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(95)  
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**Cross-Reference:**

Waterwood at Eagle Creek, Section One (Plat), Instrument #86-58349  
Waterwood at Eagle Creek, Section Two (Plat), Instrument # 86-94582  
Waterwood at Eagle Creek, Section Three (Plat), Instrument # 87-51865  
Waterwood at Eagle Creek, Section Four (Plat), Instrument # 87-51873  
Waterwood at Eagle Creek, Declaration of Covenants, Instrument #860058348  
Waterwood at Eagle Creek, Amendment to Declaration of Covenants, Instrument #890042855  
Waterwood at Eagle Creek, Amended Declaration of Covenants, Instrument #2002-0023079  
Waterwood at Eagle Creek, Amended Declaration of Covenants, Instrument #2004-0042847

**REVISED, AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

for

**WATERWOOD AT EAGLE CREEK**

COMES NOW the Waterwood at Eagle Creek Homeowners Association, Inc., by its Board of Directors, on this 15 day of August, 2008, and states as follows:

**WITNESSETH THAT:**

**WHEREAS**, the residential community in Indianapolis, Marion County, Indiana commonly known as Waterwood at Eagle Creek was established upon the recording of certain Plats with the Office of the Recorder for Marion County, Indiana, and contains all of the lands contained in the area shown in "*Exhibit A*" attached hereto; and

**WHEREAS**, the Plat for Waterwood at Eagle Creek, Section 1, was filed with the Office of the Marion County Recorder on July 2, 1986, as **Instrument #86-58349**; and

**WHEREAS**, the Plat for Waterwood at Eagle Creek, Section 2, was filed with the Office of the Marion County Recorder on September 23, 1986, as **Instrument #86-94582**; and

**WHEREAS**, the Plat for Waterwood at Eagle Creek, Section 3, was filed with the Office of the Marion County Recorder on May 8, 1987, as **Instrument #87-51865**; and

**WHEREAS**, the Plat for Waterwood at Eagle Creek, Section 4, was filed with the Office of the Marion County Recorder on May 8, 1987, as **Instrument #87-51873**; and

**WHEREAS**, each of the foregoing Plats contain covenants and restrictions which run with the land (hereafter "Plat Covenants"); and

**WHEREAS**, in addition to the covenants stated thereon, the foregoing Plats also identified additional documents that contain covenants which run with the platted land, namely the Declaration of

Covenants, Conditions and Restrictions for Waterwood at Eagle Creek (hereinafter "Declaration"), recorded in the office of the Marion County Recorder on July 2, 1986, as **Instrument #860058348**; amended by the Amendment to Declaration of Covenants, Conditions and Restrictions, recorded on May 9, 1989, as **Instrument #890042855**; and Waterwood Declaration of Covenants, Conditions and Restrictions, recorded February 4, 2002, as **Instrument #2002-0023079**; and Waterwood Declaration of Covenants, Conditions and Restrictions, recorded February 19, 2004, as **Instrument #2004-0042847**; and

**WHEREAS**, the above Declarations and Covenants state that by taking a deed to any Lot as set forth on the above listed Plats for the Waterwood at Eagle Creek development, each owner becomes a mandatory member of the Waterwood at Eagle Creek Homeowners Association, Inc., an Indiana nonprofit corporation (hereinafter "Association"); and

**WHEREAS**, the Association was incorporated pursuant to the above listed Declaration as a non-profit corporation pursuant to Articles of Incorporation filed with, and approved by, the Indiana Secretary of State on April 10, 1989, for the purpose of implementing and administering the Plat covenants and the covenants set forth in the Declaration; and

**WHEREAS**, the Declaration, Section 9, and all amendments to the Declaration recorded thereafter, provides that the Declaration may be changed or amended by the affirmative vote of those persons who are then the owners of a majority of the numbered lots in the Development; and

**WHEREAS**, it is the intent of the Owners in Waterwood at Eagle Creek to create a new Revised, Amended and Restated Declaration of Covenants, Conditions and Restrictions that shall incorporate the Plat Covenants and incorporate, amend and change the provisions of the Declaration (Instrument # 860058348) and all subsequently recorded amendments, supplements or replacements to the Declaration into one (1) Declaration document; and

**WHEREAS**, in furtherance of this intent, the Association has collected written approvals from a majority of the current owners of lots in Waterwood at Eagle Creek voting in favor of the adoption of this Revised, Amended and Restated Declaration of Covenants, Conditions and Restrictions pursuant to the amendment procedures set forth in Section 9 of the Declaration, with the acknowledged votes of the Owners both in favor and against said amendments attached hereto as "*Exhibit B*"; and

**WHEREAS**, it is the intent of the Membership that this Revised, Amended and Restated Declaration of Covenants, Conditions and Restrictions that shall incorporate the Plat Covenants and incorporate, amend and change the provisions of the Declaration (Instrument # 860058348) and all subsequently recorded amendments, supplements or replacements to the Declaration, and that this Revised, Amended and Restated Declaration of Covenants, Conditions and Restrictions for Waterwood at Eagle Creek shall become the sole Declaration for the Waterwood at Eagle Creek community, and shall run with the land and shall be binding upon all Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in the Waterwood at Eagle Creek development;

**NOW, THEREFORE**, the undersigned Association, with the approval of at least a majority of the current owners of lots in Waterwood at Eagle Creek, hereby changes and amends the Declaration, and all supplements and amendments thereto, so that the Declaration shall read as follows:

**REVISED, AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**for**  
**WATERWOOD AT EAGLE CREEK**

1. **Definitions.** The following are the definitions of the terms as they are used in this Declaration.

- A. "Articles" shall mean the Articles of Incorporation for the Waterwood at Eagle Creek Homeowners Association, Inc.;
- B. "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of this Declaration, the Articles or the Bylaws of the Association;
- C. "Association" shall mean and refer to Waterwood at Eagle Creek Homeowners Association, Inc., or an entity of similar name, its successors and assigns, which shall be created as an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended.;
- D. "Board" shall mean the Board of Directors of the Association;
- E. "Bylaws" shall mean the Code of Bylaws for the Waterwood at Eagle Creek Homeowners Association, Inc.
- F. "Committee" shall mean the Architectural Review Committee, which shall be appointed by the Board and have such duties as provided in Paragraph 2 of this Declaration;
- G. "Common Area" shall mean those areas and all improvements located thereon set aside for lake and/or recreation areas, theme structures or landscape areas or mounds at street entrances, lights, park areas, street landscaping, including any landscape islands on cul-de-loops, and any other areas so designated on the Plats. However, the boundary, privacy or barrier fencing along erected along Dandy Trail Road and 38<sup>th</sup> Street shall not be considered a Common Area improvement to be maintained and replaced by the Association;
- H. "Common Expenses" shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association, including, but not limited to, enforcement of the provisions of this Declaration, the Articles, Bylaws or Rules and Regulations of the Property or Association;
- I. "Declarant" or "Developer" shall mean and refer to C.P. Morgan Company, Inc., an Indiana corporation, and any successor and assign that is designated as a successor in one or more written recorded instruments;
- J. "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of Waterwood at Eagle Creek dated July 1, 1986, and recorded on July 2, 1986, as **Instrument # 860058348**, and

any amendments, revisions, or supplements thereto recorded in the Office of the Recorder of Marion County, Indiana;

K. "Development", "Real Estate" or "Property" shall mean and refer to all sections of the Waterwood at Eagle Creek residential community, including all Lots, Common Areas and other property included in the legal descriptions of each platted section and containing all of the lands in the area described in "*Exhibit A*";

L. "Dwelling Unit", "Residence" or "Home" shall mean the residential structure located upon each Lot;

M. "Lot" shall mean any parcel of real estate, whether residential or otherwise, described by one of the plats of the development which is recorded in the Office of the Recorder of Marion County, Indiana.

N. "Owner" or "Member" shall mean and refer to the record owner, whether one or more persons, of the title to any Lot, but in any event shall not include or mean to refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to a Lot;

## 2. Architectural Review Committee

A. **Purpose.** In order to preserve the natural setting and beauty of the Real Estate, to establish and preserve a harmonious and aesthetically pleasing design for the Real Estate, and to protect and promote the value of the Real Estate, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Declaration and any rules, regulations and/or guidelines adopted by the Association or the Committee. Notwithstanding the foregoing, this Paragraph shall not apply to the activities, construction or improvements or modifications to the Common Areas by or on behalf of the Association. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction the rules, regulations and/or guidelines of the Committee, as well as the decisions of the Committee.

B. **In General.** The Board shall establish an Architectural Review Committee that consists of three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the Committee may include persons who are not Members of the Association. Members of the Committee may or may not be members of the Board.

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein, but only to the extent approved by the Board. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions, alterations or improvements made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto. The Committee may promulgate additional architectural standards and guidelines for the Real Estate. In addition to such standards, the following shall apply: plans and

specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling Unit, or to paint the interior of his Dwelling Unit any color desired.

- C. **Review and Approval.** To preserve the architectural and aesthetic appearance of the Real Estate, no construction of improvements of any nature whatsoever with the exception of vegetative landscaping shall be commenced or maintained by an Owner with respect to the construction or affecting the exterior appearance of any Dwelling Unit or with respect to any other portion of the Real Estate, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, or outbuildings, nor shall any exterior addition to or change or alteration therein be made (excluding repainting or re-roofing in the original color but otherwise including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Committee, significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of such plans and specifications with such standards as may be published by the Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved".
- D. **Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make the requested improvement, when:
- (1) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;
  - (2) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures, including trim, siding, roof and brick colors;
  - (3) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any part of other Owners.

The Committee has the authority to reserve approval of any architectural request upon or until modification of the plans, materials, location or scope of any project by the Owner based upon the recommendation or request of the Committee.

### 3. **Duties of Committee.**

- A. **In General.** The Committee shall approve or disapprove proposed improvements within fifteen (15) days after all required information shall have been submitted to it. A copy of submitted materials shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons. Email submissions and notifications may be mutually agreed upon

by Owner and the Committee, but only if all email communications are sent or directed as "return receipt requested" to verify mailing and receipt of the email transmission. Failure of the Committee to make a written ruling on any application within fifteen (15) days of submission shall be automatically deemed denied.

Under no circumstance does any member or individual of the Board or Committee have the authority to verbally grant or approve any architectural request or issue a written approval without the proper approval of the respective Board or Committee. Owners in Waterwood at Eagle Creek are hereby given notice that any verbal or unauthorized approval for any architectural improvement project is hereby considered invalid and will not act as an estoppel or defense against the Board's or Committee's request for written application for the project or the subsequent denial of the project by the Board or Committee.

- B. **No Waiver of Future Approvals.** Each submission shall be separately evaluated by the Committee, and the approval by the Committee of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.
- C. **Appeal of Committee Decision.** If the Committee and Board are not combined, then any decision made by the Committee may be appealed to the Board of the Association within fifteen (15) days of the Committee's decision. The Board, upon receipt of the appeal from an Owner, shall hold a meeting with the Owner and the chairman of the Committee to hear both sides of the matter. After the meeting, the Board shall issue its decision in writing on whether to uphold the decision of the Committee, reverse the decision of the Committee, or modify the decision of the Committee in any fashion the Board deems necessary or appropriate under the circumstances. Decisions by the Board are final. If the Committee and Board are the same body, then there shall be no further appeal rights beyond the Board's decision on an architectural request.
- D. **Variances.** The Board may grant a variance of any provision set forth herein, unless expressly limited by these covenants, if a situation arises whereby to hold the Owner to the strict terms of the Declaration would impose unreasonable hardship upon the Owner or if exceptional circumstances exist which would justify such a variance. Whether or not to grant a variance is solely the determination of the Board, and a decision to grant a variance in one instance does not require the Board to grant a variance in another instance, even if the facts are similar in nature. If the Committee and Board are not combined, the Committee may not grant a variance; however, the Committee may make a recommendation to the Board to grant a variance. All variances must be approved by the Board in writing before becoming effective.
4. **Liability of Committee.** Neither the Committee nor any agent thereof, not Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.
5. **Inspection.** The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations. In the event the Committee shall determine that the plans, specification, restrictions, rules, regulations, guidelines or other provisions of this Declaration are not being complied with, the Committee shall be entitled to enjoin further construction and to

require the removal or correction of any work in place which does not comply with approved plans and specifications, or that is in violation of the Declaration or any rule, regulation or guideline of the Association.

6. **Rules Governing Building on Several Contiguous Lots Having One Owner.** Whenever two or more contiguous lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said lots as a site for a single dwelling, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single dwelling shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single dwelling.

7. **Remedies.**

A. **In General.** Any party to whose benefit these Restrictions inure, including the Association, the Committee, or any individual homeowner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Association or Committee shall be liable for damages of any kind to any person for failing to enforce or carry out any of these restrictions.

B. **Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the provisions of this Declaration, or any rule, regulation or guideline of the Association, shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of the Declaration, or any rule, regulation or guideline of the Association. Likewise, no delay or failure of any party to enforce any particular provision of the Declaration, or any rule, regulation or guideline of the Association shall be deemed a waiver or an estoppel of that party to enforce another provision of the Declaration, or any rule, regulation or guideline of the Association.

C. **Costs and Attorneys' Fees.** In the event the Association or Committee is required to retain attorneys or engage in civil proceedings in order to enforce the terms and provisions of this Declaration, or the Articles, the Bylaws, or the rules, regulations, guidelines and standards adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such action, proceeding or litigation without the necessity of proving any actual damages to the Association or its members, obtaining a court order of injunctive relief, including those cases when the alleged violation is corrected by the Owner following the filing of a lawsuit but before judgment is entered on the matter, or securing compliance by any other method of due process for any structure, improvement, act or omission that is not in compliance with the covenants, conditions and restrictions contained herein. The Association, or Owner, bringing an action is also entitled to reimbursement for any legal expenses incurred in gaining an Owner's compliance with any provision in this Declaration, the Bylaws or the rules and regulations of the Association, regardless of whether an actual lawsuit is ultimately filed against the Owner. (For example, and not by way of limitation, the Association is entitled to recover any legal expenses incurred to have a violation letter sent to an Owner to compel compliance, even if the violation is subsequently corrected and a lawsuit is not filed.) Damages or expenses incurred by the Association relating to the prosecution of a violation of these covenants shall be a personal obligation of the Owner determined to be in violation of any of these covenants, and an Owner cannot avoid liability to the Association for reimbursement of these damages and expenses by subsequently selling his interest in the property before a factual or final determination regarding

the validity of the violation is made by any court of competent jurisdiction. Any costs and/or expenses incurred by the Association as the result of a proceeding against a Owner for violation of these covenants that is not recovered from the Owner may be distributed via a pro-rata distribution to all Owners in the Development in the next fiscal budget.

8. **Homeowners Association and Assessments.**

A. **In General.** The Owners of any lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such lot, shall accept such deed and execute such contract subject to each and every provision set forth in this Declaration, as well as any rule, regulation or guideline properly adopted by the Association, and also for themselves, their heirs, personal representatives, successors and assigns. Such Owners covenant, agree and consent with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such provisions of this Declaration, as well as any rule, regulation or guideline properly adopted by the Association.

Each Owner shall be entitled to one (1) vote for each Lot owned by such Owner with respect to each matter submitted to a vote of the Owners upon which the Owners are entitled to vote. In the event that any Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, each shall be an Owner, but they shall be treated collectively as one Owner for voting purposes, so that as to any matter being considered by the Owners, only one (1) vote shall be cast for each Lot. A Lot Owner's right to vote on any matter or to be elected to, or to continue to serve upon, the Board of Directors of the Association shall be suspended for any period during which any of the Association's assessments and other charges properly due the Association and owed by the Owner remains unpaid

B. **The Homeowners Association.**

- (1) **Organization of the Association.** The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation and the Code of Bylaws of the Association. Upon completion of the Development or transition of control of the Association to the Owners, whichever occurs first, the Developer shall convey any lakes and other Common Areas to the Association or corporation.
- (2) **General Duties of the Association.** The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.
- (3) **Maintenance by Association.** The Association shall maintain and keep in good repair the Common Areas. The maintenance shall include, but need not be limited to, maintenance, repair and replacement of all landscaping and other flora, structures, play equipment, and



improvements, including all private streets, if any, situated upon the Common Areas, landscaping easements along the primary roads through the Real Estate, medians and rights of ways of public streets within the Real Estate, entry features for the Real Estate, and such portions of any other real property included within the Common Areas as may be provided in this Declaration, or by a contract or agreement for maintenance with any other person or entity, by the Association. Maintenance shall also include such items as snow removal from the streets in the Development and other services deemed necessary or desirable by the Association.

- (4) **Insurance.** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

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

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

### C. **Assessments.**

- (1) **Liability for Assessment.** Each owner of any developed lot subject to these Articles ("Lot Owner"), by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges for maintenance, insurance, taxed and other costs and expenses incurred by the Association and, (2) special assessments for capital improvements and operating deficits. Such assessments are mandatory, shall be distributed or shared among the Owners on an equal, or pro-rata, basis; and shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, late fees, costs, and reasonable attorneys' fees, shall be a charge on the lot and shall be a continuing lien upon the property against which each such assessments is made. Each such assessment, together with interest, late fees, costs, and reasonable attorneys' fees, shall also be the personal obligation of the

person(s) who was the owner of such property at the time when the assessment was due. If more than one person owned the property when the assessment became due, then the co-owners shall be joint and severally liable for the personal obligation for unpaid assessments. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

- (2) **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Development; to ensure compliance with and the enforcement of the restrictions, rules and regulations set forth in or adopted pursuant to the Declaration, Articles or Bylaws; and for the improvement and maintenance of the Common Areas and other areas owned, leased, managed, used or operated by the Association.
- (3) **Annual Assessments.** The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth the amount of the annual assessment sufficient to cover all anticipated expenses for the coming fiscal year (with appropriate allocations for expenses attributed to any shared facilities), together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Association's Property. A copy of this budget shall be delivered to each owner at least thirty (30) days prior to the beginning of each fiscal year of the Association.
- (4) **Special Assessments.** In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association may from time to time incur; or to cover any operating deficits that may occur should the Board of Directors determine at any time during the fiscal year that the annual assessments levied for that year are insufficient to pay for the common expenses of the Association for that fiscal year. The Board of Directors may approve a special assessment without the approval of the members, so long as the amount of each special assessment does not exceed fifty percent (50%) of the amount of the annual assessment for the year in which the special assessment is approved. If the Board determines that a special assessment larger than fifty percent (50%) of the annual assessment is required, then the Board shall call a special meeting of the Association to consider imposing such special assessment; and a special assessment which is more than fifty percent (50%) of the annual assessment amount shall be imposed only with the approval of two-thirds (2/3) of all eligible Members of the Association voting in person or by proxy at a duly constituted special meeting called for the purpose of voting on said special assessment. A special assessment shall be due and payable on the dates(s) determined by the Board of Directors.
- (5) **Fiscal Year; Date of Commencement; Due Dates.** The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The liability of an Owner for assessments under this Declaration shall commence as of the date such Owner acquires his interest in a Lot. The annual assessment for a fiscal year shall become due and payable commencing on the first day of each fiscal year of the Association, or upon another date deemed appropriate or desirable by the Association. Annual assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such assessments in installments.
- (6) **Duties of the Association.**
  - (a) The Board shall keep proper books and records of the levy and collection of each annual and special assessment, including a roster setting forth the identification of each and every Lot and each assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business

hours of the Association. The Association reserves the right to require any member to request inspection of the accounts, books, records, financial statements, and other papers of the Association according to the requirements set forth under the Indiana Nonprofit Corporation Act of 1991, specifically Indiana Code 23-17-27 et seq., and any amendments or modification subsequently adopted thereto, and reserves the right to deny any such request in which the Association determines was not made in good faith or for a proper purpose, the member fails to describe with reasonable particularity the purpose and the records the member desires to inspect, or the records requested are not directly connected to the stated purpose for the request.

- (b) The Board shall cause written notice of all assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such assessment or *any* installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the assessment to which such notice pertains, payment of such assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.
  - (c) The Association, or their appointed agent or representative, shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, or their duly appointed agent or representative, setting forth the extent to which assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. The Association, or its agent or representative, may assess a reasonable administrative fee for such certificate.
  - (d) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the Bylaws or this Declaration which is not cured within sixty (60) days.
- (7) **Failure of Owner to Pay Assessments.** If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon, late fees and other costs of collection thereof as hereinafter provided, a continuing lien on the Lot, binding upon the then Lot Owner, his heirs, devisees, successors, and assigns. The personal obligation of the then Lot Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the assessment falls due, the assessment shall bear interest from the date of delinquency at the rate of interest allowed by law on judgments, but, in no event, less than 12% per annum. In addition, the Association may impose reasonable late fees on all delinquencies in an amount(s) determined by the Board from time to time. The Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing the collection notices and letters, preparing and filing the complaint in such action, interest and late fees on the assessment as above provided, and reasonable attorneys' fees, together with the costs of the action.

No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot or by waiving or not using the Common Areas.

- (8) **Subordination of Association's Assessment Lien to Mortgage.** Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Annual Assessment or Special Assessment as to such installments which become due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Lot or the purchaser thereof at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments the Annual Assessments or Special Assessments thereafter becoming due or from the lien therefore. Such unpaid share of any Annual Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a common expense collectible from all Owners (including the subject Dwelling Unit Site from which it arose).

9. **Duration and Amendments.**

- A. **Duration.** The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2014, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years.
- B. **Amendments.** Notwithstanding the foregoing, changes or amendments to any provision(s) in this Declaration may be made at any time by vote of those persons who are then the Owners of a majority of the numbered Lots in the Development and who are in good standing. For purposes of this provision, "good standing" shall mean Lot Owners whose voting rights have not been suspended under the provisions set forth in Paragraph 8(A) of this Declaration.

Approval for an amendment to this Declaration under this provision may be obtained:

- (i) at a meeting of the Members of the Association duly called and held in accordance with the provisions of the Association's Bylaws; or
- (ii) by mail, door-to-door collection or electronic balloting. Any ballot submitted via mail or door-to-door collection must contain the printed name of the Owner, the Owner's signature, and indicate how the Owner wishes to vote on each designated issue being voted upon. Any ballot submitted via electronic means must contain the name of the Owner, a properly designated or issued confirmation or security number, and indicate how the Owner wishes to vote on each designated issue being voted upon; or
- (iii) pursuant to any other procedure recognized under Indiana law, including those recognized under the Indiana Nonprofit Corporations Act of 1991, as may be amended.

To ensure all Owners are given an opportunity to vote on any proposed amendment, the Association shall send to all Owners a ballot regarding any proposed amendment. This ballot shall be sent by first class, postage pre-paid, U.S. Mail to the Owner's last known mailing address. A ballot shall be sent to each Owner regardless of whether a special meeting of the members is held to address or vote on a proposed amendment.

Each amendment adopted by the membership shall be executed by the President and the Secretary of the Association, certifying that a majority of the Lot Owners in the Development who are in good standing approved such amendment. Thereafter, the amendment shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

10. **Severability and Interpretation.**

- A. **Severability.** Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions.

Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

- B. **Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Developer or the Board will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. If any conflict exists or is found to exist between the provisions of this Declaration and any other recorded Declaration or Plat for this Development, the provisions of this Declaration shall control. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

11. **Use Restrictions.** The following covenants and restrictions on the use and enjoyment of the Real Estate shall be in addition to any other covenants or restrictions contained herein and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Association as set forth in Paragraph 7 herein.

- A. **Streets and Common Areas.** The streets and common areas, together with all existing and future plantings, trees and shrubbery thereon, as shown on the plats for the Development are hereby dedicated to the perpetual use of the homeowners for proper purposes. Said streets in the Development, if dedicated for public use by the City of Indianapolis, shall thereafter be maintained by the City.

- B. **Storage Sheds and Temporary Structures.** No tent, shack, trailer, storage shed, mini-barn or other similar detached structure shall be placed upon a Lot or the Common Areas, except that for purposes of this provision, a dog house as described in subsection (I) of this Paragraph 11 shall not be prohibited, and party tents or similar temporary structures may be erected for special events with prior written approval of the Committee or the Developer and children's overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours.

- C. **Building Location**. No building or structure shall be located on any lot nearer to the front lot line or nearer to the side street lot line (corner lots) than the minimum building setback lines as shown on the plats for the Development.
- B. **Easements**. There are strips of ground as shown on the plats of the Development that are marked D.U. and S.E. (drainage, utility and sewer easement) which are reserved for the use of public utility companies, including cable television companies, but not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines, wires, sewers, drains, subject to all times to the proper authorities, and to the easements herein reserved. For example, but not in limitation of location, there shall be a fifteen foot (15') drainage, utility, and sewer easement on the front of each lot unless otherwise noted (said fifteen foot (15') D.U. and S.E. applies to both frontages on corner lots). No permanent or other structures shall be erected or maintained on said strips except for fences, driveways, and walkways, as permitted. The owner of such lots in this addition, however, shall take their title subject to the rights of the public utilities and other owners of said lots in this addition to said easements herein granted for ingress and egress in, along and through the strips reserved.
- C. **Sight Distance at Intersections**. No fence, wall, <sup>9' Feet</sup> hedge, or shrub planting which obstructs sight lines at elevations between two feet (2') and ~~six feet (6')~~ above the street, shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines, and a line connecting points twenty-five feet (25') from the intersection of the street lines extended, the same sightline limitations shall apply to any Lot within ten feet (10') from the intersection of a street line with the edge of a driveway, pavement or alley line. No tree shall be permitted to remain within such distances of such intersection unless the foliage is maintained at sufficient height to prevent obstruction of the sight line.
- D. **Driveways**. All driveways shall be installed by the builder at the time of original construction, and maintenance of driveways thereafter, including all repair and replacement, shall conform with and be uniform to the surface provided at the time of original construction, ordinary wear and tear accepted. Any Owner who wishes to change the materials or appearance of the driveway from that of the original construction must receive architectural approval for such change pursuant to the provisions of Paragraph 2 of this Declaration before making said changes. The Board or Committee has the authority to grant variances of this provision to any Owner whose driveway has already been changed or modified from its original construction prior to the record date of this Declaration amendment.
- E. **Quiet Enjoyment**. No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition. No noxious or illegal activity shall be carried on upon any portion of the Real Estate. No hunting of any nature shall be permitted within the Real Estate.

No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Real Estate. All wood piles shall be kept neatly stacked and shall be kept or stored in the rear yard of the home only, and no wood shall be stored forward of the front corner of the home's foundation, including, but not limited to, the front yard, front porch and driveway of any Lot. Tarps or coverings for stored wood shall be brown, tan or other dark color and shall be securely fixed. The Developer or the Association may order the relocation of any wood piles which are unsightly.

No noxious, unlawful or otherwise offensive activity shall be carried out on any Lot in this subdivision, nor shall any Lot or property be used in any unlawful manner or in any manner that

might cause nuisance, annoyance, inconvenience or damage to any other Owner and/or occupant of a Lot in the Real Estate or any neighboring property, including, but not limited to, noise by the use of loud speakers, electrical equipment, amplifiers or other equipment or machines, animal barking or noises, or a loud person or group of people, and any objectionable odors. Any violation of this shall constitute a nuisance which may be abated by the Association in any manner provided at law or in equity. No owner or person having interest in the property shall participate in any activity which could cause harm to other Owners or their property, such as the use of fireworks, especially aerial explosives.

- F. **Signs.** No signs of any kind shall be erected within the Real Estate, or permitted within any windows, without the written consent of the Board. No business signs, flags (except the American Flag), banners or similar items shall be erected or displayed on any Lot by an Owner. If permission is granted to an Owner to erect or display a sign, including name and address signs within the Real Estate, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

The following signs are permitted without prior approval of the Committee, subject to the following requirements or limitations:

- a) One (1) sign, no larger than six (6) square feet shall be allowed on a Lot at any given time advertising the property for sale;
- b) One sign, no larger than six (6) square feet, advertising improvements being made to a Lot or home will be allowed for seven (7) days only.
- c) One sign, no larger than six (6) square feet, advertising or promoting a garage or yard sale being held on the property will be allowed for twenty four (24) hours;
- d) Temporary signs (i.e. yard cards), no larger than ten (10) square feet, displayed for the specific purpose of celebrating a birthday, anniversary, or other special occasion will be allowed for twenty four (24) hours;
- e) One sign, no larger than six (6) square feet, promoting a political candidate displayed on a Lot will be allowed beginning one (1) week prior to the primary or election date and is to be removed within one (1) day following the primary or election date.
- f) One sign, no larger than four (4) square feet, celebrating or supporting a child or resident of the property in a school activity (i.e. cheerleader, soccer player, etc. lives here);

Under no circumstances shall signs advertising a business, except as permitted herein, be allowed; nor shall signs containing lewd or provocative speech be displayed on any Lot in the Real Estate. The Board reserves the right to remove any sign erected or displayed in violation of this provision, or a sign that was previously approved by the Board, but permission has subsequently been withdrawn.

- G. **Animals.** No animals, livestock or poultry of any kind, including, but not limited to, exotic animals and pot-bellied, or Vietnamese, pigs, shall be raised, bred or kept on any Lot, except that dogs, cats or other customary household pets may be kept on a Lot, provided that such pet is not kept, bred or maintained for any commercial purpose and does not create a nuisance, including but not limited to foul odor or unreasonable noise, to any other Lot Owner or resident. No Owner shall feed or perform any other act that encourages or promotes wild animals or waterfowl, including, but not limited to, geese and ducks, from using, landing or feeding on any portion of the Real Estate, including the Common Areas. Any Owner feeding wild animals or waterfowl may be held responsible for any destruction caused to the Common Areas by said animals or for

any expense incurred by the Association to repair damage caused by said animals or to deter said animals from continuing to use, land, or feed on the Real Estate.

Unless a pet is contained inside a fenced yard, pets shall be taken outdoors only under leash or other restraint and while immediately attended by the Owner. The tying, chaining, roping, or tethering of pets on any Lot or other area of the Development without the Owner present does not constitute "attended." Owners may have one (1) dog house inside a fenced yard area, but the dog house must be wood or resin, no larger than twenty five (25) square feet in size, no taller than five (5) feet, and must be similar in color and appearance to the main house structure. All dog houses must be pre-approved in writing by the Architectural Review Committee. Kennels and/or chain link cages are expressly prohibited in the Development.

An Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by the Owner's pet. The Owner shall be responsible for the cleaning of any Common Area or public right-of-way soiled by his pet's excrement, and shall be fully liable for the expenses of any cleaning performed by the Association because the Owner failed to clean up after his pet.

Any pet which, in the sole discretion and judgment of the Board, is a dangerous animal, or is causing or creating a nuisance, unreasonable disturbance or noise, property damage, or loss of enjoyment to a resident or a resident's property in the Development, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to so remove said animal is mailed to the respective Owner via first class mail. A "dangerous animal" is one that has bitten or attacked a resident in the Development, or when unprovoked, has chased or approached a person upon that person's private property, or upon the streets, sidewalks, or any public grounds in the Development, in a menacing fashion or an apparent attitude of attack.

- H. **Motor Vehicles and Trailers.** Because of the limited space in the Development available for parking, Owners in the Development shall park or store their vehicles only in the garages or on the driveways serving the Lots. Parking on the streets within the Development by Owners is hereby prohibited. Owners are encouraged to have their guests park in the Owner's driveway while visiting whenever possible; however, an Owner's guests and visitors may temporarily park (less than twelve (12) consecutive hours) on the street when necessary.

In the event that vehicle(s) are parked on the street according to the limitations of this provision, vehicles may be parked on one side of the street only. Vehicles shall not be parked directly across the street from other vehicles, or on both sides of any street, so that the available thoroughfare is reduced to less than 1½ times the width of a standard sized automobile. In addition, no vehicles of any kind may be parked on any Lot or street in a manner that would block or interfere with the access and/or use of any mailbox, or would block or restrict vehicular traffic on any street in the Development, including, but not limited to, school buses and emergency equipment.

Any Owner wishing to park his guest's vehicles on the street for a period longer than twelve (12) consecutive hours must submit a request in writing to the Board and receive written permission to do so. Unless written permission has been granted to an Owner by the Board for his guest to park on the street for longer than twelve (12) consecutive hours, there must be a minimum twenty-four (24) consecutive hour interval between each twelve (12)-hour street parking event.

Commercial vehicles primarily used or designed for commercial purposes, tractors, busses, mobile homes, recreational vehicles, trailers (either with or without wheels), heavy equipment,



campers, camper trailers, boats and other watercraft, boat trailers, and antique or collector vehicles shall be parked only in an enclosed garage and out of public view. Semi-trucks and their trailers are hereby prohibited from being parked in the Development at any time.

No vehicles of any kind may be parked for any length of time on any portion of the grass, yard, or other non-paved portion of the Common Areas or Limited Common Areas. No inoperative, disabled, unregistered or unlicensed vehicle shall be parked, stored, or repaired anywhere in the Development in open public view. No vehicles of any kind may be put up on blocks or jacks to accommodate car repair unless such repairs are done in an enclosed garage. For purposes of this section, "inoperative" includes any vehicle that has not been noticeably moved or driven by its owner for a period of three (3) consecutive weeks or longer; any vehicle that has a block or other device under the tires to prevent movement or rolling; or any vehicle which has a flat tire or other obvious damage that would prevent the vehicle from being driven. For purposes of this section, "unregistered" and "unlicensed" includes any vehicle that does not display a valid license plate as required by law.

The Board may pass further rules and regulations regarding parking on the streets and Lots, and other portions of the Development as they may deem necessary or appropriate. The rules and regulations shall be as binding on each Owner as any provision herein set forth.

Any vehicle parked in violation of this section or any parking rule promulgated by the Board shall be subject to towing at the discretion of the Association, and any expenses incurred by the Association for towing, storing and disposing of any towed vehicle shall be the responsibility of the Owner of the vehicle thereof, including any collection costs, attorney fees or expenses. The Association shall not be responsible and/or liable for any damage or expense incurred by an Owner, guest or their vehicle as a result of the vehicle being towed for a violation of this restriction.

- I. **Trash and Waste.** All trash, rubbish, garbage or other waste shall be regularly removed from a Lot and shall not be allowed to accumulate thereon. All trash, rubbish, garbage or other waste, including, but not limited to, grass, leaves and other vegetation, shall be kept in sanitary containers. All trash containers and equipment used for the storage or disposal of trash, rubbish, garbage or other waste shall be kept clean and shall not be stored or kept on any Lot in open public view, except on scheduled waste collection days.

Trash containers, trash bags and/or other items placed outside for regular trash collection may not be placed on the curb side earlier than 3:00 p.m. the afternoon before the scheduled trash pick up day, and trash containers must be removed from public view by 9:00 p.m. of the trash collection day.

- J. **Land Use.** No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling. Whenever two or more contiguous Lots shall be owned by the same Owner, such Owner shall not be permitted to use two or more of said Lots as a site for a single dwelling. Each Lot shall be, and shall remain, improved with a single Dwelling Unit, and each Lot shall be subject to the Assessments.

Each Lot in the Development shall be used for residential purposes only, and no trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the

Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Real Estate; and (d) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involve the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore.

- K. **Storage Tanks.** No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Real Estate except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment.
- L. **Drainage, Water Wells & Septic Systems.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. In the event storm water drainage from any lot or lots flow across another Lot, provision shall be made to permit such drainage to continue without flow restriction or reduction (artificial and/or natural) across the downstream Lot and into the natural/artificial drainage channel or course, even though no specific drainage easement for such flow of water is provided on the within plat. No Person may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. It shall be the responsibility of the owner of any Lot or parcel of land within the Real Estate to comply at all times with the provisions of the development plan (grading plan) as approved for the Real Estate by the Department of Public Works, Indianapolis, IN and the requirements of all drainage permits issued for any Lot or parcel of land within the Real Estate.

No private or semi-private water supply or well, and/or sewage disposal system (septic tanks, absorption field or any other method of sewage disposal) shall be installed, constructed or maintained on any Lot in the Development.

- M. **Nonexclusive Easement.** Whenever a building is constructed so as to be substantially contiguous with a side lot line, then to the extent necessary, the owner of such lot is hereby granted a three foot (3') access easement upon the adjoining lot for maintenance and for encroachments by walls, eaves, roof overhang, gutters, and the like. Said nonexclusive easement is hereby granted, as necessary or appropriate, for underground utility lines and utility service within said three foot (3') easement and said nonexclusive easement shall run in favor of the owners of said lots and to all public, private, and municipal utility companies (including cable television and the like). The Owner of an adjacent lot subject to said nonexclusive easement shall not erect or construct any fence or other barrier that would prevent or prohibit the owner holding the nonexclusive easement, or any utility company, the right of access to the nonexclusive easement area.
- P. **Patio Easements.** Certain lots within Waterwood at Eagle Creek may be improved with a residential unit having a patio and patio area at the side of the unit ("Patio Unit") rather than the rear. In such event, the wall of the adjacent residential unit facing such patio unit shall be constructed without windows (excepting where there is a dividing patio fence) below a point which is seven feet (7') above the finished floor elevation. If the adjacent residential unit facing

such patio unit is constructed so as to be substantially contiguous with the side lot line, then the owner of such patio unit shall have an exclusive easement for the use of the area extending from the exterior wall of the patio unit to the exterior wall of the adjacent residential unit or to the dividing patio fence, in the case of adjacent patio units, and running the length of the exterior of such adjacent unit. If the adjacent residential unit facing such patio unit is not constructed so as to be contiguous with the side lot line, then the owner of such patio unit shall have an exclusive easement for the use of the area extending from the exterior wall of the patio unit to the lot line of said lot.

In either event, the owner of the patio unit shall maintain such area (excluding the exterior wall of the adjacent unit). As set forth in Paragraph O above, the owner of the adjacent unit shall have a nonexclusive easement to enter such area as is necessary to maintain his residential unit.

No fences, except those fences initially installed by the Developer, shall be erected in a patio area without the written consent of the adjacent lot owner and the Committee. Under no circumstances shall a fence or other barrier be erected or constructed that would prevent or prohibit the owner holding a nonexclusive easement, or any utility company, the right of access to the nonexclusive easement area, unless such fence or barrier has a gate or other means of entry to allow the holder of a nonexclusive easement to have access to the area, and the fence or barrier is approved by both the nonexclusive easement lot owner and the Committee. Any fence or barrier erected or constructed in violation of this provision or any limitation set forth herein shall be subject to removal without notice by the holder of a nonexclusive easement, or to legal action for the removal of said fence or barrier by either the holder of a nonexclusive easement or the Association, and any party found to have violated this provision shall be responsible for reimbursing the other party's legal expenses, including reasonable attorney fees, or other costs and expenses.

- Q. **Fences.** No fencing shall be installed on any Lot without the prior review and approval of the Committee. No fence shall be higher than six feet (6'); and all fencing shall be constructed of wood, resin or poly-vinyl, or brown or black vinyl coated chain-link. If an Owner wishes to paint or stain a wood fence any color other than a natural wood color, the Owner must submit a request for the color and get approval from the Committee before painting the fence. Any Owner painting their fence in violation of this covenant may be required by the Association to repaint or re-stain their fence an approved color. No fence shall be erected in this subdivision between the front building line and the front property line (side building line and side property line-corner lots) of the streets as shown on the within plat.

R. **Exterior Home Appearance and Lot Maintenance.**

- (i) **Appearance.** It is the intent and desire of the Board to promote and maintain an aesthetically pleasing appearance within the neighborhood. To this end, it is the goal of these covenants, restrictions, rules and regulations to control the exterior appearance of the homes in the Development, including, but not limited to, the gutters, shutters, windows and doors (both residential and garage) so that they are harmonious and consistent in appearance with the majority of homes in the subdivision.

Approved colors of homes in the Real Estate consist of any color originally available or installed on any home in the Development. The Board or Committee recognizes that colors may be discontinued over time, and simply requests that Owners match the original color of their home as closely as possible to the original color when repainting their home. So long as the Owner is repainting their home the same original color, or a color as close as possible to the original color,

then the Owner does not need to receive prior written approval of the Board or Committee before painting their home.

If an Owner wishes to change the color of their home from its original color, they may do so if they use a color that already exists in the subdivision. In this case, the Owner shall submit the address of the home in the Real Estate that displays the color they wish to use.

The Board also recognizes that many residents desire individuality when it comes to decorating their homes. The Board wishes to encourage Owners to be creative in their use of color combinations in home exterior decoration. Therefore, if an Owner wishes to use a color that does not already exist in the Development, the Owner shall submit his request to the Board or Committee along with paint samples showing the color the Owner wishes to use. The Board or Committee has the sole discretion to determine whether the color will be harmonious and consistent with the appearance of other homes in the neighborhood, and the Board or Committee may deny any request for paint color change if they believe the color would not be harmonious or consistent with the colors of homes already existing in the neighborhood. The decision of whether to approve a color that does not already exist in the Development is solely within the discretion of the Board or Committee.

Because of their inability to blend well with most colors found in the Real Estate, the Board must insist that bright, bold or vivid colors, such as bright yellows, reds, pinks, oranges, purples or greens, and neon or fluorescent colors are not permitted in the Development. Pursuant to the Declaration, the Board or Committee may pursue removal or repainting of any non-conforming or unapproved exterior home color through legal or other equitable means set forth in these covenants.

(ii) **Siding**. All replacement siding in the Development must be consistent with that originally installed by the Developer or builder. Unless the Owner is replacing his siding with the same style and material siding as currently exists on the home, the Owner must submit a written request and obtain written approval by the Board or Committee for any siding modifications in style of material.

(iii) **Roofs**. All replacement roofing in the Development must be consistent in style and color with that originally installed by the Developer or builder. Unless the Owner is replacing his roofing with the same style and color roofing as currently exists on the home, the Owner must submit a written request and obtain written approval by the Board or Committee before making any changes in the roofing style or color. For example, if a roof is damaged in a hail storm, and is being replaced, the Owner does not need approval to replace the roof with the same style and color of asphalt shingle; but the Owner would need to submit for and receive approval before installing a new roof of another style or a different color.

If a roof is damaged and needs to have missing shingles replaced, those repairs must be made within a reasonable amount of time from the point the shingles blew off or were damaged.

(iv) **Lot Maintenance**. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. All Owners shall perform routine and necessary maintenance, including, but not limited to, painting, mold or mildew abatement or cleaning, wood repair, garage door repair, siding repair, roofing repair, window and porch screens and window repair, driveway repair, sidewalk repair, on the exterior of their residence and all improvements on their Lot to maintain a reasonable appearance and to avoid becoming unsightly in relation to the appearance of other homes and improvements in the neighborhood.

All lawns and other landscaping materials shall be maintained on a regular basis. In no event shall the grass on any Lot exceed the length of six inches (6"), nor shall any noxious, illegal or other weeds, underbrush, or other unsightly growths be permitted to grow or remain upon any Lot. An example of a weed that shall not be permitted is Dandelions, due to their nature to infest other lawns in their vicinity. Flower beds, trees and bushes shall remain neatly trimmed and not allowed to become overgrown with weeds or other vegetation.

The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly, disassembly, restoration and repair of vehicles and/or other mechanical devices, woodworking, metalworking, or other similar activity, which cause or may cause disorderly, unsightly, or unkempt conditions on any Lot shall not be pursued, undertaken or continued on any part of the Real Estate. In addition, nothing which would result in the cancellation of any insurance for any portion of the Real Estate, or which would be in violation of any law or governmental code or regulation shall be permitted on the Real Estate.

The failure of any Owner, or his family, tenants, guests, invitees, servants, or agents, to comply with any of the requirements or restrictions of this provision may warrant the Association to abate the violation using any method deemed appropriate by the Board, including, but not limited to, cutting the grass/weeds/growth, clearing the trash, refuse, or debris, or chemically treating any vegetation or weeds. The Association, or any of its designated agents, shall have the right, but not the obligation, to enter upon any Lot to perform said maintenance, mowing, repair, or other acts as may be reasonably necessary to make such Lot and any improvements thereon conform to the requirements of the Declaration and these covenants; and the Association, or its agents, shall not be liable to the Owner for any damages resulting from the work performed hereunder unless it can be shown that the damages resulted from an act of gross negligence or willful or reckless misconduct. The expense of said action shall be the responsibility of the Owner of the Lot committing or necessitating the action. The cost of the Association's corrective action shall become part of the Owner's account and treated as a Special Assessment against the Owner and Lot, and there shall be lien against said Lot for these expenses, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association may file suit and recover such amount together with reasonable attorney fees and costs of collection.

For purposes of this section, the Association shall have the right and discretion to determine whether the condition or appearance of a Lot reasonably constitutes an "unsightly or unkempt" condition or appearance when compared or considered in relation to the condition or appearance of the other homes in the Development as a whole. However, the Committee determination regarding whether a Lot is "unsightly or unkempt" may be overturned if the Owner found to be in violation of this rule presents the Board with a petition containing the signatures, addresses and date of signature of a majority of the Owners in the Development stating the Owners disagree with the Board's determination. Said petition must be presented to the Board within thirty (30) days of the Board's determination; otherwise, the Board determination regarding the violation of the rule will be deemed valid.

- S. **Satellite Dishes and Antennae.** In accordance with the Federal Telecommunications Act of 1996, and the Federal Communications Commission rules governing Over-the-Air Reception Devices (OTARD), members may only install satellite dishes that are one meter or less in diameter. One meter is equal to 39.37 inches, and "diameter" is the distance measured across the widest part of the dish. Only one dish may be installed upon each Lot, unless additional dishes are required to receive additional or unique transmissions that cannot be received by a previously

installed dish. The Committee reserves the right to require written verification for the installation of additional dishes upon any Lot.

The OTARD Rule allows Associations to designate a preferential order of placement for dishes in their community. To that end, the Committee desires that satellite dishes be permanently mounted in a location on the Lot that is the least visible from the street directly in front of the Lot which will not result in a substantial degradation of reception. This priority shall be: 1) in the rear of the Lot; 2) on the side of the Lot or home; and 3) the front of the home, in this specified order. Therefore, an Owner shall install a satellite dish in the rear portion of the Lot if acceptable reception can be received from that location. If acceptable reception cannot be obtained in the rear portion of the Lot, then the dish may be located along the side of the home if adequate reception can be received from that location. If adequate reception cannot be received from a location along the side portion of the home, then a dish may be located in the front of a home. However, if a dish is located in the front portion of a Lot, the Committee reserves the right to request an Owner provide adequate documentation from a reputable dish installation expert that the placement of the dish had to be located in the front Portion of the Lot to prevent a substantial degradation of reception. So long as the Owner follows this preferential placement guideline for installation, the Owner does not need to receive prior written approval of the Committee before installing a dish.

After a dish is installed, if the Committee believes or determines that the device could have been installed in another location on the Lot less visible from the street directly in front of the home, or that the Owner did not comply or follow the preferred placement order when installing the satellite dish, then the Committee reserves the right to require the Owner to move the dish to another location less visible from the street, or to seek the removal of the dish from its location, so long as the relocation of the dish does not substantially impact or degrade the reception of the device. For example, if an Owner locates a dish on the front of his home, and it is determined that the dish could have been installed in a location on the rear or side of the home that would have still allowed adequate reception, then the Committee may require the Owner to move the dish, at the Owner's expense, to this less visible location.

In addition, the Committee reserves the right to require landscaping, fencing or other screening around the dish to hide it from direct view of the street, or to cover or paint the dish to make it more acceptable in appearance to its surroundings, so long as none of these changes or screenings impair the reception of the device. If an Owner fails to install or make the improvements or modifications requested by the Committee, then the Association reserves the right to enter upon the Owner's Lot upon ten (10) days prior notice and make said improvements or modifications, the expense of which shall be added to the Owner's account. The ten (10) day notice provided to the Owner shall set forth the specific work to be performed. If an Owner objects to or prevents the Association from making such improvements or modifications, then the Association reserves the right to seek injunctive relief for the removal of the dish.

Other antennae, aerials or devices, towers or radio antennae that are not covered by the OTARD rule, such as dishes larger than one (1) meter in diameter and ham or amateur radio antennas, must receive prior written approval of the Committee before being installed on any Lot.

- T. **Air Conditioning Units.** No window air conditioning units may be installed on any Lot unless the Owner submits a written request and obtains written approval by the Committee before installing the window air conditioning unit.

U. **Awnings; Solar Panels; Clotheslines.**

(i) **Awnings.** Window awnings, patio/pergola awnings and/or covers, covers, overhangs or other similar structures may be allowed only after the Owner submits a written request and obtains written approval by the Committee before installing the awning or cover. The Committee reserves the right to require any patio awning or cover to be of a retractable nature, permanently mounted or affixed to the residence on the Lot, made from nylon, canvas, or other material approved by the Committee, and shall be kept or maintained in proper working order. No awnings, patio/pergola awnings and/or covers, covers, overhangs or other similar structures constructed of metal, wood, or fiberglass, excluding the structural framework, shall be permitted, erected or situated on any Lot. The Committee also reserves the right to adopt additional rules regarding the color, location, etc. of any approved awning or cover.

(ii) **Solar Panels and Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot without the prior written approval of the Committee. The Committee may deny any request for solar panels and other energy conservation equipment unless the Committee, as determined in the sole discretion of the Committee pursuant to the provisions of this Declaration, determines said equipment can be installed as an integral and harmonious part of the architectural design of the home and surrounding dwellings.

Roof top solar panels must be located on the rear roof of the house and not visible from the public street in front of the home. Panels must be properly maintained in appearance and shall not be allowed to become cloudy, unpainted, cracked, faded, or in any other condition that may detract from the appearance of the home or impact the desirability or value of the adjacent homes. Fence mounted solar panels are strictly prohibited. Ground mounted solar panels will be approved only if they are hidden or obscured by fencing or other acceptable foliage.

If the Committee approves a request for solar panels, and it is subsequently determined in the sole discretion of the Committee that the Owner has failed to properly maintain the appearance or condition of the panels, the Committee reserves the right to have the panels removed at the Owners expense. If court proceedings are necessary to have the panels removed, the Association is entitled to recover their attorney fees and costs.

(iii) **Clotheslines.** No clotheslines or other outside drying or airing facility shall be permitted in the subdivision unless confined to patio areas and out of open public view.

V. **Ponds and Water Bodies.** All ponds and other water bodies within the Real Estate, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation, swimming, boating, playing or use of personal flotation devices, shall be permitted; except that residents only may fish in the ponds during daylight hours only. No owner may trespass upon the private property of another owner to fish unless that property owner has granted the resident permission to fish from the owner's bank. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of ponds within the Real Estate, and the Association reserves the right to adopt further rules regarding the use of the ponds within the Real Estate as it deems necessary or prudent from time to time.

W. **Basketball Goals, Play Sets and Recreational Equipment.** Swingsets/Playsets must be approved by the Committee before being installed on any Lot. Swingset or playset structures must be wooden, plastic or vinyl. Absolutely no metal swingsets or playsets structures shall be

permitted in the subdivision. Swingsets and playsets shall be located behind the home and must be kept in good repair and appearance. No items, including, but not limited to, implements, tools, mowers, garden, lawn, or pool maintenance equipment, signs, displays, pool accessories, etc., may be hung, stored, displayed or affixed in, or on the exterior of, any swingset or playset structure, or enclosed portion of such structure, either permanently or temporarily. If it is determined by the Board that an existing swingset or playset, or any part thereof, is being used for storage, either permanently or temporarily, the Association shall, upon written demand to the Owner, be entitled to have the swingset or playset immediately removed from the Lot; or, if the owner refuses to remove the structure, by injunctive relief through the courts. For purposes of this rule, the term "playset" also includes a dollhouse, playhouse, or other enclosure typically used by children for play.

No permanent basketball goals shall be allowed in the Development. Temporary basketball goals may be used along the side of a driveway, but under no circumstances shall a basketball goal be mounted or installed upon any home in the Development. All basketball goals and recreational equipment are approved on the condition that they will be properly maintained, including, but not limited to, goals must have netting that is not torn and backboards must have a rim and not be broken. The Committee reserves the right to request the repair or removal of any basketball goal upon a finding by the Committee that proper maintenance and repair of the goal is not being performed by the Owner; and if the Owner refuses to remove or repair the goal upon request from the Committee, to proceed with legal action to have the goal removed based upon the failure of the Owner to properly maintain the goal.

Under no circumstance shall any basketball goal or other recreational equipment be installed or placed on or next to any sidewalk, curb or street in the Development, or in any other location on a Lot that will require or allow play to occur in the streets of the Development, hinder or interfere with traffic on any street or sidewalk, or hinder or obstruct any bus stop or mailbox in the Development. The Committee reserves the exclusive right to approve or disapprove the style or location of all basketball goals. Lighted courts or facilities shall not be permitted in the Development.

- X. **Exterior Flags and Improvements.** Exterior improvements, fountains, flags, and similar items must be approved in writing by the Committee before being erected or installed. If approved, all items must be kept in a good state of repair at all times. For purposes of this provision, the term "flag" includes all decorative flags except for American flags.

Pursuant to the Freedom to Display the American Flag Act of 2005, and a desire to allow residents in the community to display their patriotism, Owners within the Development may display an American flag on their property without prior permission of the Committee, but only if the flag is displayed by following the rules set forth by the United States Code, adopted by the American Legion, or following any other generally accepted rule or custom pertaining to the proper display or use of the American flag.

Freestanding flag poles are permitted in the Real Estate; but an Owner must submit a written request and receive written approval for a flag pole from the Committee before installing or erecting the flag pole. Flag poles shall not be more than thirty foot (30') in height, nor more than four inches (4") in diameter. No flag pole may be erected within the public right-of-way easement or within any sight line setback provided for in the Declaration. No lighting may be directed on or toward the flag or flag pole. An Owner may not display more than one (1) American flag on his Lot at the same time.



Prior approval is not required for any Owner wishing to install an angle-mounted flag standard attached to the Owner's Residence. The Committee also reserves the right to adopt additional rules limiting the size of American flags that may be displayed by an Owner, if the Committee deems such rules necessary or advisable in the future.

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

Z. **Rental and Lease Restrictions.**

(i) **Applicability.** In an effort to limit investment purchasers, institutional buyers, and others from buying properties within the Development solely for the purpose of leasing or renting the properties therein, all homes in the Development shall be, except as set forth under subsections (iii), (iv), (v) or (viii), owner-occupied for a minimum of two (2) years after each Owner takes title of a property. Except as set forth under subsection (vii)(c), an Owner may rent or lease his property after two (2) years from the date after taking title to a property in the Development subject to the remaining provisions of the covenant. By way of example, if ABC Realty Investments Co. purchases a property in the Development pursuant to a foreclosure sale, then ABC Realty Investments Co. would not be able to rent or lease the purchased property for a period of two (2) years after taking title to the property.

This limitation on leasing takes effect upon the date this covenant amendment is recorded with the Marion County Recorder's Office. Any Owner taking title to a property within the Development prior to the recordation of this amendment shall not be subject to its provisions.

Any home being rented or leased in the Development shall be subject to the remaining provisions of this covenant during its use as a rental or lease property. Upon approval and recordation of this covenant, the terms thereof shall run with the land in perpetuity and be binding upon all Owners and their heirs, successors, and assigns in interest.

(ii) **General Rental or Lease Conditions.** Any rental or lease agreement for a home in the Development shall comply with the following requirements:

- (i) All rental or lease agreements executed, or entered into, after the date this amendment is recorded must be for a minimum of six (6) months and may not be for a period longer than one (1) year, including, but not limited to, rent to own or purchase contract agreements, unless otherwise approved by the Board in writing;
- (ii) No portion of any home, other than the entire home, shall be leased for any period of time; except in situations where the Owner also lives in the home with the lessee or renter (For example, the Owner rents a room to a college student). No subleasing of homes shall be allowed.
- (iii) All formal rental or lease agreements shall be in writing and a copy of each lease agreement (but which may have the rental amount deleted) shall be provided to the Board within thirty (30) days of said agreement being executed;
- (iv) All rental or lease agreements shall contain a provision stating that the renter, tenant, lessee, purchaser or occupant has been advised of or provided a copy of these Plat Restrictive Covenants and has been informed they must follow these covenants the same as any other Owner in the Development;

- (v) All rental or lease agreements shall be made expressly subject to and subordinate in all respects to the terms of the covenants and restrictions to the same extent as if the tenant were an Owner and member of the Association;
  - (vi) All rental or lease agreements shall contain a provision authorizing direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such home. If such provision or authorization is not set forth in any lease agreement involving a home in the Development, then such authority and authorization shall be presumed as if it were expressed in said agreement.
  - (vii) No rental or lease agreement shall provide for, or be interpreted to provide for, a release of the Owner from his obligations to the Association for compliance with the provisions in the Declaration or from the Owner's liability to the Association for payments of assessments or any other charges.
  - (viii) For the purposes of this Section, "rental or lease agreement" shall include all forms of rental, lease, lease or rent to buy, land or purchase contracts, or other form of agreement that involves the occupation of any home in the Development by an occupant other than the titled Owner for compensation paid to the titled Owner.
- (iii) **Hardship Exceptions.** The Board may approve an exception to any or all of the requirements set forth in Subsections (i) and (ii) in cases of undue hardship, but only if so requested or petitioned in writing by the Owner. Such petition must set forth the reasons said exception is being requested and the terms, if applicable, of said exception being requested. The Board may request further information regarding the petition or may seek modification of the terms of said petition before entering a ruling on the petition. Whether a petition for an undue hardship exception will be granted lies solely within the discretion and authority of the Board; and the Board may place limits on the length of the exception if deemed appropriate. An exception shall be deemed approved by a majority vote of the Board in writing. The Board has thirty (30) days from the date of receiving the petition to make a ruling on the request. If the Board does not rule on the petition within thirty (30) days from the date of receiving the request, then the request is automatically deemed granted. For purposes of this Section, an "undue hardship" includes, but is not limited to,
- (a) unexpected unemployment due to layoff or business closing;
  - (b) necessary relocation of the Owner's residence to a point more than fifty (50) miles from the property's address due to a change in employment or the retirement of at least one (1) Owner;
  - (c) relocation of one (1) Owner due to mental or physical reasons or disability or other health related issues;
  - (d) divorce or marriage of an Owner;
  - (e) death of an Owner.
- (iv) **Estate Planning Transfers.** Any transfer of property title by the Owner to another party for the purpose of estate planning or inheritance, shall not be considered a transfer of title requiring Owner-occupancy for purposes of this section.
- (v) **Other Resident Occupants.** All Owners who do not reside in the home located on their Lot in the Development, but are not renting or leasing the home to another party for monetary or other compensation, must provide the Board of Directors with the name of the resident(s) living in the home. For purposes of enforcement of rights under this provision, all residents of a home, whether a tenant or guest, shall be treated as a tenant for enforcement purposes under subsection (vii).

- (vi) **Rules & Regulations.** The Board of Directors shall also have the power to promulgate any additional Rules, Regulations or Guidelines as, in its discretion, may be necessary or appropriate concerning leasing or the conduct of renters, tenants, lessees, purchasers or occupants.
- (vii) **Violations and Enforcement.** The Association or any Owner in the Development shall have the right to exercise any and all available remedies at law or in equity, and the following specific remedies shall be available to the Association to ensure the rules set forth in this Section are followed:
- (i) If any enforcement action is taken by the Association, regardless of the actual filing of a lawsuit, against a tenant and/or Owner of a home for failing to comply with or follow any provision in the Declaration, then the Association is entitled to reimbursement of any expenses incurred by the Association for the enforcement action from the tenant, the Owner, or if both the tenant and Owner have been joined in the action, then by the both the tenant and Owner as joint tenants in common;
  - (ii) Any failure of the tenant or Owner of a home to fully comply with the terms set forth in the Declaration, or any purported lease executed in violation of this section, shall constitute an automatic default under the lease and/or this covenant, and the Association may elect to void and terminate said rental or lease agreement pursuant to the rules as set forth in this section. If the Association shall so elect, the Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to evict the purported renter, tenant, lessee, purchaser or occupant (in case of an unauthorized leasing) in the name of, and as attorney in fact for, said Owner as the proposed landlord. If an eviction action is taken by the Association, then the Owner shall reimburse the Association for all expenses (including reasonable attorneys' fees and disbursement) incurred in connection with such proceedings.
  - (iii) Additionally, any Owner found to be in violation of this section shall lose his right to lease any home within the Development for a period of five (5) years from the date of the violation's determination.
- (viii) **Institutional Mortgagees.** The provisions set forth in this rental and leasing provision shall not be applicable to any Institutional Mortgagee of any home which comes into possession of the home by reason of a foreclosure sale, judicial sale, deed in lieu of foreclosure, other arrangement or remedy provided for within the language of the mortgage contract, or any other legal action or proceeding at law or in equity. However, when the home is sold or conveyed by the Institutional Mortgagee to any other subsequent purchaser or holder in title, that subsequent purchaser or holder in title shall be bound by the provisions of this rental and leasing restriction covenant.
- (ix) **Administrative Fee.** The Association may adopt and set a reasonable administrative fee per home to be paid by the Owner to cover the costs associated with processing and maintaining rental information on each home. Said fee, including liability for and collection of, shall be treated as a special assessment on that particular Lot pursuant to the Development's governing documents.
- (x) **Severability Clause.** If any provision of this covenant is found to be invalid or unenforceable, it shall not affect or impair the enforceability or validity of any other provision of this rental and leasing restriction covenant; nor shall the Association be liable

for damages of any kind to any person for failure either to abide by, enforce or carry out any provision of this provision of the Declaration or any rules, regulations, procedures, guidelines or standards adopted by the Association thereto.

**AA. Grandfather Provision.** Any restriction within this Revised and Amended Declaration that did not exist prior to this Declaration being adopted and recorded shall not be applied retroactively, and any improvement erected or installed upon any Lot in the Development prior to this revised and amended Declaration being recorded shall be considered "grandfathered" under the new rules or restrictions and shall be allowed to remain, even if said improvement is now in violation of one or more of the restrictions or limitations set forth in this Revised and Amended Declaration. However, any improvement erected or installed prior to these rules being recorded that is subsequently removed and replaced, or in need of replacement, shall be required to conform to these rules.

**BB. Rules and Regulations.** Subject to the provisions hereof, the Board may establish reasonable rules and regulations in addition to the restrictions set forth herein concerning the use of Lots and Dwelling Units. Any such rules and regulations, and any amendments thereto, shall be furnished by the Association to all Members prior to the effective date upon the Owners, their families, tenants guests, invitees, servants and agents, and shall be binding upon all Owners, their families, tenants guests, invitees, servants and agents until and unless any such rule or regulation is specifically overruled, cancelled, or modified by the Board or at a regular or special meeting of the Association by a majority vote of the aggregate of all Members.

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