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STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

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MICHAEL B. BROWN  
RECORDER

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS & EASEMENTS  
FOR BEACON POINTE OF CEDAR LAKE**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BEACON POINTE OF CEDAR LAKE (this "Declaration") is made as of this 6th day of November, 2017 by Beacon Pointe of Cedar Lake LLC, an Indiana limited liability company (hereinafter referred to as "Declarant") and MHI Homes, LLC, an Indiana limited liability company (hereinafter referred to as "Builder").

**RECITALS**

1. All capitalized terms used herein shall have the meaning ascribed to them at the first time they are used herein or in the definition set forth in Article I below.

2. Declarant intends to, and by recording this Declaration does, subject and submit to the provisions of this Declaration the Submitted Parcel as legally described on Exhibit "A" attached hereto. The Development Area is the site of a residential development and from time to time Declarant may, but is not required to, subject additional portions of the Development Area to the provisions of this Declaration as Added Property, as more fully described in Article XVII hereof. Those portions of the Development Area which are not made subject to the provision of this Declaration may be used for any purposes not prohibited by law. Nothing herein shall preclude Declarant from subjecting other property adjacent to or in the vicinity of the Development Area to the provisions of this Declaration.

3. In order to provide for the necessary administration, preservation, maintenance and enhancement of those portions of the Development Area and any other land subject to the provisions of this Declaration, Declarant or Builder will form the Association which shall be responsible for the maintenance of the areas described in Article IV hereof and each Owner of a Residential Unit which is subject to this Declaration (excluding the Declarant and Builder) shall be assessed for such Owner's share of the cost thereof by the Association.

4. Declarant intends by this Declaration to impose upon the portions of the Development Area subject to the provisions of this Declaration mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Submitted Parcel made subject to this Declaration and amendments thereto by the recording of this Declaration. Declarant desires to provide a flexible and reasonable procedure for the development of the Submitted Parcel, and to establish a method for the administration, maintenance, enhancement, preservation, use and enjoyment of the Submitted Parcel and Development Area.

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JOHN E. PETALAS  
LAKE COUNTY AUDITOR

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5. Declarant and Builder shall retain certain rights set forth in this Declaration. Prior to the Turnover Date, Builder shall retain the right to appoint all members of the Board and the right to use the Submitted Parcel for the purposes set forth in Section 16.06 hereof.

**NOW, THEREFORE**, Declarant hereby declares that the real property legally described in Exhibit "A" and referred to herein as the Submitted Parcel and such additions thereto, referred to herein as Added Property, as may hereafter be made pursuant to Article XVII hereof, is and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, burdens, uses, privileges, charges and liens which shall exist at all times hereafter among all parties having or acquiring any right, title or interest in or to any portion of the Submitted Parcel; which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described Submitted Parcel or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

**Section 1.01.** "Added Residential Units" shall mean the Residential Units (or Parcels upon which attached or unattached, as the case may be, single-family dwellings are being completed) comprising the Added Property submitted to the provisions of this Declaration by a Supplemental Amendment in accordance with Article XVII 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 XVII 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 XIII 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 Residential Units against which the Assessment is levied and of maintaining the Residential Units, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below.

**Section 1.04.** "Association" shall mean and refer to Beacon Pointe of Cedar Lake 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 having its normal meaning under Indiana law. The Association shall be organized and governed in accordance with the Articles of Incorporation, and By-Laws, attached hereto as Exhibits "B" and "C", respectively.

**Section 1.05.** "Builder" shall mean and refer to MHI Homes, LLC, an Indiana limited liability company, and its successors and assigns in specifically acting as Builder hereunder.

**Section 1.06.** "Common Area" shall mean (i) all real property (including but not limited to detention ponds) and personal property owned or controlled by the Association and available for the common benefit and/or use of Owners, (ii) the ingress and egress easements shown on

the Plat and the improvements therein, (iii) landmark signage with associated landscaping features, identifying the Subdivision, if installed by Declarant, Builder or the Association, and (iv) 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 1.07. "Common Expenses"** shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, alias 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 1.08. "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 1.09. "Declarant"** shall mean CWS Holdings, LLC, an Indiana limited liability company, and its successors and assigns in specifically acting as Declarant hereunder. Such successor or assignee shall be deemed a Declarant and entitled to exercise, among other things, all or any rights of Declarant as provided in Article XVI hereof.

**Section 1.10. "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, or across the street from, property then subject to the scheme of 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 1.11. "Insurance Trustee"** shall mean the Association and its successors, unless the Association shall have appointed another entity as Insurance Trustee pursuant to Section 5.06 hereof.

**Section 1.12. "Lot"** shall mean and refer to any lot in the Subdivision herein described, 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 attached or unattached residential structures could be constructed, whether or not such structures have been constructed. Notwithstanding the foregoing, when an attached Residential Unit shall come into existence, a "Lot" shall mean the designated portion of a platted lot upon which such attached Residential Unit is located. In this regard, a platted lot with two (2) attached Residential Units shall be deemed to be two (2) "Lots" for purposes of this Declaration, and a platted lot with four (4) attached Quad Residential Units shall be deemed to be four (4) "Lots" for purposes of this Declaration, with each such "Lot" to be designated by a distinct tax key number.

**Section 1.13. "Member"** shall mean and refer to a person or entity entitled to Membership in the Association, as provided herein.

**Section 1.14.** "Mortgage" shall include a deed of trust, as well as a mortgage.

**Section 1.15.** "Mortgagee" shall include a beneficiary or holder of a deed or trust, as well as a mortgagee.

**Section 1.16.** "Mortgagor" shall include the trustor of a deed of trust, as well as a mortgagor.

**Section 1.17.** "Occupant" shall mean and refer to one or more Persons or entities 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 1.18.** "Owner" shall mean and refer to one or more persons or entities who hold the record title to any Residential Unit which is part of the Development Area, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Residential Unit is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner.

**Section 1.19.** "Parcel" shall mean a part of a Lot, fee simple title to which shall be conveyed by deed of the Declarant or Builder to each Owner, upon which an attached or unattached, as the case may be, single-family dwelling is located or to be located, and which may be identified by a separate parcel identification number.

**Section 1.20.** "Person" means a natural person, a corporation, a partnership, limited liability company, trustee or other legal entity.

**Section 1.21.** "Plat" shall collectively mean the real estate legally described in Exhibit "A" under the "Development Area" subheading.

**Section 1.22.** "Project" shall mean the Development Area owned by the Declarant and held for development under a common plan for attached or unattached, as the case may be, single-family dwellings from time to time.

**Section 1.23.** "Quad Residential Unit" shall mean any one (1) of four (4) Residential Units which are attached together in a single building.

**Section 1.24.** "Quad Residential Unit Reserve" shall mean the reserve funded solely by the Assessments of Owners of Quad Residential Units to be used solely for the repair and replacement of exteriors of Quad Residential Units, but only to the extent described in Sections 4.02(e) and (f).

**Section 1.25.** "Residential Unit" shall mean a Parcel and the attached or unattached, as the case may be, single-family dwelling constructed thereon, which is 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 Parcel conveyed by Declarant or Builder 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 the Town of Cedar Lake, Indiana.

**Section 1.26. "Subdivision"** shall mean and refer to all such existing properties, and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations and shall initially include the real property described in Exhibit "A".

**Section 1.27. "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 1.28. "Supplemental Amendment"** shall mean a supplement to this Declaration to submit Added Property to this Declaration in accordance with Article XVII 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 1.29. "Turnover Date"** shall mean the date on which the right of Builder to select and designate all of the members of the Board of Directors is terminated pursuant to Section 16.01 hereof.

## ARTICLE II

### PROPERTY RIGHTS

**Section 2.01. Party Wall Rights, Restrictions and Easements.** Subject to any other or additional provisions contained in any written agreement between parties affected, each wall which is built as part of the original construction of an attached single family Residential Unit and placed on the lot line of a Residential Unit shall constitute a party wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and of liabilities for property damage due to negligence or willful acts or omissions shall apply thereto. In the event and to the extent that the center of any wall between attached single family Residential Units shall encroach into or onto the adjacent Residential Unit, the Owner utilizing said party wall shall have a perpetual exclusive easement appurtenant to his attached Residential Unit on and over such adjoining Residential Unit for the maintenance, repair and restoration of such wall and his attached Residential Unit to the extent that the same shall occupy such adjoining Residential Unit, and such wall shall be deemed a party wall for all purposes of this Declaration. The cost of reasonable repairs and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, the Owner who has shared the wall may restore it, and if the other owner thereafter makes use of the wall, they shall contribute equally to the cost of restoration thereof, without prejudice however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. Notwithstanding any other provisions of this Declaration to the contrary, any Owner who by his negligence or willful act, or the negligence or willful act of his occupancy causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other owner under this Declaration shall be appurtenant to the land and shall pass to such

Owner's successors in title. Easements are hereby declared and granted to Owners having a party wall to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components through the party walls of two or more attached single family Residential Units, whether or not such walls lie in all or in part within the boundaries of a Residential Unit. Every portion of an attached single family Residential Unit which contributes to the structural support of another Residential Unit shall be burdened with an easement of structural support for the benefit of the other Residential Units.

**Section 2.02. Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment as between each adjacent Residential Unit due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance necessary to encompass any constructed encroachment, either now existing or arising in the future; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to the intentional, willful, or knowing conduct on the part of any Owner or Occupant.

**Section 2.03. Easements for Utilities, Etc.** Declarant hereby reserves for Builder, Declarant, and its designees (including, without limitation, the Town of Cedar Lake and any utility) easements upon, across, over and under the Residential Units for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity. This reserved 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 Development Area.

Without limiting the generality of the foregoing, there are hereby reserved for the Town of Cedar Lake, Indiana, easements across all Residential Units for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on Residential Units, except as may be approved by the Association's Board of Directors or as provided in the development and sale by Declarant or Builder. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Article II shall in no way adversely affect any other recorded easement on the Submitted Parcel.

**Section 2.04. Right of Entry.** The Association shall have the right and license, but shall not be obligated, to enter into any Residential Unit which is an attached single family dwelling for emergency, security and safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during the reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter such Residential Unit to cure any condition which may increase the possibility of a fire

or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board. There is hereby granted to the Association, and its agents, employees, and independent contractors, a license to enter upon all Lots and Parcels to the extent necessary or appropriate for the conduct of the Association's responsibilities under Article IV.

**Section 2.05. Ingress and Egress Easements.** The ingress and egress easements are depicted on the Plat.

**Section 2.06. Non-Exclusive Easements.** Declarant hereby declares the following non-exclusive easements are hereby created with respect to the Common Area, if any:

- a. Each Owner and their respective guests, invitees and employees shall have a non-exclusive easement for use and enjoyment in and to the Common Area subject to the following: (i) right of the Association to pass reasonable rules and regulations relating to such use and enjoyment, (ii) the right of the Association to suspend an Owner's right to use or enjoy such easement for any period during which such Owner may be in violation of this Declaration, (iii) the right of the Association to levy assessments as herein provided, and (iv) any and all rights reserved to Declarant, Builder and the Association as herein provided.
- b. A non-exclusive easement for the installation and maintenance of drainage facilities and utility easements is hereby granted to the Association and reserved by the Declarant over, under, across and through the Common Area. If any such drainage or utility facilities are not installed or in any easements for such purposes are not created with respect to a Lot or Residential Unit or any portion thereof prior to delivery of a Deed to an Owner, said Owner hereby grants to the Declarant and the Association a power of attorney to execute and record any such easements with respect to any Lots or Residential Units owned by said Owner for the benefit of the Subdivision. The foregoing power of attorney is hereby coupled with an interest and is therefore irrevocable.

The Declarant, Builder, Association and any of their respective agents, employees and independent contractors shall have the right to enter upon the Common Area and any Lot or Residential Unit to the extent necessary for the purpose of maintaining, repairing and replacing the Common Area as herein provided or for performing any of their respective obligations herein provided. In any such case, the Declarant, Builder, Association, or any of their agents, employees or independent contractors shall not be guilty of trespass.

### **ARTICLE III**

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

**Section 3.01. Membership and Meeting.** 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 Residential Unit owned. In the event the Owner of a Residential Unit is more than one (1) person or entity, 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 more than one (1) vote be cast for each Residential Unit.

The first annual meeting of the Association shall not be held until such time as the rights of the Builder to appoint directors and to thereby control the Association shall have expired as provided in Section 3.03 of this Declaration or at such earlier time or times as may be determined by the Builder. 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 3.02. Voting.** The Association shall have one (1) class of membership. Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold an interest required for membership by Section 3.01 hereof; there shall be only one (1) vote per Residential Unit. When more than one (1) person or entity holds such interest in any Residential Unit, the vote for such Residential Unit 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 Residential Unit's vote shall be suspended in the event more than one (1) person or entity seeks to exercise it.

Any Owner of Residential Units which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Residential Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

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

**Section 3.03. Number Terms and Selection of Board of Directors.** The initial Board of Directors shall consist of three (3) directors appointed by the Builder 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 Builder shall have the right to select and designate all of the directors, and accordingly therefore the right to operate and control the Association, until the Turnover Date. Thereafter, 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 Builder. 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 Residential Units, 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.

Builder 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 Builder retains control of the Association. At the time of turnover of control by Builder, a meeting of the Association will be called, at which time the rights and powers of the Builder 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 Builder 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 Builder 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 IV

### MAINTENANCE

**Section 4.01. Association's Responsibility.** Unless otherwise provided by an amendment to the By-Laws of the Association by a vote of two-thirds (2/3) 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 Cedar Lake) shall be limited to:

- a. the providing for the care of lawns, grass mowing, fertilizing and landscaping (the type and replacement of such landscaping to be determined by the ARC (as hereinafter defined) in its discretion) on each Residential Unit, including the obligation to maintain the irrigation system and provide water for the irrigation system;
- b. grass mowing, maintenance, repair and replacement of the Common Areas, provided that the care of any detention ponds and fountains shall be as described in Section 4.03;
- c. maintenance, repair and replacement of any sign installed by the Association, Declarant or Builder at the entry to the Subdivision on the Submitted Parcel identifying the Subdivision;
- d. the maintenance, repair and replacement of any decorative or landscaping lighting installed by the Association, Declarant or Builder, and the payment of the ongoing utility bills for such lighting;
- e. the removal of the snow from private walks and driveways within twenty four (24) hours, when accumulation is two inches or more, to provide access to the entry door and overhead garage door for each Residential Unit;

- f. for each Quad Residential Unit (but only to the extent of funds available in the Quad Residential Unit Reserve), the replacement of exterior siding, soffit, fascia, gutters, and downspouts;
- g. for each Quad Residential Unit (but only to the extent of funds available in the Quad Residential Unit Reserve), the repair and replacement of the roof excluding: (i) flashings, (ii) any damage covered by insurance, and (iii) any damage caused by ice damming; and
- h. the maintaining, repairing and replacing of United States Postal Service approved cluster mailboxes serving several Residential Units ("Cluster Mailboxes").

Notwithstanding anything contained in this Section 4.01 to the contrary, the Association shall not be responsible for repair, replacement and/or maintenance of anything which occurred as a result of an insured loss. In addition, the Association shall not be responsible for repair, replacement and/or maintenance of any item listed in this Section 4.01 which is not due to normal wear and tear. Any repair, replacement and/or maintenance listed in this Section 4.01 which is not due to normal wear and tear shall be at the sole cost and expense of the responsible Owner. The Declarant or Builder, as the case may be, shall be entitled to reimbursement from the Association for any Association related expenses the Declarant or Builder pays for or on behalf of the Association, including but not limited to the Association's responsibilities set forth in this Section 4.01.

**Section 4.02. Owner's Responsibility.** Except as provided in Section 4.01 hereof, all maintenance, repair and replacement of the attached or unattached, as the case may be, single-family residential unit, its sidewalk and driveway located on the Residential Unit thereon shall be the sole responsibility of the Owner thereof who shall perform such maintenance, repair and replacement 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 with respect to such Owner's Residential Unit:

- a. removing snow from the rear of the Residential Unit;
- b. the maintenance, repair and replacement of the post light, the light bulbs within the post light and the dusk-to-dawn sensor on the post light on the Residential Unit;
- c. to maintain, repair and replace the Owner's mailbox to Subdivision standards, other than Cluster Mailboxes, as described in Section 4.01(h), above; and
- d. to provide 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 4.03. Detention Ponds/Common Areas.** The Declarant has or will convey to the Association certain detention ponds and common areas located in the Submitted Parcel, including but not limited to the following real estate:

Outlot "A" in Beacon Point - Unit 1 Planned Unit Development, an addition to the Town of Cedar Lake, Lake County, Indiana Recorded on June 7, 2017 in Plat Book 110, Page 27 as Document No. 2017 034819 in the Office of the Recorder of Lake County, Indiana.

The Association, upon delivery of the deed to such real estate, shall be responsible only for the mowing of grass above the water line and the maintenance of fountains, if any, of said ponds and also any and all real estate taxes due on said real estate. Subject to the terms of the foregoing sentence, the Association shall attempt in good faith to follow the Subdivision's Storm Water Best Management Practices Operations and Maintenance Manual.

## ARTICLE V

### INSURANCE AND CASUALTY LOSSES

**Section 5.01. Insurance.** The Association may, but shall not, under any circumstances, be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance in such form as the Board of Directors deems appropriate for the full replacement cost of all structures on the Residential Units, as well as public liability insurance. If the Association elects not to obtain such casualty insurance, then each Owner shall obtain such insurance in accordance with Section 5.02 hereof. All provisions of this Article shall apply to all policy provisions, loss adjustment and all other subjects of all policies of insurance whether such policies are obtained by the Association or the Owners, or both.

The Association, acting through its Board, shall obtain a master casualty policy affording fire and extended coverage insurance insuring the capital assets of the Association in an amount equal to the full replacement value thereof or any improvements located upon the Common Area or reserved easement herein as determined by a qualified property and casualty insurer. The amount shall be determined and the insurance renewed annually.

Each Owner shall also obtain a public liability policy covering the Residential Unit owned by such Owner, and shall name the Association as an additional insured as to such policy. The public liability policy shall have at least a Five Hundred Thousand Dollars (\$500,000.00) limit per occurrence and a One Hundred Thousand Dollar (\$100,000.00) minimum property damage limit. In addition, each Owner upon request of the Association shall provide a copy of the insurance policy or a certificate to the Association.

Premiums for insurance obtained by the Association shall be a Common Expense of the Association and shall be included in the Assessments, as described in Article IX. Premiums for insurance obtained by Owners shall be paid by such Owners.

All casualty insurance coverage obtained by the Association or by any Owner shall be for the respective benefitted parties, as further identified in b. below. Such insurance 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 "secure rating" of A or better as reflected in the current A.M. Best Company, Inc. guide, if reasonably available, or, if not available, the most nearly equivalent rating. Additionally, property damage insurance shall be for the full replacement cost.

b. All policies on Residential Units shall be for the benefit of the Residential Unit Owners and their Mortgagees as their interests may appear. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

c. In no event shall any insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees.

d. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Cedar Lake, Indiana area.

e. The Association's Board of Directors and each Owner shall be required to make reasonable efforts to secure insurance policies that will provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association, its Board of Directors, and manager, the Owners, and each of their respective tenants, servants, agents and guests;

(2) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(3) that no policy obtained by the Association may be canceled, invalidated or suspended on account of any one or more individual Owners;

(4) that no policy may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager 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, its manager, any Owner or Mortgagee;

(5) that any "other insurance" clause in any policy exclude the Association and individual Owners' policies from consideration; and

(6) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association or the Owner.

**Section 5.01A. Other Association Insurance.** In addition to the other insurance required by Section 5.01 hereof, the Board shall also have the authority to and shall obtain, as a Common Expense, the following:

- a. Comprehensive public liability and property damage insurance against claims for person injury or death or property damage suffered by the public or by any Owner occurring in or about the streets, sidewalks and passageways and other areas within the Submitted Parcel and/or with respect to the Association's maintenance obligations set forth in Section 4.01 hereof, in such amounts as the Board shall deem desirable.
- b. Such workmen's compensation insurance as may be necessary to comply with applicable laws.
- c. Employer's liability insurance in such amount as the Board shall deem desirable.
- d. Directors' and Officers' liability insurance, as set forth in Section 14.02 hereof.
- f. Such other insurance in such reasonable amounts as the Board shall deem desirable.

Such insurance coverage shall include cross liability claims of one or more insured parties against other insurance parties. The premiums for such insurance shall be Common Expenses.

**Section 5.02. Individual Insurance.** By virtue of taking title to a Residential Unit 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 on the Residential Unit and structures constructed thereon as provided for in Section 5.01 hereof, unless the Association carries such insurance, which the Association is not obligated to do. Each individual Owner further covenants and agrees that in the event of any loss or damage and destruction the proceeds of such insurance shall be used only in accordance with this Declaration. In the event that the structure is totally destroyed and by a vote of three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), it is determined, subject to the further requirements of Section 5.04 hereof, not to rebuild or to reconstruct, the individual Owner shall clear the Residential Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. A decision not to rebuild or reconstruct shall under no circumstances relieve or discharge an Owner from the obligation to pay Assessments to the Association.

**Section 5.03. Disbursement of Proceeds.** Proceeds of insurance policies obtained by the Association shall be paid to the Insurance Trustee to be disbursed as follows:

- a. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction or, in the event no repair or reconstruction is made, shall be disbursed to the affected Owner or Owners and their Mortgagee(s) as their interests may appear. This is a covenant for the benefit of any Mortgagee of a Residential Unit and may be enforced by such Mortgagee.
- b. If it is determined, as provided for in Section 5.02 hereof, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for in Section 5.03a. hereof.

**Section 5.04. Damage and Destruction.**

a. Immediately after the damage or destruction by fire or other casualty to all or any part of a Residential Unit, the Owner of the Residential Unit 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 or reconstruction of the damaged or destroyed Residential Units. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Residential Units to substantially the same condition in which they existed prior to the fire or other casualty.

b. Any damage or destruction shall be repaired or reconstructed by the Owner unless by a vote of at least three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), the Association shall decide within sixty (60) days after the casualty not to require such repair or reconstruction. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

c. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Residential Unit shall be restored to its natural state by the Owner or Owners thereof and maintained as an undeveloped portion of the Project by the Association in a neat and attractive condition.

**Section 5.05. Repair and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owner or Owners of Residential Units affected by such damage or destruction. Additional Assessments may be made in like manner at any time during or following the completion of any repair or construction.

**Section 5.06. Appointment of Insurance Trustee.** The Association, as Insurance Trustee, shall have the right to appoint any federal or state bank which is qualified to offer trust services to the public as Insurance Trustee hereunder, and upon such appointment shall be relieved of all liability and responsibility as Insurance Trustee hereunder.

**ARTICLE VI**

**NO PARTITION**

Except as is permitted in this Declaration or amendments thereto, there shall be no physical partition of a Residential Unit or any part thereof, nor shall any person acquiring any interest in any Residential Unit or any part thereof seek any such judicial partition unless the Submitted Parcel 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 VII

### CONDEMNATION

Whenever all or any part of a Residential Unit shall be taken (or conveyed in lieu of and under threat of condemnation by the Owner) 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 as Common Area 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 VIII

### RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION

**Section 8.01. Real and Personal Property for Common Use.** The Association, through the actions of its Board of Directors, may acquire, own, lease, hold and dispose of real property and tangible and intangible personal property.

**Section 8.02. 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 also have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association shall permit the Town of Cedar Lake, Indiana, to enforce ordinances on the Submitted Parcel for the benefit of the Association and its Members.

**Section 8.03. 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 IX

### ASSESSMENTS

**Section 9.01. Creation of Assessments.** There are hereby created Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 9.06 hereof. Except as provided below, Assessments shall be allocated equally among all Residential Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. 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 Residential Unit and shall be a continuing lien upon the Residential Unit against which each Assessment is made.

Each such Assessment together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Unit 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 Residential Unit pursuant to the remedies provided in the 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 delinquent Owners. Unless the Board otherwise provides, the Assessments shall be paid in bi-annual installments.

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

**Section 9.02. 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 costs of operating the Association during the coming budget year. Subject to the provisions of Section 9.05 hereof, the budget shall 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 Residential Unit 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.

The Board may not, without the vote or written consent of a majority of the votes of the Association, impose an Assessment per Residential Unit which is greater than one hundred fifty percent (150%) of the amount for the previous fiscal year, except for the Assessment levied for the first time.

Upon the Declarant or Builder's sale of a Residential Unit to a third party Owner, the following assessments shall be collected by and for the benefit of the Association at the time of the initial closing on the Residential Unit: (1) an initial closing assessment of Three Hundred Dollars (\$300.00), (2) for each Quad Residential Unit, a yearly Assessment of One Thousand Eight Hundred Dollars (\$1,800.00) per year, of which Six Hundred Dollars (\$600.00) shall be allocated to the Quad Residential Unit Reserve, or as otherwise determined herein by the Board per calendar year (prorated for the first year of ownership), and (3) for each Residential Unit other than a Quad Residential Unit, a yearly Assessment of One Thousand Two Hundred Dollars (\$1,200.00) per year or as otherwise determined herein by the Board per calendar year (prorated for the first year of ownership).

Thereafter, for each Quad Residential Unit, a yearly assessment of One Thousand Eight Hundred Dollars (\$1,800.00) per year or as otherwise determined by the Board (of which Six Hundred Dollars (\$600.00) or as otherwise determined by the Board shall be allocated to the Quad Residential Unit Reserve) shall be due and payable to the Association on a pro rata bi-annual basis on or before the first day of January and July each year, or as otherwise determined by the Board. For each Residential Unit other than a Quad Residential Unit, a yearly Assessment of One Thousand Two Hundred Dollars (\$1,200.00) per year or as otherwise determined by the Board shall be due and payable to the Association on a pro rata bi-annual basis on or before the first day of January and July each year, or as otherwise determined by the Board.

**Section 9.03. Special Assessments.** In addition to the Assessments authorized in Section 9.01, 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 more than fifty percent (50%) of a quorum 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 Owner to reimburse the Association for costs incurred in bringing an Owner and such Owner's Residential Unit 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 9.04. Lien for Assessments.** When a notice of the lien has been recorded, such Assessment or Special Assessment shall constitute a perfected lien on each Residential Unit 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 Residential Unit 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 Residential Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Residential Unit had it not been acquired by the Association as a result of foreclosure. A 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 9.05. 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 9.02 hereof. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

**Section 9.06. 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 Residential Unit. The sale or transfer of any Residential Unit shall not affect the Assessment or Special Assessment lien. However, the sale or transfer of any Residential Unit 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 Residential Unit 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 Residential Unit obtains title, his successors and assigns shall not be liable for the share of the Assessments by the Association chargeable to such Residential Unit which became due prior to the acquisition of title to such Residential Unit by such acquirer. Such unpaid share of the Assessments shall be deemed to be Common Expense collectible from all of the Residential Units, including such acquirer, his successors and assigns.

**ARTICLE X**

**ARCHITECTURAL STANDARDS**

This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any real estate subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition, staking, clearing, excavation, grading and other site work, and no plantings or removal of plants, trees or shrubs shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Architectural Review Committee (the "ARC") has been obtained. The ARC shall consist of three (3) members. The initial ARC shall consist of the Declarant and any persons designated by the Declarant. After the Turnover Date, the members of the ARC shall be appointed by the Board of Directors. The ARC shall have exclusive jurisdiction over all modifications, additions or alterations made on or to existing Residential Units and the open space, if any, appurtenant thereto. The original construction of the single-family unit shall be in accordance with the plans and specifications approved by the Declarant. Notwithstanding anything to the contrary in this Declaration, until the Turnover Date the Builder shall solely act as the ARC for purposes of reviewing and potentially approving landscaping and vegetation, privacy dividers, pavers, and the placement of satellite dishes.

**Section 10.01. Architectural Standards.** Notwithstanding that it is the Owner's responsibility to maintain and repair the Residential Unit owned by him and/or her, each Owner agrees that they are prohibited from taking any action with regard to the following:

- a. The reconfiguration of any existing structure of a Residential Unit in any manner whatsoever.

- b. The use of any materials on the exterior of any Residential Unit which is not substantially the same to that which was provided as a part of the original construction, both in quality, color and other appearance.
- c. The erection of clotheslines, awnings, or other similar items or devices.
- d. The use of window coverings which are not white or beige or show a white or beige appearance when viewed from the exterior of the Residential Unit.
- e. The use of mailboxes not in conformity with the quality and style and location of the original mailboxes installed for the Residential Units in accordance with Section 11.11.
- f. The use of exterior lamp posts not in conformity with the quality and style and location of the original exterior lamp posts installed for the Residential Units by the Declarant in accordance with Section 11.12.
- g. No fencing will be permitted for any purpose on a Lot. This provision does not prohibit the ARC from allowing vegetation or PVC privacy dividers, so long as an Owner submits a proposal to the ARC and approval has been obtained. In this regard, no PVC privacy dividers or dividers of similar material will be allowed, except in limited instances when two patios or decks, or two screened patios/decks, or two covered patios/decks are adjacent to one another at the common wall property line between Residential Units within the same building.

In addition to the foregoing prohibitions, each Owner shall have an affirmative obligation to maintain and repair his and/or her Residential Unit in such manner as to maintain at all times the uniformity of appearance of such Residential Unit with all others in the community. Notwithstanding anything contained herein to the contrary, no permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right to an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired.

**Section 10.02. Architectural Construction and Landscaping Standards and Use Restrictions for Residential Units.** No structure shall be erected, including exterior remodeling or additions to existing Residential Units, or permitted on any Lot in the Subdivision until plans and specifications for that structure have been submitted to and approved in writing by the Declarant until control of the Association is turned over to the Owners and at that time, then approved in writing by the ARC. A "structure" is defined as any building, pool, driveway, breezeway, pond, kennel, playhouse, barn, or any other building or fixture that is permanent.

Each contractor or Owner must submit to the Declarant and/or the ARC and receive the Declarant's or ARC's written approval of the following items before any construction on any structure may begin:

- a. Drawings showing all four elevation and masonry areas;
- b. Floor plan showing square footage;

- c. Site plan showing grade plan, placement of the structure on the Lot and the location of driveway and walkways;
- d. Landscape and sidewalk plans; and
- e. Provide a detail of materials and manufacturer specifications to be used.

The Builder may submit a single set of plans for multiple structures and Lots and the ARC may approve or disapprove such plans either individually or collectively. The ARC's approval or disapproval as required in these Covenants shall be in writing. In the event the ARC, or its designated representative, fails to approve or disapprove within thirty (30) days after the plans and specifications have been submitted to it, approval by the ARC will be presumed, provided that no structure, as previously defined, shall be erected which violates any of the Covenants or restrictions as set forth in this Declaration.

Refusal or approval of plans and specifications by the ARC may be based upon any ground, including purely aesthetic ones.

The ARC reserves the power to make exceptions to these restrictions and covenants as it deems proper.

Whether or not a provision specifically states in any conveyance of any Parcel by the Declarant, its successors or assigns, the owner or occupancy of any Parcel, by acceptance of title thereto or by taking possession, covenants and agrees to adhere to all of the covenants, restrictions, duties, obligations and procedures as set forth in this documents.

None of the Declarant, the Builder, the Association, the ARC, or their respective representatives, or any member thereof, shall be liable for any damage, loss, or prejudice suffered or claimed by any contractor or Owner or Occupant which submits such a plan or specification on account of:

- (i) Any effects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Article X;
- (ii) Any structural defects in any work done according to the plans and specifications;
- (iii) The approval or disapproval of any plans, drawings and specifications, whether or not defective;
- (iv) The construction or performance of any work, whether or not done pursuant to approved plans, drawings and specifications; or
- (v) The development of any real estate in the Subdivision.

Any person or entity submitting plans or specifications to the Declarant or the ARC, or their representatives, or any member thereof, shall hold them harmless from all damage, loss, or prejudice suffered or claimed by any third party, including attorney's fees incurred.

During construction on any Lot in the Subdivision, the contractor on that Lot shall remove all trash and debris resulting from construction on the Lot. Each building of a Residential Unit in the Subdivision shall maintain a dumpster for all construction debris and mud, although a single dumpster may be used for multiple Lots. Each contractor other than Builder will specifically be held responsible for clearing the roadway of all mud and debris placed on the road by any contractor, subcontractor or material man. No debris shall be burned or disposed of on any real estate in the Subdivision.

All exterior work in the construction of any Residential Unit, including driveways, shall be completed within nine months from the date of the issuance of the building permit. Extensions of time, for good cause, may be granted by the ARC.

No improvement which has been partially or totally destroyed by fire or other reason, shall be allowed to remain in that state for more than ninety (90) days from the date of such destruction or damage. Extensions of time, for good cause, may be granted by the ARC.

**Section 10.03. Minimum Building Requirements.** Any Residential Unit shall meet the following minimum requirements:

- a. All Residential Units shall be erected by a general contractor licensed by the Town of Cedar Lake.
- b. There shall be no quad level, tri-level and/or bi-level Residential Units.
- c. Any Residential Unit erected on any Parcel shall erect an attached garage and in addition thereto shall provide a minimum of two off-street parking spaces which shall consist of a driveway. All driveways and parking areas shall be comprised of concrete or as otherwise approved by the ARC. No driveways or off-street parking areas shall be located in any required rear yard.

**Section 10.04. Landscaping.**

- a. Within three (3) months from the date of occupancy of any Residential Unit the contractor on any Parcel shall sod all front and sides facing or fronting a street and shall seed or sod all side and rear yards not covered by porches, patios, driveways, or sidewalks, provided however that seeding shall be not required between October 15<sup>th</sup> and April 30<sup>th</sup> if occupancy occurs after September 15<sup>th</sup> of each year. Each required front, side and rear yard, as defined and required by Area Width and Yard Regulations of the Cedar Lake Zoning Ordinance.
- b. Any Residential Unit erected on any Parcel shall connect all footing and sump drainage to the public storm sewer, provided however that downspouts or other roof or surface drainage shall be discharged to the Parcel surface and not the storm sewer, provided further, that driveways may drain to the street curb. No downspout, sump pump or other storm or drainage discharges shall be connected or emptied into the sanitary sewers serving the Subdivision.

c. Each Lot with an unattached Residential Unit (e.g., a cottage home) shall have at least two (2) trees and five (5) shrubs such Lot. Lots with only two (2) attached Residential Units (e.g., a paired villa) shall have at least two (2) trees and ten (10) shrubs collectively for such two (2) attached Residential Units. Lots with four (4) attached Residential Units (e.g., Quad Residential Units) shall have at least two (2) trees and twenty (20) shrubs collectively for such four (4) attached Residential Units. No trees or shrubs shall be planted or maintained which are listed on the Town of Cedar Lake prohibited species list.

**Section 10.05. Driveway Requirements.** No Residential Unit or structure erected or placed on any Parcel in the Subdivision shall be occupied in any manner at any time prior to the installation and construction thereon by the contractor thereof (at the contractor's sole expense), of a concrete driveway from the street to the garage provided, however, that this requirement may be extended for a period not to exceed one hundred twenty (120) days in the event such Residential Unit shall be ready for occupancy during a time when inclement weather or labor strike shall prevent the construction and installation of such driveway.

**Section 10.06. Exterior Color Plan.** The Declarant shall have final approval of all exterior color plans and each contractor must submit to the Declarant, and then upon the Declarant's resignation to the ARC, a color plan showing the color of the roof, exterior walls, shutters, trim, etc. It shall then be considered the extent to which the color plan is consistent with the homes in the surrounding areas and the extent to which the color plan conforms with the natural color scheme of and for the Subdivision.

## ARTICLE XI

### USE RESTRICTION

**Section 11.01. Residential Restrictions.** The Lots subject to this Declaration may be used for attached and unattached single-family residential units and for no other purpose. Any and all business, trade, or similar activity is prohibited, except that an Owner or occupant residing in a dwelling on a Lot may conduct business activities within the dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling; (b) the business activity conforms to all zoning requirements; (c) the business activity does not involve door to door solicitation of residents of the Subdivision; (d) the business activity does not generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Subdivision which is noticeably greater than that which is typical of dwellings in which no business activity is being conducted; and (e) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in a full or part time manner; (ii) such activity is intended to or does generate a profit; or (iii) a license is required. The only exception hereto is any model provided by the Declarant or Builder to promote the sales of the Parcels and/or Residential Units. The Association, acting through the Board of Directors, shall have standing and the

power to enforce the use restrictions contained herein as well as those stated in the ordinances of the Town of Cedar Lake as if all of such provisions were regulations of the Association.

**Section 11.02. Nuisances.** No nuisances shall be allowed upon any Residential Unit nor shall any use or practice be allowed which would annoy residents or interfere with the peaceful possession and proper use of the Residential Units by its residents, or which will obstruct or interfere with the rights of other Owners or the Association. This provision shall not be construed to prohibit or limit the enforcement of any provision of the Declaration which does not constitute a nuisance, or to prohibit the Association from adopting Rules and Regulations prohibiting conduct which does not constitute a nuisance.

In addition, the following shall apply to all Parcels and Owners of any portion of a Parcel described herein:

- a. No burning of refuse shall be permitted.
- b. The use of any driveway or parking area which may be in front of or adjacent to or part of any Parcel as a habitual parking place for commercial vehicles is prohibited. The term "commercial vehicles" shall include all trucks (larger than 3/4 ton), construction equipment and vehicular equipment which bear signs or have printed on the side of said vehicle reference to any commercial undertaking or enterprise. Commercial vehicles shall also include all limousines for hire. The habitual violation of the parking regulations set forth in this paragraph shall be deemed a nuisance. Pick-up trucks (3/4 ton or smaller) and vans (3/4 ton or smaller), with or without a commercial name, shall be an exception to this exclusion.
- c. No buildings shall be located or maintained within the utility and drainage easements within the real estate. The removal of such as required by the Town of Cedar Lake, Lake County, Indiana, or any public utility or governmental agency shall be at the sole cost and expense of the Parcel Owner.
- d. No plants or seeds, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Parcel.
- e. No Owner shall allow the temperature within its attached single family dwelling on a Residential Unit to fall below the minimum temperature of 60° Fahrenheit.

**Section 11.03. Immoral, Improper, Offensive and Unlawful Uses.** No immoral, improper, offensive or unlawful use shall be made of any Residential Unit nor any part thereof and all laws, zoning ordinances and regulations of all governmental bodies regarding the maintenance, modification or repair of Residential Units shall be the same as provided in Article IV hereof.

**Section 11.04. Uses Affecting Insurance Rates.** An Owner shall not permit or suffer anything to be done or kept in a Residential Unit which will increase the insurance rates on any other Residential Unit.

**Section 11.05. Signs and Other External Items.** No Owner shall display any sign (except for temporary but tasteful "for sale" or "for rent" signs, but only after the Turnover Date),

advertisement or notice of any type on the exterior of a Residential Unit and no Owner shall erect any exterior antennae, aerials or awnings upon any Residential Unit. No clothesline or other similar device shall be allowed on any portion of any Residential Unit.

**Section 11.06. Antennae and Satellite Dishes.** No above-ground communication, electric or television lines or cable shall be placed by any Owner anywhere in the Development Area other than within homes or dwellings. No television or radio antenna, earth station dish, pole, wire, rods, satellite dish over twenty inches (20") in diameter, or other device used in connection with the reception or transmission of any television, radio or any other electrical signal shall be erected or maintained on the exterior of any home or dwelling or on any part of a Parcel. An Owner who desires to install a permitted satellite dish must attempt in good faith to properly screen such dish from the view of surrounding Parcels or place such dish in the rear of the Owner's Parcel, with the final location and screening of the satellite dish to be approved by the ARC.

**Section 11.07. Animals.** An Owner may not keep, raise or breed any animals, livestock or poultry in or on a Residential Unit, provided, however, that no more than two (2) pets shall be allowed to be kept in or on a Residential Unit, subject to the Rules and Regulations of the Association. Notwithstanding anything contained herein to the contrary, the Association may impose a Special Assessment against any Owner for (a) repairs or replacements required to be made to the exterior of the unit or the landscaped areas as a result of damage created by the Owner's animal, and/or (b) the Owner's failure to clean up after said pets. No animals shall be allowed to run loose at any time and no dog be allowed to continuously bark, yelp, whine or howl by the Owner of any Residential Unit.

**Section 11.08. Vehicles.** No recreational vehicles, motor homes, campers, boats, boat trailers, recreational equipment and trailers 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 11.09. Plants, Plant Material.** The planting materials are to be located 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. All unhealthy and dead material shall be replaced within six (6) months or the next appropriate planting season. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of the Lot unless approved by the Builder or ARC.

**Section 11.10. Rubbish Trash, Garbage and Nuisance.** No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot or any portion thereof and all trash receptacles 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 11.11. Mailboxes.** The Declarant shall select and designate a standard mailbox and post as well as the styles of Cluster Mailboxes. Subject to the provisions of

Section 4.01(h) for Cluster Mailboxes, the Owner of the Residential Unit shall cause such standard mailbox and post to be installed prior to the occupancy of the Residential Unit. No exterior newspaper receptacles shall be permitted in the Development unless part of the standard mailbox. Subject to the provisions of Section 4.01(h) for Cluster Mailboxes, the Owner shall cause such standard mailbox to be maintained and/or replaced, if necessary, at the Owner's expense.

**Section 11.12. Exterior Post Lights.** The Declarant shall adopt and designate a standard exterior post light for all Lots and may designate a standard location for such exterior post light. The Owner of the Residential Unit shall cause such standard exterior post light to be installed prior to the occupancy of the Residential Unit. The Owner shall be required to maintain and replace said standard exterior post light. Exterior post lights shall be on and illuminated from dusk to dawn unless the Association shall provide otherwise by rule or regulation. No exterior lighting fixture, other than the post light approved by the Builder or landscape lighting shall be installed in the front yard of any Residential Unit.

**Section 11.13. Flag Poles.** Flag poles are permitted, provided the flag pole is not more than 25 feet in height.

**Section 11.14. Air Conditioning Units.** No window or wall unit air conditioners or heating systems (HVAC) shall be installed on any Residential Unit.

**Section 11.15. Storage Sheds.** No free standing structures, detached garages, metal, prefab or steel storage sheds of any kind shall be erected on any Parcel.

**Section 11.16. Temporary Structures.**

a. No trailer, basement or incomplete building, tent, shack, garage, barn, motorized home and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent, on any Parcel.

b. Temporary buildings or structures used during the construction of a Residential Unit shall be on the same Parcel as the Residential Unit, and such buildings or structures shall be promptly removed upon the completion of construction. Such temporary buildings or structures must first be approved by the Declarant.

c. No building shall be moved from another location to a Parcel. No modular home, log cabin, prefabricated residential unit, steel frame or foam/concrete composite residential unit shall be erected on any Parcel.

**Section 11.17. Parcel Maintenance.** Each Parcel shall at all times be kept in a clean and sightly condition. No trash, litter, junk, boxes, containers, bottles or cans shall be permitted to collect or remain exposed on any Parcel, except as necessary during the period of construction and in approved containers. The Owner of each Parcel shall be responsible for the cutting or removal of weeds periodically on such Parcel so as to conform with the requirements, ordinances and regulations of the Town of Cedar Lake, Indiana.

**Section 11.18. Outdoor Furniture, Play Facilities.** Outdoor furniture, equipment, and facilities shall be maintained in good "like new" condition and shall not be

stored or maintained so as to create an eyesore or nuisance to neighboring houses or residents. No swing sets, slides or other children's play equipment, bikes or toys may be kept or maintained outside on a Parcel.

**Section 11.19. Discharge of Contaminants.** The discharge or dumping of any

harmful chemicals, paper, boxes, metal, wire, junk or other refuse on or in any area shall be prohibited and the cost of removing same shall be borne by the party depositing or causing the same to be deposited thereon. In the event the responsible person or party cannot be determined, then the Parcel Owner shall be responsible for the removal and cleaning of the Parcel. Garbage containers may not be stored outside.

**Section 11.20. Swimming Pools.** No swimming pools, either above or below ground, or hot tubs shall be permitted on any Parcel.

**Section 11.21. Underground Wiring.** No lines or wires for communication or

the transmission of electrical current or power shall be constructed, placed or permitted to be placed anywhere in Subdivision other than within buildings or Residential Units or attached to their walls, unless the same shall be contained in conduits or approved cable, constructed, placed and maintained underground.

**Section 11.22. Rules and Regulations.** Rules and Regulations concerning the use of the Residential Units may be promulgated and amended by the Association acting by and through its Board of Directors each of which shall be deemed to be incorporated herein by reference and made a part hereof, as amended from time to time; provided, however, copies of all such Rules and Regulations shall be furnished to each Owner prior to the time that the same shall become effective. All Rules and Regulations promulgated from time to time shall be deemed to be reasonable and enforceable, so long as they bear any relationship to the safety, health, happiness and enjoyment of life of all of the Owners, are in furtherance of a plan to provide for the congenial occupation of the Residential Units, to promote and protect the cooperative aspects of ownership, the value of the Residential Units, and/or facilitate the administration of the community as a first class, safe, healthy, happy, quiet and restful residential community, and are not arbitrary and capricious. The Board of Directors of the Association is hereby granted the specific power and authority to enforce said rules and regulations in accordance with the provisions of Article XII.

## **ARTICLE XII**

### **ENFORCEMENT**

Each Owner and Occupant of a Residential Unit 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 and Builder shall have no personal or other liability, obligation or responsibility to enforce this Declaration or any part thereof. A default or violation by an Owner or Occupant of a Residential Unit 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 the 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 and Residential Units 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 9.03 hereof, which shall constitute a lien upon the Owner's Residential Unit 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:

(1) 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.

(2) 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.

(3) 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, 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:

(1) 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 Residential Units 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 Residential Unit.

(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.

(2) All Special Assessments amounts imposed hereunder as a sanction shall be deemed to be a part of the Assessment attributable to the Residential Unit occupied by the violator, and shall be assessed against said Residential Unit 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 Residential Unit, and shall be collected and enforced in the same manner as Assessments.

(3) 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 outrageous in nature. Said special findings of fact shall specifically set forth all facts and circumstances.

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

(5) 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.

**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 Article XIV, Article XV and Article XVII, 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 or Builder, without such party'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 of not less than three-fourths (3/4) 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: (1) correct scrivener's errors, minor defects or omissions, (2) comply with the requirements of Indiana law, (3) comply with the requirements of any governmental agency, public authority, or title insurance company, (4) 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 Residential Units, (5) induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering

residential units, (6) designate additional Lots, Parcels, Residential Units, Quad Residential Units, and/or Outlots within the Submitted Parcel and Development Area, which will then be specifically subject to the terms and conditions of this Declaration under such designations, or (7) add additional covenants, conditions and restrictions to this Declaration covering such areas of the Submitted Parcel and Development Area in which Declarant and/or its designated assigns then own and control.. This subparagraph (d) shall constitute an irrevocable special power of attorney to Declarant coupled with an interest on behalf of all Owners, Mortgagees, and any and all other Persons having an interest of any kind in the Submitted Parcel, 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, By-Laws and Rules and Regulations.**

The Articles of Incorporation, By-Laws and Rules and Regulations 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 Submitted Parcel, and shall inure to the benefit of an shall be enforceable by the Association or the Owner of any Parcel or Residential Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) 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 a majority 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: (i) 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 (ii) 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. Re-recording of Declaration.** If at any time or times the Board shall deem it necessary or advisable to re-record this Declaration, or any part thereof, in the Office of the Recorder of Deeds of Lake County, Indiana, in order to avoid the expiration hereof or of any of the covenants or other provisions herein contained, it shall subject the matter to a meeting of the Members of the Association called upon not less than ten (10) days notice, and unless at such meeting at least two-thirds (2/3) of said Members shall vote against such re-recording; the Board shall have and is hereby granted, power to so re-record this Declaration or such part thereof, and such re-recording shall be binding upon all Owners or any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and the re-recorded document executed and acknowledged by each of them.

**Section 14.05. Restrictions, Conditions, Covenants, Liens and Charges.** Each grantee of Declarant or Builder, by taking title to a Parcel and each purchaser under any contract for a deed of conveyance pursuant to which said grantee will take title, accepts said title subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Parcel as fully and completely as though such rights were recited fully and set forth in their entirety in any such documents.

**Section 14.06. Enforcement of Covenants.** Declarant, Builder and each Owner from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants

and obligations herein set forth, or any of them, in addition to the right to bring a legal action for damages. Whenever there shall have been built (or whenever there is being built) on any Parcel any improvement which is and remains in violation of the covenants set forth, or any of them, for a period of thirty (30) days after delivery of written notice thereof (in the manner provided in Article XII hereof) from Declarant, Builder or the Association to the Owner of any such Parcel, then Declarant, Builder or the Association shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily to abate or remove it at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of Declarant, Builder and the Owners to enforce any of the covenants or obligations herein provided due to a particular violation be deemed to be a waiver of the right to do so respecting any such violation or any subsequent violation.

**Section 14.07. Special Amendment.** Declarant hereby reserves the right and power to record a special amendment (hereafter referred to as "Special Amendment") to this Declaration at any time and from time to time which amends this Declaration: (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, 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 such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or grant first mortgages encumbering any Lot, Parcel or Unit, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereof. In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elects to record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the expenses to be borne by them hereunder. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be, said power shall be irrevocable. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot, Parcel or Residential Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record Special Amendments. Subject to the provisions of Article XIV hereof, the right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds title to any Lot, Parcel or Residential Unit.

**Section 14.08. Ownership Under a Trust.** In the event title to any Parcel is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Parcel remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, obligations and undertakings chargeable or created under this Declaration against any such Lot, Parcel or Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply, in whole or in part, against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon said Parcel and the beneficiaries of

such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to any such Parcel.

**Section 14.09. 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 14.10. Self Help.** In addition to any other remedies provided for herein, the Declarant, the Builder, the Association, or their respective 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 Builder, the Association, or their respective 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, the Builder or the Association, as the case may be, shall give the violating Lot Owner thirty (30) days' written notice of its intent to exercise remedial activity (self help). All costs of the Declarant, the Builder 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, the Builder 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, the Builder 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 14.11. 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 14.12. Usage.** Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

**Section 14.13. 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 14.14. 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 14.15. 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 14.16. 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 14.17. 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 Residential Units. 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 Residential Unit 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 Residential Unit 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 Residential Unit 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 16.02 hereof.

**Section 15.02. Mortgagee's Rights Respecting Amendments to the Declaration.**

To the extent possible under Indiana law, and notwithstanding the provisions of Article XIII, any

amendment of a material nature must be approved by Eligible Holders representing at least fifty-one percent (51%) of the votes of Residential Units that are subject to Mortgages held by Eligible Holders. An amendment to any of the following shall be considered material:

- a. voting rights;
- b. Assessments, Assessment liens, or subordination of Assessment liens;
- c. responsibility for maintenance and repairs;
- d. boundaries of any Residential Unit;
- e. expansion of the Development Area (to include real estate not described in Exhibit "A" or not adjacent thereto nor in the vicinity thereof);
- f. insurance or fidelity bonds;
- g. imposition of any restrictions on an Owner's right to sell or transfer his or her Residential Unit;
- h. restoration or repair of the Submitted Parcel (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- i. any action to terminate the legal status of the Submitted Parcel after substantial destruction or condemnation occurs, provided, however, that any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation shall require the consent of Eligible Holders or Owners representing sixty-seven (67%) of the votes of Residential Units; or
- j. any provisions that expressly benefit mortgage holders, insurers or guarantors.

**Section 15.03. 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 at least two-thirds (2/3) of the first Mortgagees or Owners provide their written 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 (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 and maintenance of Residential Units and of any Common Area;

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 15.03 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 15.04. 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 AND BUILDER'S RIGHTS

**Section 16.01. Control.** 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 Builder under this Declaration, the first and all subsequent Board of Directors shall consist solely of three (3) individuals designated by Builder, which individuals may but need not be Owners or Members until the first to occur of any of the following (the "Turnover Date"):

- a. Thirty (30) days after Declarant has conveyed to purchasers for value all of the Residential Units proposed for the Development Area;
- b. The expiration of twenty (20) years from the date of the recording of this Declaration; or
- c. The date on which the Builder elects to terminate its sole control by the delivery of written notice of such election to the Owners.

**Section 16.02. Absence of Warranty.** THE DECLARANT AND BUILDER EACH SPECIFICALLY DISCLAIMS ANY WARRANTY OR REPRESENTATION IN CONNECTION WITH THE SUBMITTED PARCEL 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 and Builder shall each be exempt from any Assessment levied by the Association on any or all Residential Units owned by the Declarant, Builder and/or such party's designees which are unoccupied and offered by the Declarant or Builder for sale.

**Section 16.04. Right to Amend Declaration.** The Declarant or Builder shall have the right to amend the Declaration, and the Articles of Incorporation, By-Laws, and Rules and Regulations, in accordance with Section 13.01(d) hereof.

**Section 16.05. Transfer of Rights.** Any or all of the special rights and obligations of the Declarant or Builder may be transferred to other persons or entities, 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 or Builder, as the case may be, and duly recorded in the Office of the Recorder of Lake County, Indiana.

**Section 16.06. Reserved Rights and Easements.** Notwithstanding any provisions herein to the contrary, Declarant and Builder each 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, Builder, or either of 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 or Builder, 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, Internet, 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 or Builder without payment of any fee or charge whatsoever; and
- 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 or Builder, 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;
- c. no rights, privileges, and easements granted or reserved herein shall be merged into the title of any Residential Unit 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 or Builder releasing its respective 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 prior written consent of Declarant or Builder as to their respective rights under this Section.

## **ARTICLE XVII** **ANNEXATION OF ADDITIONAL PROPERTY**

**Section 17.01. Annexation Without Approval of Membership.** As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Declarant and Builder shall jointly have the 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", any Lot in the Added Property shall be referred to as an "Added Lot" and any Parcel in the Added Property shall be referred to as an "Added Parcel." 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 17.02. Power to Amend.** In furtherance of the foregoing, Declarant and Builder jointly reserve the right to record a Supplemental Amendment, at any time and from time to time prior to twenty (20) 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 17.03. Effect of Amendment.** Upon the recording of a Supplemental Amendment by Declarant and Builder 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 Added Parcels) and inure to the benefit of and be the personal obligation of the Owners of Added Parcels 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 Parcels which were initially subjected to this Declaration.
- b. Every Person who is an Owner of an Added Parcel 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 Parcels.

c. Each Owner of an Added Parcel shall pay the same monthly Assessment as the Owner of an existing Parcel; provided, however, the Owner of an Added Parcel 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 Parcel prior to the recording of the Supplemental Amendment shall not be affected.

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 and Builder shall jointly have the right to transfer to any other person the said right, privilege and option to annex such Added Property which is herein reserved to Declarant and Builder jointly, provided that such transferee or assignee shall be the developer or builder of at least a portion of such Added Property and that such transfer is memorialized in a written, recorded instrument.

**Section 17.04. Amendment.** This Article XVII shall not be amended without the written consent of Declarant and Builder, so long as the Declarant or Builder owns any portion of the Development Area.

**Section 17.05. Annexation of Common Areas.** If, at any time pursuant to this Article XVII, property is annexed adjacent to or in the vicinity of the Development Area, including but not limited to the property described in Exhibit "A," and said property includes property deemed 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.

## ARTICLE XVIII

### LIMITATION OF LIABILITY

**Section 18.01. Limitation of 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 NONE OF DECLARANT OR BUILDER (INCLUDING WITHOUT LIMITATION ANY ASSIGNEE OF THE INTEREST OF DECLARANT OR BUILDER HEREUNDER), NOR ANY MEMBERS OR MANAGERS OF DECLARANT OR BUILDER (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 BUILDER (OR ITS RESPECTIVE 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.

IN WITNESS WHEREOF, the Declarant and Builder have caused this instrument to be signed as of this 6th day of November, 2017.

Beacon Pointe of Cedar Lake LLC

By: John Doe  
Its: MANAGING MEMBER

**MHI Homes, LLC**

By: R. W. Thompson  
Its: President

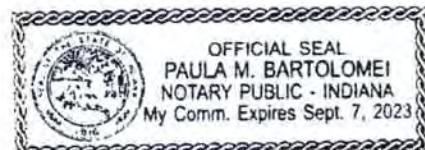
STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

**BEFORE ME**, a Notary Public in and for said County and State, personally appeared Beacon Pointe of Cedar Lake LLC, an Indiana limited liability company, by DEAN SCHILLING, and acknowledged the execution of the foregoing instrument to be its free and voluntary act.

Given under my hand and notarial seal this 7<sup>th</sup> day of NOVEMBER, 2017.

*Paul J. Bartolomei*, Notary Public

My Commission Expires: 9-7-23  
County of Residence: WAKE



STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

**BEFORE ME**, a Notary Public in and for said County and State, personally appeared MHI Homes, LLC, an Indiana limited liability company, by Ronald W. McFarland, and acknowledged the execution of the foregoing instrument to be its free and voluntary act.

Given under my hand and notarial seal this 6<sup>th</sup> day of December, 2017.



This 6<sup>th</sup> day of November, 2017.

Linda M. Rambault, Notary Public

My Commission Expires: 4-3-23  
County of Residence: Lafayette

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

/s/ Mark R. Anderson

Printed Name: Mark R. Anderson

This instrument prepared by:

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

**EXHIBIT "A"**

**Submitted Parcel and Subdivision**

BEACON POINT - UNIT 1 PLANNED UNIT DEVELOPMENT, AN ADDITION TO THE TOWN OF CEDAR LAKE, LAKE COUNTY, INDIANA RECORDED ON JUNE 7, 2017 IN PLAT BOOK 110, PAGE 27 AS DOCUMENT NO. 2017 034819 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

**Development Area**

PART OF SECTION 27, TOWNSHIP 34 NORTH, RANGE 9 WEST OF THE SECOND PRINCIPAL MERIDIAN, IN LAKE COUNTY, INDIANA, LYING SOUTH OF THE CENTERLINE OF SLEEPY HOLLOW DITCH AND WEST OF THE WEST RIGHT OF WAY LINE OF THE MONON RAILROAD, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 27, SAID POINT BEING THE POINT OF BEGINNING, THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID SECTION 27, A DISTANCE OF 2427.19 FEET TO THE SOUTHWEST CORNER OF CAMELOT, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 70 PAGE 24, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA; THENCE SOUTH 64 DEGREES 25 MINUTES 58 SECONDS EAST ALONG THE SOUTH LINE OF CAMELOT A DISTANCE OF 266.44 FEET; THENCE NORTH 89 DEGREES 56 MINUTES 11 SECONDS EAST A DISTANCE OF 99.00 FEET TO THE CENTERLINE OF SLEEPY HOLLOW DITCH; THENCE ALONG THE CENTERLINE OF SLEEPY HOLLOW DITCH FOR THE FOLLOWING 8 COURSES: SOUTH 60 DEGREES 01 MINUTES 07 SECONDS EAST A DISTANCE OF 93.03 FEET; SOUTH 87 DEGREES 16 MINUTES 00 SECONDS EAST A DISTANCE OF 43.00 FEET; SOUTH 14 DEGREES 33 MINUTES 00 SECONDS EAST A DISTANCE OF 58.00 FEET; SOUTH 87 DEGREES 26 MINUTES 00 SECONDS EAST A DISTANCE OF 63.00 FEET; NORTH 65 DEGREES 30 MINUTES 00 SECONDS EAST A DISTANCE OF 65.00 FEET; NORTH 89 DEGREES 14 MINUTES 00 SECONDS EAST A DISTANCE OF 269.00 FEET; NORTH 86 DEGREES 23 MINUTES 00 SECONDS EAST A DISTANCE OF 128.00 FEET; SOUTH 79 DEGREES 43 MINUTES 00 SECONDS EAST A DISTANCE OF 118.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE MONON RAILROAD; THENCE SOUTH 02 DEGREES 10 MINUTES 38 SECONDS WEST ALONG SAID WESTERLY RIGHT OF WAY LINE A DISTANCE OF 2228.75 FEET TO THE SOUTH LINE OF SAID SECTION 27; THENCE NORTH 89 DEGREES 44 MINUTES 04 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF 1027.70 FEET TO THE POINT OF BEGINNING.

Rev. November 8, 2017

EXHIBIT "B"

ARTICLES OF INCORPORATION  
FOR  
BEACON POINTE OF CEDAR LAKE HOMEOWNERS ASSOCIATION, INC.

State of Indiana  
Office of the Secretary of State

Certificate of Incorporation  
of

BEACON POINTE OF CEDAR LAKE 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 Tuesday, November 07, 2017.



In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, November 08, 2017

A handwritten signature in black ink that reads "Connie Lawson".

CONNIE LAWSON  
SECRETARY OF STATE

201711071222655 / 7749857

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

APPROVED AND FILED  
CONNIE LAWSON  
INDIANA SECRETARY OF STATE  
11/08/2017 08:29 AM

#### ARTICLES OF INCORPORATION

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

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

BUSINESS ID	201711071222655
BUSINESS TYPE	Domestic Nonprofit Corporation
BUSINESS NAME	BEACON POINTE OF CEDAR LAKE HOMEOWNERS ASSOCIATION, INC.
PRINCIPAL OFFICE ADDRESS	2300-A Ramblewood Drive, Highland, IN, 46322, USA

#### ARTICLE II - REGISTERED OFFICE AND ADDRESS

NAME	Ronald McFarland
ADDRESS	2300-A Ramblewood Drive, Highland, IN, 46322, USA

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

PERIOD OF DURATION	Perpetual
EFFECTIVE DATE	11/07/2017
EFFECTIVE TIME	04:12PM

#### ARTICLE IV - PRINCIPAL(S)

No Principal on record.

#### ARTICLE V - INCORPORATOR(S)

NAME	Ronald McFarland
ADDRESS	2300-A Ramblewood Drive, Highland, IN, 46322, USA

APPROVED AND FILED  
CONNIE LAWSON  
INDIANA SECRETARY OF STATE  
11/08/2017 08:29 AM

**ARTICLE VI - GENERAL INFORMATION**

**STATEMENT OF PURPOSE**

See Attachment

**TYPE OF CORPORATION**

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

**WILL THE CORPORATION HAVE MEMBERS?**

Yes

**DISTRIBUTION OF ASSETS**

See Attachment

**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 November 7, 2017

**SIGNATURE** Ronald McFarland

**TITLE** Incorporator

Business ID : 201711071222655  
Filing No : 7749857

**ARTICLES OF INCORPORATION OF NONPROFIT CORPORATION:  
BEACON POINTE OF CEDAR LAKE HOMEOWNERS ASSOCIATION, INC.**

**ATTACHMENT**

**PURPOSE**

Section 1 To form an organization for the owners and residents of Beacon Pointe of Cedar Lake, 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 To own, maintain and administrate community properties and facilities, to administrate and enforce covenants and restrictions applying to property within the development known as Beacon Pointe of Cedar Lake, located in Cedar Lake, Indiana, and to collect and distribute assessments and charges therefor.

Section 3 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 4 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 5 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 6 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  
11/08/2017 08:29 AM

**ARTICLES OF INCORPORATION OF NONPROFIT CORPORATION:  
BEACON POINTE OF CEDAR LAKE HOMEOWNERS ASSOCIATION, INC.**

---

**ATTACHMENT**

**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 BEACON POINTE OF CEDAR LAKE HOMEOWNERS ASSOCIATION, INC.

#### ARTICLE I

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

**Section 1. Name.** The name of the Association shall be Beacon Pointe of Cedar Lake Homeowners 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 2300-A Ramblewood Drive, Highland, Indiana 46322. 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 Beacon Pointe of Cedar Lake (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 one (1) class 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 Builder 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 Builder. 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 Builder Control.** The Directors shall be selected by the Builder acting in its sole discretion and shall serve at the pleasure of the Builder until such time as is specified in the Declaration, unless the Builder shall earlier surrender this right to select Directors. The Directors selected by the Builder need not be Owners or residents in the Subdivision. After the period of Builder 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 Builder, 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 Builder'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, the Builder, or an affiliate of the Declarant or Builder, 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.** Builder 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).