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DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
THE PRESERVE, PHASE 1 SUBDIVISION  
RECORDED IN PLAT BOOK 109, PAGE 43  
LAKE COUNTY, INDIANA

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE PRESERVE, PHASE 1 SUBDIVISION (this "Declaration"), made this 6<sup>th</sup> day of October, 2016, by PRESERVE, S.J., LLC, an Indiana limited liability company (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of the real estate legally described herein and commonly known as The Preserve, Phase 1, a Subdivision in the Town of St. John, Lake County, Indiana, and

WHEREAS, the Declarant desires to develop The Preserve, Phase 1 as a single family residential subdivision under a general plan and scheme of development and improvement; and

WHEREAS, the Declarant desires to promote the orderly development of the Subdivision subjecting the real estate owned by the Declarant to the covenants, restrictions, conditions, reservations, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the Subdivision described herein and real estate comprising the development; and

NOW THEREFORE, the Declarant hereby declares that the single-family platted lots and Common Area (as hereinafter defined) located in Phase 1, as well as any subsequently Added Property (as hereinafter defined), shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, restrictions, conditions, reservations, easements, charges and liens, all of which are declared and agreed to be in furtherance of a plan for the improvement of the real estate and sale of the said Lots in the Subdivision, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision together as a whole and of each of the said lots situated in each of the developments described herein.

ARTICLE I

DEFINITIONS

The following terms or words, when used in this Declaration, shall have the meanings attributed below:

**Section 1.01.** **"Added Lots"** shall mean the Lots comprising the Added Property submitted to the provisions of this Declaration by a supplemental amendment in accordance with Article XVIII hereof.

**Section 1.02.** **"Added Property"** shall mean any portion of the Development Area submitted to the provisions of this Declaration in accordance with Article XVIII hereof.

**Section 1.03.** **"Assessments"** shall mean Assessments for Common Expenses provided for herein or by any Supplemental Amendment or by any other amendment hereof pursuant to Article X

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LAKE COUNTY AUDITOR

hereof which shall be used for the purposes of promoting the health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Lots against which the Assessments are levied, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below. The Assessments shall be levied equally against the Owners of the Lots unless otherwise specifically set forth herein.

**Section 1.04.** **“Association”** shall mean and refer to The Preserve of St. John Homeowners Association, Inc., an Indiana not-for-profit corporation, and its successors and assigns. The “Board of Directors” or “Board” shall be the elected body of the Association having its normal meaning under Indiana law. The Association shall be organized and governed in accordance with its Articles of Incorporation, By-Laws, and Rules and Regulations, attached hereto as Exhibits “B”, “C” and “D”, respectively.

**Section 1.05.** **“Common Area”** shall mean (i) Outlots C and D shown on the recorded plats and the improvements thereon, (ii) entrance area and signage easement(s) with associated landscaping features, identifying the Subdivision, if installed by Declarant or the Association, (iii) all real and personal property owned or controlled by the Association and available for the common benefit and/or use of Owners, and (v) all other improvements located on or within the Submitted Parcel owned or controlled by the Association and available for the common benefit and/or use of the Owners or for the maintenance or management of any part of the Development Area.

**Section 1.06.** **“Common Expenses”** shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

**Section 1.07.** **“Community-Wide Standard”** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Development Area. Such standard may be more specifically determined and set forth by the Architectural Review Committee, or by the Board of Directors.

**Section 1.08.** **“Declarant”** shall mean Preserve, S.J., LLC, an Indiana limited liability company, its successors and assigns, if any such successor or assignee acquires the undeveloped portion of the Subdivision from the Declarant for the purpose of development.

**Section 1.09.** **“Development Area”** shall mean the real estate described on Exhibit “A” hereto with all improvements thereon and any additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration shall be contiguous to the real estate then subject to this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted as residential Lots, (c) said plat of added real estate shall dedicate, or commit to dedicate, the Common Area of said plat of real estate, and (d) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association.

**Section 1.10.** **“Lot”** shall mean and refer to any lot in the Subdivision, together with any and all improvements thereon, as shown on the plat or plats thereof and designated thereon with a number for identification on which a Structure could be constructed, whether or not one has been constructed.

**Section 1.11.** “Maintenance” shall mean the exercise of reasonable care to maintain and upkeep Structures, water detention or retention easements, landscaping and/or other related improvements and fixtures in a condition comparable to their original condition.

**Section 1.12.** “Member” shall mean and refer to a Person entitled to Membership in the Association, as provided herein.

**Section 1.13.** “Mortgage” shall include a deed of trust, as well as a mortgage.

**Section 1.14.** “Mortgagee” shall include a beneficiary or holder of a deed or trust, as well as a mortgagee.

**Section 1.15.** “Mortgagor” shall include the trustor of a deed of trust, as well as a mortgagor.

**Section 1.16.** “Occupant” shall mean and refer to one or more Persons which may at any time be entitled to the use and possession of a Residential Unit, or any part thereof, by leave, license, contract or any other means, whether or not lawful, and shall include, without limitation, Owners, tenants, subtenants, and their guests and invitees.

**Section 1.17.** “Owner” shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot, including the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, the purchaser (rather than the fee owner) shall be considered the Owner.

**Section 1.18.** “Person” means a natural person, a corporation, a limited liability company, a partnership, trustee or other legal entity.

**Section 1.19.** “Residential Unit” shall mean one of the Lots and the single-family residence located thereon, which is a part of the Subdivision intended for independent ownership for use and occupancy as a single-family residence. The boundaries of Residential Units shall be the boundary lines of the Lots conveyed by Declarant to the Owners. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of Lake County, Indiana, or other local governmental entity.

**Section 1.20.** “Structure” shall mean any Residential Unit, building, pool, driveway, breezeway, accessory building or fixture that is permanent.

**Section 1.21.** “Subdivision” shall mean and refer to the real estate commonly known as The Preserve, a Subdivision in the Town of St. John, Lake County, Indiana, and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations, under the provisions of Article II hereof, and shall initially include the real estate described in Article II, Section 1.

**Section 1.22.** “Submitted Parcel” shall mean that portion of the Development Area which is described on Exhibit “A” attached hereto, as Exhibit “A” may be amended from time to time, together with all rights appurtenant thereto.

**Section 1.23.** “Supplemental Amendment” shall mean a supplement to this Declaration to submit Added Property to this Declaration in accordance with Article XVIII hereof. Such Supplemental Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and

obligations on the Added Property submitted by that Supplemental Amendment to the provisions of this Declaration.

**Section 1.24.** **"Turnover Date"** shall mean the date on which the right of Declarant to select and designate all of the members of the Board of Directors is terminated pursuant to Section 16.01 hereof.

## ARTICLE II

### **PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO, DELETIONS THEREFROM**

**Section 2.01.** **Legal Description.** The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Lake County, Indiana, and comprises all of the Lots, tracts and easements shown and/or platted within or upon the property legally described as the Submitted Parcel on Exhibit "A."

**Section 2.02.** **Subdivision Restrictions.** Declarant shall be entitled at any time and from time to time, to plat, replat or vacate existing plattage of all or any part of the real estate subjected to this Declaration, and to file Subdivision restrictions and/or amendments thereto with respect to any undeveloped portion, or portions of, or additions to the Subdivision.

**Section 2.03.** **Retractable Real Estate.** At the sole election of the Declarant, all of the real estate specifically described in Section 2.01 of this Article and subject to this Declaration may be withdrawn from submission hereunder at one time, or portions thereof at different times; provided, however that no real estate may be withdrawn which has been developed. All Owners and mortgagees are hereby deemed to consent to the vacation, and waive all right to remonstrate thereto, of any portion of the plat of the Subdivision not developed in which the Declarant has withdrawn from this Declaration.

**Section 2.04.** **Easements.** There are platted on the plat of the Subdivision certain easements which shall be and are hereby reserved for the installation, construction, maintenance, repair or replacement of any and all public utilities and drainage and their poles, ducts, wires, pipelines, lines, conduit, sewers, manholes or other related utility or drainage facility. No permanent Structure shall be erected or allowed to be maintained on any easement. Declarant also reserves for itself and its designees (including, without limitation, the Town of St. John and any utility) the non-exclusive right and power to grant, modify or expand such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of the Subdivision, and such easements may include easements upon, across, over and under the Lots for ingress, egress, installation, replacing, repairing and maintaining cable television systems, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity. This reserved right of easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Subdivision and/or Development Area. The Owner of any property to be burdened by any easement granted pursuant to this Section shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned. No Owner shall grant an easement, license or permit others to use any Lot, or portion thereof, in the Subdivision for access to any property or real estate not located within the Subdivision.

## ARTICLE III

### USE RESTRICTIONS

**Section 3.01. Residential Restrictions.** The Residential Units shall be used only for one family residential, personal recreational and related purposes as may be more particularly set forth in this Declaration and amendments thereto. The Association, acting through the Board of Directors, shall have standing and the power to enforce use restrictions contained in any such declaration as if such provision were a regulation of the Association.

**Section 3.02. Building Method.** All improvements constructed on Lots in the Subdivision shall be subject to this Declaration, including but not limited to the provisions of this Article and Article XI.

**Section 3.03. Residential Setback Requirements.** All dwellings or houses and above-grade Structures designed to be used in connection therewith shall be constructed or placed on Lots in the Subdivision so as to comply with the setback lines as established in the plat or plats of the various portions of the Subdivision and the local zoning codes and ordinances without variance or deviation unless approved by the applicable Board of Zoning Appeals and the Declarant.

**Section 3.04. Owner's Obligation to Maintain Lot.** Each Owner of an improved Lot which is subject to this Declaration shall at all times maintain the Lot and the improvements in such a manner as to prevent the Lot and improvements from becoming unsightly, and specifically such Owner shall: (a) mow and otherwise tend to the landscaping on the Lot as such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds six (6) inches or more in height; (b) cut down and remove dead trees; (c) remove all debris and rubbish and prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Lot; and (d) keep the exterior of the improvements in such a state of repair or maintenance as to avoid the improvements from becoming unsightly.

**Section 3.05. Leasing Residential Units.** All lease or rental agreements to allow any other Person to occupy the Residential Unit as an Occupant with or without rent independent of the Owner must be in writing and shall not be for an initial term of less than six (6) months nor for less than thirty (30) days for any term thereafter. Every Owner shall cause all occupants of such Owner's Residential Unit to comply with this Declaration, the By-Laws, the Rules and Regulations, and the Community-Wide Standard, and shall be responsible for all violations and losses to the Common Area caused by such occupants, notwithstanding the fact that such occupants of a Residential Unit are fully liable and may be sanctioned for any violation of this Declaration, the By-Laws, the Rules and Regulations, and the Community-Wide Standard.

**Section 3.06. Accessory Buildings.** In order to preserve the quality and aesthetic appearance of the existing geographical areas within the Subdivision, no Structures of any kind other than a single family residence may be erected or placed on any Lot; provided, however that one pool cabana may be built on each Estate Lot (as hereinafter defined). Each pool cabana must be approved by the Declarant and the Architectural Review Committee, and must be in accordance with Town of St. John ordinances and specifications. Pool cabanas may only be erected in the rear portion of an Estate Lot, and shall have exterior finishes that match the residence constructed on such Lot. No metal, fiberglass or "one-piece" vinyl pool cabanas shall be allowed.

**Section 3.07. No Temporary Building.** No structure of a temporary character, such as a trailer, tent, shack, garage, barn, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

**Section 3.08. Fences.** In order to preserve the quality and aesthetic appearance of the existing geographical areas within the Subdivision, any fence must be approved by the Declarant or Architectural Review Committee as to size, location, height and composition before it may be installed. Only "wrought iron" style fences will be allowed, and in any and all occasions chain link fences are prohibited from use anywhere in the Subdivision including dog runs and pet enclosures. All fences approved by the Declarant or Architectural Review Committee must also be approved and permitted by the Town of St. John.

**Section 3.09. Swimming Pools.** Only in-ground pools are allowed. No above-ground swimming pools shall be installed on any Lot. This includes "temporary" or inflatable pools.

**Section 3.10. Prohibition of Used Structures.** All Structures constructed or placed on any Lot in the Subdivision shall be constructed with substantially all new material, and no used Structures shall be relocated or placed on any Lot.

**Section 3.11. Exterior Post Lights.** Each Owner of a Lot shall cause an exterior post light to be installed and maintained, at such Owner's expense. Exterior post lights shall be illuminated from dusk to dawn, be located five (5) feet from the driveway and five (5) feet from the public sidewalk toward the middle of the Lot, and contain the illumination at a minimum of a 60-watt incandescent bulb.

**Section 3.12. Mailboxes.** The Declarant or Architectural Review Committee may select and designate a standard mailbox and post for the Subdivision, to be purchased and installed by the Lot Owner. No Owner may install or use a mailbox or mailbox post that is composed of plastic, rubber or wood.

**Section 3.13. Antennae.** No exposed radio or television antennae or solar panels shall be allowed on any Structure or on any Lot which are visible from the front of such Structure or Lot as described in Section 11.09(b)(10). Satellite dish antennae, the dish for which does not exceed twenty (20) inches in diameter, shall be permitted as described in Section 11.09(b)(10).

**Section 3.14. Plants, Plant Material.** The planting materials are to be located on a Lot and shall be reasonably maintained at the Owner's expense so as to present a healthy, neat and orderly appearance, free from refuse and debris. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of the Lot unless approved by the Declarant or Architectural Review Committee. All such landscaping shall be completed no later than six (6) months from the issuance of an occupancy permit by the Town of St. John.

**Section 3.15. Well and Septic Tanks.** No water wells shall be drilled on any Lot in the Subdivision without the approval of the Declarant or Architectural Review Committee. No septic tanks shall be installed on any Lot.

**Section 3.16. Boats and Motor Vehicles.** No recreational vehicles, motor homes, boats, boat trailers, recreational equipment and trailers, commercial vehicles over one-half ton, or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Lot for more than forty-eight (48) hours, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot, except within a fully enclosed building and totally isolated from public view.

**Section 3.17. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot. However, dogs, cats and other common household pets may be kept on Lots so long as they are not kept, bred, or maintained for commercial or hobby purposes. No animals shall be allowed to run loose at any time in the Subdivision, and they must be kept on a leash at all times. No dog shall be allowed to continuously bark, yelp, whine or howl by the Owner of any Lot in the Subdivision. No Owner may leave animals leashed and unattended outdoors for lengthy periods of time.

**Section 3.18. Rubbish, Trash, Garbage and Nuisance.** No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot and all trash shall be kept in sanitary containers and shall be stored inside the garage. No firewood, scrap wood, limbs, branches, compost, composters, paper, bottles, tires or similar substances, filth, rubbish trash or noxious substance shall be collected or remain on any Lot or any part thereof which causes damage, prejudice or discomfort to others or the public or creates a breeding ground for insects or vermin.

**Section 3.19. Clothes Drying Area.** No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the residence to be constructed on a Lot.

**Section 3.20. Signs.** Except as hereinafter provided for Declarant, no advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on any Lot subject to this Declaration. An Owner may place one professional sign on any Lot advertising the Lot for sale.

**Section 3.21. Destruction of Structure.** No Structure which has partially or totally been destroyed by fire, windstorm or other casualty shall be allowed to remain in such state for more than four (4) months from time of such destruction or damage.

**Section 3.22. Nuisances.** Nothing shall be done or maintained on any Lot which may be or become a nuisance to the Subdivision.

**Section 3.23. Immoral, Improper, Offensive and Unlawful Uses.** No immoral, improper, offensive or unlawful use shall be made of any Lot or Structure or any part thereof.

**Section 3.24. Uses Affecting Insurance Rates.** An Owner shall not permit or suffer anything to be done or kept in a Structure or on a Lot which will increase the insurance rates on any adjacent Structure or Lot.

## **ARTICLE IV**

### **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**Section 4.01. Membership and Meetings.** Every Owner shall be deemed to have a membership in the Association. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall there be more than one (1) vote for each Lot, subject to the provisions of Section 4.02.

The first annual meeting of the Association shall not be held until such time as the Declarant elects to terminate its sole control by delivery of written notice of such election to the Owners of record of

the Lots or at such earlier time or times as may be determined by Declarant. The next annual meeting shall be set by the Board of Directors so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board of Directors. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Members shall, at each annual meeting, elect the Board of Directors of the Association in accordance with the provisions of the By-Laws and transact such other business as may properly come before the meeting.

**Section 4.02. Voting.** The Association shall have two (2) classes of Members who shall collectively vote on all matters presented for Member vote, as follows:

- (a) Class A - Class A Members shall be all Owners of Lots with the exception of the Declarant; and
- (b) Class B - Class B Member shall be the Declarant.

The Class A Members shall be entitled on all issues to one (1) vote for each Lot in which they hold an interest required for membership by Section 4.01 hereof. When more than one (1) Person holds such interest in any Lot as the case may be, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

The Class B Member shall be entitled on all issues to five (5) votes for each Lot in which it holds title. The Class B membership for a given Lot shall cease and be automatically converted to Class A membership on the happening of either of the following events, whichever occurs first: (i) upon conveyance of the title to a Lot to an unrelated third party Owner, or (ii) whenever the Class B Member elects to do so.

The voting rights of Members shall be subject to the Declarant's rights pursuant to the provisions of Article XVI, Article XVII and Article XVIII hereof.

**Section 4.03. Number Terms and Selection of Board of Directors.** The initial Board of Directors shall consist of three (3) directors who may but need not be Owners or Members of the Association, and who shall serve those terms of office as established by the By-Laws. The initial Board of Directors shall consist of Frank E. Schilling, Dean Schilling and Jack Slager. After the Turnover Date, directors shall be elected as otherwise required by the Articles of Incorporation and By-Laws of the Association and must be Members of the Association.

Notwithstanding any other provision of this Declaration, the Articles of Incorporation, or the By-Laws, from and after the date of the recording of the Declaration until the Turnover Date, the Association shall be governed by the Board of Directors appointed from time to time by the Declarant. Such Board of Directors so appointed shall exclusively hold all rights and powers which a Board of Directors or the Association would have under this Declaration, the Articles of Incorporation, or the By-Laws, except as specifically limited herein. Such Board of Directors may appoint from time to time from among the Owners of Lots, one or more committees to advise and assist it in the performance of its functions. The rights and powers of such Board of Directors shall be limited as follows:

- (a) All Assessments shall be made in accordance with this Declaration.

(b) Such Board shall have no power to reallocate the voting power among the Members in any manner contrary to this Declaration.

(c) Such Board shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

Declarant shall have the right to waive, on behalf of the Association, the annual meeting and annual accounting provided for in this Declaration, so long as Declarant retains control of the Association. At the time of turnover of control by Declarant, a meeting of the Association will be called, at which time the rights and powers of the Declarant-appointed Board of Directors shall terminate and the Association shall thereafter be governed in accordance with the other provisions of this Declaration, the Articles of Incorporation and the By-Laws. Each Member shall be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which such Member is entitled to vote under this Declaration, or under the Articles of Incorporation or the By-Laws of the Association. The proxy hereby granted to Declarant shall be deemed to be coupled with an interest and irrevocable. Such proxy shall terminate as of the Turnover Date as set forth above.

## ARTICLE V

### MAINTENANCE

#### Section 5.01. Association's Responsibility.

A. Unless otherwise provided by an amendment to the By-Laws of the Association by a vote of two-thirds (2/3) of the votes of the Members (not two-thirds (2/3) of a quorum), the Association's responsibility for maintenance of the Submitted Parcel (except for services provided by the Town of St. John and/or Lake County, Indiana) shall be limited to the maintenance, repair, and replacement of the Common Area including but not limited to Outlots C and D and all the retention/detention ponds and any other outlots hereinafter deeded to the Association and located in recorded plats or the Added Property.

**Section 5.02. Owner's Responsibility.** Except as provided in Section 5.01 hereof, all maintenance, repair and replacement of the residence, Structures, sidewalk and driveway located on the Lot shall be sole responsibility of the Owner thereof who shall perform such maintenance in a manner consistent with the Community Wide Standard of the Project and the applicable covenants; provided, further, the Owner shall be responsible for the following:

- (a) mowing any grass and caring for any lawn or landscaping that is located on the Lot;
- (b) removing snow from the sidewalks on the Lot;
- (c) maintaining, repairing and replacing of the post light, the light bulbs within the post light and the dusk-to-dawn sensor on the post light;
- (d) maintaining, repairing and replacing the Owner's mailbox to Subdivision standards; and
- (e) providing the Association with the Owner's name, address, phone number and insurance company information and to keep the Association informed of any changes thereto.

**Section 5.03. Retention and Detention Ponds.** The Declarant has or will convey to the Association the Common Area which contain detention ponds located on the property, the legal descriptions of said ponds is as follows:

Outlot "D," The Preserve Subdivision, Phase 1, to the Town of St. John, as per plat thereof, recorded in Plat Book \_\_\_, Page \_\_\_, in the Office of the Recorder of Lake County, Indiana.

## ARTICLE VI

### **INSURANCE AND CASUALTY LOSSES**

**Section 6.01. Association Insurance.** The Association's Board may obtain a public liability policy covering the Common Area and the Association and its Members for all damages or injury caused by the negligence of the Association or any of its Members or agents acting for or on behalf of the Association. Any such public liability policy shall have at least a One Million Dollars (\$1,000,000.00) single person limit with respect to bodily injury and property damage, a One Million Dollars (\$1,000,000.00) limit per occurrence, a Two Million Dollars (\$2,000,000) limit aggregate, and a Two Hundred Fifty Thousand Dollars (\$250,000.00) minimum property damage limit.

Premiums for all insurance required to be carried by the Association shall be Common Expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added as Common Expenses attributable to insurance premiums.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance and employer's liability insurance, if and to the extent necessary, and errors and omissions insurance on directors, officers, employees and other Persons handling or responsible for Association matters. The amount of coverage shall be determined in the Board's best business judgment. Insurance may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

**Section 6.02. Owner's Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance for all insurable Structures and improvements on the Owner's Lot against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost and any repair or reconstruction of the Structures and improvements in the event of damage or destruction from any such hazard, including coverage for interior improvements constructed by Owners, and public liability insurance with the same limits and coverages required of the Association, to cover claims arising from occurrence on the Owner's Lot. This insurance shall at all times also name the Association as an additional insured, as well as the Declarant at all times prior to the Turnover Date. Each Owner shall promptly provide to the Association a certified copy of any and all applicable insurance policies upon request of the Association.

All such insurance coverage obtained by the Owner shall be governed by the provisions hereinafter set forth.

(a) All policies shall be written with a company licensed to do business in Indiana and holding a rating of A- or better in the Financial Category as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies shall be for the exclusive benefit of the Owners, subject to the additional insured requirements set forth above.

(c) Each Owner shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association, the Association's Board of Directors and the other Owners;

(ii) that no policy may be cancelled, invalidated or suspended on account of the Association or any one or more other Owners without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner or mortgagee;

(iii) that any "other insurance" clause in any policy exclude the Association's policies from consideration; and

(iv) that no policy may be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

Immediately after the damage or destruction by fire or other casualty to all or any part of any Lot covered by insurance written in the name of an Owner, such Owner shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair, reconstruction and replacement of the damaged or destroyed Lot. The Owner, with the use of such insurance proceeds, shall proceed immediately with the repair, reconstruction and replacement. As used in this paragraph, repair, reconstruction and replacement means repairing, restoring and replacing the Lot to substantially the same condition in which it existed prior to the fire or other casualty, but subject to the approval of the Architectural Review Committee. If such proceeds are not sufficient to defray the cost of repair, reconstruction and replacement, the Owner shall be personally responsible for funding the difference.

## ARTICLE VII

### NO PARTITION

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of a Lot or any part thereof, nor shall any Person acquiring any interest in any Lot or any part thereof seek any such judicial partition unless the Subdivision or relevant portion thereof has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring title to real property which may or may not be subject to this Declaration.

## ARTICLE VIII

### CONDEMNATION

Whenever all or any part of a Lot shall be taken (or conveyed by the Owner in lieu of and under threat of condemnation) by any authority having the power of condemnation or eminent domain, each Owner damaged by such condemnation shall be entitled to pursue all available remedies against the condemning authority. Should any property owned or maintained by the Association for common use be affected by the condemnation, the Association shall be entitled to pursue all available remedies against the condemning authority for the damages sustained to such property.

## ARTICLE IX

### RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION

**Section 9.01. Personal Property for Common Use.** The Association, through action of its Board of Directors, may acquire, own, lease, hold and dispose of tangible and intangible personal property.

**Section 9.02. Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the operations of the Association, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may be imposed in accordance with Article XII. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association shall permit the Town of St. John and/or Lake County, Indiana, to enforce ordinances on the Subdivision for the benefit of the Association and its Members.

**Section 9.03. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, the By-Laws, or the Rules and Regulations, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE X

### ASSESSMENTS

**Section 10.01. Creation of Assessments.** There are hereby created Assessments for Common Expenses authorized by the Board of Directors to be commenced at the time and in the manner as determined by the Board of Directors in its sole discretion. Notwithstanding anything to the contrary in this Declaration, no Assessments shall be levied on a Lot unless and until the Declarant sells such Lot to an unrelated third party Owner; provided, however, that if the Declarant repurchases a Lot from a third party Owner the Declarant, as the succeeding Owner, shall be responsible for timely payment of ongoing Assessments related to such Lot. Assessments shall be for expenses determined by the Board to be for the benefit of the Association. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these Assessments. All such Assessments, together with interest at the rate of twelve percent (12%) per annum, costs, and reasonable attorneys' fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each Assessment is made. If any Assessments are not paid within thirty (30) days of due date the same shall be deemed to be past due and subject to collection.

Each such Assessment together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed, except no first Mortgagee who obtains title to a Lot pursuant to the remedies provided in a Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Assessment for delinquents; unless the Board otherwise provides, the Assessments shall be paid in monthly installments.

The Association is specifically authorized to enter into subsidy contracts with Declarant or other entities for the payment of some portion of the Common Expenses.

**Section 10.02. Computation of Assessment.** It shall be the duty of the Board, at least thirty (30) days before the beginning of the budget year (the budget year shall be from January 1 through December 31) and ten (10) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated Common Expenses during the coming budget year. Subject to the provisions of Section 10.05 hereof, the budget may include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general expenses. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Lot for the following budget year to be delivered to each Owner at least seven (7) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board fails for any reason so to determine the budget for the succeeding budget year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding budget year.

Until the Board of Directors of the Association establishes an Assessment, at the time that each Lot is transferred from the Declarant to the new Owner, an initial Assessment of Four Hundred Dollars (\$400.00) shall be collected at the closing. In addition, each Owner shall be responsible to pay a yearly Assessment of Four Hundred Dollars (\$400.00) or as otherwise determined by the Board per calendar year (prorated for the first year of ownership) which amount shall be due on or before March 31 of said year.

**Section 10.03. Special Assessments.** In addition to the Assessments authorized in Section 10.01, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year, provided, however, that such Special Assessment for any purpose other than as a sanction against an Owner shall have the vote or written assent of greater than fifty percent (50%) of the votes of a quorum of the votes of Members entitled to vote at a meeting called for the purpose. The Association may also levy a Special Assessment as a sanction against any Member in accordance with the provisions of Article XII to reimburse the Association for costs incurred in bringing a Member and his or her Lot into compliance with the provisions of the Declaration, the Amendments thereto, the Articles of Incorporation, the By-Laws, and the Rules and Regulations, which Special Assessment may be levied upon the vote of the Board.

**Section 10.04. Lien for Assessments.** When a notice of the lien has been recorded, such Assessment or Special Assessment shall constitute a perfected lien on each Lot prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior

thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgage or deeds of trust) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Association, following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be assessed or levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

**Section 10.05. Capital Budget and Contributions.** In the event that the Association becomes the Owner of any capital asset, or is charged with the duty for the upkeep, maintenance and repair of a capital asset, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in any amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Assessment, as provided in Section 10.02 hereof. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

**Section 10.06. Date of Commencement of Annual Assessments.** The annual Assessments provided for herein shall commence as to each Lot on the first day of each year and shall be prorated to the date of conveyance of title to an Owner of said Owner's Lot from the Declarant or its assignee. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual Assessment shall be adjusted according to the number of months then remaining in that budget year. In no event shall the Declarant be responsible or liable for Assessments as to any Lot during the period prior to the conveyance of title of any such Lot to a third party Owner.

**Section 10.07. Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the Assessments, including interest, late charges subject to the limitations of Indiana law, and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any bona fide first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the Assessment or Special Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any Assessments or Special Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his successors and assigns shall not be liable for the share of the Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of the Assessments shall be deemed to be Common Expense collectible from all of the Lots, including such acquirer, his successors and assigns.

## ARTICLE XI

### ARCHITECTURAL REVIEW PROCESS

**Section 11.01. Objectives.** The Declarant and Association's objectives are to carry out the general purposes expressed in this Declaration; and to assure that any improvements or changes to a Lot will be of good and attractive design and will serve to preserve and enhance existing features of natural

beauty; and to assure that materials and workmanship of all improvements are of high quality and comparable to other improvements in the area.

**Section 11.02. The Committee.** To achieve the Declarant and Association's objectives, the Declarant shall create a three (3) member Architectural Review Committee with the power to administer this Declaration with regard to approving or disapproving those matters which are expressed herein to be within the jurisdiction of the Committee. The right to appoint and remove all members of the Committee or the alternative right to solely act as the Committee, shall vest solely in the Declarant, its successors and assigns, until such time as Declarant, in its sole option, at any time hereafter relinquishes to three (3) Lot Owners the power to appoint and remove one or members of the Committee. Matters requiring approval of the Committee shall be submitted to its Chairman, or as the Committee otherwise designates. It is the intention and purpose of this Declaration to ensure that all Structures shall be of a quality of design, workmanship and materials which are compatible and harmonious with the natural setting of the area and other Structures within the development to, among other things, meet the Community-Wide Standard.

**Section 11.03. Materials to be Submitted.** No improvements shall be constructed or placed on any Lot within the Subdivision until final plans and specifications showing the site plan and all existing or proposed improvements have been submitted to, and approved in writing by the Committee or Declarant, as the case may be. An Owner may choose to submit a preliminary concept to the Declarant or Committee, which concept, if approved, may be incorporated into final plans and specifications. If a preliminary concept is approved by the Declarant or the Committee, a final plan which is substantially similar to the preliminary concept plan shall be approved by the Declarant or the Committee as to those items submitted in the preliminary concept.

The Owner shall request architectural review in writing, and shall furnish one (1) complete copy of each of the following:

- (a) The Lot site plan or plat prepared by a registered surveyor showing elevations, setbacks, erosion control, drainage and the location and dimensions of all proposed residences, Structures and accessory buildings;
- (b) Drawings and specifications of all proposed exterior building surfaces, showing elevations and including the color, quality and type of exterior construction materials; and
- (c) Any additional information reasonably required for, or requested by the Committee which shall enable the Committee to determine the location, character, design, scale and appearance of the proposed improvements, including the square footage of any proposed improvement.

Changes in approved plans and specifications, or subsequent alterations, additions and changes to any existing improvements that affects dwelling size, placement or external appearance must be similarly submitted to and approved by the Declarant or the Committee. Plans and specifications for the repair or reconstruction of improvements after casualty or condemnation must be similarly submitted to and approved by the Declarant or the Committee.

**Section 11.04. Procedure.** The Committee, or Declarant, as the case may be, shall disapprove preliminary concepts or plans and specifications submitted to it in the event the same are not in accordance with this Declaration or if the concept or final plans and specifications submitted are incomplete or otherwise not in accordance with this Declaration, and shall specify the reason for such disapproval. The Committee or Declarant may also refuse to grant approval when the proposed

improvement, construction or modification, or any part thereof, would be contrary to the interests, welfare or rights of all or any part of the other Owners, all as determined in the sole discretion and opinion of the Committee or Declarant. The Declarant or the Committee shall review all elevations and consider any request which is submitted in accordance with the terms hereof on the basis of its conformity and harmony of external design and location in relation to surrounding Structures, relation to topography, grade and finish ground elevation of the Lot being improved to that of neighboring sites, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning and rooftop installations, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. In this regard, the Declarant or the Committee shall require a minimum level of architectural detail to help ensure home values for all Owners. The Declarant or the Committee shall, within thirty (30) days after the submission of such complete plans and specifications, approve or disapprove any such request in writing. In the event such plans and specifications are disapproved, the Declarant or the Committee shall specify the reasons therefor. If the Declarant or the Committee fails to so approve or disapprove such request within thirty (30) days after such plans and specifications are submitted, such request shall be deemed approved. The decision of the Declarant or the Committee shall be final, but the Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specifications. The Declarant or the Committee shall retain one (1) full set of each Owner's final plans for its file. The Declarant or the Committee shall have the rights, in its sole discretion, to approve the builder of the improvements on the Lot.

**Section 11.05. Completion of Improvements.** Upon obtaining the final plan approval of the Committee, the Owner shall, as soon as practicable, proceed diligently with the commencement and completion of all approved improvements. The Declarant recommends that all building materials including all framing materials, exterior windows and doors, interior doors and trim, cabinetry, and flooring be supplied from Schilling Brothers Lumber Company.

**Section 11.06. Variances.** The Architectural Control Committee, by the written consent of two-thirds of the members thereof, or by the decision of Declarant, as the case may be, is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that variances shall not materially injure any other Lot or improvements within other Lots, and shall otherwise be subject to all applicable laws, ordinances, rules and regulations of any governmental agency or political subdivision having jurisdiction over the Lot. No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other Person, Owner, Occupant or Lot.

**Section 11.07. Liability.** Neither the Committee, Declarant, nor any member, employee or agent thereof, shall be liable to any Owner, to anyone submitting plans for approval, or to any other Person, by reason of good faith exercise of judgment or mistake or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications or for any other action in connection with its or their duties hereunder. No Committee member shall receive any compensation for serving on the Architectural Control Committee.

The Committee, Association and Declarant, as well as the Declarant's employees, agents and representatives shall not be liable for any damage, loss or prejudice suffered or claimed by any Owner or contractor who submits such plans on account of: (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; and (e) the development of any

property within The Preserve additions to the Town of St. John, Lake County, Indiana. Any Person submitting plans to the Committee or Declarant shall hold the Committee, Association and Declarant harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorney fees incurred.

**Section 11.08. Remedies.** If any Owner believes that:

- (a) the disapproval of any plans and specifications;
- (b) the finding of any unfulfilled declaration obligations; or
- (c) the finding of a nuisance or violation under this Declaration is arbitrary and capricious,

then the Owner must, as its sole remedy, submit the matter to final and binding arbitration pursuant to the provisions of the Indiana Uniform Arbitration Act and the rules of the American Arbitration Association not in conflict with said Act. The fees for the arbitrator and a court reporter shall be divided equally between the Owner and the Committee and/or Association. All other costs shall be borne by the party incurring same. The parties to arbitration agree to cooperate in providing the relevant documents, witnesses, employees, agents and contractors requested by the other party. No arbitrator shall vary from, or change the provisions of this Declaration.

**Section 11.09. Minimum Criterion for Architectural Review.** No residence shall be permitted to be constructed upon a Lot, nor shall the Committee be required to approve any construction which shall fail to comply with the following minimum requirements:

- (a) Minimum Finished Floor Area.

(1) Minimum Finished Floor Area for Standard Lots (Lots 1-55, Phase 1). The minimum finished floor area (as hereinafter defined) of each residence on a Standard Lot (as hereinafter defined) shall be as follows:

(A) All one (1) story residences (as hereinafter defined) shall have a minimum finished floor area of two thousand (2,000) square feet.

(B) All one and one-half (1-1/2) story residences (as hereinafter defined) shall have a minimum finished floor area of two thousand two hundred (2,200) square feet.

(C) All two (2) story residences (as hereinafter defined) shall have a minimum finished floor area of two thousand four hundred (2,400) square feet.

(2) Minimum Finished Floor Area for Premium Lots (No Lots in Phase 1). The minimum finished floor area of each residence on a Premium Lot (as hereinafter defined) shall be as follows:

(A) All one (1) story residences shall have a minimum finished floor area of two thousand four hundred (2,400) square feet.

(B) All one and one-half (1-1/2) story residences shall have a minimum finished floor area of two thousand six hundred (2,600) square feet.

(C) All two (2) story residences shall have a minimum finished floor area of two thousand eight hundred (2,800) square feet.

(3) Minimum Finished Floor Area for Estate Lots (Lots 56 and 57, Phase 1). The minimum finished floor area of each residence on an Estate Lot (as hereinafter defined) shall be as follows:

(A) All one (1) story residences shall have a minimum finished floor area of two thousand eight hundred (2,800) square feet.

(B) All one and one-half (1-1/2) story residences shall have a minimum finished floor area of three thousand (3,000) square feet.

(C) All two (2) story residences shall have a minimum finished floor area of three thousand two hundred (3,200) square feet.

(b) Requirements Applicable to all Residence Construction.

(1) Garages. All overhead garage doors shall include windows and/or special architectural details, and all garages shall additionally meet or exceed the following minimum requirements:

(A) Each residence on a Standard Lot shall be required to have at least an attached two-car garage.

(B) Each residence on a Premium Lot shall be required to have at least an attached two-car side-load garage.

(C) Each residence on an Estate Lot shall be required to have at least an attached three-car side-load garage.

(2) Front exteriors. The front exterior of each residence shall meet or exceed the following minimum requirements, unless a variance is approved by the Architectural Review Committee:

(A) At least 25% of the front exterior (excluding dormers) of each residence on a Standard Lot shall be constructed of brick or stone.

(B) At least 50% of the front exterior (excluding dormers) of each residence on a Premium Lot shall be constructed of brick or stone.

(C) At least 75% of the front exterior (excluding dormers) of each residence on an Estate Lot shall be constructed of brick or stone.

(3) All driveways and service walks shall be of concrete or brick pavers. During construction, each Owner must install, at its expense, a five foot (5') public sidewalk of poured concrete along all street frontages and within the public right-of-way

as shown on the engineering plans. All public sidewalks will comply with the construction standards of the Town of St. John.

(4) There shall be no "blank" elevations in which windows and/or doors are absent (including garage walls). Specific scrutiny will be given to this area by the Architectural Review Committee.

(5) No panel sidings, such as plywood or Masonite, may be used unless a variance is approved by the Architectural Review Committee. Vinyl siding is prohibited and any siding shall be composed of cedar, composite or cement board unless a variance is approved by the Architectural Review Committee.

(6) Each residence shall be compatible with residences on neighboring Lots and the contour of the land. Corner Lots and front elevations on main thoroughfares will have additional scrutiny to architectural detail. No building previously constructed elsewhere shall be moved upon any Lot within the Subdivision. Pre-fabricated and modular homes are prohibited, as well as all bi-level, tri-level, and quad-level style homes and any homes constructed on a slab.

(7) All foundations shall be poured concrete. The use of steel framing studs is prohibited.

(8) All windows shall be wood clad and shall be manufactured by Andersen Window Company.

(9) Roof pitches are to be a minimum of 8/12 pitch unless a variance is approved by the Architectural Review Committee. All plumbing stacks and roof vents or ventilators shall be located in the rear of the residence roof.

(10) No exposed radio or TV antennas, satellite dish antennas over twenty (20) inches in diameter, or solar panels will be allowed on any Structure or Lot which is visible from the front of such Lot without approval of the Architectural Review Committee.

(11) Trees. Within ninety (90) days of the issuance of an occupancy permit, an Owner shall plant (and/or the Lot shall already have existing) at least the following number of trees in the following locations, each of which must be at least 2" caliper and a species not prohibited by the Town of St. John:

(A) On Standard Lots, Owners shall plant at least two (2) trees at least thirty (30) feet apart but no more than fifty (50) feet apart in the parkway between the curb and sidewalk. On corner lots, at least four (4) trees must be planted, with at least two (2) trees on each frontage. In addition, at least one (1) tree must be planted in the front yard and two (2) trees in the rear yard.

(B) On Premium Lots, Owners shall plant at least three (3) trees at least thirty (30) feet apart from each other in the parkway between the curb and sidewalk. On corner lots, at least six (6) trees must be planted, with at least three (3) trees on each frontage. In addition, at least two (2) trees must be planted in the front yard and two (2) trees in the rear yard.

(C) On Estate Lots, Owners shall plant at least four (4) trees at least thirty (30) feet apart from each other in the parkway between the curb and sidewalk. On corner lots, at least six (6) trees must be planted, with at least three (3) trees on each frontage. In addition, at least three (3) trees must be planted in the front yard and four (4) trees in the rear yard.

The Declarant or the Architectural Review Committee shall have the right to plant and charge Owners for tree cost and installation labor for non-compliance with lien rights for non-payment within thirty (30) days.

(12) All Lots shall be landscaped within forty-five (45) days of issuance of an occupancy permit, weather permitting. Landscaping for winter occupancy permits shall be completed by May 15. Landscaping shall include grass sodded front and side yards and grass sodded or seeded rear yard. An automatic irrigation system shall be required for the front, side and rear yards. A landscaped border of no less than 36" shall be maintained around the front elevation of the residence which shall consist of shrub/flower plantings. All landscaping must conform minimally to the Town of St. John landscape requirements.

(c) For purposes of this Section, the following definitions are applicable:

(1) A one (1) story residence is defined as a dwelling having all living area on one floor. The living area floor level is at or slightly above the exterior grade level.

(2) A one and one-half (1 1/2) story residence is defined as a dwelling having one and one-half floors of living area, both above grade, with the second floor of living area consisting of approximately one-half of the size of the ground level.

(3) A two (2) story residence is defined as a dwelling having two floors of living area, both above grade and both approximately the same size.

(4) Finished floor area is defined as finished living room, bedroom, kitchen, dining room, family room, closets, utility rooms, entry ways and bath usage, but shall specifically exclude attached garages, carports, open terraces, porches, basements and breezeways. To qualify as finished floor area the interior finish must be of a manner and quality of materials in keeping with the other rooms.

(5) Standard Lots are defined as those Lots in the Subdivision (including but not limited to Lots 1-55, Phase 1) which are generally 80' to 100' wide measured at the front building line.

(6) Premium Lots are defined as those Lots in the Subdivision (none of which are in Phase 1) which are generally 100' to 120' wide measured at the front building line.

(7) Estate Lots are defined as those Lots in the Subdivision (including but not limited to Lots 56 and 57, Phase 1) which are generally 120' or more wide measured at the front building line.

(d) Any construction undertaken on any Lot shall be continued with diligence toward the completion thereof and construction of any dwelling shall be completed within twelve (12) months from the date final approval of the plans by the Declarant or Architectural Review Committee, except that such period may be extended for a reasonable time by reason of Acts of God, labor disputes or other matters beyond the Owner's control.

(e) The location and elevation of each Structure, including driveways, on a Lot shall be subject to approval in writing by the Declarant or Architectural Review Committee, giving consideration to setback lines and easements on the recorded Subdivision, provided that each Owner shall be given reasonable opportunity to recommend the suggested construction site.

(f) Grading of Lots shall be in compliance with the Town of St. John requirements and the master grading plan prepared for this development plus grading shall be performed so as not to damage the adjacent Lot or Lots. No construction debris or concrete (including wash outs) is to be placed on any Lot other than the Lot being worked on at the time. All infrastructure are the responsibility of the Lot Owner and/or such Owner's builder until the Town of St. John accepts the Subdivision. Owners, whether legal or reserve, are to maintain their Lot(s) from debris, weeds and erosion.

#### **Section 11.10. Compliance with Soil Erosion Control Plan.**

(a) The Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-off Associated with construction activity. Each Owner shall undertake all erosion control measures contained therein as the plan applies to Aland distributing activity" initiated by Owner or Owner's builders, contractors and their subcontractors and to comply with the Declarant's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

(b) Owner shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Owner, Owner's employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

(c) The Owner and the Owner's contractors and subcontractors shall fully and completely comply with the soil erosion measures required by state and local law and this Declaration and, among other things, shall install, repair or replace slit fence, clean the street near the Owner's Lot, repair any damage to the asphalt street or curbs or do any other work required to comply with the Owner's obligations for soil erosion management. Upon the Owner or its contractors failure to timely comply with this Article, the Declarant may (but shall be under no obligation to) unilaterally take soil erosion management action with respect to a Lot, and the Owner shall be responsible and shall reimburse the Declarant within thirty (30) days for any such costs incurred. If not paid by the Owner or its contractors, this obligation shall be a lien on the Lot or Lots and the personal obligation of the Owner and shall become due and payable in all

respects, together with interest, reasonable attorney's fees, and cost of collection, as provided for herein and shall be subordinate to mortgage liens as provided for herein.

(d) The Owner shall also be responsible for erosion control maintenance of their Lot from the date of contract sale. In addition to the above, any Owner who does not comply with this Section shall be fined One Thousand Dollars (\$1,000.00) and may be charged an hourly rate by the Declarant to bring any Lot into conformance with this Section.

## ARTICLE XII

### ENFORCEMENT

Each Owner and Occupant of any Lot shall be governed by and shall comply with the terms of this Declaration and the Articles of Incorporation, By-Laws, and the Rules and Regulations of the Association adopted pursuant thereto as they may be amended from time to time. The Declarant shall have no personal or other liability, obligation or responsibility to enforce the Declaration or any part thereof. A default or violation by an Owner or Occupant of any Lot shall entitle the Association or, in lieu thereof, any other Owner or Owners to the following remedies (i.e., any other Owner or Owners may act apart from and in place of the Association and/or Board of Directors in administering and enforcing the provisions of this Article XII):

#### Section 12.01. Authority and Administrative Enforcement and Procedures.

(a) Authority. Lots shall be used only for those uses and purposes set out in this Declaration, and subject to the covenants and restrictions set forth herein, and in the By-Laws and Rules and Regulations of the Association. The Board of Directors shall have the power and authority to impose reasonable Special Assessments in accordance with Section 10.03 hereof, which shall constitute a lien upon the Owner's Lot and to suspend an Owner's right to vote, and to approve other appropriate sanctions in the event that it is determined in accordance with this Article XII that an Owner or Occupant has violated any provision of this Declaration, the By-Laws, or the Rules and Regulations as duly promulgated.

(b) Procedure. The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:

(i) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (A) the alleged violation; (B) the action required to abate the violation; and (C) a time period, not less than ten (10) days, during which the violation may be abated without further sanction.

(ii) Notice. If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the violator with written notice of a hearing. The notice shall contain: (A) the nature of the alleged violation; (B) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice; (C) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf; and (D) the proposed sanction to be imposed.

(iii) Hearing. The hearing shall be held in executive session by the Board of Directors pursuant to the notice affording the violator a reasonable opportunity to be

heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be heard, and the written result and statements of the sanction shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting.

(c) Sanctions. The Board of Directors' power and authority to impose sanctions shall be governed by the following provisions:

(i) All Special Assessments imposed upon a violator under this Article shall bear a reasonable relationship to the violation, considering all the circumstances which may include, but shall not be limited to, the following:

(A) The actual costs and expenses incurred by the Board of Directors and the individual directors in the exercise of the power and authority under this Article XII (including but not limited to reasonable attorneys fees and costs), and in otherwise attempting to remedy the violation.

(B) The amount of actual damage done to other Owners and Occupants and/or their Lots and any Structures thereon and/or to the Association arising out of the violation or the efforts to remedy the effects of same.

(C) The amount which would be reasonably required to compensate the Association for the disruption of and inconvenience to, the community, the Association or any Member thereof, or Occupant of a Lot.

(D) The extent to which the violation is or was flagrant, and the extent to which the violator cooperated or hindered in any effort to remedy the violation.

(ii) All Special Assessments amounts imposed hereunder as a sanction shall be deemed to be a part of the Assessment attributable to the Lot owned or occupied by the violator, and shall be assessed against said Lot and its Owner as a Special Assessment to be due and payable on the date that the next Assessment payment would be due, and any such Special Assessments which are not paid as of that date shall become a lien on such Lot, and shall be collected and enforced in the same manner as Assessments.

(iii) Nothing herein contained shall be construed as granting to the Board of Directors the power or authority to impose such a Special Assessment which is punitive in nature, or to suspend an Owner's right to vote, unless the Board of Directors finds, by specific special findings of fact in accordance with the foregoing procedure, that the violator's conduct was willful, malicious, oppressive and/or outrageous in nature. Said special findings of fact shall specifically set forth all facts and circumstances.

(iv) All other sanctions imposed shall be reasonably related to the violation found.

(v) The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

**Section 12.02. Legal Remedies.** In addition to the administrative remedies set forth in Section 12.01 hereof, the legal remedies may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any legal proceeding including reasonable attorneys' fees and costs.

**Section 12.03. No Waiver of Rights.** The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall not constitute a waiver of the right of the Association or Owner to enforce such right, provision, covenant or condition in the future.

**Section 12.04. No Election of Remedies.** All rights, remedies and privileges granted to the Association or any Owner pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges.

## **ARTICLE XIII**

### **AMENDMENT**

The Declaration and the Articles of Incorporation, By-Laws, and Rules and Regulations may be amended in the following manner:

**Section 13.01. Declaration.** Subject to the provisions of Article XIV, Article XV and Article XVIII, amendments to the Declaration shall be proposed and adopted as follows, provided, however, that no amendment may revoke, remove, or modify any right or privilege of the Declarant, without the Declarant's written consent.

(a) Notice. Notice of the subject matter of any proposed amendment shall be included in the Notice of any meeting of the Board of Directors or Owners at which any proposed amendment is to be considered.

(b) Resolution. Except as provided in subparagraph (d) hereof, a resolution to amend the Declaration may be adopted by the affirmative vote in person or by proxy of not less than three-fourths (3/4) of the votes of the Members (not three-fourths (3/4) of a quorum), at any regular or special meeting of the Members called and held in accordance with the By-Laws; provided, however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum).

(c) Recording. The amendment shall not be effective until a certified copy thereof is recorded in the Office of the Recorder of Lake County, Indiana. A copy of any such amendment shall also be sent to each Owner and his Mortgagee by registered or certified mail; provided, however, the mailing of such amendment shall not constitute a condition precedent to the effectiveness of such amendment.

(d) Amendments by Declarant. Notwithstanding any other provision of the Declaration, and in addition to any other right to amend elsewhere set forth herein, the Declarant

alone may amend this Declaration, or the Articles of Incorporation, By-Laws, and Rules and Regulations, without the consent of the Owners, the Association, the Board of Directors or any Mortgagee, or any other Person, to: (i) correct scrivener's errors, minor defects or omissions; (ii) comply with the requirements of Indiana law; (iii) comply with the requirements of any governmental agency, public authority, or title insurance company; (iv) comply with the 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, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by each sell, insure or guarantee first mortgages covering Lots; (v) induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots; or (vi) add portions of the Development Area to the Submitted Parcel by Supplemental Amendment pursuant to Article XVIII hereof. This subparagraph (d) shall constitute an irrevocable special power of attorney to Declarant on behalf of all Owners, Mortgagees, and any and all other Persons having an interest of any kind in the Subdivision, for so long as Declarant owns any portion of the Development Area and it shall become effective upon the recording of a copy thereof in the Office of the Recorder of Lake County, Indiana. A copy of such amendment shall also be sent to all Owners and their Mortgagees in the manner provided in subparagraph (c) hereof.

**Section 13.02. Articles of Incorporation.** The Articles of Incorporation of the Association shall be amended in the manner provided by such documents or by law.

## ARTICLE XIV

### GENERAL PROVISIONS

**Section 14.01. Term.** The covenants and restrictions of this Declaration shall run with and bind the Subdivision, and shall inure to the benefit of an shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by at least seventy-five percent (75%) of the then Owners, has been recorded within the year preceding and the beginning of each successive period often (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

**Section 14.02. Indemnification.** The Association shall indemnify every officer and director against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, or any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless each of the directors and each of the officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association, or arising out of their status as directors or officers, unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include an indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably

incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director or officer may be involved by virtue of such Person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such Person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board of Directors, there is not reasonable grounds for such Person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer. Any right to indemnification provided for herein shall be not exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 14.03. Perpetuities.** If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 14.04. Owner's Obligation to Maintain and Repair.** Each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's residence and Structures keeping the same in a condition comparable to the condition of such residence and Structures at the time of its initial construction.

**Section 14.05. Self-Help.** In addition to any other remedies provided for herein, the Declarant, the Association, or either of their duly authorized agents shall have the power to take such remedial action, activity or otherwise perform or take such action or obligation of a defaulting Owner to bring a Lot into compliance with this Declaration. The Declarant, the Association, or either of their duly authorized agents may enter upon a Lot or any portion of the Subdivision (including Common Area) to abate or remove, using such force as may be reasonably necessary, any construction, erection, thing or condition which violates this Declaration, the Architectural Guidelines, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Declarant or the Association, as the case may be, shall give the violating Lot Owner five (5) days' written notice of its intent to exercise remedial activity (self-help). All costs of the Declarant or the Association's remedial activity (self-help), together with interest at the rate of twelve percent (12%) per annum, including attorneys' fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein. No liability shall be assumed or imposed by the Declarant and/or the Association's exercise or failure to exercise such remedial activity. Notwithstanding the foregoing, in the event of an emergency or the blockage or material impairment of the easement rights granted hereunder, the Declarant or Association may immediately cure the same and be reimbursed by the defaulting Owner upon demand for the reasonable cost thereof together with interest as above described.

**Section 14.06. Notices.** Any notices required to be sent to any Owner under any provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the Person who appears as owner on the records of the Lake County Auditor's official property tax records at the time of such mailing.

**Section 14.07. Usage.** Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

**Section 14.08. Effective Date.** This Declaration or any amendment hereto shall become effective upon its recordation in the Office of the Recorder of Lake County, Indiana.

**Section 14.09. Severability of Invalid or Unenforceable Provisions.** If any term, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other terms, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations. If any part of this Declaration, or any term, covenant, provision, phrase or other element, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Indiana, then the said laws shall be deemed controlling and the validity of the remainder of the Declaration and the application of any other term, covenant, provision, phrase or other element in other circumstances shall not be affected thereby.

**Section 14.10. Captions.** Captions used in this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations.

**Section 14.11. Binding Effect.** This Declaration shall be binding upon and inure to the benefit of each Owner, its successor, grantees, assigns and the legal representatives thereof.

**Section 14.12. Recitals.** The recitals set forth at the beginning of this Declaration are hereby made a part of and incorporated into this Declaration by reference.

## ARTICLE XV

### MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Lots. To the extent applicable, necessary, or proper, the provisions of this Article XV apply to both this Declaration and to the By-Laws of the Association. Where indicated, these provisions apply only to "Eligible Holders," as hereinafter defined; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

**Section 15.01. Notices of Action.** An institutional holder, insurer, or guarantor of a first mortgage, who provides written request (such request to state the name and address of such holder, insurer or guarantor and the Lot address), to the Association (thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) any proposed termination of the Association;

(b) any condemnation loss or any casualty loss which affects a material portion of the Submitted Parcel or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(c) any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;

(d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(e) any proposed action which would require the consent of Eligible Holders, as required in Section 15.02 hereof.

**Section 15.02. Special FHLMC Provision.** So long as required by FHLMC, the following provisions apply in addition to and not in lieu of the foregoing two sections of this Article. Unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any Common Area which the Association owns, directly or indirectly (provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the property shall not be deemed a transfer);

(b) change the method of determining the obligations, Assessments, dues or other charges which may be levied against the Owner;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of any Structure;

(d) fail to maintain fire and extended coverage insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such.

The provisions of this Section 15.02 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required for any of the actions contained in this Section.

**Section 15.03. Mortgagee's Right to Cure.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for any Common Area, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

## ARTICLE XVI

### DECLARANT'S RIGHTS

**Section 16.01. Control by Declarant.** Notwithstanding any of the other provisions of this Declaration or the By-Laws to the contrary, and in addition to any other right or privilege given or granted or reserved to Declarant under this Declaration, the first and all subsequent Board of Directors shall consist solely of three (3) individuals designated by Declarant, which individuals may be need not be Owners or Members until the date on which the Declarant elects to terminate its sole control by the delivery of written notice of such election to the Owners (the "Turnover Date").

**Section 16.02. Absence of Warranty.** THE DECLARANT SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION IN CONNECTION WITH THE SUBDIVISION OR DEVELOPMENT AREA OR THIS DECLARATION EXCEPT AS SPECIFICALLY SET FORTH HEREIN; AND NO PERSON SHALL RELY UPON ANY WARRANTY OR REPRESENTATION NOT SPECIFICALLY SET FORTH THEREIN. ANY ESTIMATES OF ASSESSMENTS ARE BELIEVED TO BE ACCURATE, BUT NO WARRANTY OR GUARANTY IS MADE OR INTENDED, NOR MAY ONE BE RELIED UPON.

**Section 16.03. Assessment Exemption.** Declarant shall be exempt from any Assessment levied by the Association on any or all Lots owned by the Declarant and/or Declarant's designees which are unoccupied and offered by the Declarant for sale.

**Section 16.04. Right to Amend Declaration.** The Declarant shall have the right to amend the Declaration, and the Articles of Incorporation, By-Laws, and Rules and Regulations, in accordance with Article XIII hereof.

**Section 16.05. Transfer of Rights.** Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is a written instrument signed by the Declarant and duly recorded in the Office of the Recorder of Lake County, Indiana.

**Section 16.06. Declarant's Reserved Rights and Easements.** Notwithstanding any provisions herein to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel, for the benefit of Declarant, its successors, and assigns over, under, in, and/or on the real estate and any portion of the Development Area which becomes part of the Submitted Parcel, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, maintenance, repair, replacement, use and enjoyment and/or otherwise dealing with the Submitted Parcel and Development Area. The reserved easement shall constitute a burden on the title to all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel and specifically includes, but is not limited to:

(a) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel; and the right to tie into any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel with driveways, parking areas, streets, and drainage systems; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, and in connection therewith the right to store construction equipment and materials in appropriate areas in areas owned by Declarant without payment of any fee or charge whatsoever;

(b) the right to construct, install, replace, relocate, maintain, repair, use and enjoy model units, parking spaces, signs, lighting, construction offices, business offices and sales offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the

construction of improvements and sale of units in all or any portion of the Submitted Parcel and Development Area; and

(c) no rights, privileges, and easements granted or reserved herein shall be merged into the title of any Structure within the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit claim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel.

This Section 16.06 may not be amended without the advance written consent of Declarant.

## ARTICLE XVII

### LIMITATION ON DECLARANT'S LIABILITY

**Section 17.01. Limitation on Declarant's Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IT IS EXPRESSLY AGREED, AND EACH OWNER, BY ACCEPTING TITLE TO A LOT AND BECOMING AN OWNER ACKNOWLEDGES AND AGREES, THAT NEITHER DECLARANT (INCLUDING WITHOUT LIMITATION ANY ASSIGNEE OF THE INTEREST OF DECLARANT HEREUNDER) NOR ANY MEMBERS OR MANAGERS OF DECLARANT (OR ANY MEMBER, PARTNER, OFFICER, DIRECTOR OR SHAREHOLDER IN ANY SUCH ASSIGNEE) SHALL HAVE ANY LIABILITY, PERSONAL OR OTHERWISE, TO ANY OWNER OR OTHER PERSON, ARISING UNDER, IN CONNECTION WITH, OR RESULTING FROM (INCLUDING WITHOUT LIMITATION RESULTING FROM ACTION OR FAILURE TO ACT WITH RESPECT TO) THIS DECLARATION EXCEPT, IN THE CASE OF DECLARANT (OR ITS ASSIGNEE), TO THE EXTENT OF ITS INTEREST IN THE SUBDIVISION; AND, IN THE EVENT OF A JUDGMENT NO EXECUTION OR OTHER ACTION SHALL BE SOUGHT OR BROUGHT THEREON AGAINST ANY OTHER ASSETS, NOR BE A LIEN UPON SUCH OTHER ASSETS OF THE JUDGMENT DEBTOR.

## ARTICLE XVIII

### ANNEXATION OF ADDITIONAL PROPERTY

**Section 18.01. Annexation without Approval of Membership.** As the Owner thereof, or if not the Owner, with the Consent of the Owner thereof, Declarant shall have the unilateral right, privilege and option, from time to time at any time until the end of the twentieth (20th) year after the recording of this Declaration, to annex, submit and subject to the provisions of this Declaration, all or any part of the Development Area, or other property adjacent to or in the vicinity of the Development Area, by recording an amendment to this Declaration ("Supplemental Amendment") as hereinafter provided. For the purposes of this Article, any portion of the Development Area which is made subject to this Declaration by a Supplemental Amendment shall be referred to as "Added Property," and any Lot in the Added Property shall be referred to as "Added Lot." Added Property may be made subject to the Declaration at different times and there is no limitation on the order in which Added Property may be made subject to this Declaration. There is no limitation on the location of improvements which may be made on Added Property and no particular portion of the Development Area must be made subject to this Declaration.

**Section 18.02. Power to Amend.** In furtherance of the foregoing, Declarant reserves the right to record a Supplemental Amendment, at any time and from time to time prior to ten (10) years from the date of recording hereof, which amends those portions of this Declaration necessary to reflect the Added Property and the effect of the Added Lots.

**Section 18.03. Effect of Amendment.** Upon the recording of a Supplemental Amendment by Declarant which annexes and subjects Added Property to this Declaration, as provided in this Article, then:

(a) The restrictions, conditions, covenants, reservations, lien, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Property (including Added Lots) and inure to the benefit of and be the personal obligation of the Owners of Added Lots in the same manner, to the same extent, and with the same force and effect that this Declaration applies to the Submitted Parcel and Owners of Lots which were initially subjected to this Declaration.

(b) Every Person who is an Owner of an Added Lot shall be a Member of the Association on the same terms and subject to the same qualifications and limitations as those Members who are Owners of Lots.

(c) Each Owner of an Added Lot shall pay a percentage of the Common Assessments due as calculated at the time of the annexation by the Board of Directors in its sole discretion; provided, however, the Owner of an Added Lot shall not be required to pay any installment of a Special Assessment levied to cover a deficit under a prior year's budget.

(d) The amount of the lien for Assessments, charges or payments levied against an existing Lot prior to the recording of the Supplemental Amendment shall not be affected unless specifically notified by the Declarant at the time of the annexation.

Such Supplemental Amendment shall not require the vote of Members. Any such annexation shall be effective upon the filing for record of such Supplemental Amendment unless otherwise provided herein. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege and option to annex such Added Property which is herein reserved to Declarant, provided that such transferee or assignee shall be the Declarant of at least a portion of such Added Property and that such transfer is memorialized in a written, recorded instrument.

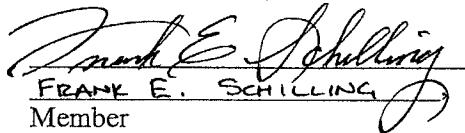
**Section 18.04. Amendment.** This Article XVIII shall not be amended without the written consent of Declarant, so long as the Declarant owns any portion of the Development Area.

**Section 18.05. Annexation of Common Areas.** If, at any time pursuant to this Article XVIII, property is annexed within, adjacent to or in the vicinity of the Development Area and said property includes common area, then it shall be the responsibility of the Association to maintain, repair and replace any part of the common area, including but not limited to any retention or detention ponds.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants and Restrictions to be executed on the date first written above.

PRESERVE, S.J., LLC

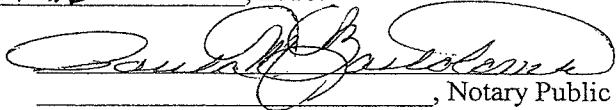
BY:

  
FRANK E. SCHILLING  
Member

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

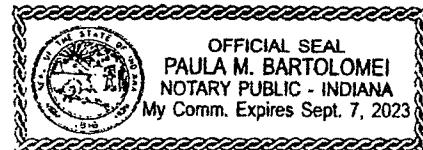
Before me, the undersigned, a Notary Public in and for said County and State, personally appeared FRANK E. SCHILLING, Member of PRESERVE, S.J., LLC and acknowledged the execution of the foregoing instrument for and on behalf of PRESERVE, S.J., LLC and as its free and voluntary act.

Signed and sealed this 6<sup>th</sup> day of OCTOBER, 2016.

  
, Notary Public

My Commission Expires: 9 - 7, 2023

County of Residence: LAKE



This instrument prepared by:

Mark R. Anderson, #21524-53  
Anderson & Anderson, P.C.  
Barrister Court  
9211 Broadway  
Merrillville, IN 46410  
(219) 769-1892

**EXHIBIT "A"**

**Development Area**

THE PRESERVE, Phase 1, a Subdivision in Lake County, Indiana, as per record plat thereof appearing in Plat Book 109, Page 43, in the Office of the Recorder of Lake County, Indiana.

**Submitted Parcel**

THE PRESERVE, Phase 1, a Subdivision in Lake County, Indiana, as per record plat thereof appearing in Plat Book 109, Page 43, in the Office of the Recorder of Lake County, Indiana.

**EXHIBIT "B"**

**ARTICLES OF INCORPORATION  
FOR  
THE PRESERVE OF ST. JOHN HOMEOWNERS ASSOCIATION, INC.**

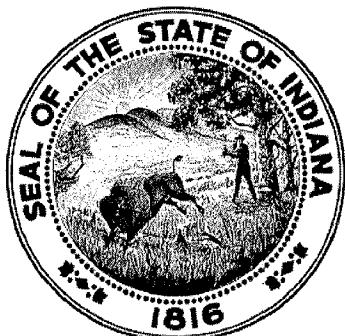
State of Indiana  
Office of the Secretary of State

Certificate of Incorporation  
of

**THE PRESERVE OF ST. JOHN HOMEOWNERS  
ASSOCIATION, INC.**

I, CONNIE LAWSON, Secretary of State, hereby certify that Articles of Incorporation of the above Domestic Nonprofit Corporation have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Nonprofit Corporation Act of 1991.

NOW, THEREFORE, with this document I certify that said transaction will become effective Thursday, October 06, 2016.



In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, October 06, 2016

A handwritten signature in cursive script that reads "Connie Lawson".

CONNIE LAWSON  
SECRETARY OF STATE

201610061161699 / 7411537

To ensure the certificate's validity, go to <https://bsd.sos.in.gov/PublicBusinessSearch>

APPROVED AND FILED  
CONNIE LAWSON  
INDIANA SECRETARY OF STATE  
10/06/2016 01:52 PM

## ARTICLES OF INCORPORATION

Formed pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991

**ARTICLE I - NAME AND PRINCIPAL OFFICE ADDRESS**

<b>BUSINESS ID</b>	201610061161699
<b>BUSINESS TYPE</b>	Domestic Nonprofit Corporation
<b>BUSINESS NAME</b>	The Preserve of St. John Homeowners Association, Inc.
<b>PRINCIPAL OFFICE ADDRESS</b>	8900 Wicker Avenue, Saint John, IN, 46373, USA

**ARTICLE II - REGISTERED OFFICE AND ADDRESS**

**NAME** John A. Slager  
**ADDRESS** 8900 Wicker Ave., Saint John, IN 46373, USA

### ARTICLE III - PERIOD OF DURATION AND EFFECTIVE DATE

PERIOD OF DURATION Perpetual  
EFFECTIVE DATE 10/06/2016

**ARTICLE IV - PRINCIPAL(S)**

No Principal on record

**ARTICLE V - INCORPORATOR(S)**

**NAME** John A. Slager  
**ADDRESS** 8900 Wicker Ave., Saint John, IN, 46373, USA

**ARTICLE VI - GENERAL INFORMATION**

#### STATEMENT OF PURPOSE

See attached

Public benefit corporation, which is organized for a public or charitable purpose

## WILL THE CORPORATION HAVE MEMBERS? Yes

#### DISTRIBUTION OF ASSETS

See attached

APPROVED AND FILED  
CONNIE LAWSON  
INDIANA SECRETARY OF STATE  
10/06/2016 01:52 PM

**SIGNATURE**

THE SIGNATOR(S) REPRESENTS THAT THE REGISTERED AGENT NAMED IN THE APPLICATION HAS CONSENTED TO THE APPOINTMENT OF REGISTERED AGENT.

THE UNDERSIGNED, DESIRING TO FORM A CORPORATION PURSUANT TO THE PROVISIONS OF THE INDIANA NONPROFIT CORPORATION ACT, EXECUTE THESE ARTICLES OF INCORPORATION.

IN WITNESS WHEREOF, THE UNDERSIGNED HEREBY VERIFIES, SUBJECT TO THE PENALTIES OF PERJURY, THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE, THIS DAY **October 6, 2016**

**SIGNATURE**      John A. Slager  
**TITLE**              Incorporator

Business ID : 201610061161699  
Filing No. : 7411537

APPROVED AND FILED  
CONNIE LAWSON  
INDIANA SECRETARY OF STATE  
10/06/2016 01:52 PM

**ARTICLES OF INCORPORATION OF NONPROFIT CORPORATION:  
THE PRESERVE OF ST. JOHN HOMEOWNERS ASSOCIATION, INC.**

**ATTACHMENT**

**ARTICLE II – PURPOSE**

Section 2.01 To form an organization for the owners and residents of The Preserve, a development located in Lake County, Indiana, to primarily provide for the acquisition, management, maintenance and care of association common area property and to promote the recreation, health, safety and welfare of said owners and residents.

Section 2.02 To own, maintain and administrate community properties and facilities, to administrate and enforce covenants and restrictions applying to property within the development known as The Preserve, located in St. John, Indiana, and to collect and distribute assessments and charges therefor.

Section 2.03 To engage in any and all activities related or incidental to the foregoing including but not limited to the powers to acquire, own, hold, use, sell, lease, mortgage or pledge any property, real or personal, tangible or intangible, legal or equitable; to loan or invest its own money upon such security or in such securities as may from time to time be determined by its Board of Directors.

Section 2.04 To do any and all things necessary, convenient or expedient, as permitted by the "Act" for the accomplishment of any of the purposes or the furtherance of any of the powers hereinabove set forth either alone or in association with other corporations, firms or individuals.

Section 2.05 No part of the net earnings of the corporation (other than by acquiring, constructing, or providing management, maintenance and care of association property and other than by a rebate of excess membership dues, fees or assessments) shall inure to the benefit of, or be distributable to its members, trustees, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these articles.

Section 2.06 Notwithstanding any other provision of these articles, the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 528 of the Internal Revenue Code of 1986 or corresponding provisions of any future provisions of the Internal Revenue Code.

APPROVED AND FILED  
CONNIE LAWSON  
INDIANA SECRETARY OF STATE  
10/06/2016 01:52 PM

**ARTICLES OF INCORPORATION OF NONPROFIT CORPORATION:  
THE PRESERVE OF ST. JOHN HOMEOWNERS ASSOCIATION, INC.**

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**ATTACHMENT**

**ARTICLE VII**  
**DISTRIBUTION OF ASSETS ON DISSOLUTION OR FINAL LIQUIDATION**

Upon this dissolution of this corporation, the Board of Directors shall, after paying or making provisions for the payment of all liabilities of the corporation, dispose of all the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for the charitable, educational, religious, civic or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) and/or Section 528 of the Internal Revenue Code of 1986 (or the corresponding provisions of any future IRC Law, as the Board of Directors shall determine).

This corporation does not afford pecuniary gain, incidental or otherwise to its members.

## **EXHIBIT "C"**

### **BY-LAWS FOR THE PRESERVE OF ST. JOHN HOMEOWNERS ASSOCIATION, INC.**

#### **ARTICLE I**

##### **NAME, MEMBERSHIP, APPLICABILITY AND DEFINITIONS**

**Section 1. Name.** The name of the Association shall be The Preserve of St. John Homeowner's Association, Inc. (hereinafter sometimes referred to as the "Association").

**Section 2. Principal Office.** The principal office of the Association in the State of Indiana shall be located at 8900 Wicker Ave., St. John, Indiana 46373. The Association may have such other officers, either within or without the State of Indiana, as the Board of Directors may determine or as the affairs of the Association may require.

**Section 3. Definitions.** The words used in these By-Laws shall have the same meaning as set forth in that Declaration of Covenants and Restrictions for The Preserve of St. John Homeowners Association, Inc. (said Declaration, as amended, renewed or extended from time to time is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

#### **ARTICLE II**

##### **ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES**

**Section 1. Membership.** The Association shall have two (2) classes of membership, as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

**Section 2. Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

**Section 3. Annual Meetings.** The first annual meeting shall not be held until such time as the rights of the Declarant to appoint all of the Board of Directors and to thereby control the Association shall have expired as provided in the Declaration, or at such earlier time or times as may be determined by the Declarant. The next annual meeting shall be set by the Board of Directors so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent annual meetings shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Members shall, at each annual meeting after the Turnover Date, elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

**Section 4. Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by at least ten percent (10%) of the total votes of the Association. The notice of any special meeting shall state the date, time and place of

such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 5. Notice of Meetings.** Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally or by first class mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid.

**Section 6. Waiver of Notice.** Waiver of notice of meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed a waiver by such member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted there at unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

**Section 7. Adjournment of Meetings.** If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that at least twenty-five percent (25%) of the total votes of the Association remains present in person or by proxy, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

**Section 8. Voting.** The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

**Section 9. Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot or upon receipt of notice by the Secretary of the Board of the death or judicially declared incompetence of a Member or upon the expiration of eleven (11) months from the date of the proxy.

**Section 10. Majority.** As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate, totaling more than fifty percent (50%) of the total number.

**Section 11. Quorum.** Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of forty percent (40%) of the votes of the Members shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

**Section 12. Conduct of Meetings.** The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transaction occurring there at.

**Section 13. Action without a Meeting.** Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Members.

## ARTICLE III

### **BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS**

#### **A. Composition and Selection.**

**Section 1. Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time.

**Section 2. Directors during Declarant Control.** The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant until such time as is specified in the Declaration, unless the Declarant shall earlier surrender this right to select Directors. The Directors selected by the Declarant need not be Owners or residents in the Subdivision. After the period of Declarant appointment, all Directors must be Members of the Association.

**Section 3. Number of Directors.** The Board of Directors shall consist of three (3) persons.

**Section 4. Nomination of Directors.** Except with respect to Directors selected by the Declarant, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of vacancies or terms to be filled. Nominations shall be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members or solicit votes.

**Section 5. Election and Term of Office.** Notwithstanding any other provision contained herein:

At the first annual meeting of the membership after the termination of the Declarant's right to select all of the Board of Directors and at each annual meeting of the membership thereafter, Directors shall be elected. All Directors shall be elected at-large. All Members of the Association shall vote upon the election of Directors. The term of each Director's service shall be for a period of three (3) years and extending thereafter until his successor is duly elected and qualified or until he is removed, provided, however, that the terms of the members to the initial Board of Directors shall be for periods of three (3) years, two (2) years, and one (1) year, such that there shall be only one vacancy each year on the Board of Directors occasioned by the expiration of the director's term.

**Section 6. Removal of Directors and Vacancies.** Unless the entire Board is removed from office by the vote of the Association Members, and individual Director shall not be removed prior to the expiration of his or her term of office, except by the votes of a majority of the votes of the Members. In the event of death or resignation of a Director, his or her successor shall be selected by a majority of the remaining members of the Board and shall serve for the unexpired term of the predecessor.

**Section 7. Voting Procedure for Directors.** The first election of the Board shall be conducted at the first meeting of the Association after the Turnover Date. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

**B. Meetings.**

**Section 8. Organization Meetings.** The first meeting of the members of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

**Section 9. Regular Meetings.** Regular meetings of the Board of Directors may be held as such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

**Section 10. Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by electronic mail. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone or electronic mail shall be delivered, telephoned or emailed at least seventy-two (72) hours before the time set for the meeting.

**Section 11. Waiver of Notice.** The transactions of any meetings of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval

of minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**Section 12. Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 13. Compensation.** No Director shall receive any compensation from the Association for acting as such unless approved by a majority vote of the total vote of the Association at a regular or special meeting of the Association.

**Section 14. Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

**Section 15. Open Meeting.** All meetings of the Board of Directors shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

**Section 16. Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**Section 17. Action without a Formal Meeting.** Any action to be taken at a meeting of the Directors of any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

### **C. Powers and Duties.**

**Section 18. Powers.** The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of all Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles of Incorporation or these By-Laws directed to be done and exercised exclusively by the Members.

The Board of Directors shall delegate to one of its Members the authority to act on behalf of the Board of Directors on all matters related to the duties of the managing Agent or Manager, if any, which might arise between meetings of the Board of Directors. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) making Assessments to defray the Common Expenses, establishing the means and methods of collecting such Assessments, and establishing the period of the installment payments of the annual Assessment, provided otherwise determined by the Board of Directors, the annual Assessment against the proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;
- (c) providing for the operation, care, upkeep, and maintenance of any Common Area;
- (d) designating, hiring, and dismissing the personnel or independent contractors necessary for the maintenance, operation, repair and replacement by the Association of its property and any Common Area, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel or independent contractors in the performance of their duties;
- (e) collecting the Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of any common area in accordance with the other provisions of the Declaration and these By-Laws after damage or destruction by fire or other casualty;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;
- (l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and Mortgagees, their duly authorized agents, accountants, or attorneys during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners.

(m) make available to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage or any Lot, current copies of the Declaration, the Articles of Incorporation, the By-Laws, Rules and Regulations, and all other books, records, and financial statements of the Association; and

(n) permit utility supplies to use portions of the Development Area reasonably necessary to the ongoing development or operation of the Lots.

**Section 19. Management Agent.**

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws, other than the power set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 18 of this Article. The Declarant, or affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days' or less written notice.

**Section 20. Accounts and Reports.** The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) cash basis accounting shall be employed;

(b) accounting and controls should conform with established AICPA guidelines and principles, which require, without limitation, (i) a segregation of accounting duties, (ii) disbursements by check requiring two (2) signatures, and (iii) cash disbursements limited to amounts of Twenty-five Dollars (\$25.00) and under;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the Managing Agent may have in any firm providing goods and services to the Association shall be disclosed promptly to the Board of Directors; and

(f) commencing at the end of the month in which the first Residential Unit is sold and closed, quarterly financial reports shall be prepared for the Association containing:

(i) an Income and Expense Statement reflecting all income and expense activity for the preceding three (3) months on a cash basis;

(ii) a Balance Sheet as of the last day of the Association's fiscal year and an Operating Statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year;

(iii) a Delinquency Report listing all Owners who have been delinquent during the preceding three (3) month period in paying the monthly installments of Assessments and who remain delinquent at the time of the report and describing the status of any action to collect such installments which remain delinquent on the fifteenth (15th) day of each month); and

(iv) an annual report consisting of at least the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet as of the end of the fiscal year; (2) an operating (income) statement for the fiscal year; and (3) a statement of changes in financial position for the fiscal year. If said report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized office of the Association that the statements were prepared without audit from the books and records of the Association.

**Section 21. Borrowing.** The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of any Common Area and facilities without the approval of the Members of the Association; provided, however, the Board shall obtain membership approval in the same manner provided in Section 10.03 of the Declaration of Special Assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five percent (5) of the budgeted gross expenses of the Association for that fiscal year.

**Section 22. Rights of the Association.** With respect to any Common Areas or other Association responsibilities owned, and in accordance with the Articles of Incorporation and By-Laws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Directors of the Association.

## **ARTICLE IV**

### **OFFICERS**

**Section 1. Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

**Section 2. Election, Term of Office and Vacancy.** The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**Section 3. Removal.** Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

**Section 4. Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

**Section 5. Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two (2) officers or by the President and Treasurer or by such other person or persons as may be designated by resolution of the Board of Directors.

## ARTICLE V

### COMMITTEES

Committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

## ARTICLE VI

### MISCELLANEOUS

**Section 1. Fiscal Year.** The calendar year shall be the fiscal year. The initial fiscal year of the Association shall be a short year ending on December 31.

**Section 2. Parliamentary Rules.** Except as may be modified by Board resolution establishing modified procedures *Robert's Rules of Order*, (current edition) shall govern the conduct of Association proceedings when not in conflict with Indiana law, the Articles of Incorporation, the Declaration or these By-Laws.

**Section 3. Conflicts.** If there are conflicts or inconsistencies between the provisions of Indiana law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Indiana law, the Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail.

**Section 4. Books and Records.**

(a) Inspection by Members and Mortgagees. The Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board and committees shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Subdivision as the Board shall prescribe.

(b) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents at the expense of the Association.

**Section 5. Notices.** Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid:

(a) if to Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such owner; or

(b) if to the Association, the Board of Directors, or the Managing Agent, at the principal office of the Association or the Managing Agent, if any, or at such address as shall be designated by the notice in writing to the Owners pursuant to this Section.

**Section 6. Amendment.** Declarant may amend the By-Laws in accordance with the Declaration. These By-Laws may be amended otherwise only by the affirmative vote (in person or by proxy) or written consent of Members representing two-thirds (2/3) of the total votes of the Association (not a majority of a quorum).

## **EXHIBIT "D"**

### **RULES AND REGULATIONS FOR THE PRESERVE OF ST. JOHN HOMEOWNERS ASSOCIATION, INC.**

The following rules and regulations shall apply in addition to the terms and conditions governing the Subdivision as set forth in the Declaration of Covenants and Restrictions for The Preserve Phase 1 Subdivision (the "Declaration"):

1. Occupancy. No more than one (1) family may occupy one (1) Lot or residence thereon with no more than two (2) persons per bedroom.
2. Noise. Loud music or television or any other sound which may be objectionable to any other Occupant is prohibited at all times.
3. Garbage. All garbage receptacles shall be located and stored in such a place as to not be visible from any ground level location in the Subdivision, excepting only on those days of garbage collection by the Town of St. John or its contractor, in which case such garbage containers, when empty, shall be immediately relocated to a place as described above.
4. Definitions. The capitalized words and phrases used in these Rules and Regulations shall have the same definition and meaning as those set forth in the Declaration.

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Proposed