend this Declaration at any time and from time to time if such amendment is: (a) necessary to bring any provision thereof into compliance with any applicable governmental statutes,

rules or regulations, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwelling Units; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Development; or (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, that any amendment permitted under subsections 9.2 (a) through (f) above shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, during the Development Period, Declarant may, with consent from DRP, unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the county in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 9.3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including attorneys' fees, reasonably incurred by, or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director, and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9.4. Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less

restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana, without regard to its conflict of law provisions.

Section 9.5. Right of Entry. The Association and, during the Development Period, Declarant shall have the right, but not the obligation, to enter onto a Lot to inspect for the purpose of reviewing potential violations and ensuring compliance with this Declaration, the By-laws, and the Association rules, which right may be exercised by the Association's board, officers, agents, employees, and managers, in the performance of their respective duties. Entry shall only be during reasonable hours and after two notices citing articulable facts regarding potential violations or non-compliance in writing to the Owner and/or occupant directly affected thereby.

Section 9.6. Perpetuities. If any of the covenants, conditions, easements, 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 Section 32-17-8-1 *et seq.* as amended from time to time.

Section 9.7. Litigation. Except as provided in Section 8.2, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by an affirmative vote representing at least seventy-five percent (75%) of the Members entitled to vote thereon and during the Development Period, Declarant must also approve such action. However, this Section 9.7 shall not apply to (a) actions brought by the Association to enforce the provisions of the Act, this Declaration (including, without limitation, the foreclosure of liens), the By-Laws and reasonable rules and regulations adopted by the Board, (b) actions brought for the imposition and collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

Section 9.8. Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to its Lot, such Owner shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Board, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

Section 9.9. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations, or other entities, or to individuals, men, or women, shall in all cases be assumed as though in each case fully expressed. The necessary grammatical changes required to make the provisions of this Declaration apply to all persons shall be assumed.

Section 9.10. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

Section 9.11. Right of Third Parties. This Declaration shall be recorded for the benefit of DRP, Declarant, the Owners, and their mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title, or interest whatsoever in the Real Estate or rights of enforcement under the Declaration (which rights shall remain with DRP, Declarant, and the Association as provided in this Declaration). Except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provision hereof, and subject to the rights of DRP, Declarant, and the mortgagees as herein provided, the Association shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

Section 9.12. Headings. The headings and captions contained in this Declaration have been inserted and used solely for ease of reference and shall not be considered in the interpretation or construction of this Declaration.

Section 9.13. Controlling Document. In the event there is a conflict of interest between the provisions of this Declaration and any Plat, the terms and provisions of this Declaration shall control. In the case of any conflict between this Declaration and the By-Laws, this Declaration shall control. In the case of any conflict between this Declaration and the HOA Act, the HOA Act shall control.

Section 9.14. 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 9.15. Notice of Defects. Until the Development Period has expired, the Association shall send to the applicable developer, contractor, subcontractor, supplier, or design professional a notice of any claim alleging any construction or design defect (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 DRP or 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 “**Claim**”) to mediation as provided in Section 9.16 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 Claim shall be deemed to have waived the Claim, and DRP and Declarant shall be released and discharged from any and all liability on account of such Claim.

Section 9.16. Alternative Dispute Resolution. Except with respect to any claim as set forth in the HOA Act, each and every Claim brought under this Declaration shall be subject to the following procedures:

(a) Any Claim 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, DRP, 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 9.17. Damages. Notwithstanding any other provision of this Declaration to the contrary, including without limitation the provisions of Section 8.2 (b), 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.

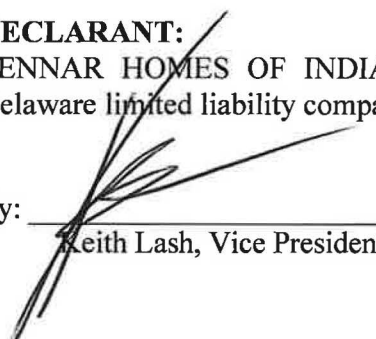
Section 9.18. Prevailing Party and Damages. Except as otherwise provided in this Declaration, the articles of incorporation, the By-Laws and rules, regulations, and guidelines, as each may be amended from time to time, each party shall bear its own costs and expenses, including attorneys' fees, for any proceeding of a dispute under this Declaration, the articles of incorporation, the By-Laws 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 of incorporation, the By-Laws and rules, regulations, and guidelines, as each may be amended or supplemented from time to time.

IN WITNESS WHEREOF, Declarant has caused this Declaration of Covenants, Conditions, Easements, and Restrictions for Aberdeen of Westfield to be made and executed as of the date written above.

DECLARANT:
LENNAR HOMES OF INDIANA, LLC, a
Delaware limited liability company

By: 
Keith Lash, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Keith Lash, Vice President of Lennar Homes of Indiana, LLC, a Delaware limited liability company, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions, Easements, and Restrictions on behalf thereof, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 21 day of December, 2022.

Signature Wanda Wooldridge

Printed Wanda Wooldridge
Notary Public

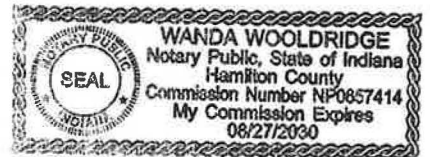


Exhibit A

Parcel 1:

A part of the Northeast and Northwest Quarters of Section 26, and a part of the Southeast and Southwest Quarters of Section 23, all in Township 19 North, Range 3 East, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of the Northeast Quarter of said Section 26; thence North 00 degrees 14 minutes 39 seconds East (basis of bearings is Indiana State Plane Grid Bearing, East Zone) along the East line of said Northeast Quarter 1988.70 feet to the Southeast corner of the North Half of the Northeast Quarter of the northeast Quarter of said Section 26; thence South 89 degrees 47 minutes 55 seconds West along the South line of said North Half 1323.05 feet to the Southwest corner thereof; thence North 00 degrees 14 minutes 49 seconds East along the West line of said North Half 662.10 feet to the Northwest corner thereof and the POINT OF BEGINNING; thence South 89 degrees 45 minutes 50 seconds West along the North line of the Northeast Quarter of said Section 26 a distance of 661.51 feet to the Northeast corner of the West Half of the Northwest Quarter of the Northeast Quarter of said Section 26; thence South 00 degrees 14 minutes 54 seconds West along the East line of said West Half 1323.41 feet to the Southeast corner thereof; thence South 89 degrees 49 minutes 59 seconds West along the South line of said West Half 661.54 feet to the Southwest corner thereof; thence South 89 degrees 45 minutes 06 seconds West along the South line of the Northeast Quarter of the Northwest Quarter of said Section 26 a distance of 1324.06 feet to the Southwest corner thereof; thence North 00 degrees 12 minutes 52 seconds East along the West line of said Quarter-Quarter 1321.94 feet to the Northwest corner thereof; thence North 00 degrees 06 minutes 09 seconds East along the West line of the Southeast Quarter of the Southwest Quarter of said Section 23 a distance of 1321.61 feet to the Northwest corner thereof; thence North 89 degrees 43 minutes 36 seconds East along the North line of said Quarter-Quarter 1037.15 feet to the northeast corner of Instrument Number 2015004954, recorded in the Office of the Recorder of Hamilton County, Indiana (the following two courses are along the West and South boundaries of said Instrument); (1) thence South 01 degree 19 minutes 55 seconds West 316.44 feet; (2) thence North 88 degrees 56 minutes 56 seconds East 295.71 feet to the East line of the Southeast Quarter of the Southwest Quarter of said Section 23; thence South 00 degrees 10 minutes 00 seconds West 348.46 feet to the Southwest corner of the North Half of the Southwest Quarter of the Southeast Quarter of said Section 23; thence North 89 degrees 39 minutes 19 seconds East along the South line of the North Half of the Southwest Quarter of the Southeast Quarter of said Section 23 a distance of 1320.74 feet to the Southeast corner thereof; thence South 00 degrees 01 minute 56 seconds East along the East line of said South Half 663.26 feet to the Point of Beginning, containing 118.491 acres, more or less.

Property Addresses:

0 Horton Road, Westfield, Indiana 46074

19601 Horton Road, Westfield, Indiana 46074

Parcels No.:

08-05-23-00-00-017.000 / 29-05-23-000-017.000-014

08-05-26-00-00-004.000 / 29-05-26-000-004.000-014

08-05-26-00-00-003.000 / 29-05-26-000-003.000-014

08-05-23-00-00-022.000 / 29-05-23-000-022.000-014

Parcel 2:

The North Half of the Southwest Quarter of the Southeast Quarter and Ten (10) acres of the South side of the Northwest Quarter of the Southeast Quarter, all of Section 23, Township 19 North, Range 3 East located in Washington Township, Hamilton County, Indiana, and also beginning at a point 40 rods North of the Southwest corner of the East Half of the Southeast Quarter of Section 23, Township 19 North, Range 3 East and running thence North 60 rods, thence East 14 rods to the railroad, thence down the railroad to a point due East of the Place of Beginning, thence West 53 rods to the Place of Beginning.

EXCEPTING THEREFROM:

That part of the above described property conveyed to John L. Hajduk and Kimberly D. Hajduk, husband and wife by Warranty Deed recorded October 26, 1993, as Instrument Number 9352186, in the Office of the Recorder of Hamilton County, Indiana, described as follows:

A part of the Southeast Quarter of Section 23, Township 19 North, Range 3 East located in Washington Township, Hamilton County, Indiana, being more specifically described as follows:

Beginning at a point on the West line of the Southeast Quarter of Section 23, Township 19 North, Range 3 East, said Point of Beginning being the Northwest corner of 10 acres off the South end of the Northwest Quarter of said Southeast Quarter; thence Easterly 320.00 feet on and along the North line of 10 acres off the South end of the Northwest Quarter of said Southeast Quarter; thence Southerly 408.38 feet parallel with the West line of said Southeast Quarter; thence Westerly 320.00 feet parallel with the North line of 10 acres off the South end of the Northwest Quarter of said Southeast Quarter to the West line of said Southeast Quarter; thence Northerly 508.38 feet on and along the West line of said Southeast Quarter to the Point of Beginning.

ALSO EXCEPTING THEREFROM:

That part of the above described property conveyed to Karl Manders and Kathleen Manders, husband and wife as tenants by the entirety by Warranty Deed recorded August 19, 2015, as Instrument Number 2015043829, in the Office of the Recorder of Hamilton County, Indiana, described as follows:

A part of the Southeast Quarter, Section 23, Township 19 North, Range 3 East, Washington Township, Hamilton County, Indiana, described as follows:

Commencing at a rebar found at the West corner of said Southeast Quarter; thence North 00 degrees 08 minutes 47 seconds East along the West line of the Northwest Quarter of said Southeast Quarter 330.70 feet to the North line of 10 acres of the South side of the Northwest Quarter of said Southeast Quarter; thence North 89 degrees 33 minutes 03 seconds East along the North line there 320.00 feet to the Northeast corner of "Manders", Point of Beginning and a rebar with cap scribed "SEA GROUP FIRM 00091", hereinafter referred to as a "rebar set"; thence continuing along said North line North 89 degrees 33 minutes 03 seconds East 15.00 feet to a rebar set; thence South 00 degrees 08 minutes 47 seconds West parallel with the West line of the Northwest Quarter of said Southeast Quarter 992.76 feet to the South line of the Northwest Quarter of said Southeast Quarter; thence South 89 degrees 38 minutes 26 seconds West along the South line thereof 336.59 feet to the West line of the Southwest Quarter of said Southeast Quarter; thence North 00 degrees 17 minutes 04 seconds East along the West line thereof 583.87 feet to the Southwest corner of "Manders"; thence North 89

degrees 33 minutes 03 seconds East along the South line of "Manders" 320.19 feet; thence North 00 degrees 08 minutes 47 seconds East along the Easterly line of "Manders" 308.38 feet and the Point of Beginning, containing 4.529 acres, more or less.

FURTHER EXCEPTING THEREFROM:

That part of the above described property conveyed to City of Westfield, Indiana by Warranty Deed recorded October 23, 2015, as Instrument Number 2015055336, in the Office of the Recorder of Hamilton County, Indiana, described as follows:

A part of the East Half of the Southeast Quarter of Section 23, Township 19 North Range 3 East, Hamilton County, Indiana, described as follows:

Commencing at the Southeast corner of said section, designated as point "580" on Location Control Route Survey Plat recorded as Instrument No. 2014003559, and the Affidavit of Correction recorded as Instrument No. 2014029650, all in the Office of the Recorder of said county (basis of bearings is said Location Control Route Survey Plat); thence North 00 degrees 13 minutes 38 seconds West 32.29 feet along the East line of said section to the center line of the abandoned CSX (Monon) Railroad; thence North 33 degrees 30 minutes 30 seconds West 749.67 feet along said center line to the Southeast corner of the grantor's land and the Point of Beginning of this description; thence South 89 degrees 38 minutes 18 seconds West 39.41 feet along the South line of the grantor's land; thence North 33 degrees 30 minutes 30 seconds West 1,185.38 feet to the North line of the grantor's land; thence North 89 degrees 38 minutes 18 seconds East 39.41 feet along said North line to the Northeast corner of the grantor's land and the center line of said abandoned railroad; thence South 33 degrees 30 minutes 30 seconds East 1,185.48 feet along the Northeast line of the grantor's land and said center line to the Point of Beginning and containing 0.898 acres, more or less, inclusive of the presently existing right-of-way which contains 0.005 acres, more or less.

A modernized legal description for the above Parcel 2, prepared by HWC Engineering, as Job No. 2019-117 and more particularly described as follows:

Part of the Southeast Quarter of Section 23, Township 19 North, Range 3 East of the Second Principal Meridian, in Washington Township, Hamilton County, Indiana, based upon an ALTA/NSPS Land Title Survey prepared by Michael G. Judt, Professional Surveyor Number 21500017, HWC Engineering, Project Number 2019-117, dated July 12, 2021, more particularly described as follows:

COMMENCING at the Southeast corner of said Southeast Quarter, marked by a Harrison monument; thence South 89 degrees 45 minutes 50 seconds West (basis of bearings is Indiana State Plane Grid Bearing, East Zone) along the South line of said Southeast Quarter a distance of 1323.02 feet to the Southeast corner of the Southwest Quarter of said Southeast Quarter; thence North 00 degrees 01 minutes 56 seconds West along the East line of the South Half of the Southwest Quarter of said Southeast Quarter a distance of 663.26 feet to the Southeast corner of the North Half of the Southwest Quarter of said Southeast Quarter and the POINT OF BEGINNING, marked by a 5/8-inch rebar with cap stamped "CRIPE FIRM 0055"; thence South 89 degrees 39 minutes 19 seconds West along the South line of the North Half of the Southwest Quarter of said Southeast Quarter a distance of 985.75 feet to the Southeast corner of a tract of land described in Instrument Number 2016046931 in the Office of the Recorder of Hamilton County, Indiana; thence North 00 degrees 10 minutes 00 seconds East along the East line of said tract a distance of 991.95 feet (992.76 feet per deed) to the North line of 10 acres off the South side of the Northwest Quarter of said Southeast Quarter; thence North 89 degrees

32 minutes 47 seconds East along said North line a distance of 1193.20 feet to the Southwest line of the Monon Trail, as described in Instrument Number 2015055336 in said Recorder's Office; thence South 33 degrees 30 minutes 39 seconds East along said Southwest line a distance of 1187.67 feet to the South line of the North Half of the Southeast Quarter of said Southeast Quarter; thence South 89 degrees 39 minutes 19 seconds West along said South line a distance of 866.04 feet to the POINT OF BEGINNING, containing 34.717 acres, more or less.

Property Address:

0 East 199th Street, Westfield, IN 46074

Parcel No.: 08-05-23-00-00-018.000 / 29-05-23-000-018.000-014