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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**BAYVIEW ESTATES**

Table of Contents

**RECITALS**.....2

**ARTICLE I. DEFINITIONS**.....2

**ARTICLE II. DECLARATION**.....5

**ARTICLE III. OBLIGATIONS OF DECLARANT**.....5

**ARTICLE IV. ASSOCIATION; MEMBERSHIP; VOTING; FUNCTIONS**.....6

Section 1. Membership in Association.....6

Section 2. Voting Rights.....7

Section 3. Functions.....7

**ARTICLE V. BOARD OF DIRECTORS**.....7

Section 1. Management.....7

Section 2. Initial Board of Directors.....7

Section 3. Additional Qualifications.....8

Section 4. Term of Office, Vacancy and Number of Directors After the Applicable Date.....8

Section 5. Removal of Directors.....8

Section 6. Duties of the Board of Directors.....8

Section 7. Powers of the Board of Directors.....9

Section 8. Limitation on Board Action.....10

Section 9. Compensation.....10

Section 10. Non Liability of Directors.....11

Section 11. Additional Indemnity of Directors.....11

Section 12. Bond.....11

Section 13. Initial Management.....11

**ARTICLE VI. REAL ESTATE TAXES; UTILITIES**.....12

Section 1. Real Estate Taxes.....12

Section 2. Utilities.....12

**ARTICLE VII. ENCROACHMENTS AND EASEMENTS IN COMMON AREAS**.....12

**ARTICLE VIII. DELINEATION OF HOMEOWNERS ASSOCIATION VERSUS LOT OWNERS' MAINTENANCE, ETC. OBLIGATIONS**.....12

Section 1. Homeowners Association Obligations.....12

Section 2. Maintenance of Individual Lots.....12

Section 3. Damage to or Abuse of Common Area.....13

Section 4. Access to Lots and Easements.....13

Section 5. Storm Water Quality and Best Management Practices.....13

**ARTICLE IX. ARCHITECTURAL STANDARDS**.....13

Section 1. Architectural Control Committee.....14

Section 2. Approval Process.....14

Section 3. Power of Disapproval.....15

Section 4. Duties of Committee.....15

Section 5. No Waiver of Future Approvals.....15

Section 6. Variance.....15

Section 7. Compliance with Guidelines.....16

Section 8. Non-Liability of Declarant, Committee.....16

Section 9. Inspection.....16

Section 10. No Compensation.....16

**ARTICLE X. USE RESTRICTIONS/COVENANTS AND RESTRICTIONS**.....16

Section 1. Zoning Commitments.....17

Section 2. Declarant's and the Association's Rights to Perform Certain Maintenance and Removal.....17

Section 3. Ditches and Swales and Erosion Control.....	17
Section 4. Drilling.....	17
Section 5. Ground Elevations and Erosion Control.....	17
Section 6. Insurance Impact.....	17
Section 7. Landscape Easements.....	17
Section 8. Maintenance of Lots and Improvements.....	18
Section 9. Occupancy and Residential Use of Partially Completed Dwelling Unit Prohibited.....	18
Section 10. Occupants Bound.....	18
Section 11. Quiet Enjoyment.....	19
Section 12. Residential Use.....	19
Section 13. Business Use.....	19
Section 14. Firearms.....	19
Section 15. Tents, Trailers and Temporary Structures.....	19
Section 16. Model Homes.....	20
Section 17. Non-Applicability to Association.....	20
Section 18. Sales Office.....	20
Section 19. Sanitary Waste Disposal.....	20
(a) Nuisances.....	20
(b) Construction of Sanitary Sewage Lines.....	20
(c) Connection Requirements for Sanitary Sewers.....	20
<b>ARTICLE XI. ASSESSMENTS.....</b>	<b>21</b>
Section 1. Annual Accounting.....	21
Section 2. Proposed Annual Budget.....	21
Section 3. Regular Assessments.....	22
Section 4. Special Assessments.....	23
Section 5. Failure of Owner to Pay Assessments.....	23
Section 6. Initial Budgets and Assessments.....	24
Section 7. Initial Working Capital and Start-Up Fund.....	25
<b>ARTICLE XII. MORTGAGES.....</b>	<b>25</b>
Section 1. Notice to Association.....	25
Section 2. Notice of Unpaid Assessments.....	26
<b>ARTICLE XIII. INSURANCE.....</b>	<b>26</b>
Section 1. Insurance.....	26
Section 2. Insurance by Owners.....	26
<b>ARTICLE XIV. CASUALTY AND RESTORATION.....</b>	<b>27</b>
<b>ARTICLE XV. AMENDMENT OF DECLARATION.....</b>	<b>27</b>
Section 1. Generally.....	27
(a) Adoption.....	27
(b) Special Amendments.....	28
(c) Recording.....	28
Section 2. Amendments by Declarant Only.....	28
<b>ARTICLE XVI. ACCEPTANCE AND RATIFICATION.....</b>	<b>29</b>
<b>ARTICLE XVII. NEGLIGENCE.....</b>	<b>29</b>
<b>ARTICLE XVIII. BENEFIT AND ENFORCEMENT.....</b>	<b>29</b>
Section 1. Covenants Appurtenant to Land.....	29
Section 2. Prosecution of Violations.....	30
<b>ARTICLE XIX. MISCELLANEOUS.....</b>	<b>30</b>
Section 1. Costs and Attorney Fees.....	30
Section 2. Waiver.....	30

Section 3. Severability Clause.....30  
Section 4. Pronouns.....30  
Section 5. Interpretation.....30  
Section 6. Delegation of Use of the Common Areas .....31  
Section 7. The Plat .....31  
Section 8. Grievance Resolution.....31

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
BAYVIEW ESTATES**

This Declaration of Covenants, Conditions and Restrictions ("Declaration") of Bayview Estates (hereinafter "Community", "Bayview" or "Bayview Estates") is made this 1<sup>st</sup> day of 11/14, 2014, by **Silverthorne Homes, LLC**, an Indiana Limited Liability Company (the "**DECLARANT**").

**WITNESSETH:  
(RECITALS)**

WHEREAS, **DECLARANT** is the Owner of certain Lots and common area in Hamilton County, State of Indiana, more particularly described in **Exhibit "A"** attached and made a part hereof, known as Bayview Estates;

WHEREAS, Bayview Estates is a residential community with public streets, with identification signage, and complimentary landscaping at the entranceway and with open spaces and with common areas for surface water management while also serving as open space, all for the benefit of the residential community known as "Bayview Estates Subdivision" (**Exhibit "B"**); and

WHEREAS, **DECLARANT** desires to provide subject to this Declaration a common interest community which addresses commonly owned real estate, their maintenance and other maintenance obligations and the finances to honor these and other community obligations; and

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

WHEREAS, **DECLARANT** deems it desirable to create an entity to which shall be delegated and assigned the powers of supervising, maintaining and administering any common areas and maintenance expense areas detailed in the Plat, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the common interest of the Owners of the Real Estate, and all parts thereof; and

WHEREAS, **DECLARANT** has caused to be incorporated under the Indiana Code § 23-17-1, et seq., under the name "Bayview Estates Homeowners Association, Inc.", as such entity for the purpose of exercising such functions; and

WHEREAS, **DECLARANT** desires to transfer its ownership of the Common Areas of Bayview Estates described in **Exhibit "A"** to the Association by general warranty deed executed contemporaneously with this Declaration and recorded as Instrument No. 2014019010 for the common use and enjoyment of the Members of the Association;

NOW THEREFORE, **DECLARANT**, as Owner of the Real Estate hereby declares that the **Exhibit "A"** Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements,

conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth.

## ARTICLE I DEFINITIONS

**Section 1.** The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- (a) "Act" shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended;
- (b) "Applicable Date" or "Turnover Date" shall mean and refer to the date determined pursuant to Article IV of this Declaration; and refers to the time at which the **DECLARANT** relinquishes control of the governance of the Association as detailed on Article IV;
- (c) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time;
- (d) "Association" (also known as "HOA") shall mean and refer to Bayview Estates Homeowners Association, Inc., an Indiana corporation organized under Indiana Code 23-17-1, et seq, which **DECLARANT** has caused to be incorporated under said name or a similar name, its successors and assigns;
- (e) "Board" or "Board of Directors" shall mean and refer to the governing body of the Association elected, selected or appointed as provided for in the Articles, Bylaws and this Declaration;
- (f) "Bylaws" shall mean and refer to the Code of Bylaws of the Association, as the same may be amended from time to time;
- (g) "Committee" shall mean and refer to the "Bayview Estates Architectural Control Committee", the same being the committee or entity established pursuant to Article IX, of this Declaration for the purposes therein stated;
- (h) "Common Areas" are denominated by such title on recorded plats of this community and are transferred in legal title to the HOA by the **DECLARANT**, by general warranty deed executed contemporaneously with this Declaration, and will thereafter be commonly owned by the HOA Members. Common areas limited in use to less than all of the owners, if any, are labeled "Limited Common Area." All common areas not labeled Limited Common Area are General Common Areas available to all lot owners in the project.

The HOA at all times herein has rights with respect to these common areas to regulate the use thereof, to make and/or remove improvements thereon, including but not limited to landscaping, to provide utilities thereto with the attendant responsibility to care for and maintain same. Illustrative of such areas are the common areas denominated as such on Exhibit B. **DECLARANT** reserves the right to relocate and/or reconfigure the open space or common areas as precise engineering for the site may dictate;

(i) "Common Expenses" shall refer to expenses of administration of the HOA and for their exercised rights and obligations detailed in the Definitions "Common Areas" and Maintenance Expense Areas and shall also include the cost of overseeing areas designated on recorded plats of Bayview Estates labeled "Common Area";

(j) "Community or Project" refers to Bayview Estates area depicted on Exhibit B as it is developed and as it continues to exist after the Applicable Date;

(k) "DECLARANT" SHALL MEAN AND REFER TO SILVERTHORNE HOMES, LLC, AN INDIANA LIMITED LIABILITY COMPANY, AND ANY SUCCESSORS AND THEIR ASSIGNS INCLUDING, BUT NOT LIMITED TO, ANY MORTGAGEE ACQUIRING TITLE TO ANY PORTION OF THE REAL ESTATE PURSUANT TO THE EXERCISE OF RIGHTS UNDER, OR FORECLOSURE OF, A MORTGAGE EXECUTED BY DECLARANT;

(l) "Dwelling Unit" shall refer to a single free-standing residential structure on an individual or multiple lots;

(m) "Lot" means any plot of ground designated as such upon the recorded Final Plat of Bayview Estates, and upon which one (1) Dwelling Unit is constructed or is to be constructed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon;

(n) "Maintenance Expense Areas." Certain aesthetic, informational and other amenities influenced by the natural features of the Real Estate have been used in the development design to differentiate this community from other communities. As a consequence thereof, easement areas or improvements in dedicated rights-of-ways have or will be created shown on recorded plats that reserve to **DECLARANT** and after the Applicable Date the HOA certain rights and/or responsibilities. Illustrative of these areas are the following:

- (1) Common Areas and any dedicated common access thereto. This area shall not include easement areas across lots, which maintenance shall be the responsibility of the respective lot owners.
- (2) The identification walls at the Community entrances and complimentary landscaping and possibly water and electric service for such identification within easements designated on recorded plats, to the extent such features exist or are later installed or constructed.
- (3) If the **DECLARANT** or the HOA after the Applicable Date contracts, under lease, with an electric utility to install street lighting in Bayview Estates the lease payments shall be a common expense.
- (o) "Member" means a Member of the Association;
- (p) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (q) "Open Space Areas/Common Areas." In addition to the retention ponds being open space areas, other space labeled as noted is contemplated, some of which may be Common Areas;

(r) "Owner" shall mean and refer to the record Owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;

(s) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;

(t) The "Real Estate" shall mean and refer to the parcel of real estate in Hamilton County, Indiana, described in Exhibit "A" attached to this Declaration and subject thereto, as referred to in the first recital clause of this Declaration, and defined therein as the Real Estate;

(u) The description of "Bayview Estates" consists of nineteen (19) Lots numbered 1 through 19 inclusive. Consequently, the legal description for each Lot in this subdivision shall be as follows:

Lot \_\_\_\_\_ in Bayview Estates, a subdivision in Hamilton County, Indiana, as per plat thereof, recorded October 10, 2006 as Instrument #200600060995 in the Office of the Recorder of Hamilton County, Indiana.

(v) "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time (see Article X);

(w) "Rules and Regulations" are the rules and regulations relative to the use, occupancy, operation and enjoyment of the Real Estate, Common Areas and individual Lots that are part of this Development.

**Section 2.** Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

## ARTICLE II DECLARATION

**DECLARANT** hereby expressly declares that the Real Estate shall be held, transferred and occupied subject to the Restrictions as Covenants running with the Real Estate. The Owners of any Lot subject to these Restrictions, and all other Persons, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from **DECLARANT** or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of **DECLARANT**, the Committee and of the Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with **DECLARANT**, the Committee, the Association, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.



**ARTICLE III  
OBLIGATIONS OF DECLARANT**

**DECLARANT** has constructed or provided for, or will prior to the Applicable Date construct or provide for, the following:

- (a) a storm drainage system for the Real Estate, including structures and drainage courses;
- (b) at the sole discretion of the **DECLARANT**, the installation in the designated easements of the subdivision identification signage and landscaping at the entranceway to Bayview Estates project and possible water and electric service to accommodate same;
- (c) the Common Areas described in Article I (h).

**ARTICLE IV  
ASSOCIATION; MEMBERSHIP; VOTING; FUNCTIONS**

**Section 1. Membership in Association.** **DECLARANT** and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and membership will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Association.

**Section 2. Voting Rights.** The Association shall have the following classes of membership, with the following voting rights:

(a) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be Members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine and as amplified in the Bylaws if such determination is unavailable, but in no event shall more than one (1) vote be cast with respect to any such Lot. Attendance at properly called Association meetings by one Member of a jointly titled Lot shall vest in such sole attending Member the entire one (1) vote;

(b) Class B. Class B Members shall be **DECLARANT** and all successors and assigns of **DECLARANT** designated herein as **DECLARANT** as Class B Members in a written notice mailed or delivered to the resident agent of the Association. Each Class B Member shall be entitled to ten (10) votes for each Lot designated on the Bayview Estates Subdivision Exhibit B on all matters requiring a vote of the Members of the Association. **THE CLASS B MEMBERSHIP SHALL CEASE AND TERMINATE UPON THE FIRST TO OCCUR OF:**

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

(ii) THIRTY (30) DAYS AFTER THE DATE WHEN THE LOTS SUBJECT TO THIS DECLARATION ARE TITLED IN NAMES OTHER THAN THE **DECLARANT** OR AN ASSIGNEE OF THE **DECLARANT**; OR

THE DATE APPLICABLE TO THE ABOVE IS HEREINAFTER REFERRED TO AS THE "APPLICABLE DATE".

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

The total possible votes for Class A Members prior to the Applicable Date considering only the Real Estate is 19. The total votes for Class B Members prior to the Applicable Date is 190.

**Section 3. Functions.** The Association has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation of the Article III matters and, to pay any other necessary expenses and costs related thereto, and to perform such other functions as may be designated for it to perform under this Declaration.

#### **ARTICLE V BOARD OF DIRECTORS**

**Section 1. Management.** The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a Member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or a person appointed by **DECLARANT** as provided in Section 2 of this Article V.

**Section 2. Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles (herein referred to as the "Initial Board" or "Board"), who have been or shall be appointed by **DECLARANT**. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws or the Act (a) the Initial Board shall hold office until the first annual meeting of the Members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by **DECLARANT**, who shall thereafter be deemed a Member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of judicial acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed **DECLARANT** as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as **DECLARANT** determines, on all matters as to which Members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of **DECLARANT** as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original Member thereof or as a Member thereof appointed by **DECLARANT** to fill a vacancy, shall be deemed a Special Member of the Association and an Owner solely for the purpose of qualifying

to act as a Member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Association).

**Section 3. Additional Qualifications.** Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

**Section 4. Term of Office, Vacancy and Number of Directors After the Applicable Date.**

(a) **Term.** Subject to the provisions of Section 2 of this Article V, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the Members occurring on or after the Applicable Date provided herein. After the Applicable Date, each Member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified.

(b) **Number of Directors After Applicable Date.** The number of Directors to serve on the Board after the Applicable Date shall be a minimum of three (3) with a maximum of six (6).

(c) **Vacancies.** Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board after the Applicable Date shall be filled by a vote of a majority of the remaining Members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy. Any vacancy of Directorship held by a member of the **DECLARANT** must be replaced by a person designated by **DECLARANT**.

**Section 5. Removal of Directors.** A Director or Directors, except the Members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners or until his successor is duly elected and qualified. Any vacancy of Directorship held by a member of the **DECLARANT** must be replaced by a person designated by **DECLARANT**.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion,

reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(a) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);

(b) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;

(c) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;

(d) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

(e) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours by reasonable pre-arrangement;

(f) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(g) paying any other necessary expenses and costs in connection with the Common Areas (including open space common areas) and including the overseeing of open space preservation areas that are not common areas but instead are impositions by Easement within the confines of lots; and

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

**Section 7. Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

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

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

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

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of

the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;

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

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

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

(h) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, and Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service, provided that such easements are located within or are coextensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded;

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

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

**Section 8. Limitation on Board Action.** After the Applicable Date, the authority of the Board shall be in accordance with Indiana Code § 32-25.5-1 et seq. and further limited to contracts involving a total expenditure of less than Thirty Thousand and No/100 Dollars (\$30,000.00) per year without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

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

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

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

**Section 9. Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the

Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**Section 10. Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

**Section 11. Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorney fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 12. Bond.** The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

**Section 13. Initial Management.** Notwithstanding anything to the contrary contained in this Declaration, **DECLARANT** shall have, and **DECLARANT** hereby reserves to **DECLARANT**, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Association, until the Applicable Date. **DECLARANT** may, at its option, engage a Managing Agent affiliated with it to perform such functions and, in either case, **DECLARANT** or such Managing Agent shall be entitled to reasonable compensation for its services so long as **DECLARANT** secures

DECLARANT's written consent to a required written contract which will not be unreasonably delayed, conditioned, or withheld.

**ARTICLE VI  
REAL ESTATE TAXES; UTILITIES**

**Section 1. Real Estate Taxes.** Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot.

**Section 2. Utilities.** Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit including utilities (if any) to community identification signage shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

**ARTICLE VII  
ENCROACHMENTS AND EASEMENTS IN COMMON AREAS**

If by reason of inexactness of construction, settling after construction, or for any other reasons, any Common Areas encroach on any Lot, an easement shall be deemed to exist and run to the Association for the maintenance, use and enjoyment of such Common Areas.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, in the Common Areas and serving his Dwelling Unit.

**ARTICLE VIII  
DELINEATION OF HOMEOWNERS ASSOCIATION VERSUS LOT OWNERS'  
MAINTENANCE, ETC. OBLIGATIONS**

**Section 1. Homeowners Association Obligations.** Maintenance of the Common Areas, unless the same is otherwise the responsibility or duty of Owners of Lots shall be provided by the Association, however, this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system.

**Section 2. Maintenance of Individual Lots.** Except as otherwise noted, each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon not provided by the Association in a good, clean and sanitary condition, with an appearance which is complementary to the Subdivision. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition with an exterior appearance up to the general standards of Bayview Estates Subdivision, the Association may perform any work necessary and charge the Owner thereof for such cost which shall be immediately due, and shall be secured by the Association's lien on the Owner's property in like manner to liens created for Assessments hereunder. Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Association, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to affect the maintenance, cleaning, repair or other work permitted herein.

**Section 3. Damage to or Abuse of Common Area.** If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, or invitee or other occupant or visitor of the Owner, damage is caused to Common Areas or repairs and maintenance are accelerated relative to the Association's obligations and some maintenance or repairs are required, the Owner shall be required to pay for such damage. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, and if not paid, a lien in like manner to the lien under Assessments may attach to the Owner's property, and costs of collection and reasonable attorney fees shall be added to any judgment entered on behalf of the Corporation.

**Section 4. Access to Lots and Easements.** The authorized representatives of the DECLARANT, the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items, including, but not limited to, access to any easements reserved, granted or created by any Bayview Estates subdivision plat or of any portion of the Real Estate for such purposes.

#### **ARTICLE IX ARCHITECTURAL STANDARDS**

Nothing, including any fence, deck, retaining walls, recreational equipment (including basketball goals), or any structure, storage shed, doghouse or other improvements, shall be erected on any Lot, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of any residence or existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the Committee has been obtained pursuant to Section 1 below.

THIS ARTICLE SHALL NOT APPLY TO THE ACTIVITIES OF THE DECLARANT, NOR TO CONSTRUCTION OR IMPROVEMENTS OR MODIFICATIONS TO THE COMMON AREAS BY OR ON BEHALF OF THE ASSOCIATION.

THIS ARTICLE MAY BE AMENDED BY DECLARANT, BUT NOT WITHOUT THE DECLARANT'S WRITTEN CONSENT SO LONG AS THE DECLARANT OWNS ANY LAND SUBJECT TO THIS DECLARATION, WHICH CONSENT SHALL NOT BE UNREASONABLY DELAYED, CONDITIONED OR WITHHELD.

This Committee has the right to assign to the property manager to approve some or all Architectural Control Requests that fall within the scope of the Architectural Standards, Guidelines, Rules and Covenants. If the property manager determines the documents provide inadequate direction the property manager should seek guidance from the Committee and the Board of Directors.

**Section 1. Architectural Control Committee.** There shall be, and hereby is, created and established the "Bayview Estates Architectural Control Committee" ("Committee"), consisting of DECLARANT, which shall have exclusive jurisdiction over all construction on any portion of the Lots. UNTIL HOMES HAVE BEEN CONSTRUCTED ON ONE HUNDRED PERCENT (100%) OF THE LOTS AND THOSE HOMES HAVE BEEN CONVEYED TO PURCHASERS in the normal course of construction and sale, the



**DECLARANT**, or not more than five (5), nor less than three (3), Persons designated by it, SHALL CONSTITUTE THE COMMITTEE AND SHALL SERVE AT THE DISCRETION OF THE DECLARANT. THERE SHALL BE NO SURRENDER OF THIS RIGHT PRIOR TO THAT TIME EXCEPT IN A WRITTEN INSTRUMENT IN RECORDABLE FORM EXECUTED BY THE DECLARANT. IN ALL INSTANCES, AT LEAST ONE (1) MEMBER OF THIS COMMITTEE WILL BE DESIGNATED BY DECLARANT. After the sale of one hundred percent (100%) of the Lots, the Committee shall be a standing committee of the Association, consisting of not more than five (5), nor less than three (3), Persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the Committee, then the Board shall be and constitute the Committee.

**Section 2. Approval Process.** The Committee may prepare and promulgate, on behalf of the Board of Directors, design and development guidelines and application and review procedures. Copies are on file in the office of the DECLARANT (or the Association, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Association, and the Committee shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Lots and such Owners and builders shall conduct their operations strictly in accordance therewith. The Committee, or its designee, must give written approval for any building contractor selected by the Lot Owner for construction.

Prior to any construction on any Lot, the approval of the Committee must be obtained after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be made in the manner and form prescribed from time to time by the Committee in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the Committee.

**Section 3. Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Declarations, the plat restrictions or any rules, regulations or guidelines adopted by the Committee;
- (b) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee;
- (c) the proposed improvement, or any part thereof, would, in the sole opinion of the Committee, be contrary to the interest, welfare or rights of all or part of other Owners; or
- (d) the removal or placement of landscaping or structures in the open space preservation easements.

**Section 4. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) calendar days after all required information shall have been submitted to it. One copy of submitted material 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 therefore. In the event that the Committee fails to provide written notice of approval or to request written notice for additional information within forty-five (45) days after submission of all required or requested information, the plans shall be deemed and presumed denied. **MUST HAVE WRITTEN APPROVAL BY COMMITTEE. NO VERBAL APPROVALS ALLOWED.**

**Section 5. No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such 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.

**Section 6. Variance.** The Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the Committee shall not be considered hardships warranting a variance.

**Section 7. Compliance with Guidelines.** Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the Committee may be excluded by the Committee from the Real Estate without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by **DECLARANT** or the Association.

**Section 8. Non-Liability of DECLARANT, Committee.** Neither the **DECLARANT** nor the Committee shall be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee and the **DECLARANT** do not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded plat governing the Real Estate or any applicable code, regulation or law.

**Section 9. Inspection.** The Committee and the **DECLARANT** and/or any property management organization's personnel may inspect work being performed to assure compliance with these Restrictions, the plat restrictions and applicable regulations. However, neither the

Committee, nor any member thereof, nor the **DECLARANT**, nor any agent or contractor employed or engaged by the Committee or the **DECLARANT**, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the **DECLARANT** shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

**Section 10. No Compensation.** Neither the Committee nor any of its members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

## **ARTICLE X USE RESTRICTIONS/COVENANTS AND REGULATIONS**

The following covenants and restrictions contained below and made a part hereof concerning the use and enjoyment of the Lots, Dwelling Units, Common Areas and (Article VIII) are in addition to any other covenants or restrictions contained herein and in the Final Plat of Bayview Estates. 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 are enforceable by an Owner, or by the Association. In addition to any other remedies herein provided, present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof including reasonable attorney fees, but there shall be no right or reversion or forfeiture resulting from such violation.

### **Section 1. [INTENTIONALLY OMITTED]**

**Section 2. DECLARANT'S and the Association's Rights to Perform Certain Maintenance and Removal.** In the event that the Owner of a Lot shall fail to maintain his Lot and any improvements, or remove any unauthorized item or structure situated thereon in accordance with the provisions of these Restrictions and the provisions of any recorded plat of the Real Estate, the **DECLARANT**, until the Applicable date, and, thereafter, the Association through its agents and employees or contractors, should have the right to enter upon said Lot and repair, mow, clean, remove or perform such other acts as may be reasonable necessary, to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the provisions contained in any such plat. The cost thereof to the **DECLARANT** or the Association shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the **DECLARANT** nor the Association, nor any of its agents, employees or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

**Section 3. Ditches and Swales and Erosion Control.** It shall be the duty of the Owner of any Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary. It shall be the duty of the Owner of any Lot to establish as needed and to maintain all erosion control on his or her respective Lot.

**Section 4. Drilling.** No oil or water drillings, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted on any Lot.

**Section 5. Ground Elevations and Erosion Control.** It shall be the Lot Owner's responsibility to maintain and comply with all building and site finish ground elevations and erosion control as finally required and approved by the Town of Fishers or other municipal government if the Bayview Estates community is annexed to said municipal government's department of planning and zoning as evidenced upon the final construction plan for the development of this subdivision.

**Section 6. Insurance Impact.** Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

**Section 7. Landscape Easements.** There are strips and areas of ground shown titled as various easements on the Final Plat for the Real Estate which are hereby reserved for the use of Owners of Lots to the extent and limited for the purposes set forth in the Declaration and for the use of **DECLARANT** and Association for the installation, maintenance, repair and replacement of the matters detailed in Article 1(i) requiring maintenance. Except as installed and maintained by Lot Owners, pursuant to the requirements of the Declarations, or by **DECLARANT** and the Association, no permanent or other structure (except walls, sidewalks and fences otherwise permitted hereby or by the **DECLARANT** and approved by the Board) shall be erected or maintained on said strips and areas by the Owner of any Lot subject to any such "Landscape Easement", and the Owners of such Lots affected by any such "Landscape Easement" shall take and hold title to their Lots subject to the foregoing rights of the **DECLARANT** and the Association and shall not do or permit to be done anything which will obstruct or interfere with or remove any installations or landscaping made by the **DECLARANT** or Association in any such "Landscape Easement". The foregoing grant of rights to the **DECLARANT** shall not impose an obligation on the **DECLARANT** to undertake such maintenance unless it elects to do so.

**Section 8. Maintenance of Lots and Improvements.** It shall be the responsibility of each Owner to prevent the occurrence of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. No waste shall be committed in any Dwelling Unit or on any Lot. Each Owner shall:

- (a) Remove all debris or rubbish;
- (b) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;

- (c) Cut down and remove dead trees;
- (d) Where applicable, prevent debris and foreign material from entering drainage areas; and
- (e) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

**Section 9. Occupancy and Residential Use of Partially Completed Dwelling Unit Prohibited.** No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Board and such decision shall be binding on all parties, however, if an Occupancy Permit from government is involved, the issuance thereof shall be deemed substantial completion.

**Section 10. Occupants Bound.** All provisions of the Declaration, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Owner. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations adopted pursuant thereto.

**Section 11. 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 or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Real Estate that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants or surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Real Estate. For greater clarification, no Owner shall knowingly or willfully make or create an unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners or allow any such noise or disturbance to be made on his or her Lot, including any noise by the use of musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other machines or equipment. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is in any way obnoxious, dangerous, unsightly, unpleasent, or of a nature as may diminish or destroy the enjoyment of the Real Estate. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Real Estate. Also, excessive grass clippings from the mowing of lawns or other lawn/tree rubbish will not be allowed to be left on any street within the development.

**Section 12. Residential Use.** The Real Estate shall be used only for single family residential purposes; provided, however, that such restriction shall not apply to any Lot or part thereof or any other part of the Real Estate at any time owned by the Association which constitutes a part of the Common Areas and upon which no Dwelling Unit is located.

**Section 13. Business Use.** No trade or business may be conducted in or from any Lot, except that an Owner or occupant of a Lot 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 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.

**Section 14. Firearms.** The discharge of firearms within the Real Estate is prohibited. The term "Firearms" includes bows and arrows, slingshots, "B B" guns, pellet guns, paint ball guns and other firearms of all types, regardless of size. Notwithstanding anything to the contrary, contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

**Section 15. Tents, Trailers and Temporary Structures.** Except as may be permitted by the **DECLARANT** or the Board during initial construction within the Real Estate, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Lot or the Common Maintenance Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events for a period not longer than 48 hours unless otherwise consented to by the **DECLARANT**.

**Section 16. Model Homes.** No Owner of any Lot shall build or permit the building upon his Lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the **DECLARANT**.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the **DECLARANT** with respect to its development and sale of the Real Estate or its use of any Lots with such entity owns within the Real Estate.

**Section 17. Non-Applicability to Association.** Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth, shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

**Section 18. Sales Office.** To the extent deemed necessary or desirable by **DECLARANT**, it shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the subdivision on any unsold lot or on any Common Area in the subdivision.

**Section 19. Sanitary Waste Disposal.**

- (a) **Nuisances.** No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Board), and no sanitary waste or other wastes shall be permitted to be exposed.
- (b) **Construction of Sanitary Sewage Lines.** All sanitary sewage lines on the Lots shall be designed, constructed and installed in accordance with the provisions and requirements of Hamilton County and these Restrictions.
- (c) **Connection Requirements for Sanitary Sewers.** All homes shall have sewers directly connected by way of gravity except by the use of lift pumps and/or check valves or connections shall be one (1) foot above the lowest manhole in the Subdivision.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, **DECLARANT** shall have the right to use and maintain any Lots and Dwelling Units owned by **DECLARANT** in and on the Real Estate (other than individual Dwelling Units and Lots owned by persons other than **DECLARANT**), all of such number and size and at such locations as **DECLARANT** in its sole discretion may determine, as **DECLARANT** may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. **DECLARANT** shall have the right to relocate any or all of the same from time to time as it desires. **DECLARANT** shall have the right to remove the same from the Real Estate and Additional Property at any time.

**ARTICLE XI  
ASSESSMENTS**

**Section 1. Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnish the Owners with a financial statement of operations by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 2. Proposed Annual Budget.** The Initial Board of the HOA shall establish the first annual budget and its resultant regular assessment and thereafter. Annually, on or before the date of the annual or special meeting of the Association at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual or special meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual or special meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the eligible Owners represented at such meeting; provided, however, that in no event shall such annual or special meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as

amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement repair of the Common Areas shall be maintained by the Association in a separate interest-bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hamilton County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual or special meeting of the Association at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

**Section 3. Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot, provided, immediately following the adoption of the annual budget, each Owner shall be given notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, each Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in annual installments payable in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. Payment of the Regular Assessment, whether in one payment or in any other manner, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (b) if the total Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be retained by the Association for Association expenses but shall be taken into account in



establishing the next regular assessments: provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) above or (b) shall be made by a cash payment by, or refund to, the Owner or the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for the Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 2 of Article XII hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same. The initial and subsequent Regular Assessment shall be adopted by the Board based on the annual expenses of the Community, including but not limited to, the cost of maintenance, utilities, professional fees, general upkeep, etc. of the Community which includes the input of **DECLARANT**.

(c) **DECLARANT IS NOT OBLIGATED FOR ANY REGULAR ASSESSMENT AND SHALL NOT BE SUBJECT TO ASSESSMENT AT ANY TIME FOR ANY DEFICIT IN THE REPLACEMENT RESERVE FUND.**

**Section 4. Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the Bylaws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, but not on Lots owned by **DECLARANT**, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration. **THE DECLARANT SHALL ONLY BE RESPONSIBLE FOR SPECIAL ASSESSMENTS AFTER THE "APPLICABLE DATE" OCCASIONED BY EXTRAORDINARY REPAIRS TO ORIGINALLY INSTALLED INFRASTRUCTURE, BUT DECLARANT SHALL NOT BE RESPONSIBLE FOR NEW INFRASTRUCTURE OR AMENITIES DESIRED BY OTHER OWNERS UNLESS DECLARANT FOR ITSELF SPECIFICALLY AGREES OTHERWISE IN WRITING.**

**Section 5. Failure of Owner to Pay Assessments.**

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Maintenance Expense Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. Regular and special assessments should constitute a lien against the Lots and Dwelling Units thereon. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments against his Lot when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Association as a mechanic's lien on real property and enforced in like manner as mechanic liens. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby waiving) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or any other charges due the Association, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorney fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly announced or published by Chase or its successors (or if said Bank is no longer in existence, then such rate charged by another national bank in Hamilton County, Indiana selected by the Board) plus four percent (4%) but in no event more than the maximum rate allowable under applicable usury laws.

(b) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot and Dwelling Unit 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 Regular Assessment or Special Assessment or other charges as to such installments which became 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 and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments or other charges thereafter becoming due or from the lien therefore. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefore, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

(c) In addition to the remedies above stated for failure to pay assessments, the Association may disqualify a delinquent Owner from his right to vote and to hold office or committee membership in the Association while Assessments are delinquent in addition to charging a reasonable late fee, as allowed by Indiana Law, per day of delinquency to among

other things, cover the administrative expense of addressing the delinquency and also deny such Member the use of the Common Areas for a period not exceeding sixty (60) days for each separate nonpayment.

**Section 6. Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Articles, in the Bylaws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the **DECLARANT** by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date. Until otherwise established or modified by Declarant, the initial Regular Assessment shall be Four Hundred and No/100 Dollars (\$400.00).

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owed or payable by **DECLARANT** with respect to any Lot or other portion of the Real Estate owned by **DECLARANT** while the same is owned by **DECLARANT** nor shall any such Assessments or Charges become a lien on any such Lot or other portion of the Real Estate owned by **DECLARANT** nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Real Estate owned by **DECLARANT** as specifically detailed in the last paragraph of subsection 4 herein. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by **DECLARANT** to another Person (other than **DECLARANT**), and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Association against each Lot so conveyed by **DECLARANT** shall be paid by each purchaser upon such conveyance.

**Section 7. Initial Working Capital and Start-Up Fund.** Upon the closing of the initial conveyance of each Lot by **DECLARANT**, to another Person (other than **ARBOR HOMES, LLC** from **DECLARANT**), the purchaser of such Lot shall pay to the Association, in addition to any other amount then owed or due to the Association, as a contribution to its working, capital and start-up fund, Two Hundred Fifty and No/100 Dollars (\$250.00), which payment shall be nonrefundable and shall not be considered as an advance payment of any Assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to **DECLARANT** for advances made to pay expenses of the Association for its early period of operation of the Real Estate, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board. This start-up fund shall also be applicable from any successors in title to Lots and therefore is an obligation of successor title owners to the HOA at the time of such title transfer.

**Section 8. Compliance with Indiana Code.** To the extent that these covenants are inconsistent or not fully compliant with Indiana Code Section 32-25.5-3-1 et seq, these covenants shall be interpreted to be in compliance therewith and the HOA shall be required to operate in compliance therewith in all respects.

## ARTICLE XII MORTGAGES

**Section 1. Notice to Association.** Any Owner, who places a first mortgage lien upon his Lot, or the Mortgagee, may notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record or in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

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

**Section 2. Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement except as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article XI hereof.

## ARTICLE XIII INSURANCE

**Section 1. Insurance.** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association shall 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, **DECLARANT**, 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) year's assessment on all Lots in the Development, 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.

**Section 2. Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

#### ARTICLE XIV CASUALTY AND RESTORATION

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of these areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing these areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas and/or maintenance expense areas (if any) to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same architecture and materials.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

#### ARTICLE XV AMENDMENT OF DECLARATION

**Section 1. Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy percent (70%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

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

(c) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

**Section 2. Amendments by DECLARANT Only.** Notwithstanding the foregoing or anything else contained herein, the DECLARANT shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if DECLARANT records the modification in the Office of the Recorder of Hamilton County, Indiana, and if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) function similar to those performed by such agencies or entities, to subject additional property to these

restrictions, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (g) to clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, or (h) change the substance of one or more covenants, conditions, terms or provisions hereof but (A) does not materially increase the obligation(s) of any Owner under any covenant, condition, term or provision without such Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the **DECLARANT** to vote in favor of, make, or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the **DECLARANT** to vote in favor of, make, execute and record any such amendments. The right of the **DECLARANT** to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the **DECLARANT** no longer holds or controls title to any part or portion of the Real Estate.

#### **ARTICLE XVI ACCEPTANCE AND RATIFICATION**

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the Bylaws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance of the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended, or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in an Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the Bylaws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

#### **ARTICLE XVII NEGLIGENCE**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

**ARTICLE XVIII  
BENEFIT AND ENFORCEMENT**

**Section 1. Covenants Appurtenant to Land.** These covenants are to run with the land, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless at any time after fifteen (15) years a majority of the then Owners of the Lots in this subdivision agree to change (or terminate) said covenants in whole or in part and on the condition that an instrument to that effect signed by the Lot Owners voting in favor of such change has been recorded; provided, however, that no change or termination of said covenants shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto.

**Section 2. Prosecution of Violations.** It shall be lawful for the Association, the Committee (as to matters for which it has responsibility) or any other person owning any real property situated in this subdivision to prosecute any proceedings at law or in equity against the person or persons violating, or attempting to violate any covenant, conditions, provisions or restrictions contained herein either to prevent such person or persons from doing so, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. All costs of litigation and attorneys' fees resulting from violation of these covenants and restrictions shall be the financial responsibility of the Lot Owner or Owners found to be in violation. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenant shall not be considered as a waiver of the right to enforce any covenant herein, thereafter. Notwithstanding the foregoing, any violation of these covenants or the Declaration may be waived by a majority of the then Owners of the Lots in this subdivision.

The Association may as respects an Owner who violates these restrictions and/or Rules and Regulations, after written notice to the Owner detailing the nature of the violation with a time period established by the Association to cure or conform, disqualify the voting rights and right to hold office while the violation continues and may further in the Board's sole discretion, an additional charge shall be fined, as allowed by Indiana Law. This fine, if not paid when required, will be processed in the same manner as Assessments.

**ARTICLE XIX  
MISCELLANEOUS**

**Section 1. Costs and Attorney Fees.** In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the Bylaws, or to comply with any provision of this Declaration, the Articles, the Bylaws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorney fees incurred in connection with such default or failure.

**Section 2. Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.



**Section 3. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the Bylaws and each shall be enforceable to the greatest extent permitted by law. Non enforcement of one provision does not affect the enforcement of another.

**Section 4. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

**Section 5. Interpretation.** The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

**Section 6. Delegation of Use of the Common Areas.** Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Association, his right of enjoyment, and use of the Common Areas to members of his family, his tenants or contract purchasers who reside on any Lot.

**Section 7. The Plat.** The Final Plat of the realty of Bayview Estates in this Declaration is recorded as Instrument No. 20600060995 in the Office of the Recorder of Hamilton County, Indiana.

**Section 8. Grievance Resolution.** Any grievance between and among the Members and the Board or any member thereof shall first be subject to discussion between the involved parties at a meeting held specifically for that purpose, and if unsuccessful referred to mediation. Only after unsuccessful discussions and determination by the mediator that further mediation would be fruitless, the parties may then submit their grievance to a court of competent jurisdiction to resolve the grievance.

IN WITNESS WHEREOF, Silverthorne Homes, LLC, by its duly authorized Member, Rector Family Investments, LLC, has executed this Declaration on the day and year first hereinabove set forth.

Rector Family Investments, LLC  
Its sole member

By: [Signature]  
Curtis A. Rector, Manager

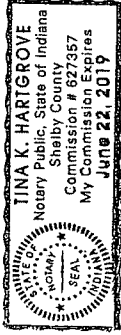
STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF Madison )

Before me, a Notary Public in and for said County and State, personally appeared Curtis A. Rector, Manager of Rector Family Investments, LLC, the sole member of Silverthorne Homes, LLC, who acknowledged the execution of the above and foregoing instrument for and on behalf of said limited liability company, and, who having been duly sworn, stated that any representations contained therein are true.

WITNESS my hand and Notarial Seal this 19<sup>th</sup> day of May, 2014.

My Commission Expires: [Signature]  
Notary Public

June 22, 2019 Printed Tina K. Hartgrove  
Resident of Shelby County



PREPARED BY: ARBOR INVESTMENTS, LLC, PAUL CLAIRE  
RETURN TO: 6626 E. 75TH STREET, SUITE 400  
INDIANAPOLIS, IN 46250

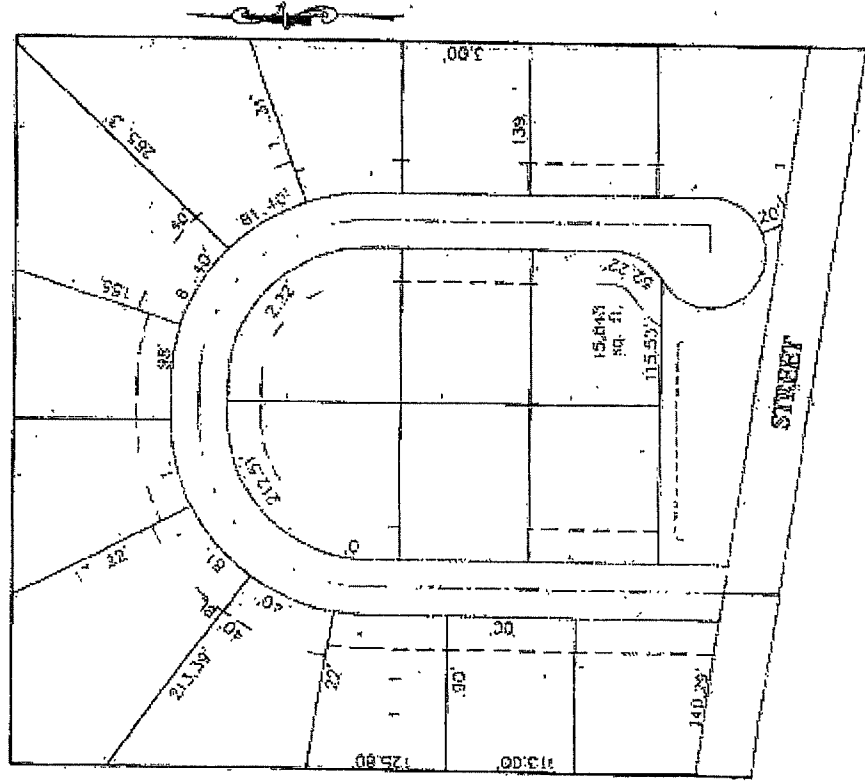
"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law."

(Name): PAUL C. CLAIRE

EXHIBIT A  
Legal Description

Lots 1 through 19 (both inclusive) and the Common Area in Bayview Estates, a subdivision being part of the Northeast Quarter of Section 1, Township 17 North, Range 5 East, According to the Plat thereof recorded October 10, 2006 as Document No. 200600060995, Plat Cabinet 4, Slide 160, Hamilton County, Indiana.

EXHIBIT B  
Plat



2018030601 ASGN \$25.00  
07/06/2018 02:46:49PM 4 PGS  
Jennifer Hayden  
Hamilton County Recorder IN  
Recorded as Presented



LSB

STATE OF INDIANA  
COUNTY OF HAMILTON

ASSIGNMENT AND ASSUMPTION OF DECLARANT RIGHTS

**THIS ASSIGNMENT AND ASSUMPTION OF DECLARANT RIGHTS** (this “Assignment”) is made as of July 2, 2018 (the “Effective Date”), by and between **SILVERTHORNE HOMES, LLC**, an Indiana limited liability company (“Assignor”), and **CLAYTON PROPERTIES GROUP, INC.**, a Tennessee corporation (“Assignee”).

RECITALS

- A. Assignor recorded that certain Declaration of Covenants, Conditions and Restrictions of Bayview Estates on May 21, 2014, as Instrument No. 2014019011, with the Office of the Recorder of Hamilton County, Indiana (as may be modified and amended from time to time, the “Declaration”). Capitalized terms used in this Assignment and not otherwise defined herein shall have the meanings defined for them in the Declaration.
- B. Assignor is the current “Declarant” under the Declaration and prior to the Effective Date, has not assigned, conveyed or transferred any of its right, title or interest as the “Declarant” thereunder. Assignor has, however, heretofore resigned as the Class B Member and caused the Applicable Date, as defined in the Declaration, to occur, which resulted in the termination and/or transfer to the Bayview Estates Homeowners Association of certain of Declarant’s rights and obligations as “Declarant”, all as more specifically set forth in the Declaration. Assignor intends by this Assignment to assign to Assignee any and all right, title, interest and power that it may continue to have as the “Declarant” under the Declaration, if any, notwithstanding the prior passage of the Applicable Date.
- C. Assignor and Assignee have agreed that the Assignor shall assign to the Assignee all of Assignor’s right, title, interest and power as “Declarant” under the Declaration (collectively, the “Declarant Rights”), and Assignee has agreed to assume all of Assignor’s obligations and responsibilities as “Declarant” under the Declaration, to the extent accruing from and after the Effective Date (collectively, the “Declarant Obligations”).

## AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the parties hereby agree as follows:

1. **ASSIGNMENT OF DECLARANT RIGHTS.** Assignor hereby sells, bargains, conveys, transfers and assigns to Assignee, its successors and assigns, all of the Declarant Rights.
2. **ASSUMPTION OF DECLARANT OBLIGATIONS.** Assignee hereby accepts the sale, bargain, conveyance, transfer and assignment of the Declarant Rights, and hereby assumes and agrees to perform and discharge all of the Declarant Obligations, to the extent accruing from and after the Effective Date.
3. **MISCELLANEOUS PROVISIONS.**
  - (a) Assignor and Assignee agree, at the other party's request, whether on or after the date hereof, and without further consideration, that each shall execute and deliver any and all further instruments and documents, and take such further actions, as the other party may reasonably request or as may reasonably be required in order more effectively to vest in Assignee all of the Declarant Rights, and to evidence Assignee's assumption of the Declarant Obligations, to the extent accruing from and after the Effective Date, or to otherwise carry out the provisions of this Assignment.
  - (b) All of the terms, provisions and conditions of this Assignment shall be binding on, and shall inure to and be enforceable by, the parties hereto and their respective successors and assigns.
  - (c) This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The exchange of copies of this Assignment and of signature pages by facsimile, electronic mail, or other means of electronic transmission is to constitute effective execution and delivery of this Assignment as to the Parties.
  - (d) If any provision of this Assignment shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
  - (e) This Assignment is subject in all respects to, and is not meant to alter, enlarge, or otherwise modify, the provisions of that certain Asset Purchase Agreement by and among Assignee, Assignor and the other parties named therein dated of even date herewith.

*[Signature Pages to Follow]*

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment as of the Effective Date.

ASSIGNOR:

SILVERTHORNE HOMES, LLC,  
an Indiana limited liability company

By: [Signature]  
Name: Curtis Rector  
Title: Manager

STATE OF INDIANA            )  
  )SS:  
COUNTY OF Marion        )

Before me, a Notary Public in and for said County and State, personally appeared Curtis Rector, the Manager, of Silverthorne Homes, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing instrument for and on behalf of said limited liability company.

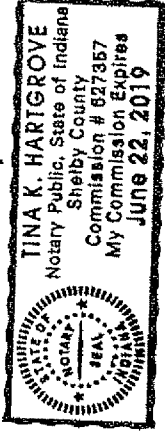
WITNESS my hand and Notarial Seal this 2nd day of July, 2018.

By: [Signature]  
Notary Public

Printed Name: Tina K. Hartgrove


I am a resident of Shelby County, Indiana

My commission expires June 22, 2019



ASSIGNEE:

CLAYTON PROPERTIES GROUP, Inc.,  
a Tennessee corporation


By:   
Name: MIKE RUTHERFORD  
Title: PRESIDENT

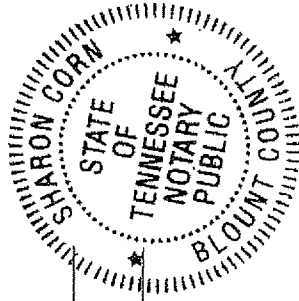
STATE OF TENNESSEE

COUNTY OF BLOUNT

On this 2<sup>nd</sup> day of JULY, 2018, before me appeared MIKE RUTHERFORD to me personally known, who, being by me duly sworn did say that he is the PRESIDENT of CLAYTON PROPERTIES GROUP, INC., a Tennessee corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and acknowledged that he executed the same as the free act and deed of said corporation and is acting for and on behalf of and as PRESIDENT of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

  
Notary Public  
Printed Name: SHARON CORN



My Commission Expires:  
My Commission Expires  
July 20, 2019

The mailing address to which statements should be mailed under IC 6-1.1-22-8.1 is 5000 Clayton Road, Maryville, Tennessee 37804. The mailing address of the Assignee is Clayton Properties Group, Inc., 5000 Clayton Road, Maryville, Tennessee 37804.

I affirm, under penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Lee L. Sheppard

This instrument was prepared by Lee L. Sheppard, Maynard, Cooper & Gale, P.C., 1901 6<sup>th</sup> Avenue North, Suite 2400, Birmingham, Alabama 35203.



2021064489 AMEN \$25.00  
09/02/2021 03:25:47PM 6 PGS  
Jennifer Hayden  
Hamilton County Recorder IN  
Recorded as Presented

Cross-Reference: Inst. No. 2014019011



TGR

**FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF BAYVIEW ESTATES**

**RECITALS**

**WITNESSETH:**

**WHEREAS**, the Bayview Estates subdivision located in Hamilton County, Indiana (“Bayview Estates”) was formed pursuant to a certain “Declaration of Covenants, Conditions and Restrictions of Bayview Estates,” which was recorded in the Office of the Recorder of Hamilton County, Indiana on May 21, 2014, as **Instrument No. 2014019011** (the “Declaration”); and

**WHEREAS**, the Bayview Estates Homeowners Association, Inc. (“Association”), an Indiana not-for-profit corporation, was established to supervise, maintain, and administer the affairs of the Bayview Estates subdivision, including enforcement of the terms, covenants, and restrictions set forth in the Declaration; and

**WHEREAS**, the owners of homes in Bayview Estates desire to amend the Declaration to add rental restrictions; and

**WHEREAS**, Article XV of the Declaration sets forth that the Declaration may be amended upon the approval of Owners representing not less than seventy percent (70%) of the Lots in Bayview Estates; and

**WHEREAS**, the Owners of seventeen (17) of the nineteen (19) Lots in Bayview Estates (about 89%) have voted to approve the following amendment to the Declaration.

**NOW, THEREFORE**, the Declaration of Covenants, Conditions & Restrictions for Bayview Estates is hereby amended as follows:

1. A new Article XX is hereby added to the Declaration to state as follows:

## **ARTICLE XX RENTAL BAN**

The Association's members recognize that an owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus owner-occupants maintain their property better than renters generally. The Association's members wish to ensure that the residents within Bayview Estates share the same proprietary interest in and respect of the Dwelling Units and the Common Areas, and to encourage residents to not only maintain property values but also to improve them by recognizing that owner-occupants have more incentive to do so compared to non-owner-occupants. Thus, the provisions of this Article XX shall be applicable.

**Section 1. Rental Ban.** No Owner who wishes to lease or rent their Dwelling Unit may do so without express written permission from the Board of Directors, unless that Dwelling Unit enjoys "Grandfather Status" as described in Section 2 below. The Board may, in writing, approve a lease agreement if the Owner establishes to the Board's satisfaction that denying the lease agreement will cause undue hardship in the manner as defined in Section 3 below. If a Dwelling Unit enjoys "Grandfather Status" as described in Section 2, then the rental ban will not be in effect for that Unit for as long as the Dwelling Unit has the same Owner as it did when it first received "Grandfather Status". The Dwelling Unit will be subject to the remaining Sections of this Article XX.

**Section 2. Effective Date of "Rental Ban" on Existing Rentals.** Within fifteen (15) days after the date on which this Amendment is recorded in the Office of the Recorder of Hamilton County (the "Recording Date"), the Board of Directors shall provide written notice to all Owners setting forth the Recording Date. The Rental Ban provisions of Section 1 shall not apply to any Dwelling Unit in Bayside Estates which, as of the Recording Date, is rented or leased by its Owner to a non-owner occupant, so long as the Owner-landlord mails or otherwise delivers to the Board (at the address shown in the notice of the Recording Date), within sixty (60) days after the Recording Date, a copy of each executed lease of such Owner-landlord's Dwelling Unit (or Units) which is in effect as of the Recording Date. Those Dwelling Units will enjoy "Grandfather Status". Such lease copies may have the rental amount deleted, together with any personal identifying information such as social security numbers. The Owners of Dwelling Units that enjoy Grandfathered Status shall not be subject to the provisions of Section 1 but shall be subject to the remaining provisions of this Article XX. However, when the legal owners of record of any Dwelling Unit that enjoys Grandfathered Status sells, transfers, or conveys such Dwelling Unit(s) to another Owner after the Recording Date, such Dwelling Unit(s) shall immediately become subject to the Rental Ban.

If any such Owner-landlord of a leased or rented Dwelling Unit fails to deliver a copy of such pre-Recording Date lease within said sixty-day period to the Board of Directors, that will result in said Owner-landlord's Dwelling Unit being subject to the Rental Ban (from and after the date of expiration of such pre-Recording Date lease). However, in no event shall the Rental Ban apply to any lease executed prior to the Recording Date or to any renewals thereof provided

for in any such leases, so long as the Dwelling Unit continues to be occupied by one or more of the non-Owner occupants in possession of the Dwelling Unit as of the Recording Date.

**Section 3. Hardship Exceptions and Waiver.** Notwithstanding Section 1 above, if an Owner wishes to rent or lease his or her Dwelling Unit, the Owner may request the Board of Directors to waive the Rental Ban and approve a proposed lease if the Owner establishes to the Board's satisfaction that the Rental Ban will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request, the Board of Directors shall permit the Owner to rent or lease said Dwelling Unit, subject to any further conditions or limitations imposed by the Board, in the Board's discretion, but only if the Owner satisfies all other requirements of this Article XX. Such decision shall be at the sole discretion of the Board. Examples of an undue hardship include:

- (1) death, dissolution or liquidation of an Owner;
- (2) divorce or marriage of an Owner;
- (3) necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Bayside Estates due to a change of employment or retirement of at least one (1) of such Owners;
- (4) necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- (5) difficult real estate market conditions;
- (6) other similar circumstances.

The above examples do not guarantee that the Board of Directors will grant a hardship exemption, but are merely illustrative as to what might be considered a hardship by the Board of Directors.

**Section 4. General Lease Conditions.** All leases, including renewals, shall be in writing, and no lease shall be entered into for an initial term of less than one (1) year without the prior written approval of the Board of Directors. However, in no event will an Owner be permitted to rent his or her Dwelling Unit for an initial term of thirty (30) days or less. No portion of any Dwelling Unit other than the entire Dwelling Unit shall be leased for any period. No subleasing shall be permitted. All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association, and shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Dwelling Unit. If such provision is not in the lease, it will be deemed to be in such lease. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. If at any time an Owner becomes delinquent, the Board shall have the right

to revoke said Owner's right to lease the Owner's Dwelling Unit, even if the term of the lease has not expired. All Owners who do not reside in the Dwelling Unit shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the Dwelling Unit, together with the phone number of the tenant(s). Also, the Owner must provide the Board of Directors or its managing agent with the Owner's contact information such as address, phone number and email. To be eligible to lease his or her Dwelling Unit, the Owner cannot be in violation of any provisions of this Declaration, the By-Laws, or the rules and regulations adopted by the Board, all as amended. If at any time an Owner violates any such provisions through the actions or omissions of the Owner's tenant, the Board shall have the right to revoke said Owner's right to lease the Owner's Dwelling Unit, even if the term of the lease has not expired.

**Section 5. Owner is Still Liable.** No lease shall provide, or be interpreted, or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, these By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

**Section 6. Association's Copy of Lease.** A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted as well as any personal identifying information) shall be provided to the Board of Directors by the Owner within thirty (30) days after execution.

**Section 7. Violations.** Any lease or attempted lease of a Dwelling Unit in violation of the provisions of this Article XX shall be voidable at the election of the Association's Board of Directors or any other Owner, except that neither party to such lease may assert this provision of this Article XX to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity.

**Section 8. Institutional Mortgagees.** The provisions set forth in this Article XX shall not apply to any institutional mortgagee of any Dwelling Unit which comes into possession of the Dwelling Unit by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Dwelling Unit is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of Article XX

**Section 9. Burden of Proof.** Anything to the contrary herein notwithstanding, if at any time a Dwelling Unit is not occupied by one of the Owners thereof, there shall be a presumption that the Dwelling Unit is being leased and subject to the provisions of this Article XX and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Article XX, including but not limited to the delivery to the Board of Directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Article XX and this Section 9, any occupancy (including occupancy

pursuant to a rent-to-buy contract or similar arrangement or pursuant to any option to purchase) by anyone other than an Owner shall be deemed to be a lease or rental.

**Section 10. Certain Dwelling Units Not Counted as Rentals.** The provisions of this Article XX will not apply to any situation where a Dwelling Unit is occupied by one or more family members of the Dwelling Unit Owner. Thus, this kind of occupancy will not be considered a “rental”. Likewise, any Dwelling Unit owned by a Trust or an Estate will not be considered a “rental” if the resident is (i) the Trustee, (ii) the Fiduciary of an Estate, or (iii) a beneficiary of the Trust or Estate.

2. All other terms and provisions of the Declaration and the exhibits thereto shall remain unchanged and in full force and effect. Any capitalized term not defined herein shall have the meaning prescribed to it in the Declaration.
3. Certification. The undersigned person hereby represents and certifies that all requirements for and conditions precedent to this First Amendment to the Declaration of Covenants, Conditions and Restrictions of Bayside Estates have been fulfilled and satisfied.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.]

