

23  
2019 024638

2019 APR 29 AM 11:07

**DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
MORNING CREST SUBDIVISION, UNIT 1  
RECORDED IN PLAT BOOK 112, PAGE 07 LAKE COUNTY, INDIANA**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR MORNING CREST SUBDIVISION, UNIT 1 (this "Declaration"), made this 29<sup>th</sup> day of April, 2019, by LANTZ DEVELOPMENT CORP., an Indiana corporation (the "Declarant").

**WITNESSETH:**

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

WHEREAS, the Declarant desires to develop Morning Crest, Unit 1, except Lot 35 and Outlots A & B as a single family residential subdivision under a general plan and scheme of development and improvements and

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

NOW THEREFORE, the Declarant hereby declares that the single-family platted lots located in Unit 1, except Lot 35 and Outlots A & B (as hereinafter defined), shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, restrictions, conditions, reservations, easements, charges and liens, all of which are declared and agreed to be in furtherance of a plan for the improvement of the real estate and sale of the said Lots in the Subdivision, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision together as a whole and of each of the said lots situated in the development described herein.

**ARTICLE I**

**Section 1 - DEFINITIONS**

In this Declaration, the following terms, words, or phrases shall have the meanings described below:

- a) **"Assessments"** shall be defined as the Assessments for Common expenses provided for herein or by any Supplemental Amendment or by any other amendment hereof pursuant to Article IX, hereof which shall be used for the purposes of maintaining Outlots, common areas, entrance monuments and easements. Such assessments shall be subjected or levied to each lot owner for the benefit and enjoyment of said areas. Such assessments or levies may need to be revisited or audited periodically by the Board of Directors and as more particularly authorized below. The Assessments shall be levied equally against the Owners of the Lots unless otherwise specifically set forth herein.
- b) **"Association"** shall be defined and referred to as Morning Crest Homeowners Association, Inc., an Indiana nonprofit mutual benefit corporation, and its successors and assigns (the "Association"). The "Board of Directors" shall be an elected body of the Association under the laws of the state of Indiana. The Association shall be organized and governed in accordance with its Articles of Incorporation and By-Laws, attached hereto. In addition, the Board may adopt Rules and Regulations for the Association and Subdivision.

**FILED**

APR 29 2019

051171

JOHN E. PETALAS  
LAKE COUNTY AUDITOR

\$2500

JH

CC

- c) **"Common Elements"** shall be defined as Outlots A & B, as well as the entrance monuments, landscaping easements for those monuments shown on the recorded plats and the improvements thereon, identifying the Subdivision installed by Declarant or the Association (excluding the Units also known as Lots). All real and personal property owned or controlled by the Association and available for the common benefit and/or use of Owners, and 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 Developed Area.
- d) **"Common Expenses"** Common Expenses shall constitute expenditures made by or financial liabilities of the Association, together with any and all allocations to reserves, which expenses shall include, but are not limited to: (a) expenses of administration, maintenance, repair and/or replacement of the Common Elements; (b) expenses declared to be Common Expenses by the Instruments; (c) expenses agreed upon as Common Expenses by the Association; and, (d) adequate reserves for the periodic maintenance, repair, and replacement of Improvements and those Limited Common Elements that the Association is obligated to maintain in addition to the Common Elements or any other real or personal property acquired or held by the Association.
- e) **"Declarant"** shall be defined as Lantz Development Corp., an Indiana corporation, its successors and assigns for the purpose of this development.
- f) **"Declaration"** shall be defined as The Declaration of Covenants and Restrictions For Morning Crest Subdivision, Unit 1, Recorded in Plat Book 112, Page 07 Lake County, Indiana, an addition to the Town of St. John, Lake County, Indiana as amended from time to time.
- g) **"Development Area"** shall be defined as the real estate described on Exhibit "A" hereto with all improvements within.
- h) **"Development Rights"** shall be defined as the rights reserved by the Declarant under this Declaration.
- i) **"Eligible Mortgage"** shall be defined as an insurer or guarantor of a first mortgage who has notified the Association in writing of its name and address and that it has insured or guaranteed a first mortgage on a Unit. Such notice shall be deemed to include a request that such Eligible Insurer be given the notices and other rights described in this Declaration.
- j) **"Eligible Mortgagee"** shall be defined as the holder of a first Security Interest on a Unit who has notified the Association, in writing, of its name and address, and that it holds a mortgage on a Unit. Such notice shall be deemed to include a request that such Eligible Mortgagee be given notices and other rights described in this Declaration.
- k) **"Instruments"** the Declaration, the Surveys and Plans recorded with the Office of the recorder of Lake County, Indiana, the Bylaws and the rules and Regulations as they may be amended from time to time. Any Exhibit, Schedule or Certification accompanying and Instrument is a part of the Instrument.
- l) **"Lot" (Unit)** shall be defined and referred to as any lot within the Subdivision, together with any and all improvements thereon, identified with a number as shown on the Plat.
- m) **"Majority of Members"** shall be defined as the Owners of more than fifty-one percent (51%) of the votes in the Association. Any specified percentage, portion or fraction of members, unless otherwise stated in any Instrument, means such portion of votes.

- n) **"Member"** shall be defined and referred to as the Declarant or other Person who owns any interest in one or more Units or Lots in this Subdivision, excluding a person having a Security Interest in a Unit. The Declarant is the Owner of any Unit created by the Declaration until that Unit has been conveyed to another Person.
- o) **"Occupant"** shall be defined or referred to as one or more Persons which may at any time be entitled to the use and possession of a Residential Unit.
- p) **"Owner"** shall be defined as the record owner, whether one or more Persons, of the fee simple title to any Lot, including the Declarant.
- q) **"Person"** shall be defined as an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government agency or other legal or commercial entity.
- r) **"Plans"** shall be any recorded plat of the subdivision and other plans filed with the Declaration.
- s) **"Residential Unit"** shall be defined as one of the Lots and the single-family residence located thereon, which is contained within the Subdivision intended for independent ownership for use and occupancy as a single-family residence. The boundaries of Residential Units shall be the boundary lines of the Lots conveyed by Declarant to the Owners. For the purpose of this Declaration, a Residential Unit shall come into existence when substantially complete.
- t) **"Rules and Regulations"** shall be defined as the rules and Regulations for the use of Units or Lots and Common Elements and for the conduct of a Person within the Property.
- u) **"Structure"** shall mean any building, pool, driveway, breezeway, accessory building or fixture that is permanent or non-permanent.
- v) **"Subdivision"** shall be defined and referred to as the real estate commonly known as Morning Crest, a Subdivision in the Town of St. John, Lake County, Indiana.
- w) **"Submitted Parcel"** shall be defined as that portion of the Development Area which is described and attached as Exhibit "A" may be amended from time to time, together with all rights appurtenant thereto.
- x) **"Surveys"** any Surveys filed with the Declaration, as may be amended from time to time.
- y) **"Turnover Date"** will be the date when the Board of Directors transfers the responsibilities thereof.
- z) **"Unit" (Lot)** shall be defined and referred to any lot within the Subdivision, together with any and all improvements thereon, identified with a number as shown on the Plat.
- aa) **"Votes"** shall be defined as the Votes allocated to each Member as provided in the Declaration and Bylaws.

## ARTICLE II

### **Section 2 - PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO, DELETIONS THEREFROM**

- a) **Legal Description.** The real property which is held, transferred, sold, conveyed and occupied, subject to this Declaration, located in Lake County, Indiana, and comprises all of the Lots, easements, and outlots shown and/or platted within or upon the property legally described as the Submitted Parcel as Morning Crest Subdivision or Exhibit "A." Provided, however, Lot 35 of the subdivision, as appearing in Morning Crest, Unit 1, plat thereof, appearing in Plat Book 112, page 07, in the Office of the Recorder of Lake County, Indiana is specifically excluded from this Declaration.
- b) **Easements.** There are easements shown on the plat of the Subdivision, such certain easements which shall be and are hereby reserved for the installation, construction, maintenance, repair or replacement of any and all public utilities and drainage and their poles, ducts, wires, pipelines, lines, conduit, sewers, manholes or other related utility or drainage facility. No permanent Structure shall be erected or allowed to be maintained on any easement. Declarant also reserves for itself and its designees (including, without limitation, the Town of St. John and any utility) the non-exclusive right and power to grant, modify or expand such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of the Subdivision, and such easements may include easements upon, across, over and under the Lots for ingress, egress, installation, replacing, repairing and maintaining cable television systems, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity. This reserved right of easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the improvement, repair, maintenance, or access of the Subdivision and/or Developed Area. The Owner of any property to be burdened by any easement granted pursuant to this Section shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned. No Owner shall grant an easement, license or permit others to use any Lot, or portion thereof, in the Subdivision for access to any property or real estate not located within the Subdivision.

## ARTICLE III

### **Section 3 - USE RESTRICTIONS**

- a) **Residential Restrictions.** The Residential Units shall be used only for one family residential, personal recreational and related purposes. The Association, acting through the Board of Directors, shall have standing and the power to enforce use restrictions in such Declaration.
- b) **Building Method.** All improvements constructed on Lots in the Subdivision shall be subject to this Declaration, including but not limited to the provisions of this Article and the Architectural Review Process located in Article X.
- c) **Residential Setback Requirements.** All dwellings or houses and above-ground Structures designed and/or constructed or placed on Lots in the Subdivision so as to

comply with the setback lines, side yard and rear yard established on the plat of the Subdivision.

- d) **Owner's Obligation to Maintain Lot.** Each Owner of an improved Lot which is subject to this Declaration shall at all times maintain the Lot and the improvements in such a manner as to prevent the Lot and improvements from becoming unsightly, and specifically such Owner shall: (a) keep the exterior of the improvements in such a state of repair or maintenance as to avoid the improvements from becoming unsightly; (b) remove all debris and rubbish and prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Lot; (c) mow and otherwise tend to the landscaping on the Lot as such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds six (6) inches or more in height on improved lots with dwellings.
- e) **Leasing Residential Units.** If any Residential Unit Owner chooses to Lease their Structure or Unit, such Unit Owner, will continue to be responsible for all Rules and Regulations in this Declaration.
- f) **Accessory Buildings.** In order to preserve the quality and appearance of the Subdivision, any accessory buildings must be approved by the Declarant and/or the Architectural Review Committee, and must be in accordance with the Town of St. John ordinances and specifications. All such accessory buildings may only be erected in the rear portion of a Lot, and may not exceed a 12 foot by 14 foot floor dimension. The maximum wall height shall be 8 feet, with a maximum roof height of 12 feet. Any accessory building shall have exterior finishes that match the residence constructed on such Lot and shall be built or constructed on a concrete slab. No metal, fiberglass or "one-piece" vinyl accessory buildings shall be allowed. Jungle Gyms, Activity or Playsets, and Playhouses shall be limited and subject to the same size and height restrictions regulating sheds or accessory buildings. No portable, seasonal or temporary ice skating or hockey rinks of any kind, as well as trampolines or tree houses will be allowed. No structure of a temporary character, such as a trailer, tent, shack, garage, barn, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.
- g) **Fences.** In order to preserve the quality and appearance of the Subdivision, any fence must be approved by the Declarant or Architectural Review Committee as to size, location, height and composition before it may be installed. Only "wrought iron" style or Decorative aluminum fences will be allowed on Lots 17-22 and 27-34. Decorative Vinyl, "wrought iron" style or Decorative aluminum fences will be allowed only on Lots 1-16 and Lots 23-26, and in any and all occasions chain link, wood or stockade fences are prohibited from use anywhere in the Subdivision including dog runs and pet enclosures. All fences approved by the Declarant or Architectural Review Committee must also be approved and permitted by the Town of St. John.
- h) **Swimming Pools.** Only in-ground pools shall be allowed. No above ground swimming pools shall be installed on any lot. This includes "temporary" or inflatable pools. Only toddler inflatable pools with total heights of 18 inches or less shall be allowed and must be removed daily and stored out of site.
- i) **Prohibition of Used Structures.** All Structures constructed on any Lot in the Subdivision shall be constructed with substantially all new material, and no used Structures shall be relocated or placed on any Lot.
- j) **Exterior Post Lights.** Each Owner of a Lot shall have the right to have an exterior post light to be installed and maintained, at such Owner's expense. Exterior post lights shall

be illuminated from dusk to dawn, be located five (5) feet from the driveway and five (5) feet from the public sidewalk toward the middle of the Lot.

- k) **Mailboxes.** Mailboxes shall be constructed of masonry, stone or a combination thereof. The box insert shall consist of the cast iron type. Each Lot owner shall be responsible for the cost and installation of said Mailboxes. No Owner may install or use a mailbox or mailbox post that is composed of plastic, rubber or wood.
- l) **Antennae.** No exposed radio, television antennae, solar panels or satellite dishes shall be allowed on any Structure or on any Lot which are visible from the front of such Structure or Lot. In regards to a corner Lot, such same mentioned items shall not be visible from either street facing the structure.
- m) **Plants, Plant Material.** Planting materials shall be installed on a Lot as to present a healthy, neat and orderly appearance, free from refuse and debris. All such landscaping shall be completed no later than six (6) months from the issuance of an occupancy permit by the Town of St. John.
- n) **Well and Septic Tanks.** No water wells shall be drilled on any Lot in the Subdivision without the approval of the Declarant or Architectural Review Committee. No septic tanks shall be installed on any Lot.
- o) **Boats and Motor Vehicles.** No recreational vehicles, motor homes, boats, boat trailers, recreational equipment and trailers, commercial vehicles over three-quarter ton, or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Lot driveway 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. Removing a vehicle for one hour, one day, or varied days does not constitute the initiation of starting a new timeframe of 48 hours. The same restrictions apply to any recreational vehicles, motor homes, boats, boat trailers, recreational equipment, and trailers, commercial vehicles over three-quarter ton when parking in the streets in the subdivision.
- p) **Animals and Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot. However, dogs, cats and other common household pets may be kept on Lots so long as they are not kept, bred, or maintained for commercial or hobby purposes. No animals shall be allowed to run loose at any time in the Subdivision, and must be kept on a leash at all times. Dogs shall not be allowed to continuously bark, yelp, whine or howl by the Owner of any Lot in the Subdivision. No Owner may leave animals leashed or unleashed and unattended outdoors for lengthy periods of time.
- q) **Garbage, Rubbish, Trash, and Nuisance.** To maintain an appearance throughout the Subdivision, no garbage, rubbish, trash, or other waste materials shall be kept or permitted on any Lot and all trash shall be kept in sanitary containers and shall be stored inside the garage or out of site. 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.
- r) **Clothes Lines or Drying Areas.** No outside clothes lines shall be erected or maintained on any lot. Nor shall any portion of any Lot be used as a drying or hanging area for laundry of any kind.
- s) **Signs.** Except as hereinafter provided for Declarant, no advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on any

Lot subject to this Declaration. An Owner may place one professional sign on any Lot advertising the Lot for sale or home for sale.

- t) **Uses Affecting Insurance Rates or Nuisances.** No Owner shall permit, allow or suffer anything to be done or kept in a Structure or on a Lot which will increase the insurance rates on any adjacent Structure or Lot. Nor will they do or maintain anything on any Lot which shall decrease the value of any other Lot throughout the Subdivision.

#### **ARTICLE IV**

#### **Section 4 - ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

##### **Section 4.01. Membership and Meetings.**

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

The first annual meeting of the Association shall not be held until such time as the Declarant elects to terminate its sole control by delivery of written notice or official notification. 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 a time 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 whereas, at each annual meeting, elect the Board of Directors of the Association in accordance with the provisions of the By-Laws and transact such other business as may properly come before the meeting.

##### **Section 4.02. Voting.**

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

##### **Section 4.03. Number Terms and Selection of Board of Directors.**

The initial Board of Directors shall consist of three (3) directors who may but need not be Owners or Members of the Association, and who shall serve those terms of office as established by the By-Laws. The initial Board of Directors shall consist of **John Lantz, Brian Lantz and Dorene Lantz**. After the Turnover Date, directors shall be elected per the requirements of the Articles of Incorporation and By-Laws of the Association and must be Members of the Association.

Notwithstanding any other provision of this Declaration, the Articles of Incorporation, or the By-Laws, from and after the date of the recording of the Declaration until the Turnover Date, the Association shall be governed by the Board of Directors appointed from time to time by the Declarant. Such Board of Directors so appointed shall exclusively hold all rights and powers which a Board of Directors or the Association would have under this Declaration, the Articles of Incorporation, or the By-Laws, except as specifically limited herein. Such Board of Directors may appoint from time to time from among the Owners

of Lots, one or more committees to advise and assist it in the performance of its functions. The rights and powers of the Board of Directors shall be limited as follows:

- (a) All Assessments shall be made in accordance with this Declaration.
- (b) Such Board shall have no power to reallocate the voting power among the Members in any manner contrary to this Declaration.
- (c) Such Board shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

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

## **ARTICLE V**

### **Section 5 - MAINTENANCE**

**Section 5.01** Unless otherwise provided by an amendment to the By-Laws of the Association by a vote of two-thirds (2/3) of the votes of the Members (not two-thirds (2/3) of a quorum), and subject to the Association's responsibility for maintenance of the Submitted Parcel (except for services provided by the Town of St. John and/or Lake County, Indiana) shall be limited to the maintenance, repair, and replacement of the Common Areas including but not limited to the Sign (monument) and Landscape Easement as well as Outlot A and Outlot B and any other outlots hereinafter deeded to the Association and located in recorded plats.

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

- (a) mowing any grass and caring for any lawn or landscaping that is located on the Lot, removing snow from the sidewalks on the Lot, and providing the Association with the Owner's name, address, phone number and insurance company information and to keep the Association informed of any change.

**Section 5.03. Retention and Detention Ponds.** The Declarant has or will convey to the Association the Common Area which contain retention/detention ponds located on the property, the legal descriptions of said ponds is as follows:  
Outlots "A" & "B," Morning Crest Subdivision, Unit 1, to the Town of St. John, as per plat thereof, recorded in Plat Book 112, Page 07, in the Office of the Recorder of Lake County, Indiana.

## **ARTICLE VI**

## **Section 6 - INSURANCE AND CASUALTY LOSSES**

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

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

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

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

## **ARTICLE VII**

### **Section 7 - NO PARTITION**

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

## **ARTICLE VIII**

### **Section 8 - RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION**

**Section 8.01. Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the operations of the Association, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may be imposed in accordance with Article XII. The Board shall, in addition, have the power to

seek relief in any court for violations or to abate nuisances. In addition, the Association shall permit the Town of St. John and/or Lake County, Indiana, to enforce ordinances on the Subdivision for the benefit of the Association and its Members.

## ARTICLE IX

### Section 9 - ASSESSMENTS

**Section 9.01. Creation of Assessments.** There are hereby created Assessments for Common Expenses authorized by the Board of Directors to be commenced at the time and in the manner as determined by the Board of Directors in its sole discretion. Notwithstanding, anything to the contrary in this Declaration, no Assessments shall be levied on a Lot unless and until the Declarant sells such Lot to an unrelated third party Owner; provided, however, that if the Declarant repurchases a Lot from a third party Owner the Declarant, as the succeeding Owner, shall be responsible for timely payment of ongoing Assessments related to such Lot. Assessments shall be for expenses determined by the Board to be for the benefit of the Association. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these Assessments. Any such Delinquent Assessments, together with interest at the rate of twelve percent (12%) per annum, costs, and reasonable attorneys' fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each Assessment is made. Any Assessments which are not paid within thirty (30) days of the due date shall be deemed to be delinquent, past due and subject to collection, and shall be a valid lien against the Lot.

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

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

**Section 9.02. Computation of Assessment.** It shall be the duty of the Board, at least sixty (60) days before the beginning of the budget year (the budget year shall be from January 1 through December 31) and thirty (30) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated Common Expenses during the coming budget year. Subject to the provisions of Section 9.05 hereof, the budget may include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general expenses. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Lot for the following budget year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors. Such Assessment payment shall be due within 30 days of the adoption of the budget passed by the Board of Directors. The Board of Directors shall have the right to impose a late fee for any delinquent assessments due should they choose to adopt one.

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

Until the Board of Directors of the Association establishes an Assessment, at the time that each Lot is transferred from the Declarant to the new Owner, an initial Assessment of Two Hundred Ninety Dollars (\$290.00) shall be collected at the closing. In addition, each Owner shall be responsible to pay a yearly Assessment of Two Hundred Ninety Dollars (\$290.00) or as otherwise determined by the Board per calendar year (prorated for the first year of ownership).

**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 greater than fifty percent (50%) of the votes of a quorum of the votes of Members entitled to vote at a meeting called for the purpose. The Association may also levy a Special Assessment as a sanction against any Member to reimburse the Association for costs incurred in bringing a Member and his or her Lot into compliance with the provisions of the Declaration, the Amendments thereto, the Articles of Incorporation, the By-Laws, and the Rules and Regulations, which Special Assessment may be levied upon the vote of the Board.

**Section 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 Lot prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgage or deeds of trust) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Association, following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be assessed or levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

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

**Section 9.07. Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the Assessments, including interest, late charges subject to the limitations of Indiana law, and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any bona fide first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the Assessment or Special Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments as to payments which became due prior

to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any Assessments or Special Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his successors and assigns shall not be liable for the share of the Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of the Assessments shall be deemed to be Common Expense collectible from all of the Lots, including such acquirer, his successors and assigns

## **ARTICLE X**

### **Section 10 - ARCHITECTURAL REVIEW PROCESS**

**Section 10.01. Objectives.** The Declarant and Association's objectives are to carry out the general purposes expressed in this Declaration; and to assure that any improvements or changes to a Lot will be of good and attractive design and will serve to preserve and enhance existing features of natural beauty; and to assure that materials and workmanship of all improvements are of high quality and comparable to other improvements in the area.

**Section 10.02. The Committee.** To achieve the Declarant and Association's objectives, the Declarant shall create a three (3) member Architectural Review Committee with the power to administer this Declaration with regard to approving or disapproving those matters which are expressed herein to be within the jurisdiction of the Committee. The right to appoint and remove all members of the Committee or the alternative right to solely act as the Committee, shall vest solely in the Declarant, its successors and assigns, until such time as Declarant, in its sole option, at any time hereafter relinquishes to three (3) Lot Owners the power to ensure that all Structures shall be of a quality of design, workmanship and materials which are compatible and harmonious with the Covenants and natural setting of the area and other Structures within the development.

**Section 10.03. Materials to be Submitted.** No improvements shall be constructed or placed on any Lot within the Subdivision until final plans and specifications showing the site plan and all existing or proposed improvements have been submitted to, and approved in writing, by the Committee or Declarant, as the case may be. An Owner may choose to submit a preliminary concept to the Declarant or Committee, which concept, if approved, may be incorporated into final plans and specifications. If a preliminary concept is approved by the Declarant or the Committee, a final plan which is substantially similar to the preliminary concept plan shall be approved by the Declarant or the Committee as to those items submitted in the preliminary concept.

The Owner shall request architectural review in writing, and shall furnish two (2) complete copies of each of the following:

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

Changes in approved plans and specifications, or subsequent alterations, additions and changes to any existing improvements that affect dwelling size, placement or external appearance must be

similarly submitted to and approved by the Declarant or the Committee. Plans and specifications for the repair or reconstruction of improvements after casualty or condemnation must be similarly submitted to and approved by the Declarant or the Committee.

**Section 10.04. Procedure.** The Committee, or Declarant, as the case may be, shall disapprove preliminary concepts or plans and specifications submitted to it in the event the same are not in accordance with this Declaration or if the concept or final plans and specifications submitted are incomplete, and shall specify the reason for such disapproval. The Committee or Declarant may also refuse to grant approval when the proposed improvement, construction or modification, or any part thereof, would be contrary to the interests, welfare or rights of all or any part of the other Owners, all as determined in the sole discretion and opinion of the Committee or Declarant. The Declarant or the Committee shall consider any request which is submitted in accordance with the terms hereof on the basis of its conformity and harmony of external design and location in relation to surrounding Structures, relation to topography, grade and finish ground elevation of the Lot being improved to that of neighboring sites, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning and rooftop installations, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Declarant or the Committee shall, within thirty (30) days after the submission of such complete plans and specifications, approve or disapprove any such request in writing. In the event, such plans and specifications are disapproved, the Declarant or the Committee shall specify the reasons therefor. If the Declarant or the Committee fails to so approve or disapprove such request within thirty days after such plans and specifications are submitted, such request shall be deemed approved. The decision of the Declarant or the Committee shall be final, but the Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specifications. The Declarant or the Committee shall retain one (1) full set of each Owner's final plans for its file. The Declarant or the Committee shall have the rights, in its sole discretion to approve the builder of the improvements on the Lot.

**Section 10.05. Completion of Improvements.** Upon obtaining the final plan approval of the Committee, the Owner shall begin construction within 90 days of said approval and proceed diligently with the commencement and completion of all approved improvements. If the Owner does not begin construction within 90 days of the plan approval, said approval shall become null and void and a new submission must be made for approval.

**Section 10.06. Variances.** The Architectural Control Committee, by the written consent of two-thirds of the members thereof, or by the decision of Declarant, as the case may be, is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that variances shall not materially injure any other Lot or improvements within other Lots, and shall otherwise be subject to all applicable laws, ordinances, rules and regulations of any governmental agency or political subdivision having jurisdiction over the Lot. No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other Person, Owner, Occupant or Lot.

**Section 10.07. Liability.** Neither the Committee, Declarant, nor any member, employee or agent thereof, shall be liable to any Owner, to anyone submitting plans for approval, or to any other Person, by reason of good faith exercise of judgment or mistake or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications or for any other action in connection with its or their duties hereunder. No Committee member shall receive any compensation for serving on the Architectural Control Committee.

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

whether or not pursuant to approved plans, drawings, and specifications; and (e) the development of any property within Morning Crest to the Town of St. John, Lake County, Indiana. Any Person submitting plans to the Committee or Declarant shall hold the Committee, Association and Declarant harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorney fees incurred.

**Section 10.08. Remedies.** If any Owner believes that:

- (a) the disapproval of any plans and specifications;
- (b) the finding of any unfulfilled declaration obligations; or
- (c) the finding of a nuisance or violation under this Declaration is arbitrary and capricious, then the Owner must, as its sole remedy, submit the matter to final and binding arbitration pursuant to the provisions of the Indiana Uniform Arbitration Act and the rules of the American Arbitration Association not in conflict with said Act. The fees for the arbitrator and a court reporter shall be divided equally between the Owner and the Committee and/or Association. All other costs shall be borne by the party incurring same. The parties to arbitration agree to cooperate in providing the relevant documents, witnesses, employees, agents and contractors requested by the other party. No arbitrator shall vary from, or change the provisions of this Declaration.

**Section 10.09. Minimum Criterion for Architectural Review.** No residence shall be permitted to be constructed upon a Lot, nor shall the Committee be required to approve any construction which shall fail to comply with, or meet the following minimum requirements:

(a) Minimum Finished Floor Area. The minimum finished floor area (as hereinafter defined) of each residence on a Lot shall be as follows:

- (1) All one (1) story residences (ranches) shall have a minimum finished floor area of two thousand five hundred (2,500) square feet on lots 1-9 & 27-34 and a minimum finished floor area of two thousand four hundred (2,400) on lots 10-23. All ranches shall have a minimum of a 2-car attached garage or greater.
- (2) All one and one-half (1-1/2) story residences shall have a minimum finished floor area of two thousand six hundred fifty (2,650) square feet on lots 1-9 & 27-34 and a minimum finished floor area of two thousand five hundred fifty (2,550) square feet on lots 10-23. All 1-1/2 stories shall have a minimum of a 2-car attached garage or greater.
- (3) All two (2) story residences shall have a minimum finished floor area of two thousand seven hundred fifty (2,750) square feet on lots 1-9 & 27-34 and a minimum finished floor area of two thousand six hundred fifty (2,650) square feet on lots 10-23. All 2 stories shall have a minimum of a 2-car attached garage or greater.
- (4) For Lots 24-26, all one (1) story residences (ranches), shall have a minimum finished floor area of two thousand three hundred (2,300) square feet. All one and one-half (1-1/2) story residences on Lots 24-26, shall have a minimum finished floor area of two thousand four hundred and fifty (2,450) square feet. All two (2) story residences on Lots 24-26 shall have a minimum finished floor area of two thousand five hundred and fifty (2,550) square feet.

(b) Requirements Applicable to all Residence Construction.

- (1) A minimum of a 2-car attached garage is required on all residences. In no instance shall the square footage of the garage be included in the minimum square foot requirements for finished square footage of the residence.
- (2) At least 60% of the front exterior of the residence shall be masonry, brick, or stone, unless a variance is approved by the Architectural Review Committee. Real stone is preferred but faux (imitation) stone may be allowed, with exceptions, upon review by the Architectural Review Committee.
- (3) All driveways and service walks shall be of concrete or brick pavers. Each Owner must install, at its expense, a five foot (5') public sidewalk of poured concrete along all street frontages and within the public right-of-way as shown on the engineering plans. All public sidewalks shall comply with the standards of the Town of St. John.
- (4) There shall be no walls on the Front Elevation in which windows, doors or accenting are absent. The Architectural Review Committee shall have the right to require additional placement of said items to ensure the integrity of the architectural appearance.
- (5) All exterior siding shall consist of Smart siding, Hard-board, rigid siding or Vinyl. Panel sidings, such as plywood, may not be used unless a variance is approved by the Architectural Review Committee.
- (6) No building previously constructed elsewhere shall be moved upon any Lot within the Subdivision. Pre-fabricated and modular homes are not allowed as well as all bi-level, tri-level, and quad-level style homes and any homes constructed on a slab
- (7) All foundations shall be poured concrete. Solid Vinyl windows are not allowed.
- (8) All Roof pitches are to be a minimum of 8/12 pitch unless a variance is approved by the Architectural Review Committee. All plumbing stacks and roof vents or ventilators shall be located in the rear of the residence roof.
- (9) No exposed radio, TV antennas, satellite dish antennas or solar panels will be allowed on any Structure or Lot which is visible from the front of such Lot without approval of the Architectural Review Committee. In regards to a corner Lot, such same mentioned items shall not be visible from either street facing the structure.
- (10) Owners shall plant at least two (2) trees in the parkway located in the area between the curb and sidewalk. On corner lots, at least four (4) trees must be planted, whereas there shall be (2) on each frontage. Trees must be at least 2" caliper and a species not prohibited by the Town of St. John. The Declarant or the Architectural Review Committee shall have the right to plant and charge Owners for tree cost and installation labor for non-compliance with lien rights for non-payment within thirty (30) days.
- (11) All Lots shall be landscaped within Sixty (60) days of issuance of an occupancy permit, weather permitting. Any Occupancy Permits issued during the winter season shall be required to have their Landscaping installed and completed by May 30<sup>th</sup> of the following spring.

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

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

- (2) A one and one-half (1-1/2) story residence is defined as a dwelling having one and one-half floors of living area, both above grade, with the Master Bedroom being located on the first floor and with the second floor of living area Consisting of approximately one-half of the size of the ground level.
- (3) A two (2) story residence is defined as a dwelling having two floors of living area, both above grade and both approximately the same size;
- (4) Finished floor area is defined as finished living room, bedroom, kitchen, dining room, family room, closets, utility rooms, entry ways and bath usage, but shall specifically exclude attached garages, carports, open terraces, porches, basements and breezeways. To qualify as finished floor area the interior finish must be of a manner and quality of materials in keeping with the other rooms. Bonus room areas such as attic areas over a garage or finished areas shall be calculated as ½ square foot finished areas and must be completed during the time of construction to be considered.
- (5) Grading of Lots shall be in compliance with the Town of St. John requirements and the master grading plan prepared for this development plus grading shall be performed so as not to damage the adjacent Lot or Lots. No construction debris or concrete (including wash outs) is to be placed on any Lot other than the Lot being worked on at the time. This will be strongly enforced at Lot owner's expense. The Lot shall be the responsibility of the Lot Owner and/or Owner's builder with regards to the maintenance from debris, mowing and erosion.

#### **Section 10.10. Compliance with Soil Erosion Control Plan.**

- (a) Developer or Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-off Associated with construction activity. Each Owner shall undertake all erosion control measures contained therein as the plan applies to "land distributing activity" initiated by Owner or Owner's builders, contractors and their subcontractors and to comply with the Declarant's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.
- (b) Owner shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Owner, Owner's employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.
- (c) The Owner and the Owner's contractors and subcontractors shall fully and completely comply with the soil erosion measures required by state and local law and this Declaration and, among other things, shall install, repair or replace slit fence, clean the street near the Owner's Lot, repair any damage to the asphalt street or curbs or do any other work required to comply with the Owner's obligations for soil erosion management. Upon the Owner or its contractors failure to timely comply with this Article, the Declarant may (but shall be under no obligation to) unilaterally take soil erosion management action with respect to a Lot, and the Owner shall be responsible and shall reimburse the Declarant within thirty (30) days for any such costs incurred. If not paid by the Owner or its contractors, this obligation shall be a lien on the Lot or Lots and the personal obligation of the Owner and shall become due and payable in all

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

- (d) The Owner shall also be responsible for erosion control maintenance of their Lot from the date of contract sale.

## **ARTICLE XI**

### **Section 11 - ENFORCEMENT**

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

#### **Section 11.01. Authority and Administrative Enforcement and Procedures.**

- (a) **Authority.** Lots shall be used only for those uses and purposes set out in this Declaration, and subject to the covenants and restrictions set forth herein, and in the By-Laws and Rules and Regulations of the Association. The Board of Directors shall have the power and authority to impose reasonable Special Assessments in accordance with Section 9.03 hereof, which shall constitute a lien upon the Owner's Lot and to suspend an Owner's right to vote, and to approve other appropriate sanctions in the event that it is determined in accordance with this Article XI that an Owner or Occupant has violated any provision of this Declaration, the By-Laws, or the Rules and Regulations as duly promulgated.
- (b) **Procedure.** The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:
- i. **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (A) the alleged violation; (B) the action required to abate the violation; and (C) a time period, not less than ten (10) days, during which the violation may be abated without further sanction.
  - ii. **Notice.** If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the violator with written notice of a hearing. The notice shall contain: (A) the nature of the alleged violation; (B) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice; (C) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf; and (D) the proposed sanction to be imposed.
  - iii. **Hearing.** The hearing shall be held in executive session by the Board of Directors pursuant to the notice affording the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be heard, and the written result and statements of the sanction shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such

notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting.

- (a) 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:
  2. 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 XI, and in otherwise attempting to remedy the violation.
  3. The amount of actual damage done to other Owners and Occupants and/or their Lots and any Structures thereon and/or to the Association arising out of the violation or the efforts to remedy the effects of same.
  4. The amount which would be reasonably required to compensate the Association for the disruption of and inconvenience to, the community, the Association or any Member thereof, or Occupant of a Lot
  5. 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.
- iv. All Special Assessments amounts imposed hereunder as a sanction shall be deemed to be a part of the Assessment attributable to the Lot owned or occupied by the violator, and shall be assessed against said Lot and its Owner as a Special Assessment to be due and payable on the date that the next Assessment payment would be due, and any such Special Assessments which are not paid as of that date shall become a lien on such Lot, and shall be collected and enforced in the same manner as Assessments.
- v. Nothing herein contained shall be construed as granting to the Board of Directors the power or authority to impose such a Special Assessment which is punitive in nature, or to suspend an Owner's right to vote, unless the Board of Directors finds, by specific special findings of fact in accordance with the foregoing procedure, that the violator's conduct was willful, malicious, oppressive and/or outrageous in nature. Said special findings of fact shall specifically set forth all facts and circumstances.
- vi. All other sanctions imposed shall be reasonably related to the violation found.
- vii. The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

**Section 11.02. Legal Remedies.** In addition to the administrative remedies set forth in Section 11.01 hereof, the legal remedies may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any legal proceeding including reasonable attorneys' fees and costs.

**Section 11.03: 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 11.04. 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 XII

### **Section 12 - AMENDMENT**

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

**Section 12.01. Declaration.** Subject to the provisions of Articles herein, amendments to the Declaration shall be proposed and adopted as follows, provided, however, that no amendment may revoke, remove, or modify any right or privilege of the Declarant, without the Declarant's written consent.

- (a) Notice. Notice of the subject matter of any proposed amendment shall be included in the Notice of any meeting of the Board of Directors or Owners at which any proposed amendment is to be considered.
- (b) Resolution. Except as provided in subparagraph (d) hereof, a resolution to amend the declaration may be adopted by the affirmative vote in person or by proxy of not less than 100 percent (100%) of the votes of the Members (not 100 percent (100%) 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 100 percent (100%) of the Board of Directors (not 100 percent (100%) 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. This subparagraph (d) shall constitute an irrevocable special power of attorney to Declarant on behalf of all Owners, Mortgagees, and any and all other Persons having an interest of any kind in the Subdivision, for so long as Declarant 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 12.02. Articles of Incorporation.** The Articles of Incorporation of the Association shall be amended in the manner provided by such documents or by law.

## ARTICLE XIII

## **Section 13 - GENERAL PROVISIONS**

**Section 13.01. Term.** The covenants and restrictions of this Declaration shall run with and bind the Subdivision, and shall inure to the benefit of an shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by at least seventy-five percent (75%) of the then Owners, has been recorded within the year preceding and the beginning of each successive period often (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

**Section 13.02. 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 suite or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, or any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless each of the directors and each of the officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association, or arising out of their status as directors or officers, unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include an indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director or officer may be involved by virtue of such Person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such Person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board of Directors, there is not reasonable grounds for such Person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer. Any right to indemnification provided for herein shall be not exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 13.03. 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 13.04. 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 of the Lot on the records of the Lake County Auditor's official property tax records at the time of such mailing.

**Section 13.05. Usage.** Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

**Section 13.06. 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 13.07. 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 13.08. 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 13.09. 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 13.10. Choice of Law and Venue.** This Declaration, the Articles of Incorporation, the By-laws, or the Rules and Regulations shall be interpreted pursuant to the laws of the State of Indiana. Preferred venue for any dispute resolution as it relates to the subject matter of this Declaration, the Articles of Incorporation, the By-laws, or the Rules and Regulations, shall be Lake County, Indiana.

#### ARTICLE XIV

##### **Section 14 - DECLARANT'S RIGHTS**

**Section 14.01. Control by Declarant.** Notwithstanding any of the other provisions of this Declaration or the By-Laws to the contrary, and in addition to any other right or privilege given or granted or reserved to Declarant under this Declaration, the first and all subsequent Board of Directors shall consist solely of three (3) individuals designated by Declarant, which individuals may be or need not be Owners or Members until the date on which the Declarant elects to terminate its sole control by the delivery of written notice of such election to the Owners (the "Turnover Date").

**Section 14.02. Absence of Warranty.** The Declarant specifically disclaims any warranty or representation in connection with the Subdivision or Development Area or this Declaration except as specifically set forth herein; and no Person shall rely upon any warranty or representation not specifically set forth therein. Any estimates of Assessments are believed to be accurate, but no warranty or guaranty is made or intended, nor may one be relied upon.

**Section 14.03. Assessment Exemption.** Declarant shall be exempt from any Assessment levied by the Association on any or all Lots owned by the Declarant and/or Declarant's designees which are unoccupied and offered by the Declarant for sale.

**Section 14.04. Right to Amend Declaration.** The Declarant shall have the right to amend the Declaration, and the Articles of Incorporation, By-Laws, and Rules and Regulations, in accordance with Article XII hereof.

**Section 14.05. Transfer of Rights.** Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is a written instrument signed by the Declarant and duly recorded in the Office of the Recorder of Lake County, Indiana.

**Section 14.06. Declarant's Reserved Rights and Easements.** Notwithstanding any provisions herein to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any portion of the Submitted Parcel

and any portion of the Development Area which becomes part of the Submitted Parcel, for the benefit of Declarant, its successors, and assigns over, under, in, and/or on the real estate and any portion of the Development Area which becomes part of the Submitted Parcel, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, maintenance, repair, replacement, use and enjoyment and/or otherwise dealing with the Submitted Parcel and Development Area. The reserved easement shall constitute a burden on the title to all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel and specifically includes, but is not limited to:

- (a) The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, in all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel; and the right to tie into any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel with driveways, parking areas, streets, and drainage systems; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, and in connection therewith the right to store construction equipment and materials in appropriate areas in areas owned by Declarant without payment of any fee or charge whatsoever;
- (b) the right to construct, install, replace, relocate, maintain, repair, use and enjoy model units, parking spaces, signs, lighting, construction offices, business offices and sales offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction of improvements and sale of units in all or any portion of the Submitted Parcel and Development Area; and
- (c) no rights, privileges, and easements granted or reserved herein shall be merged into the title of any Structure within the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit claim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel.

This Section 14.06 may be amended, at any time, without the advance written consent of Declarant.

## **ARTICLE XV**

### **Section 15 - LIMITATION ON DECLARANT'S LIABILITY**

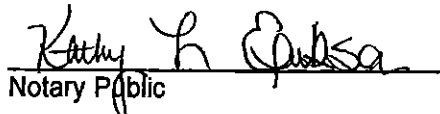
**Section 15.01. Limitation on Declarant's Liability.** Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees, that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any members of Declarant (or any member, partner, officer, director or shareholder in any such assignee) shall have any liability, personal or otherwise, to any Owner or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration except, in the case of Declarant or its assignee, to the extent of its interest in the Subdivision; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor.

## **Section 16 - ANNEXATION OF ADDITIONAL PROPERTY**

**Section 16.02. Amendment.** This Article XVI shall not be amended without the written consent of Declarant, so long as the Declarant owns any portion of the Development Area.



Signed and sealed this 26 day of April, 2019.



"I AFFIRM, UNDER THE PENALTIES FOR PERJURY THAT I HAVE TAKEN REASONABLE CARE TO REDACT EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW."  
PREPARED BY: [Signature]