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SEP 29 2021

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

ESTES PARK SUBDIVISION

Paul S. Smith
AUDITOR, MADISON COUNTY

This Declaration of Covenants, Conditions and Restrictions ("Declaration") of Estes Park Subdivision is made this 28th day of September, 2021 by Arbor Homes ("DECLARANT").

WITNESSETH:

RECITALS

WHEREAS, **DECLARANT** is the owner of real estate in Madison County, Indiana, which is described in **Exhibit A** attached hereto and incorporated herein by reference, comprised of approximately 45.72 acres (the "Real Estate"); and

WHEREAS, **DECLARANT** desires and intends to create on the Real Estate a residential community with public streets, with identification signage, and complimentary landscaping at the entranceway and with open spaces and with common areas for surface water management while also serving as open space, all for the benefit of such residential community, to be known as "Estes Park Subdivision" (the "Subdivision") as shown on **Exhibit B**; and

WHEREAS, **DECLARANT** intends to develop the Subdivision in separate sections, all of which comprise the Estes Park Subdivision, beginning with an initial section (the "Initial Tract") comprised of approximately 14.711 acres known as Estes Park Section 1 as described on **Exhibit C**, and as shown in **Exhibit D**; and

WHEREAS, **DECLARANT** has or will be caused to be incorporated under Indiana Code § 23-17-1, et seq., a non-profit corporation under the name "Estes Park Homeowners Association, Inc.", which shall own, maintain and administer the Common Areas located within the Real Estate, administer and enforce the covenants and restrictions contained in this Declaration, collect and disburse the funds of the Association, and promote the best interests of the Subdivision on behalf of the owners of the Initial Tract; and

WHEREAS, **DECLARANT** desires to subject the Initial Tract to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Initial Tract and each Owner of all or part thereof; and

WHEREAS, **DECLARANT** deems it desirable, to accomplish these tasks in said Initial Tract, to create an organization to which shall be delegated and assigned the powers of supervising, maintaining and administering any Common Areas and maintenance expense areas detailed in the Initial Tract, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the common interest of the Owners of the Initial Tract, and all parts thereof; and



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NOW THEREFORE, **DECLARANT**, as Owner of the Real Estate hereby declares that the Initial Tract is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth.

ARTICLE I.

DECLARATION OF RESTRICTIONS AND STATEMENT OF PROPERTY RIGHTS, MEMBERSHIP, FUNCTIONS OF THE ASSOCIATION, DEFINITIONS

Section 1.1. Declaration. The Owners of any Lot or Dwelling Unit which is subject to this Declaration, and all other persons: (i) by acceptance of a deed from **DECLARANT**, or any successor owner of any Lot or any Dwelling Unit, conveying title thereto, or the execution of a contract for the purchase thereof, whether from **DECLARANT** or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot or any Dwelling Unit, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each restriction and agreement contained in this Declaration or in the Plat Covenants, if any, for the Real Estate. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other persons acknowledge the rights and powers of **DECLARANT**, the Committee and of the Association with respect to these restrictions. Each Owner, for itself and its heirs, personal representatives, grantees, successors and assigns, covenants to the **DECLARANT**, the Committee, the Association, and the other Owners and subsequent Owners of each of the Lots and Dwelling Units subject to this Declaration, and agrees to keep, observe and comply with the terms and provisions of this Declaration.

Section 1.2. Property Rights. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Areas, subject to:

- A. this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association;
- B. the Plat Covenants, if any, recorded for the Subdivision in which the Lot or Dwelling Unit is located;
- C. the right of the **DECLARANT** to establish Limited Common Areas benefiting certain individual Lots or Dwelling Units within the Subdivision;
- D. the right of the Association to dedicate or transfer all or any part of the Common Areas pursuant to this Declaration, including the right of the **DECLARANT** to deed a portion of the Real Estate to a non-profit corporation or foundation for environmental preservation purposes;

E. easement rights in favor of the Association to extend storm sewers, sanitary sewers and other utilities across any of the Common Areas;

F. the right of the Association to limit the number of guests who may use any recreational facilities within the Common Areas, and to adopt rules regulating the use and enjoyment of the Common Areas;

G. the right of the Association to suspend the right of an Owner to use recreational facilities within the Common Areas (i) for any period during which any charge against such Owner's Lot or Dwelling Unit remains delinquent, and (ii) for a period in accordance with the rules and regulations promulgated by the Board of Directors of the Association for violations of the Declaration or Bylaws of the Association, after notice and a hearing pursuant to the Declaration or Bylaws, as applicable;

H. the right of the Association to impose reasonable and non-discriminatory membership requirements and charge reasonable and non-discriminatory admission or other fees for the use of any recreational facility situated upon any Common Areas.

Section 1.3. Functions of Association. The Association has been formed for the purpose of maintaining the value and appearance of the Subdivision; providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas; enactment, administration, and enforcement of rules and regulations for use of the Lots, easements and Common Areas of the Subdivision; enforcement of architectural design and environmental control standards and covenants, conditions and restrictions of the Subdivision for the mutual benefit of all Owners; to pay taxes assessed against and payable with respect to the Common Areas; to pay any other necessary expenses and costs in connection with the Association; and to perform such other functions as may be designated under this Declaration.

Section 1.4. Membership in Association. Each Owner of a Lot or Dwelling Unit shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as such ownership ceases. Membership shall terminate when such Owner ceases to be an Owner and will be transferred to the new Owner of such Lot or Dwelling Unit.

Section 1.5. Definitions. The definitions applicable to this Declaration are as follows:

A. "Annual Budget" means the annual budget of the Association approved by the Board or the Members of the Association, from time to time.

B. "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Estes Park Homeowners Association, Inc., as amended from time to time.

C. "Association" means the Estes Park Homeowners Association, Inc., its successors and assigns, a non-profit corporation, whose members shall be the Owners of Lots or Dwelling Units in the Subdivision.

D. "Bylaws" means the Bylaws of the Estes Park Homeowners Association, Inc., as amended from time to time.

E. "Board" or "Board of Directors" means the board of directors of the Estes Park Homeowners Association, Inc.

F. "Committee" means the Architectural Control Committee established for the purpose of regulating the external design, appearance, use and location of improvements in the Subdivision as provided in Article VI herein.

G. "Common Area" means the ground designated as "Block" or as "Common Area" upon the Final Plat of the Subdivision, which will ultimately be transferred in legal title to the Association, plus any streets which are not dedicated to any county or municipality as public streets. The Common Areas of this Subdivision shall be subject to easements for drainage and utilities, as further described and defined herein and in any Plat Covenants, as applicable. Common Areas limited in use to less than all of the Owners, if any, are labeled "Limited Common Area." All Common Areas not labeled Limited Common Area are "General Common Areas" available to all Owners in the Subdivision. Except where the context clearly indicates otherwise, the term Common Area shall be interpreted to include the Limited Common Areas and General Common Areas.

H. "Common Expenses" means expenses for administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of the Common Areas, and all sums lawfully assessed against the Members of the Association. Common Expenses shall include, but not be limited to:

1. All expenses of purchasing, installing and maintaining the entryways to the Subdivision, including identification signs, lighting, plantings and landscaping;

2. All expenses of maintaining and replacing a security gate or gates, if any, installed within the Subdivision, however, nothing in this Declaration shall require **DECLARANT** to install security gates or, if security gates are installed, to install any particular type or design of gate; however, maintenance of gates on private property shall not be a Common Expense;

3. All expenses of repair and maintenance of the private streets within the Subdivision;

4. All expenses of maintaining the medians in the public streets within the Subdivision;

5. Expenses of maintaining the lakes and ponds within the Subdivision, including any fountain or water circulation system within any lake or pond;

6. Expenses of maintaining any walking trails within the Subdivision;

7. Lease payments for Subdivision street and entryway lighting;

8. All expenses of purchasing, installing and maintaining any playground equipment or other recreational amenities owned by the Association within the Common Areas, however, nothing in this Declaration shall require **DECLARANT** to install any playground equipment or other recreational amenities or, if recreational amenities are installed, to install any particular type or design of recreational amenities;

9. All expenses of purchasing, installing and maintaining any common docks, if any, within the Common Areas, including pathways to such common docks, however, the expenses of such common docks within Limited Common Area shall be an expense only of the Lots or Dwelling Units benefited thereby;

10. Snow removal, if the Board of Directors determines that the Association should privately contract for snow removal;

11. Trash removal, if the Board of Directors determines that trash removal should be coordinated and paid for as a Common Expense;

12. Spraying or treatment for insects, if the Board of Directors determines that the Association should provide this service;

13. Costs of enforcing the rules and regulations governing the Subdivision, including this Declaration, any Plat Covenants, if any, and rules and regulations established by the Association; and

14. Reasonable allowances for shortfall of funds arising from late payment or non-payment of assessments, for general overruns in budget categories, and for miscellaneous expenses not budgeted under any specific category.

I. **"DECLARANT"** SHALL MEAN AND REFER TO **ARBOR HOMES** AND ANY SUCCESSORS AND THEIR ASSIGNS INCLUDING, BUT NOT LIMITED TO, ANY MORTGAGEE ACQUIRING TITLE, TO ANY PORTION OF THE REAL ESTATE PURSUANT TO THE EXERCISE OF RIGHTS UNDER, OR FORECLOSURE OF, A MORTGAGE EXECUTED BY **DECLARANT**.

J. "Director" shall mean a member of the Board of Directors of the Association.

K. "Dwelling Unit" shall refer to a single free-standing residential structure on an individual Lot or multiple Lots.

L. "Final Plat(s)" shall mean that certain Secondary Plat for Estes Park, Section 1, which has been recorded in the Office of the Recorder of Madison County, Indiana on February 5, 2021 as Instrument Number 2021R001992 and such other primary or secondary plats as may be recorded and subjected to this Declaration.

M. "Lot" means any plot of ground designated as such upon a Final Plat, and upon which one Dwelling Unit is constructed or is to be constructed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

N. "Managing Agent" means an individual or management company contracted with by **DECLARANT** or the Association, from time to time, to perform the obligations of the Association as provided in this Declaration.

O. "Member" means a Member of the Association.

P. "Mortgagee" means the holder of a first mortgage lien on a Lot or a Dwelling Unit.

Q. "Officer" means an officer of the Association.

R. "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, owning the fee simple title to a Lot or any Dwelling Unit.

S. "Plat Covenants" mean the plat covenants, if any, recorded for the Subdivision in any recorded primary or secondary plat for the Subdivision.

ARTICLE II.

OWNERSHIP AND USE OF THE COMMON AREAS

Section 2.1. Ownership. The Common Areas shall be owned by the Association and shall be held for the use and enjoyment of the Owners, which right shall pass with title to every Lot and Dwelling Unit, subject to the provisions of this Declaration. **DECLARANT** may retain title to the Common Area until its sale of the last Lot or Dwelling Unit in the Subdivision, however the responsibility and expense of maintenance shall pass to the Association upon the sale of the first Lot or Dwelling Unit in the Subdivision.

Section 2.2. Limited Common Areas. **DECLARANT** shall have the right to create Limited Common Areas for the use and benefit of individual Lots or Dwelling Units within the Subdivision, if **DECLARANT** determines, in its sole discretion, that individual amenities should be available only to certain Lots or Dwelling Units within the Subdivision. The expenses of establishing and maintaining the Limited Common Areas shall be solely the expense of the individual Lots or Dwelling Units benefitting from such Limited Common Areas.

Section 2.3. Easement for Utilities and Public and Quasi Public Vehicles. All public and quasi public vehicles including, but not limited to, police, fire and other emergency vehicles, public works, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the Common Areas and the designated easements within the Subdivision in the performance of their duties. All such easements for public and quasi public vehicles shall be subject to reasonable and non-discriminatory safety rules established by the Board.

An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewers, gas, telephone, electricity and cable internet and television within the Subdivision; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved on a Final Plat or as thereafter may be approved by the Board of Directors. Both the **DECLARANT** and the Association shall have the authority, including a power of attorney coupled with an interest, from each Owner within the Subdivision, to grant additional utility easements, which may traverse the Subdivision, except within the boundaries of any Lot or Dwelling Unit sold to an Owner. Utilities shall be required to correct any damage caused by their ingress, egress, inspection, installation, replacement, repairing and maintenance of utilities.

Section 2.4. Easement for Association. An easement is also granted to the Association, its officers, agents and employees and to any Managing Agent to enter in or to cross over the Common Areas and any easements established herein to perform its duties.

Section 2.5. Non-Liability of DECLARANT. **DECLARANT** shall not have any liability to an Owner or to any other person with respect to drainage on, over or under a Lot or erosion of a Lot. Such drainage and erosion control shall be the responsibility of the Owner of the Lot upon which a Dwelling Unit is constructed and of the builder of such Dwelling Unit. An Owner, by acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold **DECLARANT** free and harmless from and against any and all liability arising from, related to, or in connection with the erosion of or drainage on, over and under the described in such deed. **DECLARANT** shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by **DECLARANT**, and no duty of, or warranty by, **DECLARANT** shall be implied by or inferred from any term or provision of this Declaration.

ARTICLE III.

CLASSES OF MEMBERSHIP

Section 3.1. Voting Rights. The Association shall have the following classes of membership, with the following voting rights:

A. **Class A.** Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one person constitutes the Owner

of a particular Lot, all such persons shall be Members of the Association, but all of such persons shall have only one vote for such Lot, which vote shall be exercised as they among themselves determine and as amplified in the Bylaws if such determination is unavailable, but in no event shall more than one vote be cast with respect to any such Lot. Attendance at properly called Association meetings by one Member of a jointly titled Lot shall vest in such sole attending Member the entire one vote;

B. Class B. Class B Members shall be **DECLARANT** and all successors and assigns of **DECLARANT** or any person designated by **DECLARANT** as Class B Members in a written notice mailed or delivered to the registered agent of the Association. Each Class B Member shall be entitled to four (4) votes for each Lot designated on a Final Plat on all matters requiring a vote of the Members of the Association. THE CLASS B MEMBERSHIP SHALL CEASE AND TERMINATE UPON THE FIRST TO OCCUR OF:

1. THIRTY (30) DAYS AFTER THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS IS DELIVERED TO THE REGISTERED AGENT OF THE ASSOCIATION; OR

2. THIRTY (30) DAYS AFTER THE DATE WHEN ALL LOTS SUBJECT TO THIS DECLARATION, INCLUDING ANY LOTS IN ANY ADDITIONAL REAL ESTATE, ARE TITLED IN NAMES OTHER THAN THE DECLARANT OR AN ASSIGNEE OF DECLARANT.

THE DATE DETERMINED BY SECTION 3.1(B) ABOVE IS HEREINAFTER REFERRED TO AS THE "APPLICABLE DATE".

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B Member shall be entitled to one (1) Class A membership for each Lot owned.

The total possible votes for Class A Members prior to the Applicable Date considering only the Initial Tract is fifteen (15). The total votes for Class B Members prior to the Applicable Date considering only the Initial Tract is sixty (60).

ARTICLE IV.

BOARD OF DIRECTORS

Section 4.1. **Management.** The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors (each, a "Director") unless he is, or is deemed in accordance with this Declaration to be, an Owner, or a person appointed by **DECLARANT** as provided in Section 2 of this Article IV.

Section 4.2. **Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated in the Articles of Incorporation or the Bylaws (herein

referred to as the "Initial Board"), who have been or shall be appointed by **DECLARANT**. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws or the Act, in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by **DECLARANT**. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of judicial acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed **DECLARANT** as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as **DECLARANT** determines, on all matters as to which Members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of **DECLARANT** as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by **DECLARANT** to fill a vacancy, shall be deemed a special Member of the Association and an Owner solely for the purpose of qualifying to act as a Director and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Association).

Section 4.3. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

Section 4.4. Term of Office, Vacancy and Number of Directors After the Applicable Date.

(a) Term. Each Director shall hold office throughout the term of such Director's election as provided in the Bylaws or until a successor is elected and qualified.

(b) Number of Directors After Applicable Date. The number of Directors to serve on the Board after the Applicable Date shall be a minimum of three (3) with a maximum of nine (9).

(c) Vacancies. Subject to the provisions of Section 4.2 as to the Initial Board and the provisions of Section 4.5 as to removed Directors, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors. The Director so filling a vacancy shall serve until the next annual meeting of the Members or until his successor is elected and qualified. At the first annual meeting of the Members following any such vacancy, a Director shall be elected for the balance of the term of the Director in respect to whom there has otherwise been a vacancy. Any vacancy in a Director position that was appointed by **DECLARANT** occurring prior to the Applicable Date must be filled by a person designated by **DECLARANT**.

Section 4.5. Removal of Directors. A Director or Directors, except the members of the Initial Board or any Directors appointed by **DECLARANT**, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the expiration of the term of the removed Director or until his successor is duly elected and qualified. Notwithstanding anything herein to the contrary, prior to the Applicable Date, **DECLARANT** reserves the exclusive right, in its sole discretion, to remove any Director appointed by **DECLARANT**.

Section 4.6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection of Regular Assessments and/or Special Assessments and other income, and disbursement of the Common Expenses. After the Applicable Date, the Board shall employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);
- (b) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;
- (c) preparation of the proposed Annual Budget, a copy of which will be distributed, delivered and otherwise made available to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;
- (d) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be distributed, delivered and otherwise made available to each Owner simultaneously with the distribution and publication of the proposed Annual Budget for the current year;
- (e) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours by reasonable pre-arrangement;
- (f) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(g) paying any other necessary expenses and costs in connection with the Common Areas;

(h) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the Bylaws or the Act.

Section 4.7. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of its duties. These powers include, but are not limited to, the power:

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

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

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

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;

(e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

(f) to open and maintain a bank account or accounts in the name of the Association;

(g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in this Declaration) including but not limited to charging uniform fees for the use of Common Areas and to set and charge fees for late payment of assessments and fines for violations of rules and regulations as the Board, as allowed by Indiana law, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; any elimination, modification, or addition of Rules and Regulations shall require the written approval of the **DECLARANT** so long as **DECLARANT** owns any Lot, which approval shall not be unreasonably delayed, conditioned, or withheld.

(h) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, Dwelling Units, and Common Areas with facilities for utility and similar services, including but not limited to internet/television/communications facilities and service, provided that such easements are located within or are coextensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, shown upon, and identified as such on,

or provided for in, any Final Plat of the Real Estate, whether such plat is heretofore or hereafter recorded;

(i) shall have the right to convey title of Common Area to Owners to correct any overlaps or encroachments; and

(j) to borrow funds to perform its duties for the benefit of the Association and Owners and use the assessments as collateral, if collateral is required, to secure such financing.

Section 4.8. Limitation on Board Action. After the Applicable Date, the authority of the Board shall be in accordance with Indiana Code § 32-25.5-1 *et seq.*, and further provided that in the following cases, approval of majority of the cumulative votes of the Owners shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

(b) proposed contracts and proposed expenditures expressly set forth in the proposed Annual Budget as approved by the Owners at the annual meeting;

(c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners; and

(d) any action needed to be taken to remedy or prevent any event, occurrence, or situation which precludes or inhibits, whether intentional or not, **DECLARANT** or any builder therein from marketing, selling, constructing, or servicing homes in a reasonable and customary manner.

Section 4.9. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 4.10. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Any indemnification of Directors provided herein shall be in addition to any indemnification of Directors provided in the Articles or the Bylaws.

Section 4.11. Additional Indemnity of Directors. The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to

any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorney fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 4.12. Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 4.13. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, **DECLARANT** shall have, and **DECLARANT** hereby reserves to **DECLARANT**, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Association, until the Applicable Date. **DECLARANT** may, at its option, engage a Managing Agent affiliated with **DECLARANT** to perform such functions and, in either case, **DECLARANT** or such Managing Agent shall be entitled to reasonable compensation for its services so long as **DECLARANT** secures **DECLARANT's** written consent to a required written contract which will not be unreasonably delayed, conditioned, or withheld. After the Applicable Date, the Association shall be required to hire a professional management company, as a Managing Agent, to perform the administration duties of the Association, including accounting, billing, contracting and other similar duties.

ARTICLE V.

TAXES, MAINTENANCE OF COMMON AREAS, AND MAINTENANCE OF INDIVIDUAL LOTS

Section 5.1. Real Estate Taxes. Real estate taxes for individual Lots and for any improvement or Dwelling Unit thereon are to be separately assessed and taxed to each Lot, and paid by the title owner thereof. Any real estate taxes or other assessments which are separately assessed against the Common Areas shall be paid by the Association and treated as a Common Expense. Any real estate taxes or other assessments which are separately assessed against any Limited Common Area shall be paid by the Association and treated as a Common Expense for the Subdivision, Lots or Dwelling Units benefitted by such Limited Common Areas.

Section 5.2. Maintenance, Repairs and Replacements to the Common Areas. Maintenance, repairs, replacements and upkeep of the Common Areas shall be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses. Maintenance, repairs, replacements and upkeep of any Limited Common Areas shall be furnished by the Association (or, if a separate association is created for a portion of the Subdivision solely or primarily benefitted by the Limited Common Area, by such separate association), as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses for the Lots or Dwelling Units benefitted by such Limited Common Areas.

Section 5.3. Maintenance of Individual Lots and Units by the Owner. Each Owner shall, at their own expense, be responsible for maintaining their Dwelling Unit and Lot (including their driveway, sidewalk, and any deck or boat dock) in a good, clean and sanitary condition, with an exterior appearance up to the general standards of the Subdivision. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition, with an exterior appearance up to the general standards of the Subdivision, the Association may perform any work necessary and charge the Owner thereof for such cost, which shall be immediately due, secured by the Association's lien on the Owner's property, and otherwise collectable as an assessment pursuant to Section 7.9 herein.

All wood, cement board, composite, vinyl, or other siding, as approved by the Committee, and all fences, decks and boat docks must be constructed and installed by professionals approved by the Committee and must be regularly maintained by the Owner of such Lot. All colors of stain or paint must be within the range of colors approved by the Committee. All exterior surfaces must be primed and re-painted or re-stained at least every five (5) years, except that an Owner may apply to the Committee and receive up to three (3) two year extensions of this requirement, if the Owner can demonstrate to the Committee that the wood surface is still in good and attractive condition and repair. Any painted brick surface must be repainted at least every ten (10) years, except that an Owner may apply to the Committee and receive up to three (3) two year extensions of this requirement, if the Owner can demonstrate that the brick surfaces are still in good and attractive condition and repair. Any surface must be replaced if it cracks, fades or otherwise becomes unattractive or in disrepair. Any metal surface must be repaired or replaced if it becomes rusty or otherwise becomes unattractive or in

disrepair. The Committee may establish additional maintenance requirements which maintain the appearance of the Subdivision and the value of individual Lots, Dwelling Units, and Common Areas within the Subdivision.

Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Association, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work permitted herein.

Section 5.3.1. Maintenance of Individual Lots by the Association. The Association will be responsible for many aspects, but not all, of the maintenance of individual Lots. The Association will, to the extent applicable:

- (1) mow and fertilize the grass;
- (2) cut out or edge flower beds and apply annual pre-emergent and mulch to flower beds;
- (3) open, close and annual back flow testing of irrigation systems;
- (4) fertilize and trim trees and shrubs; and
- (5) conduct routine maintenance of irrigation systems

(a) In the event any Lot contains any fence, structure, or other improvement restricting the Association or its agents' access to any portion of a Lot, the Association shall not be responsible for maintenance of any such areas unless the Association has received written authorization from the Lot Owner in form satisfactory to the Association to access such areas to perform such maintenance.

(b) The Association will not be responsible for disease, infestation or other extraordinary loss of grass, trees, shrubs or soil that is exclusive to a Lot and is inconsistent with the maintenance of other Lots. These maintenance items will remain the responsibility of the individual Owners.

(c) Owners of Lots may install plantings, or otherwise alter or change the landscaping beds on their Lot without the prior written consent of the Committee, provided that the Association may assess an additional charge to an Owner whose Lot contains improvements which increase or impede the maintenance services provided by the Association, and the Association will not be responsible for maintaining such improvements.

Section 5.3.2. Snow Removal. The Association shall provide snow removal for individual driveways, sidewalks, and for front walks up to the front door of a Dwelling Unit, subject to the conditions that:

- (a) Special Assessments may be required to pay for unusual snow removal costs;

(b) snow removal shall be contracted for based upon specifications determined by the Association, including a minimum depth of snow of two inches (2") before removal is undertaken and a minimum width of passageways to be cleared; and

(c) snow removal is undertaken on a best efforts basis, and that neither the **DECLARANT** or the Association shall be responsible for any loss, injury or damage resulting from any delay or other inadequacy of snow removal.

Section 5.4. Damage to or Abuse of Common Areas and other Areas Maintained by the Association. If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, invitee or other occupant or visitor for whom the Owner is legally responsible, damage is caused to Common Areas or to portions of Lots or land maintained by **DECLARANT** or the Association, or if additional maintenance or repairs are required as a result of such acts, the Owner shall be required to pay for such damage or additional expense. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, secured by the Association's lien on the Owner's property, and otherwise collectable as an assessment pursuant to Section 7.9 herein.

Section 5.5. Security. The Association may, but shall not be obligated to maintain or support certain activities, including security gates, within the Subdivision designed to make the Subdivision safer than it otherwise might be. Neither the Association, the **DECLARANT**, nor any successor **DECLARANT** shall in any way be considered insurers or guarantors of security within the Subdivision, and neither the Association, the **DECLARANT**, nor any successor **DECLARANT** shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and occupants of any Lot or Dwelling Unit, and tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association and its Board of Directors, **DECLARANT**, or any successor **DECLARANT** and the Committee do not represent or warrant that any security system which is implemented or installed, or that any security system will be installed, by the **DECLARANT** or the Board will be effective in any or all situations. All Owners and occupants of any Lot or Dwelling Unit, and tenants, guests and invitees of any Owner hereby release the **DECLARANT** and the Board from any liability for security efforts or for failure to implement security in the Subdivision.

ARTICLE VI.

ARCHITECTURAL CONTROL

Section 6.1. Purposes. The Committee shall regulate the external design, appearance, use and location of improvements in the Subdivision in such manner as to preserve and enhance values and to achieve and maintain a harmonious relationship of architectural design, structural and landscaping improvements, and the natural vegetation, topography and environmental condition.

Section 6.2. Architectural Control Guidelines. The Board of Directors shall have the authority to establish, amend and revoke architectural control guidelines for the Subdivision and the Association, which shall be binding upon all Owners and all others who in any way use,

occupy or benefit from the Subdivision, or any part thereof. The architectural control guidelines shall not be inconsistent with any covenant in this Declaration or in the Plat Covenants, if any, and shall not be retroactively applied. There may be different architectural guidelines for different areas within the Subdivisions. The architectural control guidelines may be enforced by the Committee or by the Board of Directors.

Section 6.3. Architectural Design and Environmental Control. No structure or improvement, including but not limited to residences, accessory structures, landscaping, fences, walls, mounds, ponds, pools, satellite dishes, antenna, patios, basketball goals, trampolines, playsets, and other permanent structures for sports and recreation, shall be erected, placed or altered on any Lot in the Subdivision until the building plans, specifications and plot plan showing the location, materials, and appearance of the planned improvement, have been submitted to and approved by the Committee, regarding conformity and harmony of external design, topography, and finished ground elevations. The Committee shall not be obligated to approve any structure and may in its discretion create guidelines defining standards for approval. IN NO CIRCUMSTANCE SHALL APPROVAL OF A STRUCTURE OR OTHER IMPROVEMENT CREATE A RIGHT OR OBLIGATION TO APPROVE SIMILAR OR LIKE STRUCTURES OR IMPROVEMENTS IN THE FUTURE.

The destruction of trees and vegetation and any other such matter as may affect the environment and ecology of this Subdivision must also be approved in advance by the Committee. Excepted from the architectural approval requirement shall be items of landscape maintenance such as pruning of trees and removal of dead trees and limbs by any person or entity responsible for such maintenance.

The Committee may, but shall not be required to, retain architects, contractors, and other construction and development planning experts, to assist it in performing its duties hereunder and the Committee may impose an application fee for new construction applications to defer the costs of such experts.

Section 6.4. Composition of the Committee. The Committee will be composed of three (3) or more members. All members of the Committee, including replacement members, will be appointed by and will serve at the will of the **DECLARANT**, until the Applicable Date, unless such authority is earlier relinquished by **DECLARANT** in a written instrument in recordable form executed by **DECLARANT**. Within thirty days after the Applicable Date, the Board of Directors, shall appoint three (3) or more Lot Owners to serve on the Committee. Additionally, **DECLARANT** may relinquish authority of the Committee prior to the Applicable Date for the sole purpose of control and approval of improvements by Members while maintaining in its power as **DECLARANT** to control in its sole discretion the approval of all improvements and construction by **DECLARANT** or another Builder.

UNTIL SUCH TIME, THE **DECLARANT** SHALL HAVE COMPLETE AUTHORITY AND CONTROL OVER ARCHITECTURAL AND ENVIRONMENTAL DESIGN. During the, time that the **DECLARANT** has architectural control, a majority of the Committee members may designate a representative to evaluate and approve specific applications, so that the

Committee is not required to meet to review each application. Additionally, **DECLARANT** may relinquish authority of the Committee prior to the Applicable Date

Section 6.5. Written Approval. The Committee's approval or disapproval of any properly submitted application shall be in writing. In the event that written approval is not sent by the Committee within thirty (30) days from the date of submission of a completed application and any additional documentation requested by the Committee, and so long as the request is not prohibited by the architectural control guidelines then in effect, it shall be deemed that the Committee has approved the presented plan.

Section 6.6. Additional Approvals. Under no circumstances shall approval of the Committee be deemed to replace any required governmental approval or be deemed to constitute a representation or assurance by the Committee that the planned structure or improvement meets the requirements of any law, regulation or ordinance or meets any structural or safety requirement or standard.

Section 6.7. Alterations Without Approval. The Committee and/or the Board of Directors shall have the right and authority to require the removal of any improvement which has been made without receiving the approval of the Committee or which is substantially different in appearance, size, color, materials, location or otherwise, from what was approved by the Committee, including injunctive relief, and recovery of damages, reasonable attorney fees, and costs.

Section 6.8. Exercise of Discretion. **DECLARANT** intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions of this Article VI, and every Owner, by the purchase of a Lot, shall be conclusively presumed to have consented to the exercise of discretion by such members. In a 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 6.9. Miscellaneous Provisions.

A. The Committee's approval of, or failure to object to, a requested improvement for one Lot or Dwelling Unit shall not prevent it from objecting to a similar improvement for another Lot or Dwelling Unit in the Subdivision, if it deems, in its sole discretion, that the requested improvement would be detrimental to the Subdivision or the other Owners.

B. Neither the members of the Committee nor their designated representatives will be entitled to any compensation for services performed on behalf of the Committee.

C. After the **DECLARANT** has transferred authority for all architectural control to the Owners, a decision of the Committee may be appealed to the Board of

Directors by an applicant or by an adjoining Owner, which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

D. Members of the Committee may inspect work being performed to guarantee compliance with this Declaration and applicable regulations.

ARTICLE VII.

ASSESSMENTS

Section 7.1. Annual Accounting. A financial statement and annual report of the Association shall be prepared annually, after the close of each fiscal year and prior to the date of the next annual meeting, by a certified public accountant, CPA firm or professional management company then servicing the Association, which shall show all income and receipts and all expenses incurred and paid during the preceding fiscal year. This financial statement and annual report shall be in the form of a compilation, prepared under the direction of the Board and distributed to each Owner prior to the next annual meeting of the Owners. Any Owner or group of Owners shall, at their sole expense, be entitled to an audited accounting by the certified public accountant or CPA firm then servicing the Association, by paying the Association for the cost of the audit (as estimated by the accountant) in advance of the start of the audit.

Section 7.2. Proposed Annual Budget After the Applicable Date. The Board of Directors shall submit a proposed Annual Budget and Regular Assessment, estimating the total amount of the Common Expenses for the upcoming fiscal year, to each Owner in conjunction with the Association's annual meeting. Once an Annual Budget is adopted, it shall be the basis for the Regular Assessment for the upcoming fiscal year.

The Annual Budget may include an amount for a replacement reserve fund for capital expenditures, and replacement and repair of the Common Areas.

An Annual Budget and Regular Assessment shall be approved and adopted at each annual meeting of the Owners. If the Owners have not approved an Annual Budget, whether or not due to failure or delay of the Board of Directors, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon up to one hundred and twenty five percent (125%) of such last approved budget, as a temporary budget.

The Annual Budget, the Regular Assessments, and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis.

Section 7.3. Proposed Annual Budget Prior to the Applicable Date. Prior to the Applicable Date, the Board of Directors shall establish the amount and payment terms of Assessments based upon the same items of expense and considerations as provided in Section 7.2 herein. The Regular Assessments, including management fees and contributions towards the replacement reserve fund, shall not exceed One Thousand Three Hundred Twenty Dollars

(\$1,320.00) per year in the first year after this Declaration was originally recorded, with increases of not more than ten percent (10%) per year (cumulatively) thereafter.

Prior to the Applicable Date, the direct costs related to unplatted ground within the Subdivision will be paid by **DECLARANT** or other owner of the ground and will not be charged to the Association, and the future or projected Lots within unplatted ground will not be responsible for Regular or Special Assessments, except that **DECLARANT** may include ground within the budget which **DECLARANT** believes will be platted within the upcoming year.

DECLARANT shall not be obligated to pay any management fee or contribution towards the replacement reserve fund for the Association, or any assessment of any kind or nature, however **DECLARANT** will cover any shortfall in the Annual Budget for entryway maintenance, lawn care, landscaping, utilities, snow removal (if included in the budget), maintenance of security gates, lake maintenance, Common Area maintenance, and legal, accounting and management fees. Excluded from this guarantee are major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations, and purchases pursuant to Section 13.2 herein. This guarantee also does not prohibit **DECLARANT** from using Association reserves for such expenditures or from imposing a Special Assessment for such expenditures.

At the time that **DECLARANT** transfers authority to the Owners, **DECLARANT** shall have no liability for turning over any money to the Association, provided that all funds collected from Owners have been used for proper purposes as permitted by this Article.

Section 7.4. Regular Assessments. The Annual Budget shall contain a proposed Regular Assessment against each Lot or Dwelling Unit. The Regular Assessment shall be the same amount for each similar Lot, except that assessments may be adjusted for differences in Limited Common Areas benefitting such Lot, any differences in the services to which a Lot is entitled, and differences in size of Lots or amount of Lot and yard maintenance required. Following the adoption of the Annual Budget, each Owner shall be given written notice of the assessment (herein called the "Regular Assessment").

In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, following adoption of the final Annual Budget by the Owners which results in a different Regular Assessment, a revised statement shall be sent to each Owner indicating the additional amount owed or the credit for the next Regular Assessment.

The Regular Assessment against each Lot or Dwelling Unit shall be paid to the Board in advance, in four (4) quarterly installments on or before the first day of March, June, September and December, or as otherwise determined by the Board. The Board may elect to allow payment of assessments monthly, semi-annually or annually, in advance, and may (but shall not be required to) permit a discount for any Owner paying semi-annually or annually.

The Regular Assessment for the current fiscal year shall become a lien on each Lot and Dwelling Unit as of the first day of the Association's fiscal year, even though based upon a temporary budget. If an Owner has paid an assessment based upon a temporary budget, and conveys or transfers his Lot or Dwelling Unit before the Annual Budget and Regular Assessment

are determined, both the Owner and the successor Owner shall be jointly and severally liable for any balance owed for the Regular Assessment.

Section 7.5. Amenities Area. DECLARANT shall have the right, but no obligation, to construct an amenities area, including, for example, playground equipment. The initial cost of construction of such amenities area would be borne by DECLARANT, however the cost of operation, supervision, repair, on-going maintenance and replacement, as necessary, shall be a Common Expense of the Association.

Section 7.6. Special Assessments. Special Assessments may become necessary as a result of Common Expenses of an unusual or extraordinary nature or which were not otherwise anticipated, the failure of the Association to collect Assessments, or for other reasons.

The Board of Directors, with approval of a majority of the Owners at any annual or special meeting of the Owners, shall have the right, power and authority to impose Special Assessments, upon each Lot and Dwelling Unit in equal shares (herein called "Special Assessment"), which shall become a lien on each Lot and on each Dwelling Unit. For Special Assessments attributable to Limited Common Areas or providing services only to a portion of the Subdivision, the Special Assessment shall be approved by and imposed upon only such Owners.

Section 7.7. Initial Start-Up Fund. Upon the closing of the initial conveyance of each Lot or Dwelling Unit to an Owner other than a builder, the purchaser of such Lot or Dwelling Unit shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its start-up fund, an amount equal to Five Hundred Dollars (\$500.00), 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 or Dwelling Unit. The initial start-up fund shall be used by the Association for payment of, or reimbursement to DECLARANT for advances to the Association and initial and set-up expenses of the Association. The entire initial start-up fund will be paid to DECLARANT and DECLARANT shall not be required to account for its use thereof.

Section 7.8. Reserves. As a part of any Regular or Special Assessment, the Association may collect funds for a reserve for future expenses. These reserves may be collected for reasonably anticipated expenses plus a reasonable amount may be collected for unanticipated expenses. Reserve funds shall be accounted for separately by the Board, and may be used by the Board for any Common Expense for which it does not otherwise have funds and which is not designated for another specific purpose or expenditure.

Section 7.9. Failure of Owner to Pay Assessments. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. If any Owner shall fail, refuse or neglect to pay any Regular Assessment or Special Assessment when due, a late charge of ten percent (10%) of the unpaid assessment amount shall be added to the balance owed, plus interest of one and one-half percent (1-1/2%) per month beginning thirty (30) days after the date due, and the following additional provisions shall apply:

A. A lien for any and all unpaid Regular or Special Assessments on the Owner's Lot or Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law;

B. The Board may bring suit to recover a money judgment for any unpaid Regular or Special Assessment without foreclosing or waiving the lien securing the same;

C. The Association may recover costs of collection (including fees charged by the Managing Agent) and attorney fees in addition to any other amounts due;

D. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several;

E. The Owner and any adult occupant of the Lot or Dwelling Unit shall be jointly and severally liable for the payment;

F. The balance of installments for the current fiscal year shall become immediately due; and

G. The Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot or Dwelling Unit and to collect any rentals for the benefit of the Association to be applied to the unpaid Regular or Special Assessments.

Section 7.10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Dwelling Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Dwelling Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (prorated to the date of sale or transfer). No sale or transfer shall relieve such Lot or Dwelling Unit from liability for any assessments thereafter becoming due or from the lien thereof nor relieve the unit Owner from personal liability for any prior assessments.

ARTICLE VIII.

MORTGAGEES

Section 8.1. Notice to Association. Any Mortgagee who places a first mortgage lien upon an Owner's Lot or Dwelling Unit, or the Owner, may notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and its address shall be maintained by the Secretary. Any notice required to be given to the Mortgagee pursuant to the terms of this Declaration shall be deemed effectively given if mailed to such Mortgagee at such address. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary of the Association, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise. The Association may charge an additional assessment to any Owner whose Mortgagee requests notice, to cover the administrative costs of providing notices to the Mortgagee.

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

Section 8.2. Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed Mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot or a Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot or Dwelling Unit, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final Annual Budget, as referred to in Article VII hereof.

Section 8.3. Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and, (2) to pay any overdue premiums on hazard insurance for the Association or to secure new hazard insurance for the Association on the lapse of a policy. Any Mortgagee making such payment shall be immediately owed reimbursement by the Association.

Section 8.4. Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of the Subdivision or any Lot or Dwelling Unit upon which the Mortgagee has an interest, Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Association.

Section 8.5. Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer of a first mortgage shall, upon notification and request to the Association, receive the same notices as are required to be given to Mortgagees.

ARTICLE IX.

INSURANCE

Section 9.1. Casualty Insurance. The Association shall purchase a casualty insurance policy affording fire and extended coverage, insuring the Association's improvements within the Common Areas, Limited Common Areas and any easements within the Subdivision for the full replacement value of the improvements thereon. If the Board can obtain such coverage for reasonable amounts, they shall also obtain "all risk" coverage. Such policy shall (to the extent obtainable) contain provisions that the insurer waives its right to subrogation against the Association, the Board, its agents and employees, Owners, their respective agents and guests.

Each Owner shall otherwise be solely responsible for loss or damage to his Lot or Dwelling Unit, the contents of his Dwelling Unit, however caused, and his personal property stored elsewhere within the Subdivision. The Association shall have no liability to any Owner for loss or damage to a Lot or Dwelling Unit, the contents of any Dwelling Unit, or an Owner's personal property stored elsewhere within the Subdivision. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

Section 9.2. Public Liability Insurance. The Association shall also purchase a comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but not less than Two Million Dollars (\$2,000,000), arising out of a single occurrence, for bodily injury or death and for property damage. Such policy shall cover the Association, the Board of Directors, any committee or division of the Association or Board, any Managing Agent, and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Subdivision. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 9.3. Other Insurance. The Association shall obtain any other insurance required by law and may purchase such other insurance as the Board of Directors from time to time deems necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Association and Officers' and Directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association.

Section 9.4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. If available, the policies shall contain an endorsement that it shall not be terminated or substantially modified without at least ten (10) days prior written notice to Mortgagees and to the Association. Written notice of any insurance obtained by the Association and of any subsequent changes or termination thereof shall be promptly furnished by the Board to each Owner or Mortgagee whose

interest may be affected thereby. Except as otherwise provided in Article VIII, notice required under this Section 9.4 shall be sufficient if it is published as a part of a general newsletter and mailed or delivered within sixty (60) days.

All proceeds payable as a result of casualty losses sustained which are covered by insurance shall be paid to the Association, as the insurance trustee for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Board of Directors, in accordance with the provisions of this Declaration. Each Owner shall be deemed to have delegated to the Board of Directors his or her right to adjust with the insurance companies all losses under the policies purchased by the Association.

Section 9.5. Insurance by Owner. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

ARTICLE X.

LOSS TO COMMON AREAS

Section 10.1. Restoration of Common Area. In the event of damage to or destruction of any portions of the Common Areas, Limited Common Areas or any easements within the Subdivision due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction, and the balance shall be paid first from the reserve account and second, as a Common Expense.

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

In the event of destruction of at least half of the Common Areas, or at least half of the Subdivision, the Board of Directors may elect not to repair or reconstruct the Common Area and may apply the proceeds of insurance to other purposes consistent with this Declaration and with the Articles of Incorporation of the Association.

ARTICLE XI.

COVENANTS AND RESTRICTIONS

Section 11.1. Generally Applicable Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Areas shall be in addition to any other covenants or restrictions contained herein and in the Plat Covenants, if any, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future owners of the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall be entitled to damages and reasonable attorney fees resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation.

These covenants and restrictions are as follows:

A. All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.

B. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Areas which will result in a cancellation of insurance or increase in insurance to the Association or to any other Owner, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

C. No nuisance shall be permitted on any Lot, in any Dwelling Unit, or elsewhere in the Subdivision. The Board of Directors' determination as to what is a nuisance shall be conclusive.

D. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Committee.

E. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Areas, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and the Association shall not be liable for any injury or damage to persons or property, including the Common Areas, caused by any pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time, including, without limitation, a restriction on the number of pets, the prohibition of particular species or breeds, and the prohibition of pets in particular areas of the Subdivision. Any pet which, in the judgment of the Board, is causing or creating a

nuisance or unreasonable disturbance or noise, shall be permanently removed from the Subdivision within ten (10) days after written notice from the Board.

F. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials. No Owner or guest of an Owner, nor any builder, contractor or subcontractor, shall litter or dispose of trash improperly anywhere within the Subdivision.

G. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Subdivision, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of neighboring property. Without limiting the generality of the foregoing, excessive noise, this covenant shall include the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment, machines or vehicles, loud voices, excessive amounts of light or unpleasant odors.

H. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any street or any part of the Common Areas.

I. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except with the prior approval of the Board.

J. No water wells shall be drilled on any of the Lots, without prior approval of the Board, nor shall any septic tanks or other sewage disposal systems be installed on any of the Lots, without the approval of the Board and of the governing public health agency or other civil authority.

K. No person shall draw water or other materials from the lakes or other water retention ponds or add water, except for storm water drainage approved by **DECLARANT** or by the Committee, or other materials, whether by dumping or otherwise, to the lakes and other water retention ponds without the prior approval of the Board as to quality and quantity of materials.

L. No industry, trade, or other commercial or religious activity, educational or otherwise, whether designed for profit, altruism or otherwise, shall be conducted, practiced or permitted upon any Lot or elsewhere within the Subdivision, except within such rules and regulations as are established by the Board, and except that an Owner or occupant resident may conduct business activities within a Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming into the Subdivision who do not reside in the Subdivision or involve door-to-door solicitation of residents of the Subdivision; and (d) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as may be determined in the sole discretion of the Board,

M. No “for sale”, “for rent”, “garage sale” or other signs for any purpose shall be placed upon any Common Area or upon any Lot other than the Lot which is for sale, for rent or upon which the garage sale will be held, without the express consent of the Board. Any “for sale”, “for rent”, “garage sale” or other yard signs, whether placed on any Lot or with the Board’s consent placed in the Common Areas, shall be limited in size to what is commonly used in similar residential real estate communities, as determined by rules established by the Board. No more than one sign may be placed on any Lot, without the prior consent of the Board. No banners or signs shall be hung from any home or elsewhere on any Lot for more than one week, without the prior consent of the Board.

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

O. No Lot may be used for growing crops, except within the size and location guidelines established by the Board. The Board shall have the right and authority to prohibit the growing of crops entirely.

P. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Association shall have a lien against the cleared Lot for the expense thereof.

Q. The Common Areas shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

R. No Lot or Dwelling Unit may be used for commercial and/or residential hotel or transient uses, including without limitation, uses in which (i) the occupant is provided customary hotel services such as room service for food and beverage, maid service, laundry and linen service, or similar services, or (ii) the occupant uses the Lot or Dwelling Unit for any period of less than thirty (30) days and in exchange for payment. Further, no Lot or Dwelling Unit shall be listed or rented pursuant to any short-term rental services such as or similar to Airbnb, Vacation Rentals by Owner (VRBO) and Home Away.

S. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease, for a period of at least six (6) months, 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.

T. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from

the time of such destruction or damage, without approval from the Committee. Also, any improvement or addition to an existing structure shall be completed within three (3) months from the time of commencement, except with the approval of the Committee.

U. No recreational vehicle, motor home, truck which exceeds a ton in weight, trailer, boat or disabled vehicle may be parked or stored overnight, or longer on any driveway, street or lot in open public view. If repeated violations are not corrected, the Association retains the right to remove the vehicle as referred to above and bill the Owner for all applicable costs, including but not limited to: towing costs, towing fees, lien rights, attorney's fees, and interest and other collection rights and policies as provided for delinquent assessments under Section 7.9 of this Declaration. Street parking shall be subject to the local ordinances regarding the same. The Board of Directors however may establish rules prohibiting or regulating parking on the public streets within the Subdivision.

V. No sheds, doghouses, basketball goals, trampolines, sandboxes, above ground pools, or playsets shall be permitted.

W. There are strips and areas of ground shown titled as "Landscape Easements" on the Final Plat(s) which are hereby reserved for the use of Owners of Lots to the extent and limited for the purposes set forth in the Declaration and/or Final Plat(s) and for the use of **DECLARANT** and Association for the installation, maintenance, repair and replacement of certain improvements and landscaping within such Landscape Easements. Except as installed and maintained by Lot Owners, pursuant to the requirements of this Declaration, or by **DECLARANT** and the Association, no permanent or other structure (except walls, sidewalks and fences otherwise permitted hereby or by the **DECLARANT** and approved by the Board) shall be erected or maintained on said strips and areas by the Owner of any Lot subject to any such Landscape Easement, and the Owners of such Lots affected by any such Landscape Easement shall take and hold title to their Lots subject to the foregoing rights of the **DECLARANT** and the Association and shall not do or permit to be done anything which will obstruct or interfere with or remove any installations or landscaping made by the **DECLARANT** or Association in any such Landscape Easement. The foregoing grant of rights to the **DECLARANT** shall not impose an obligation on the **DECLARANT** to undertake such maintenance unless it elects to do so.

ARTICLE XII.

AMENDMENT OF DECLARATION

Section 12.1. General Amendments. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

A. Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

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

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

D. Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy five percent (75%) of the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner, if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

Section 12.2. Special Amendments. No amendment to this Declaration shall be adopted which changes: (1) the applicable share of an Owner's liability for the Common Expenses; or (2) the provisions of this Declaration with respect to casualty insurance or fidelity bonds to be maintained by the Association; or (3) the provisions of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster; or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each and any of such circumstances, the approval of all Owners and all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

Section 12.3. Amendments by DECLARANT Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the **DECLARANT** shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the **DECLARANT** to vote in favor of, make, or consent to any amendments described in this Section 12.3 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the **DECLARANT** to vote in favor of, make, execute and record any such amendments. The right of the **DECLARANT** to act pursuant to rights reserved or granted under this Section 12.3 shall

terminate at such time as the **DECLARANT** no longer holds or controls title to any part or portion of the Real Estate.

Section 12.4. Recording. Each amendment to the Declaration shall be executed by any two officers of the Association and shall be recorded in the office of the Recorder of Madison County, Indiana, and such amendment shall not become effective until so recorded.

Section 12.5. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

Section 12.6. Amendment Prior to the Applicable Date. Notwithstanding anything to the contrary contained herein, there shall be no amendment of this Declaration prior to the Applicable Date without the consent and approval of **DECLARANT**.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS

Section 13.1. Additional Real Estate. **DECLARANT** shall have the unilateral right, privilege, and option, from time-to-time at any time until the last Lot or Dwelling Unit has been conveyed to a final Owner of a Lot or Dwelling Unit, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of real property within or contiguous to the Real Estate not yet subjected to this Declaration (the "Additional Real Estate"). Such addition of Additional Real Estate shall be accomplished by filing in the Office of the Recorder of Madison County, Indiana, a Supplemental Declaration subjecting the Additional Real Estate to this Declaration.

DECLARANT shall have the unilateral right to transfer to any other person the right, privilege, and option to subject Additional Real Estate to this Declaration which is herein reserved to **DECLARANT**, provided that such transfer shall be memorialized in a written, recorded instrument executed by **DECLARANT**.

DECLARANT shall also have the unilateral right, privilege, and option, from time-to-time at any time until the Applicable Date to remove portions of the Real Estate which have not been conveyed to a final Owner of a Lot or Dwelling Unit from this Declaration by filing a Supplemental Declaration identifying the portions of the Real Estate to be removed. No portion of the Real Estate which has been platted or subjected to a Supplemental Declaration may be deleted from this Declaration and no portion of the Real Estate which is required for ingress or egress to and from the platted portions of the Subdivision may be removed without easements protecting the rights of Owners established in this Declaration.

Any such annexation or deletion shall be effective upon recording of the Supplemental Declaration unless otherwise provided therein.

Section 13.2. Limitation on Time to Build/Rebuild. Any party other than the **DECLARANT** who secures title to a Lot in the Subdivision shall be required to commence

construction of a Dwelling Unit upon the Lot within one year of the date of purchase and complete construction of the Dwelling Unit within one year from the date construction commences on said Lot. Extensions of these requirements may be granted in the sole discretion of the **DECLARANT**. If this condition is not met, **DECLARANT** or the Association shall have an option to purchase said Lot and improvements thereon for cash at an appraised price as hereinafter detailed exercisable by written notice from **DECLARANT** to the Owners of said Lot within sixty (60) days of expiration of the initial or extended period.

The appraised price shall be agreed upon within ten (10) days of the Lot Owner's receipt of the above written notice and if that is not possible the Lot Owner and the **DECLARANT** agree to submit the question of appraised value to appraisement and be bound by same.

Each party shall select an appraiser and the two appraisers shall select a third, and this third appraiser shall proceed to determine the value of the Lot and improvements. Both parties agree to name their respective appraiser within fifteen (15) days of the date of the aforesaid written notice. The appraisement shall be made within twenty-five (25) days of the date of the aforesaid written notice and the appraiser shall make his report in writing and furnish a copy thereof to each of the parties within five (5) days thereafter. The appraiser shall consider, in making his or her appraisal, the cost of completing construction according to the plans and the ordinary and usual costs of sale. Each party shall pay one-half of the cost of this appraisal and shall be conclusively bound by the appraisers' determination.

In the event of any loss to a Dwelling Unit or accessory structure within the Subdivision, unless the Owner obtains approval from the Committee for an extension of time or permission not to rebuild, the Owner shall begin to rebuild within six (6) months of the loss and shall complete the rebuilding within nine (9) months of the loss. Failure to rebuild within these time allowances, or any time allowances extended by the Committee, shall give either **DECLARANT** or the Association the option to purchase outlined in this Section 13.2.

Section 13.3. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of any Lot or Dwelling Unit shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that such provisions are accepted and agreed to by such Owner, tenant or occupant. All such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest in a Lot, Dwelling Unit, or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons or other legal entities who may occupy, use, enjoy or control a Lot, Dwelling Unit, or any part of the Real Estate shall be subject to the Declaration, the Articles of Incorporation, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

Section 13.4. Association's Right to Purchase Lots. The Association shall have the right to purchase Lots or Dwelling Units, either from **DECLARANT** or from any builder,

Owner, or foreclosure, sheriff's or tax sale. The Association may use reserve funds, regular budget funds, or may impose a Special Assessment in order to do so.

Section 13.5. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or of the Common Areas.

Section 13.6. Costs and Attorney's Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorney's fees incurred in connection with such default or failure.

Section 13.7. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses, whether by Regular Assessment or by Special Assessment, by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Lot.

Section 13.8. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations adopted by the Board, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles of Incorporation, or the rules and regulations, and each shall be enforced to the greatest extent permitted by law.

Section 13.9. Interpretation. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. The singular shall include and refer to the plural and vice versa as appropriate. The captions and titles of the various articles and sections of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

If a conflict exists between the covenants contained in the Plat Covenants, if any, and those of this Declaration, the covenants in this Declaration shall prevail. However, to the extent that there is not a direct conflict, both the provisions of the Plat Covenants, if any, and the provisions of this Declaration shall apply.

If a conflict exists between the Bylaws and this Declaration, the provisions of this Declaration shall control. If a conflict exists between the Articles of Incorporation and this Declaration, the provisions of this Declaration shall control.

[The Rest of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, **ARBOR HOMES** has caused this Declaration to be executed on the day and year first written above.

ARBOR HOMES

By: [Signature]
Name: John H. Hienburg
Title: Vice President Land Development

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared John Hienburg, Vice President Dev of ARBOR HOMES, who acknowledged the execution of the above and foregoing instrument for and on behalf of ARBOR HOMES, and, who having been duly sworn, stated that any representations contained therein are true.

WITNESS my hand and Notarial Seal this 28 day of September, 2021.

My Commission Expires:

[Signature]
Notary Public

1/17/23



Printed STANA K EDWARDS

Resident of Hamilton County

This instrument was prepared by Thomas F. Bedsole, Attorney at Law, 201 N. Illinois St., Suite 1900, Indianapolis, IN 46204.

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

EXHIBIT A

Legal Description of the Real Estate

Part of the Northwest Quarter of Section 28, Township 18 North, Range 6 East of the Second Principal Meridian, Green Township, Madison County, Indiana, based upon a survey prepared by Michael G. Judt, Professional Surveyor Number 21500017, HWC Engineering Job Number 2019-318, dated February 11, 2020, more particularly described as follows:

COMMENCING at the southwest corner of said Northwest Quarter, marked by a Harrison monument found per Hamilton County Surveyor reference ties; thence North 00 degrees 21 minutes 17 seconds West (grid bearing per Indiana State Plane – East Zone (NAD83, 2011, EPOCH 2010.0000) along the west line of said Northwest Quarter a distance of 420.00 feet to the POINT OF BEGINNING; thence continuing North 00 degrees 21 minutes 17 seconds West along said west line a distance of 1151.50 feet; thence North 89 degrees 33 minutes 43 seconds East along a fence line a distance of 1336.56 feet to a point in the east line of the West Half of said Northwest Quarter, being also the west line of Summerlake at Summerbrook, Section 7, the plat of which is recorded in Plat Book 31, pages 42-44 as Instrument Number 2004029294 in the Office of the Recorder of Madison County, Indiana; thence South 00 degrees 14 minutes 22 seconds East along said east line of said Half-Quarter Section a distance of 1575.22 feet to the southeast corner of said West Half of said Northwest Quarter; thence South 89 degrees 43 minutes 17 seconds West along the south line of said Northwest Quarter a distance of 1074.09 feet to a point being 259.30 feet east of the southwest corner of said Northwest Quarter; thence North 00 degrees 21 minutes 17 seconds West parallel with said west line of said Northwest Quarter a distance of 420.00 feet; thence South 89 degrees 43 minutes 17 seconds West parallel with said south line of said Northwest Quarter a distance of 259.30 feet to the POINT OF BEGINNING, containing 45.718 acres, more or less.

EXHIBIT B
Depiction of the Estes Park Subdivision

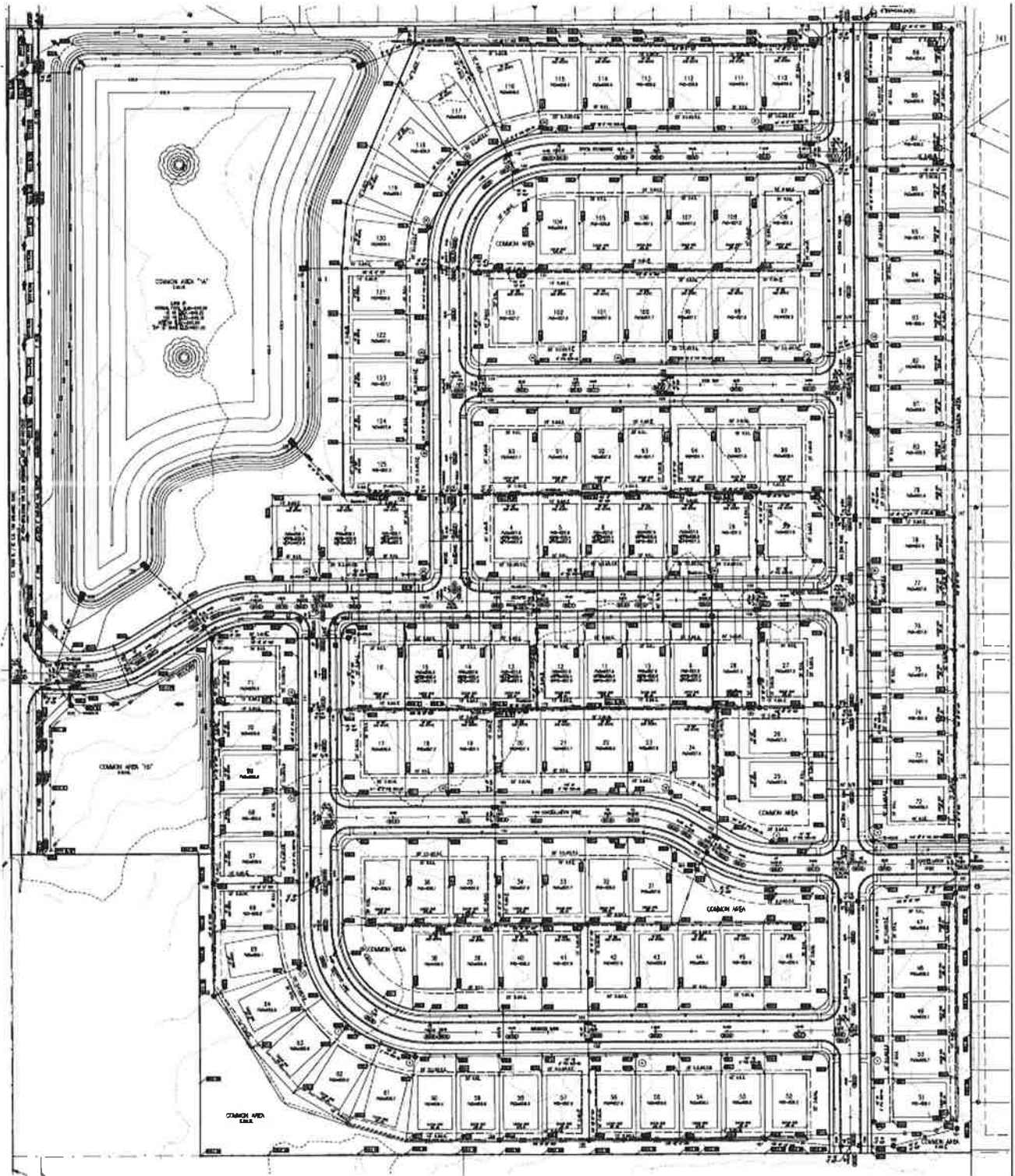


EXHIBIT C

Legal Description of the Estes Park, Section 1

Part of the Northwest Quarter of Section 28, Township 18 North, Range 6 East of the Second Principal Meridian, Green Township, Madison County, Indiana, more particularly described as follows:

COMMENCING at the southwest corner of said Northwest Quarter, marked by a Harrison monument found per County Surveyor reference ties; thence North 00 degrees 21 minutes 17 seconds West (grid bearing per Indiana State Plane – East Zone (NAD 83, 2011, EPOCH 2010.0000) along the west line of said Northwest Quarter a distance of 420.00 feet to the POINT OF BEGINNING; thence continuing North 00 degrees 21 minutes 17 seconds West along said west line a distance of 1155.92 feet to the southwest corner of Oakmont, Section One, per plat recorded in Instrument Number 2019R002446 in the Office of the Recorder of Madison County, Indiana; thence North 89 degrees 26 minutes 21 seconds East along the south line of said Oakmont, Section One a distance of 567.77 feet; thence South 00 degrees 26 minutes 17 seconds East a distance of 30.92 feet; thence South 23 degrees 14 minutes 36 seconds West a distance of 243.45 feet; thence South 04 degrees 03 minutes 47 seconds West a distance of 89.82 feet; thence South 00 degrees 21 minutes 16 seconds East a distance of 315.00 feet; thence North 89 degrees 38 minutes 44 seconds East a distance of 180.00 feet; thence North 00 degrees 21 minutes 16 seconds West a distance of 5.93 feet; thence North 89 degrees 38 minutes 44 seconds East a distance of 332.00 feet; thence South 00 degrees 21 minutes 16 seconds East a distance of 125.93 feet; thence North 89 degrees 38 minutes 44 seconds East a distance of 1.86 feet; thence South 00 degrees 21 minutes 16 seconds East a distance of 180.00 feet; thence South 89 degrees 38 minutes 44 seconds West a distance of 430.00 feet; thence North 00 degrees 21 minutes 16 seconds West a distance of 120.00 feet; thence South 89 degrees 38 minutes 44 seconds West a distance of 68.00 feet to the point of curvature of a curve to the left having a radius of 20.00 feet; thence southwesterly along said curve an arc distance of 31.42 feet, said curve being subtended by a chord bearing South 44 degrees 38 minutes 44 seconds West, a chord distance of 28.28 feet; thence South 89 degrees 38 minutes 44 seconds West a distance of 60.00 feet to a point on a non-tangent curve to the left having a radius of 20.00 feet; thence northwesterly along said curve an arc distance of 31.42 feet, said curve being subtended by a chord bearing North 45 degrees 21 minutes 16 seconds West, a chord distance of 28.28 feet; thence South 89 degrees 38 minutes 44 seconds West a distance of 37.54 feet to the point of curvature of a curve to the left having a radius of 120.00 feet; thence westerly along said curve on arc distance of 65.70 feet, said curve being subtended by a chord bearing South 73 degrees 57 minutes 43 seconds West, a chord distance of 64.88 feet; thence South 00 degrees 21 minutes 16 seconds East a distance of 302.22 feet; thence South 89 degrees 43 minutes 17 seconds West a distance of 279.29 feet to the POINT OF BEGINNING, containing 14.711 acres, more or less.

Depiction of the Estes Park, Section 1

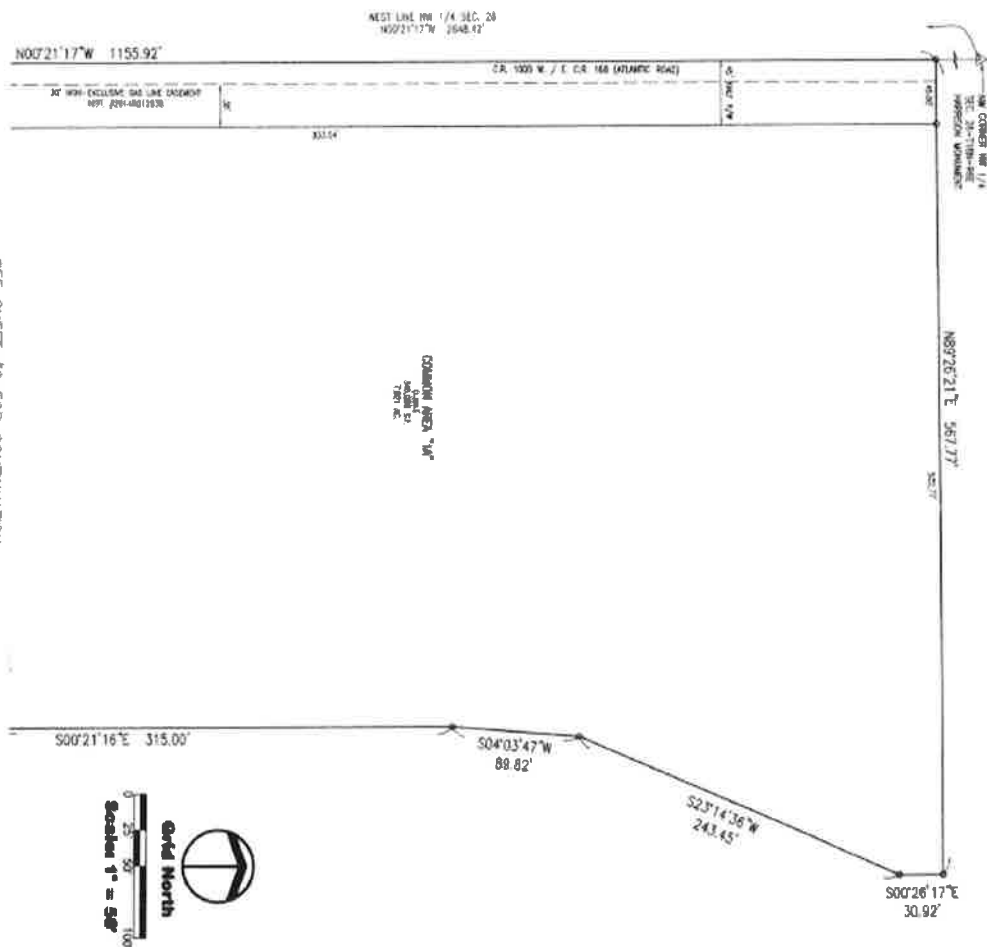


SECTION 1

(NW 1/4 SEC. 28, TOWNSHIP 18 NORTH, RANGE 6 EAST)

MICHAEL S. ABET
 HMC ENGINEERING
 175 N. FARMINGTON ST., SUITE 200
 WESTPORT, CT 06880-4024
 TEL: (203) 347-3663

CLASS	DRUGS, STAFF AND SUNDRIES
DATE	DRUGS AND STAFF
25	LOT NUMBER
B.L.	BRAND, STOCK USE
57	STOCK USE
AC	NOTE
N/W	PAID HERE - CASH
VAR	VARIOUS

SEE SHEET 1 FOR CURVE TABLE
SEE SHEET 4 FOR LAND DESCRIPTION

SEE SHEET #2 FOR CONTINUATION

SHEET 3 OF 4

[illegible]