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Blackstone Homeowners' Association

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE  
BLACKSTONE HOMEOWNERS' ASSOCIATION,  
INC.**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
THE BLACKSTONE HOMEOWNERS' ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BLACKSTONE HOMEOWNERS' ASSOCIATION, INC., dated as of the 22 day of March 2013, is made by RH of Indiana, L.P., an Indiana limited partnership ("Declarant").

**RECITALS:**

A. Declarant is the purchaser and owner of all of the land contained in the area described on Exhibit A attached hereto and made a part hereof (the "Real Estate"), which lots and land will be subdivided for the development of Blackstone, a single family housing development in Boone County, Indiana (the "Development"), and will be more particularly described on the plat to be recorded in the Office of the Recorder of Boone County, Indiana (the "Plat").

B. As provided herein, Declarant has retained and reserved the right, privilege and option to submit to the provisions of this Declaration at a later time, and from time to time as a part of the Development of additional property, and has retained and reserved the right to withdraw and remove, any portion of the Real Estate from the control and provisions of this Declaration.

C. Declarant will sell and convey all or certain of the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges contained herein and as set forth in the Plat (the "Declaration" or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and land in the Development and future owners thereof.

**TERMS:**

NOW, THEREFORE, Declarant, for itself, its successors and assigns in title to the Real Estate, hereby declares that all of the Real Estate located within the Development is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and land in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein, all of the Restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of Declarant's successors in title to any Real Estate in the Development.

## ARTICLE I

The following are the definitions of the terms used in this Declaration:

**Section 1.1.** “**Assessment**” shall mean the share of the Common Expenses imposed on each Lot or other special Assessments, as determined and levied pursuant to the provisions of Article V hereof.

**Section 1.2.** “**Association**” shall mean the Blackstone Homeowners’ Association, Inc., or an entity of similar name, its successor and assigns, which shall be created as an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended.

**Section 1.3.** “**Board**” shall mean the Board of Directors of the Association.

**Section 1.4.** “**Committee**” shall mean the Architectural Control Committee which shall be appointed by the Board and have such duties as provided in Article VI hereof.

**Section 1.5.** “**Common Area(s)**” shall mean those areas and all improvements located therein or thereon which are identified on the Plat.

**Section 1.6.** “**Common Expenses**” shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association or the Development.

**Section 1.7.** “**Declarant**” shall mean RH of Indiana, LP and its successors and assigns in title to the Real Estate.

**Section 1.8.** “**Development Period**” shall mean the period of time during which Declarant owns at least one (1) lot in the Development.

**Section 1.9.** “**Dwelling Unit**” shall mean and refer to any structure (or portion thereof) designed or intended for use and occupancy as a residence by one (1) family on a Lot located within the Development, irrespective of whether such dwelling is detached or attached to another Dwelling Unit.

**Section 1.10.** “**Easement Area**” shall mean any portion of the Real Estate which is subject to an easement as more particularly described in Article III hereof.

**Section 1.11** "Lake" or "Lakes" shall mean and refer to the water retention pond(s) or lake(s), whether or not such are also a Common Area, together with the shoreline area thereof, as shown on the Plat.

**Section 1.12.** "Lot" or "Lots" shall mean any parcel(s) of the Real Estate (excluding the Common Areas) which are designated and intended for use as a building site, or developed and improved for use as a single family residence identified by number on the Plat. No Lot shall be further subdivided for development purposes, except as may be reasonably necessary to adjust for minor side or rear yard encroachments or inconsistencies.

**Section 1.13.** "Member" shall mean any person or entity holding membership in the Association.

**Section 1.14.** "Owner" shall mean the record owner, whether by one or more persons, of the fee simple title to any Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

**Section 1.15.** "Supplemental Declaration" shall mean an amendment or supplement to this Declaration or a Plat executed by or consented to by Declarant or by the Association pursuant to Article II hereof and recorded in the public records of the county in which the Declaration was originally recorded, which subjects additional real estate to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the Real Estate or the land described therein. A Supplemental Declaration may also remove any portion of the Real Estate then owned by Declarant from the control and provisions of this Declaration.

## ARTICLE II DEVELOPMENT OF THE REAL ESTATE

**Section 2.1.** **Development of the Real Estate.** All Lots shall be and hereby are restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in this Declaration. Declarant shall have the right, but not the obligation, during the Development Period, to submit additional real estate to or exclude any portion of the Real Estate from the provisions of this Declaration, and to make and maintain improvements, repairs and changes to any Common Area and all Lots owned by Declarant, including, without limitation: (a) installation and maintenance of improvements in and to the Common Areas; (b) changes in the location of the boundaries of any Lots owned by Declarant or of the Common Areas; (c) installation and maintenance of any water, sewer, and other utility systems and facilities; (d) installation of security or refuse systems; and/or (e) additions or changes to the boundaries of any Common Area or Easement Area.

**Section 2.2.** **Public Streets.** The streets and public rights-of-way shown on the Plat are, upon recording of the Plat, dedicated to the public use, to be owned and maintained by the governmental body having jurisdiction, subject to construction

standards and acceptance by such governmental body. All Lots shall be accessed from the interior streets of the Development.

**Section 2.3. Development of Additional Property.** Declarant hereby reserves the right and option, to be exercised at its sole discretion and without further approval by any party, to submit at any time and from time to time during the Development Period, additional real estate to the provisions of this Declaration.

**Section 2.4. Annexation of Additional Real Estate by Members.** After the Development Period, the Association may annex additional real property into the provisions of this Declaration and jurisdiction of the Association. Such annexation shall require the affirmative vote of at least two-thirds (2/3) of the Members. Annexation by the Association shall be accomplished by the appropriate filing of record of a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the owner of the property being annexed and any such annexation shall be effective upon filing unless otherwise provided therein.

**Section 2.5. Withdrawal of Property.** Declarant hereby reserves the right and option during the Development Period, to be exercised at its sole discretion and without further approval by any party, to withdraw and remove any portion of the Real Estate then owned by Declarant from the control and provisions of this Declaration. Such removal by Declarant shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which shall be filed in the public records of county in which the Declaration was originally recorded, together with a legal description of the Real Estate being withdrawn.

### **ARTICLE III** **PROPERTY RIGHTS AND EASEMENTS**

**Section 3.1. General.** Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The Owner of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Declarant with respect to this Declaration and also for itself, its heirs, personal representatives, successors and assigns. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of this Declaration, including, without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Common Areas as established hereunder and membership in the Association. Each Owner shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases



for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title. Lots shall not be subdivided by any Owner and the boundaries between Lots and between the Development and other neighborhoods shall not be relocated, unless the relocation thereof is made with the approval of the Board and, during the Development Period, of Declarant.

**Section 3.2. Owner's Easement of Enjoyment.** Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws of the Association ("By-Laws") and subject to the following provisions:

- (a) The right of the Association to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate or expand the Common Areas.
- (b) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate, and the right of the Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an Easement Area is done at the Owner's risk and is subject to possible removal by the Association or the grantee of such easement.
- (c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by Declarant during the Development Period or thereafter a majority vote of the Members as provided in the By-Laws.
- (d) The rights of the Association and Declarant reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Real Estate.
- (e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

**Section 3.3. Easement for Declarant.**

- (a) During the Development Period, Declarant shall have an easement for access to the Real Estate, including any and all Lots and any and all Common Areas, for the purpose of constructing structures and other improvements in, on, to or for the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements

to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements therein and thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development.

(b) In addition to the easement set forth in Section 3.3(a) above, Declarant hereby retains, reserves and is granted an exclusive perpetual easement over, above, across, upon, along, in, through, and under the Utility Easement Areas, as such is defined in Section 3.4 below, (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service, including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe, conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area; (ii) to provide access to an ingress and egress to and from the Real Estate for the purposes specified in subsection (i) above; and (iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to Declarant under this Section 3.3(b) shall be transferable by Declarant to any person or entity solely at the option and benefit of Declarant, its successors and assigns, and without notice to or the consent of the Association, the Owners, or any other person or entity. Declarant may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, Declarant and others to whom Declarant may grant such similar or lesser easements, rights or privileges, may so use any portion of the Real Estate to supply exclusive telecommunications services to each Lot. The easements, rights, and privileges reserved under this Section shall be for the exclusive benefit of Declarant, its successors and assigns and may not be impaired, limited, transferred, sold or granted to any person or entity by the Association or any of the Owners.

**Section 3.4. Drainage, Utility and Sewer Easements.**

(a) There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the perpetual

right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any of the following providers and their respective successors and assigns, upon, over, under, and across (i) all of the Common Areas, and (ii) those portions of all Lots designated on the Plat as "DU & SE" and as otherwise are reasonably necessary (such areas herein referred to collectively as the "Utility Easement Areas") for installing, replacing, repairing, and maintaining the following specified services, and no other:

Specific Service

Electricity  
Water  
Sewer  
Natural Gas  
Telephone  
Cable

Declarant, the Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power to hereafter grant and accept nonexclusive easements within the Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Development or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including, without limitation, master television antenna and/or cable systems, security and similar systems, shall be made by Declarant in accordance with the rights reserved to Declarant under Section 3.3(b) hereof. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) Declarant hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Development with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over and across all the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Development as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall be created sanitary sewer easements in those areas designated on the Plat, which easements shall run in favor of Declarant and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for the sanitary sewer system.

**Section 3.5. Drainage Easements.** There is hereby reserved an easement for the benefit of Declarant, the Association, and their respective successors and assigns for access to and installation, repair, maintenance or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on or under his Lot (as shown on any Plat) in the condition originally provided by Declarant and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Declarant, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

**Section 3.6. Landscape Easements.** Landscape Easements, as may be designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of Declarant and the Association, for access to and installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Declarant or the Association, no improvements or permanent structures, including, without limitation, fences, patios, decks, driveways and walkways, shall be erected or maintained in or upon said Landscape Easements without the written consent of the Board and provided such are in accordance with all applicable zoning laws. Notwithstanding the reservation of this easement, the Owners of Lots subject to a Landscape Easement which does not extend along adjoining streets or roads shall have the exclusive right to use such area, subject to any other easement affecting such Lot.

**Section 3.7. Tree Preservation Areas and Easements.** Tree preservation areas and easements, as may be designated on a Plat of all or any part of the Real Estate, are hereby created and reserved. Except as installed by Declarant or the Association, no improvements or permanent structures, including, without limitation, fences, patios, decks, driveways and walkways, shall be erected or maintained in or upon said Tree Preservation Areas and Easements without the written consent of the Board and provided such are in accordance with all applicable zoning laws.

**Section 3.8. Lake Maintenance Access Easement and Emergency Easement.** There may be strips of grounds, as may be designated on a Plat of all or any part of the Real Estate, marked Lake Maintenance Access Easement ("LMAE") and Emergency Access Easement ("EAE"), which are created and reserved: (a) for the use of Declarant for access at any time to the Common Areas or the Lakes or another portion of the Real Estate, and (b) for the non-exclusive use of the Association or any applicable governmental authority for access to the Common Areas or the Lakes or another portion

of the Real Estate. The Owner of any Lot which is subject to an LMAE or EAE shall be required to keep the portion of his Lot which is subject to such easement free from obstructions so that access will be unimpeded.

**Section 3.9. Medians and Entry Features.** There may be landscaped medians and/or islands located within the Development and within the public right-of-way of the streets which are not otherwise labeled as Common Areas or as a Landscape Easement. These areas are created and reserved for installation and maintenance of landscaping and entry features, including, without limitation, permanent or temporary walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Association as if such were a Common Area.

**Section 3.10. Sales and Construction Offices.** Notwithstanding any provisions or restrictions herein to the contrary, during the Development Period, and for a reasonable time thereafter, there is hereby reserved and created for the use of Declarant, its successors and assigns, and persons constructing improvements within the Development, an easement for access to the Real Estate for the maintenance of signs, sales offices, construction offices, business offices, and model houses, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots and the Common Areas.

**Section 3.11. Maintenance Easement.** There is hereby reserved and created for the use of Declarant, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush weeds, stumps or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

#### **ARTICLE IV** **ORGANIZATION AND DUTIES OF ASSOCIATION**

**Section 4.1. Organization of Association.** The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Declarant and the By-Laws of the Association, both of which are incorporated herein by reference. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot. Notwithstanding anything herein to the contrary, during the Development Period, Declarant shall appoint the Board and elect all officers of the Association, and all actions of the Association shall otherwise require the prior written approval of Declarant.

**Section 4.2. General Duties of the Association.** The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plat. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

(a) *Responsibilities of the Association.* The Association shall maintain and keep in good condition and repair the Common Areas, Lakes, and Landscape Easements. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and other flora, structures, play equipment, and improvements, including all private streets situated upon or within the Common Areas, landscaping easements along the primary roads through the Development, medians and rights of ways of public streets within the Real Estate, entry features for the Development, and such portions of any other real property included within the Common Areas as may be provided in this Declaration or by a contract or agreement for maintenance with any other person or entity by the Association. The Association may contract for such services for the Development or any part thereof as it deems necessary or advisable.

(b) *Maintenance by Owners.* Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his Lot and Dwelling Unit, and all structures, parking areas, lawns, landscaping, grounds and other improvements comprising the Lot and Dwelling Unit in a manner consistent with all applicable covenants.

(c) *Association's Remedies if Owner Fails to Maintain Lot.* In the event Declarant or the Association determines that: (i) any Owner has failed or refused to properly discharge his obligations with regard to the maintenance, cleaning, repair, or replacement of items for which is his responsibility hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner as the case may be, shall have ten (10) days within which to complete such maintenance, cleaning, repair or

replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement within said ten (10) day period and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with any provision hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a minimum of \$150 per violation or the actual total amount expended to cure each violation, whichever is greater, and (together with the cost of attorneys' fees, if any, in the enforcement of the Owner's obligations and collection of the charge to the Owner) shall become a lien against the individual Owner's Lot (with respect to any matter relating to an individual Owner's responsibility) and such cost shall become a part of the costs of the Association (until such time as reimbursement is received from the individual Lot Owner). In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses, including, without limitation, attorneys' fees and filing fees.

(d) *Management Company.* The Association may hire a professional management company to administer the day-to-day operations of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of a minimum of ninety (90) days.

**Section 4.3. Insurance.** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under a standard "extended coverage" provision, 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, and 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/or the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, or employee of the Association or anyone else who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the 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 4.4. Owners' Insurance Requirements.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on its Lot(s) and structures constructed thereon. The Board may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures located on any Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX hereof and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that a structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall promptly clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and thereafter the Owner shall continue to maintain the Lot in a neat, safe and attractive condition.

**Section 4.5. Condemnation or Destruction.** In the event that any of the Common Areas shall be condemned or taken by any public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-Rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the Members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.



**Section 4.6. Transfer of Control of Association.** Declarant may, at its discretion, transfer control of the Association to the Members, and its right to elect the Board and officers of the Association shall terminate, as soon as is practical upon the transfer of a number of Lots equal to eighty percent (80%) of the Lots in the Development ("Transfer Period"); provided, however, that Declarant may transfer control of the Association at an earlier date at its sole discretion. Notwithstanding such transfer of control during the Development Period, all actions of the Association shall continue to require the prior written approval of Declarant. Declarant shall retain all of its rights and privileges provided for herein from the Transfer Period until Dwelling Units have been constructed on all Lots in the Development.

**Section 4.7. Interim Advisory Committee.** Declarant may, in its sole discretion, establish and maintain until such time as Declarant shall transfer control of the Association pursuant to Section 4.6 hereof, an Interim Advisory Committee (the "Advisory Committee"). If established: (a) the Advisory Committee shall serve as a liaison between the Owners (other than Declarant) and the Association, and advise the Association from time to time during such period; (b) The Advisory Committee shall consist of three (3) members, each of whom must be an Owner (other than Declarant or an officer, director or employee of Declarant); (c) The members of the Advisory Committee shall serve without compensation; (d) The Advisory Committee members shall be elected for a term of one (1) year by the Owners (other than Declarant) at a meeting thereof called for such purpose; and (e) The Owners (other than Declarant) may remove any member of the Advisory Committee with cause, and elect a successor at a meeting thereof called for such purpose.

**Section 4.8. Mortgagees' Rights.** Any mortgagees of any Lots shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

## ARTICLE V ASSESSMENTS

**Section 5.1. Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety, and welfare of the Development and the Owners, users, and occupants of the Real Estate and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, without limitation, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided, that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the

public. Each Owner (except Declarant) hereby covenants and agrees to pay to the Association:

- (a) A Pro-Rata Share of the annual Assessment fixed, established and determined from time to time, as hereinafter provided.
- (b) A One Time Assessment, as hereinafter provided.
- (c) A Reserve Assessment, as hereinafter provided.
- (d) A Pro-Rata Share of any special Assessments fixed, established and determined from time to time, as hereinafter provided.
- (e) A Violation Assessment, as hereinafter provided.

**Section 5.2. Deficit.** Declarant hereby covenants and agrees to pay to the Association during the Development Period, but not beyond the Transfer Period, an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Section 5.2 and the aggregate amount of the annual Assessment collected by the Association,

**Section 5.3. Basis for Assessment.**

- (a) Each Lot owned by a person, other than Declarant, shall be assessed at a uniform rate without regard to whether a Dwelling Unit has been constructed upon the Lot.
- (b) Declarant shall at no time be assessed or required to pay any Assessment of any type.

**Section 5.4. Liability for Assessment.** Each Assessment, together with any interest thereon and any cost of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by Declarant and shall constitute a lien upon each such Lot from and after the due date thereof in favor of the Association. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due.

**Section 5.5. Subordination of a Lien to Mortgage.** The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of and from the personal liability hereby imposed. The personal obligation is expressly assumed by such successor.

**Section 5.6. Pro-Rata Share.** The pro-rata share of each Owner for purposes of this Article V shall be the percentage obtained by dividing one by the total number of Lots shown on the Plat of the Development ("Pro-Rata Share").

**Section 5.7. Basis of Annual Assessments.** The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association upon request there for. Such budget shall serve as the basis for establishing the annual Assessments.

**Section 5.8. Annual Assessment.** The annual Assessment provided for herein shall be per fiscal year, as established by the Board, and shall commence for each Lot on the day of closing of the initial conveyance of each Lot by Declarant or another builder to an Owner other than Declarant or another builder. The amount of the annual Assessment shall be established by the Board. The amount of the annual Assessment shall not increase by more than 10% from one fiscal year to the next without the approval of a majority of the Members of the Association.

**Section 5.9. One Time Assessment.** Upon the closing of the initial conveyance of each Lot by Declarant or another builder to an Owner other than Declarant or another builder, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount equal to fifty (50%) percent of the annual Assessment assessed against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed to 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 Development, to enable the Association to have cash available to meet unforeseen expenditures, and/or to acquire additional equipment or services deemed necessary by the Board.

**Section 5.10. Reserve Assessment** Upon the closing of the conveyance of each Lot by an Owner to a subsequent Owner, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount equal to fifty (50%) percent of the annual Assessment against such Lot, which payment shall be non-refundable 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 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 Development, to enable the Association to have cash available to meet unforeseen expenditures, and/or to acquire additional equipment or services deemed necessary by the Board.

**Section 5.11. Basis of Special Assessments.** Should the Board at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time and from time to time, levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

**Section 5.12. Violation Assessment.** In addition to all other assessments authorized or accounted for herein, the Board may levy a Violation Assessment on an Owner, (i) for an uncured violation of this Declaration, or (ii) for damages, if any portion of the Common Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee. In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair and replacement is in the sole discretion of the Board. The Violation Assessment shall be a minimum of \$150 per occurrence or the actual total amount expended to cure each violation, whichever is greater.

**Section 5.13. Fiscal Year; Date of Commencement of Assessments; Due Date.** The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The liability of an Owner, other than Declarant, for Assessments under this Article V shall commence as of the date such Owner acquires his interest in a Lot. The first annual Assessment within the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

**Section 5.14. Duties of the Association Regarding Assessments.**

(a) The Board shall keep proper books and records of the levy and collection of each annual, one-time, reserve and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such

notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(b) The Association shall promptly furnish to any Owner or mortgagee of any Lot upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may assess an administrative fee for each such certificate, not to exceed the sum of \$125.00.

(c) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any Owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

**Section 5.15. Notice and Due Date.** Written notice of special Assessments and such other Assessment notices as the Board shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all Assessments shall be established by the Board.

**Section 5.16. Collection.** All Assessments, together with interest thereon, attorneys' fees, and other costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due.

**Section 5.17. Effect of Non-payment of Assessments; Remedies of the Association.**

(a) If any Assessment is not paid on or prior to the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in subparagraph (b) below; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all cost of collection thereof, including attorneys' fees, shall bear interest at the rate of twelve percent (12%) per annum until paid in full. In addition to such interest, the Association shall assess a late fee, in an amount as from time to time determined by the Board. The Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all cost of such action, including the Association's attorneys' fees, and in the event a judgment is obtained, such judgment shall include appropriate interest, late fees, costs and attorneys' fees.

(c) Notwithstanding any other provision contained herein, the Board shall have the right to suspend the voting rights, if any, and the services to be provided by the Association, together with the right to use the Common Areas, of any Member.

**Section 5.18. Adjustments.** In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association.

## ARTICLE VI ARCHITECTURAL STANDARDS AND REQUIREMENTS

**Section 6.1. Purpose.** In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Real Estate, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article VI and in Article VII. Notwithstanding the foregoing, neither this Article nor Article VII shall apply to the activities of Declarant, nor to construction or improvements or modifications of or to the Common Areas by or on behalf of the Association. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee.

**Section 6.2. Architectural Control Committee.** The Board shall establish an Architectural Control Committee to consist of three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the Committee may include persons who are not Members of the Association. Members of the Committee may or may not be members of the Board. During the Development Period, Declarant shall have all of the powers and authority of the Committee.

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Association. Any Committee member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee shall elect a Chairman and Vice Chairman, and the Chairman, or in his absence, the Vice Chairman, shall be presiding officer at its meetings. The Committee shall meet upon call of the Chairman, and all meetings shall be held at such places as may be designated by the Chairman. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions or alterations made on or to existing Lots or structures and the open space, if any, appurtenant thereto. The Committee shall promulgate a Common Interest and Community Information Disclosure Document (the "CICID"), which may contain additional architectural standards and guidelines for the Development. In addition to such standards, the following shall apply: plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling Unit, or to paint the interior of his Dwelling Unit any color desired. The Committee shall endeavor to approve or to disapprove such plans or to request additional information within thirty (30) days after submission of completed plans, proposals, specifications or drawings.

**Section 6.3. Architectural Approval.** To preserve the architectural and aesthetic appearance of the Development, no construction of improvements of any nature whatsoever, with the exception of vegetative landscaping, shall be commenced or maintained by an Owner, other than Declarant, with respect to the construction of, or affecting the exterior appearance of, any Dwelling Unit or with respect to any other portion of the Real Estate, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, or outbuildings, nor shall any exterior addition to or change or alternation therein be made (excluding repainting in the original color but otherwise including, without limitations, painting or staining of any exterior surface), unless and until a written application in the manner and form prescribed from time to time by the Committee and two (2) copies of the plans and

specifications and related data (including, if required by Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, composition, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of such plans and specifications with such standards as may be published by the Committee from time to time, including the harmony of external design, location, and appearance in relation to surrounding structures and topography. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $\frac{1}{4}'' = 1'$  and all plot plans shall be drawn by a professional to a scale of  $1'' = 30'$ , or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to ensure that an improvement is not encroaching onto an adjacent Lot or any Common Area. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved."

(a) *Approval Process.* Approval of the Committee shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed installation or construction.

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

(i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of the restrictions contained in this Declaration; (ii) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, sidings, roof and brick colors, or with the Development in general; (iii) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners; and/or (iv) The Committee is otherwise authorized to disapprove the requested improvement in this Declaration or in the CICID.

(c) *Powers Following Approval.* Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right, during reasonable hours, to enter upon and inspect any Lot or other improvements with respect to which construction is underway to determine whether or not the plans and specifications there for have been approved and are being complied with. In the event the Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.



(d) *Exercise of Discretion.* Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Committee is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

**Section 6.4. Non Vegetative Landscaping Approval.** To preserve the aesthetic appearance of the Development, no material modification to the grading, excavation or filling of any Lot shall be implemented by an Owner, unless and until the plans there for have been submitted to and approved in writing by the Committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal shall also be applicable to approvals required under this Section.

**Section 6.5. Approval Not a Guarantee.** No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the Committee shall be responsible or liable for: (a) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article VI; (b) loss or damages to any person arising out of the approval or disapproval of any plans or specifications; (c) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor (d) any defects in construction undertaken pursuant to such plans and specifications.

**Section 6.6. Building Restrictions.** All improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, and obtain such authorizations and permits as are required hereunder, and further, shall receive the prior written approval of the Committee.

#### ARTICLE VII USE RESTRICTIONS

**Section 7.1. Standards and Restrictions.** The Association, acting through its Board, shall have the authority to make and to enforce standards and

restrictions governing the use of the Real Estate, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association by a majority of members entitled to vote thereon; subject to the prior written consent of Declarant during the Development Period.

**Section 7.2. Use of Lots.** Except as permitted by Section 7.29 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried therein. The use of a portion of a Dwelling Unit as an office by Owner, or his tenant shall not be considered to be a violation of this covenant if Owner is in compliance with Section 7.29 hereof. No building or structure shall be located on any Lot outside of the setback lines designated on the Plat.

**Section 7.3. Diligence in Construction.** Subject to inclement weather and other force majeure events, every Dwelling Unit shall be completed within twelve (12) months after the commencement of its construction or placement. No improvement which has been partially or totally destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is requested.

**Section 7.4. Association's Right to Perform Certain Maintenance.** In the event that the Owner of any Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of this Declaration after notice from the Association and a cure period, the Association shall have the right, but not the obligation, by and through its agents, employees, or contractors, to enter upon said Lot and maintain, repair, mow, clean or perform such other acts as may be reasonably necessary to ensure that such Lot and improvements situated thereon, if any, conform to the requirements of this Declaration. The cost incurred by the Association shall be assessed and billed to the Owner. The Association shall have the right to collect any outstanding maintenance assessments in the manner described in Article V. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any work performed hereunder.

**Section 7.5. Unsightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent any unclean, unhealthy, unsightly or unkempt condition on his Lot. The pursuit of hobbies or other activities, 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 permitted on any part of the Real Estate. Nothing which would result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation, shall be permitted in the Development. Any Owner, or his family, tenants, guests, invitees, servants or agents, who clump or place any trash or debris upon any portion of the Development, shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a

part of that portion of any Assessment next becoming due to which such Owner and his Lot are subject.

**Section 7.6. Maintenance of Lots and Improvements.** Each Owner shall at all times maintain his Lot and any improvement situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (a) Mow the Lot as such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. In no event shall the grass on any Lot exceed the lesser of six (6) inches or the maximum height required by applicable statute or ordinance.
- (b) Remove all debris or rubbish from the Lot.
- (c) Maintain the landscaping on a regular basis and replace any dead tree or shrub that is part of required landscaping.
- (d) Cut down and remove dead trees from the Lot.
- (e) Within sixty (60) days following completion of a Dwelling Unit, the Owner shall landscape the Lot, weather permitting.

**Section 7.7. Awnings and Window Screens.** No foil or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes. No metal, fiberglass or similar type awnings or patio covers shall be permitted unless approved by the Committee. All clotheslines, including permanent, collapsible and retractable clotheslines, are prohibited. Clothing, rugs or other items which are visible to others in the Development shall not be hung on any railing, fence, hedge, or wall.

**Section 7.8. Signs.** No signs of any kind shall be erected within the Development, or permitted within any windows, without the written consent of the Board, except for such signs as may be required by legal proceedings and except for a single standard real estate "for sale" or "for rent" sign may exist on a Lot if such does not exceed six (6) square feet in area. Declarant may use such signs as it deems necessary or appropriate during the Development Period. No business signs, flags, banners or similar items except those placed and used by Declarant advertising or providing directional information shall be erected by any Owner. If permission is granted to any Owner to erect a sign, including name and address signs within the Development, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

**Section 7.9. Minimum Square Footage.** Dwelling Units within the Development shall have the following minimum square footage, exclusive of basements, open porches, garages or other unheated areas:

Ranch	1000 square feet
Two-Story	900 square feet on the first floor

**Section 7.10. Parking and Prohibited Vehicles.**

(a) *Parking.* Vehicles shall be parked in the garages or on the driveways serving the Lots. Each Dwelling Unit shall have an attached garage with space for not less than two (2) automobiles. No motor vehicle, whether or not utilized by an Owner, shall be parked on any street or public right-of-way, except on a temporary and non-recurring basis. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed. Vehicles may be parked on a street in the Development for no more than forty-eight (48) consecutive hours, and such an occurrence shall not occur more than one time during any thirty (30) day period. No Owners or other occupants of any portion of the Development shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(b) *Prohibited Vehicles.* Vehicles labeled or classified as commercial by the State of Indiana, vehicles registered with the Indiana Department of Transportation in the State of Indiana, tractors, busses, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Real Estate except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Real Estate during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed at the expense of the Owner.

**Section 7.11. Animals and Pets.** No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any Lot or Lots in the Development. No animals shall be kept or maintained on any Lot except for the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of a dog(s) or vicious animal(s) shall constitute a nuisance as determined by the Association, and may be ordered removed from the Real Estate by the Association. All pets shall remain under the control and supervision of an adult Owner, and shall not be permitted off of such Owner's respective Lot unless on a leash or other restraint. The owner of any pet shall be responsible to clean up or repair any waste or damage caused by such pet, and assure that such pet does not

create any unreasonable disturbance. Animal quarters, kennels, and runs are specifically prohibited.

**Section 7.12. Quiet Enjoyment.** No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition. No noxious or illegal activity shall be carried on upon any portion of the Real Estate. No hunting of any nature shall be permitted within the Development. With the exception of a gas or wood burning fire pit and/or outdoor fireplace, which if permanently affixed to the ground must be approved by the Committee, there shall be no outside open burning of wood, leaves, trash, garbage or household refuse within the Real Estate. Declarant or the Association may order the relocation of any wood piles which are unsightly. No horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Development.

**Section 7.13. Antennas, Aerials and Satellite Dishes.** No exterior antennas, aerials, satellite dishes, or other apparatus larger than thirty-six (36) inches in diameter and intended for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of any Lot. Any such antennas, aerials, satellite dishes or other such apparatus that do not exceed thirty-six (36) inches in diameter shall be permitted on a Lot only if such will be aesthetically concealed by landscaping or otherwise and shall be installed so as not to be visible from front elevation street view or constitute a nuisance or offensive effect on other Lot Owners. Under no circumstances shall any such antennas, aerials, satellite dishes, or other such apparatus be installed without the approval of the Committee. No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Development, provided, however, that Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Real Estate, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

**Section 7.14. Garbage Cans and Tanks.** No storage tanks of any kind shall be allowed upon a Lot. No rubbish, trash or garbage containers shall be stored or maintained outdoors except for such temporary storage necessary for immediate pick up of the trash and, in that event, trash shall be stored in appropriate containers. At the option of the Association, trash and refuse disposal for each Dwelling Unit will be provided by the Association on a weekly basis. No dumpsters or other forms of general or common trash accumulation shall be permitted within the Development, except to facilitate or in connection with construction activities. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage and other waste shall be kept in sanitary containers at all times and all equipment for storage or disposal of such materials shall be kept clean. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse.

**Section 7.15. Pools.** No above ground swimming pools shall be erected, constructed or installed on any Lot; provided, that nothing herein shall preclude installation and use of hot tubs, spas or in-ground pools with prior approval from the Committee as provided herein.

**Section 7.16. Storage Sheds and Temporary Structures.** Except as may be utilized by Declarant during the Development Period, no tent, shack, trailer, storage shed, mini-barn or other similar detached or attached structure shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Committee or Declarant and children's overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours. Any and all forms of outbuildings, including, without limitation, sheds, storage sheds, and play houses, which are not directly connected to a Dwelling Unit, are prohibited unless the same are necessary or incident to the Declarant's or Association's business or activities.

**Section 7.17. Drainage, Water Wells and Septic Systems.**

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot.

**Section 7.18. Traffic Regulation and Sight Distance at Intersections.**

All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Development shall be subject to the provisions of the laws of the State of Indiana, and any other applicable governmental agency, concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Development. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of Indiana or by any other state in the United States may operate any type of motor vehicle within the Development. All vehicles of any kind and nature which are operated on the streets in the Development shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Development.

**Section 7.19. Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Development, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

**Section 7.20. Clotheslines.** No clothesline of any kind may be erected, maintained, or permitted on or at any Lot.

**Section 7.21. Air Conditioning Units.** No window air conditioning units may be installed in or at any Lot.

**Section 7.22. Mailboxes.** Each Owner of a Lot shall maintain the mailbox and structure which was originally installed by a builder, and shall replace same as necessary with a mailbox and structure which is substantially the same in appearance as that which was originally provided to the Dwelling Unit. Nothing may be attached to the mailbox structure which will affect the uniformity thereof with other such structures in the Development. The Committee shall have the discretion to require the replacement of any mailbox within the Development at the expense of the Owner of the Lot served thereby.

**Section 7.23. Solar Panels.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot.

**Section 7.24. Homeowner Landscape Requirement.** Within six (6) months of initial occupancy of a Dwelling Unit, the Owner thereof shall be responsible for installing (i) one (1) deciduous shade tree in the front yard, with a minimum of one and one half (1 ½) inch caliper; (ii) one (1) ornamental or evergreen tree anywhere in the yard; and (iii) a minimum of five (5) shrubs with a mixture of flowering and evergreen varieties and with an eighteen (18) inch spread or height in the front yard.

**Section 7.25. Seeding of the Yard.** Within thirty (30) days of initial occupancy of a Dwelling Unit, the Owner thereof shall cause the yard of such Lot to be seeded with grass of a type generally used in the Development. The initial seeding may be delayed if the occupancy date occurs between November 1 and the following March 31, or if, as of the date of occupancy, the final grading of the yard has not been completed; provided, however, that in either of such events, the initial seeding of the yard shall be completed on or before (a) May 1 following the date of occupancy, or (b) thirty (30) days following completion of final grading, which ever is later. In lieu of the above, the Owner may sod all or any portion of the yard, at their sole cost and expense.

**Section 7.26. Exterior Flags and Sculpture.** Exterior sculptures, fountains, flags, and similar items must be approved by the Committee.

**Section 7.27. Driveways and Sidewalks.** All driveways will be constructed by a builder of the Dwelling Unit which it serves. Owners shall maintain and replace the driveway of their Lot thereafter so as to maintain the same appearance as provided at the time of original construction, ordinary wear and tear accepted. Each Dwelling Unit shall have a continuous side walk from driveway to the front porch or

entry. Any modification or extension of driveways and sidewalks beyond those constructed by a builder are subject to Committee approval as provided in Article VI. In no event will concrete, blacktop, gravel or dirt side drives or parking areas be permitted on any Lot or Common Area except where Declarant, during the Development Period, may deem necessary.

**Section 7.28. Wetlands, Lakes, and Water Bodies.** All wetlands, Lakes, ponds and streams within the Real Estate, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation; ice skating, swimming, fishing, boating, playing or use of personal flotation devices, shall be permitted, except as provided in Section 7.34. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of Lakes, ponds or streams within the Real Estate.

**Section 7.29. Fences.** The Committee, prior to installation, must approve any fencing, walls, mounds, and landscape screening on or at any Lot. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Committee when reviewing fences, walls, mounds, and screening for approval. No front yard fencing, walls, mounds, or screening are permitted, except on a Lot on which there is maintained a sales office or model home by Declarant. If approved by the Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Committee. Non-professionally installed fences may be inspected by the Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of such final review. All fences shall be kept in good repair by the Owner. No fence shall be located any closer to the front Lot line than twenty (20) feet back from the front foundation line of the residence, except to enclose equipment or garage service door. On a corner Lot, no solid/privacy fence will be allowed between the side building line and the adjacent street or right-of-way. No fences shall be installed in easements and, if erected, are erected at the sole risk of the Owner, as such fences run the risk of being partially or completely removed. Notwithstanding any other provision in this Declaration to the contrary, invisible electronic fences designed to restrict the movement of animals are expressly permitted.

Declarant, during the Development Period, and the Committee, after the Development Period, may reasonably amend or change any of the following restrictions:

- (a) *Height Restriction.* The Committee shall determine the height of fences and walls; provided, however, that the maximum heights of walls and fences shall never exceed the following:
- (i) No fence shall exceed forty-eight (48) inches in height;



(ii) Lot fencing and walls shall not exceed forty-eight (48) inches above grade;

(iii) Patio screens adjoining the rear of a Dwelling Unit shall not exceed six (6) feet in height; and

(iv) No fence located on a Lot abutting a lake shall exceed forty-two (42) inches in height beyond a point sixteen (16) feet from the rear building line of the Residence unless used to enclose a pool (see Section 7.29(a)(v)). This restriction may be waived by the Committee to enclose an in-ground pool.

(v) Any fence enclosing an in-ground pool shall not exceed six (6) feet in height, must be install immediately adjacent to the pool and not along the perimeter of the Lot, and be approved by the Committee.

(b) *Materials and Finish.*

(i) Except in certain areas, such as those adjacent to Common Areas, where wooden fences may be restricted by the Committee due to obstructed views by adjoining neighbors, fences are to be wooden, made of cedar, dog-eared in shape and remain unpainted, wrought iron or PVC. The Committee must approve all fencing materials, design, and location.

(ii) Walls above-grade must be constructed of natural stone, masonry, wood shadow box fencing, or a combination thereof.

(iii) The Committee will approve landscape screening materials, design, and location on an individual basis.

(c) *Approval.* The exact location, material, color, and height of the fence and rendering or photograph thereof shall be submitted to the Committee for written approval at least thirty (30) days prior to proposed installation or construction. If however, approval has not been received by the applicant in writing within thirty (30) days after submission, then said request shall be deemed DENIED.

**Section 7.30. Business Uses.** No trade or business may be conducted in or from an Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit, so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Development; and (d) the business activity is consistent

with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involve the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether; (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required there for. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This Section shall not apply to any commercial property within the Development nor shall it apply to any activity conducted by Declarant or a builder approved by Declarant with respect to its development and sale of the Real Estate or its use of any Lots or Dwelling Units which it owns within the Real Estate.

**Section 7.31. Basketball Goals, Tennis Courts, Racquetball Courts, and Paddleball Courts.** No basketball goals shall be permitted on any Lot without the prior review and approval of the Committee, except as provided for in this section. No basketball goals shall be permitted to be used along any curb or in any street of the Community. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities will not be permitted on any Lot without approval from the Committee. All submittals to the Committee shall include landscape plans. Permanent basketball goals may be installed on a Lot immediately adjacent to a driveway without Committee approval, provided that such goals have translucent fiberglass or glass backboards, and are professionally installed. Non-permanent basketball goals or courts may not be installed or constructed on a Lot without written Committee approval. No basketball goal or backboard shall be permitted to hang from or be affixed to any part of the Dwelling Unit. Lighted courts of any kind are prohibited. Temporary or portable basketball courts located on streets or in cul-de-sacs or in the right-of-way of any public street are a safety hazard and are strictly prohibited.

**Section 7.32. Playground Equipment.** No playground equipment shall be installed on any Lot without the prior review and approval of the Committee. All such equipment shall be located at least then (10) feet from any adjacent property lines and in the rear yard of a Lot (being the portion of such Lot behind the rear corners of the residence on such Lot). Notwithstanding the foregoing, in the event such Lot is located on a corner in the Development, the Committee may, in its discretion, approve a location for such equipment other than a rear yard, provided such is not closer than ten (10) feet from any public sidewalk. Children's play equipment, such as temporary sandboxes and temporary swimming pools having a depth of eighteen (18) inches or less, shall not require approval of the Committee, provided that such equipment is maintained by the Owner in good repair and such equipment is located in the rear yard. Equipment higher than eighteen (18) inches shall require approval of the design, location, color, material and use by the Committee and in no cases, if approved, is allowed to be up for more than

forty-eight (48) hours. Aluminum or metal play equipment is prohibited. Free standing plastic or metal playhouses are prohibited, while forts or playhouses that are incorporated as an integral part of a residential play system are permitted but must be approved by the Committee. Trampolines are allowed and can be used daily, provided they are only used in the rear yard and are stored out of sight at night and when otherwise not in use.

**Section 7.33. On-Site Fuel Storage.** No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Real Estate, except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of gas grills, lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

**Section 7.34. Contiguous Lots.** Whenever two (2) or more contiguous Lots shall be owned by the same Owner, such Owner shall not be permitted to use two (2) or more of said Lots as a site for a single dwelling, subject to applicable zoning and other regulations and restrictions. Each Lot shall be, and shall remain, improved with a single Dwelling Unit, and each Lot shall be subject to Assessments.

**Section 7.35. Control of Lakes and Common Areas.**

(a) *Control by the Association.* As part of its general duties, the Association shall regulate the Lakes and Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Lakes and Common Areas. No improvements, excavation, changes in grade or other work shall be done upon the Lakes or common Areas by any Owner, nor shall the Lakes or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Committee.

(b) *Restrictions of Use of Lakes and Common Areas.* The following covenants and restrictions on the use and enjoyment of the Lots, the Lakes and the Common Areas shall be in addition to any other covenants or restrictions contained herein or in the Plat and all such covenants and restrictions are for the mutual benefit and protecting of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners of the Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(i) No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Lakes or the Common Areas.

(ii) No nuisance shall be permitted to exist on or at any Lot and no waste shall be committed on or at any Lot which shall or might damage or cause injury to the Lakes or the Common Areas.

(iii) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or other persons entitled to use the same and to use and enjoy the Lakes and the Common Areas, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Lakes and the Common Areas.

(iv) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Lakes or the Common Areas without the express permission from the Committee.

(v) The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage system serving the Development, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, fishing, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. No Owner or other person shall take or remove any water from or out of the Lakes or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Real Estate, which extend into, or to

within twenty-five (25) feet of the shoreline of any Lake, except by Declarant or the Association.

**Section 7.36. Laws and Ordinances.** Every Owner and occupant of any Lot or Dwelling Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Real Estate and any violation thereof may be considered a violation of this Declaration; provided, however, that the Board shall have no obligation to take action to enforce such laws, statutes, ordinances or rules.

**Section 7.37. Sales and Construction.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwelling Units or the developing of Lots, Dwelling Units and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model houses, all as may be approved by Declarant from time to time, provided that the location of any construction trailer of any assignees of Declarant's rights under this Section 7.37 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwelling Units as model residences and to use any Dwelling Unit as an office for the sale of Lots and Dwelling Units and for related activities.

**Section 7.38. Owners Bound.** All provisions of this Declaration, the By-Laws 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 Lot and Dwelling Unit. Every Owner shall cause all occupants, guests and invitees of his or her Lot or Dwelling Unit to comply with this Declaration, the By-Laws, and rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, guests and invitees, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of this Declaration, the By-Laws and rules and regulations adopted pursuant thereto.

#### ARTICLE VIII RULEMAKING AND REMEDIES FOR ENFORCEMENT

**Section 8.1. Rules and Regulations.** Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots and Dwelling Units, and the amendments thereto shall be furnished by the Association to all Members prior to their effective date upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulations be specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the

Association by a majority of the Members as set forth in the By-Laws, subject to Declarant's consent during the Development Period.

**Section 8.2. Authority and Enforcement.**

(a) Upon a violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Association shall have the power, after ten (10) days written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation: (i) to cause the Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or occupant who is guilty of such violation; (ii) to suspend Owner's right to vote in the Association; and (iii) to suspend an Owner or occupant's right (and the right of his or her family, guests, and tenants) to use of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. Such sanctions are in addition to the Association's remedies under Section 4.2 hereof relating to maintenance. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guest or tenants. Any such suspension of rights may be for the duration of the infraction and/or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation or By-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by Declarant, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations, declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules or regulations. Failure by Declarant, the Association, or any Owner to enforce any covenant, restriction, rule or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either Declarant or the Association for failing to enforce or carry out any such covenants, restrictions, rules or regulations.

## ARTICLE IX GENERAL PROVISIONS

**Section 9.1. Term.** The covenants and restrictions of this Declaration shall run with and bind the Real Estate, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by more than seventy-five percent (75%) of the then Owners has been recorded within the year preceding the beginning of each successive period often (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

**Section 9.2. Amendment.** Prior to the conveyance of the first Lot to an Owner, Declarant may unilaterally amend this Declaration. After such conveyance, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is: (a) necessary to bring any provision thereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwelling Units; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Development; or (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, that any amendment permitted under subsections (a) through (f) above shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, during the Development Period, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the county in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

**Section 9.3. Indemnification.** The Association shall indemnify every officer, director, and committee member against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 9.4. Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana, without regard to its conflict of law provisions.

**Section 9.5. Right of Entry.** The Association and, during the Development Period, Declarant shall have the right, but not the obligation, to enter onto any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-laws, and the Association rules, which right may be exercised by the Association's board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Association to enter a Lot and Dwelling Unit to cure any condition which may increase the possibility of a fire or other



hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

**Section 9.6. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code Section 32-1-4.5-1 *et seq.* as amended from time to time.

**Section 9.7. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote representing at least two-thirds (2/3) of the Members entitled to vote thereon. However, this Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) actions brought for collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

**Section 9.8. Notice of Sale or Transfer of Title.** In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Board, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

**Section 9.9. Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 9.10. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

**Section 9.11. Right of Third Parties.** This Declaration shall be recorded for the benefit of Declarant, the Owners and their mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Real Estate. Except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provision hereof, and subject to the rights of Declarant and the mortgagees as herein provided, the Association shall

have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

**Section 9.12 Headings.** The headings and captions contained in this Declaration have been inserted and used solely for ease of reference and shall not be considered in the interpretation or construction of this Declaration.

**Section 9.13 Controlling Document.** In the event there is a conflict of interest between the provisions of this Declaration and any Plat, the terms and provisions of this Declaration shall control.

**Section 9.14. Waiver.** The waiver by any party of a breach of or noncompliance with any provision of this Declaration shall not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.

[signature page follows]

IN WITNESS WHEREOF, Declarant has caused this Declaration of Covenants, Conditions and Restrictions for the Blackstone Homeowners' Association, Inc. to be made and executed as of the date written above.

RH OF INDIANA, L.P.

By: *Kenny E. Windler*  
Kenneth E. Windler  
Assistant Vice President

STATE OF INDIANA )  
) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Kenneth E. Windler, the Assistant Vice President of RH of Indiana, L.P., an Indiana limited partnership, who acknowledged the execution of the foregoing Declaration of Covenants, Condition and Restrictions for the Blackstone Homeowners' Association, Inc. on behalf of such limited partnership.

WITNESS my hand and Notarial Seal this 22 day of March, 2013.



My Commission Expires: 9-6-14  
*Wanda Woodbridge*  
Notary Public

My County of Residence: Hamilton  
*Wanda Woodbridge*  
Printed

This instrument was prepared by: Kenny Windler, Ryland Homes, 9025 North River, Road, Indianapolis, IN 46240; (317) 846-3148.

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

## EXHIBIT A

## DESCRIPTION OF THE REAL ESTATE

(New legal to exclude gaps and over laps—7/13/12)

A part of the Northwest and Northeast Quarter of Section 5, Township 17 North, Range 2 East in Boone County, Indiana, being described as follows:

Commencing at the southwest corner of the Northwest Quarter of Section 5, Township 17 North, Range 2 East; thence North 89 degrees 45 minutes 00 seconds East along the south line of the North Half of said Section a distance of 2039.16 feet to the Point of Beginning; thence continuing North 89 degrees 45 minutes 00 seconds East along said south line a distance of 1573.42 feet to the southwest corner of a tract of land described in Instrument #2010-12435 in the Office of the Recorder in Boone County, Indiana; thence North 00 degrees 06 minutes 04 seconds West along the west line of said tract of land a distance of 532.69 feet; thence South 89 degrees 46 minutes 04 seconds West a distance of 295.30 feet; thence North 00 degrees 14 minutes 00 seconds West parallel with the west line of said Northwest Quarter a distance of 800.57 feet to the centerline of State Road 334; thence South 89 degrees 25 minutes 06 seconds West along said line a distance of 30.00 feet to the northeast corner of a tract of land described in Deed Book 251, page 456, in said Recorder's Office (the following three courses are along the east, south and west lines of said tract of land); 1) thence South 00 degrees 14 minutes 00 seconds East parallel with said west line a distance of 462.93 feet; 2) thence South 89 degrees 25 minutes 06 seconds West parallel with the centerline of State Road 334, a distance of 265.44 feet; 3) thence North 00 degrees 14 minutes 00 seconds West parallel with said west line a distance of 462.93 feet to the centerline of State Road 334; thence South 89 degrees 25 minutes 06 seconds West along said centerline a distance of 985.37 feet; thence South 00 degrees 17 minutes 44 seconds East a distance of 1325.93 feet to the Point of Beginning, containing 39.86 acres, more or less.