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Ashley Biedell
Pulte Homes

Instrument PG 1 OF 41
201500004426

201500004426
Filed for Record in
BOONE COUNTY, INDIANA
NICOLE K. (NIKKI) BALDWIN, RECORDER
05-18-2015 At 12:53 pm.
COVENANTS 93.00

Inst #
201500000548

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF HARVEST PARK**

THIS DECLARATION (hereafter "Declaration") made this 12 day of May,
2015, by PULTE HOMES OF INDIANA, LLC (hereafter "Declarant");

WITNESSETH, that the following facts are true:

Declarant is the owner of certain real estate, located in Boone County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "X" (hereafter "Real Estate"), upon which a residential subdivision known as Harvest Park (hereafter "Development") will be developed; and

The real estate described in what is attached hereto and incorporated herein by reference as Exhibit "Y" shall hereafter be referred to as the "Additional Real Estate"; and

Declarant desires to subdivide and develop the Real Estate and Declarant may, in the future, desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided; and

The term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to this Declaration.

NOW, THEREFORE, the Declarant hereby declares that the Property and all of the Lots (hereafter defined) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. This Declaration shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its successors in title to the Property or any part or parts thereof.

FILED

MAY 18 2015

Deanna Wilkerson
Boone County Auditor

As of the date of execution hereof, the Property consists solely of the Real Estate. The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained.

Declarant shall have the right, and hereby reserves on to itself the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property (and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein) when Declarant places of record in Boone County, Indiana an instrument so declaring the same to be part of the Property, which supplementary Declaration (hereafter "Supplementary Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate or improvements to be located thereon.

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the sole discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

ARTICLE 1 DEFINITIONS

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

Section 1.1 "Association" shall mean shall mean and refer to Harvest Park Owners Association, Inc. (or similar name), an Indiana nonprofit corporation, and its successors and assigns.

Section 1.2 "Board of Directors" shall mean the board of directors, or governing body, of the Association.

Section 1.3 "Builder" means a person or entity engaged in the business of constructing single family residences for sale and engaged in and responsible for the original construction of a residence on a Lot.

Section 1.4 "Commitments" shall mean and refer to the commitments made in connection with the Property and recorded with the Recorder of Boone County, Indiana, on the 19th day of August, 2014, as Instrument No. 201400006920, Instrument No. 201400006921, and Instrument No. 201400006922.

Section 1.5 "Committee" shall mean the Architectural Control Committee, as more fully described in Article 6 of this Declaration.

Section 1.6 "Common Area" shall mean any Common Area designated on current and future Plats as a "Block", "Common Area", or "C.A."

Section 1.7 "Design Guidelines" shall mean such documents (if any) adopted by the Declarant and/or the Committee that establish minimum standards of design, construction and maintenance, which are consistent with the level of quality and character desired for the Development and the provisions in this Declaration and to assist Builders and Owners in the planning, design, maintenance, and construction of residences and all site improvements.

Section 1.8 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Real Estate.

Section 1.9 "Drainage Board" means the Boone County Drainage Board.

Section 1.10 "Lake Area" means any portion of Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 1.11 "Limited Common Areas" means those portions of Harvest Park more fully described in Section 17.1 hereof.

Section 1.12 "Lot" shall mean and refer to a discreet lot or building parcel for a Residence, as reflected on a Plat.

Section 1.13 "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant and a Builder.

Section 1.14 "Person" shall mean an individual, firm, corporation, partnership, trust or other legal entity or any combination thereof.

Section 1.15 "Plat" shall mean the subdivision plats of the Property which are recorded with the Recorder of Boone County, Indiana.

Section 1.16 "Refuse Collection" shall mean the collection, from each Residence, of charges for trash and garbage removal, for which the Association contracts, unless the municipality provides such service.

Section 1.17 "Residence" shall mean a residential dwelling unit situated upon a Lot, together with any approved improvements.

Section 1.18 "Special Use" shall mean any use defined or identified in any applicable zoning ordinance as a "Special Use".

Section 1.19 "Town" shall mean the Town of Whitestown, Boone County, Indiana.

**ARTICLE 2
CHARACTER OF THE DEVELOPMENT**

Section 2.1 In General. No structure shall be erected, placed or permitted to remain upon any Lot except a Residence. All Property located within a Plat which has not been designated by numbering shall be used in a manner determined by the Declarant. Lots may be used only for residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Harvest Park than the number of Lots depicted on a Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 2.2 Other Restrictions. All Property shall be subject to the easements, restrictions, and limitations of record appearing on a Plat and amendments thereto, on recorded easements, and rights-of-way, and also to all governmental zoning authority and regulation affecting the Property, all of which are incorporated herein by reference.

ARTICLE 3 EASEMENTS

Section 3.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a Plat:

- (A) Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved by any entity to which the easement is dedicated and pursuant to Section 5.9 below, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

- (B) Designated Mounding, Landscaping, and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, and/or landscape maintenance access easements are hereby reserved unto Declarant, during the Development Period, and, thereafter, unto the Association, for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install, maintain and replace landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association. Finally, no Owner shall be permitted to remove anything within any of the easements described in this subparagraph (B) without the prior written approval of the Declarant during the Development Period, and thereafter by the Association.
- (C) Easement Work. Notwithstanding any architectural approval under Article 6 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.1(A) above and without any obligation of replacement.

Section 3.2 General Drainage Utility Sewer and other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Residence or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

- (A) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires,

cables, ducts, antennae and other equipment and facilities) to serve any Residence. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Residence, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

- (B) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area(s) now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, including dewatering maintenance, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Board of Directors of the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).
- (C) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, a sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its maintenance obligations.

- (D) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:
- (i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;
 - (ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,
 - (iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Boone County, Indiana.

ARTICLE 4
ADDITIONAL PROVISIONS RESPECTING OF SANITARY SEWER UTILITY

Section 4.1 Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and give utility companies the right of ingress/egress.

Section 4.2 No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or right-of-ways is at risk of being removed, damaged, or destroyed by the applicable utilities without the obligation of replacement.

Section 4.3 No mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, or other improvements shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of these which are placed within easements or right-of-ways is at risk of being removed by the applicable utilities without the obligation of replacement.

Section 4.4 All Owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the residence to its connection to the sanitary sewer main.

Section 4.5 The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains, to the sanitary sewers is prohibited.

Section 4.6 Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

ARTICLE 5 COVENANTS AND RESTRICTIONS

Section 5.1 Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of the Town of Whitestown, Indiana, may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Harvest Park than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any “Special Use” that is not clearly incidental and necessary to single family dwellings.

Section 5.2 Address Identification. The numbers representing the address of each Residence will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Committee.

Section 5.3 Lighting. All homes will have two dusk to dawn lights that operated on a photo cell located on the sides of the garage doors, regardless of the number of garage doors. In the interests of safety and aesthetics of the neighborhood, the Owner of each Lot shall maintain the appearance and working condition of their garage lights. Such lights must be illuminated during nighttime hours (i.e., immediately following dusk and preceding dawn). Street lights shall be installed by Declarant in the utility easements on Lots and in the Common Areas. Street lights shall be operated and maintained by the Association. The Association reserves the right to remove street lights deemed no longer necessary by the Board of Directors.

Section 5.4 Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

Section 5.5 Garages. All Dwellings must have a minimum of a two (2) car attached garage.

Section 5.6 Driveways. All driveways shall be concrete in material unless otherwise approved by the Committee. All driveways, including location and materials, shall be subject to the Design Guidelines and the advance written approval of the Declarant or the Committee.

Section 5.7 Water Systems. Each Owner shall connect to the water main maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability, or other charges lawfully established with respect to connections thereto.

Section 5.8 Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, “Drainage Easements” reserved as drainage swales shall be maintained by the Owner of the Lot upon which

such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots may be included in a legal drain established by the Drainage Board. In such event, each Lot will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the drainage system and the lake control structures included in such legal drain, which assessment will be a lien against the Lot in favor of the Drainage Board. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

Section 5.9 Signs. Unless otherwise permitted by the Declarant prior to the end of the Development, and thereafter by the Board of Directors of the Association, no sign of any kind shall be displayed to the public view of any Lot except that one (1) sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during construction and sale.

Section 5.10 Fencing. This subsection is applicable to all Lots except those Lots which are used for a sales office or model home by the Declarant or a Builder. No fence, wall, hedge, or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set back line except where such planting is part of Residence landscaping approved by the Architectural Review Committee and the prime root thereof is within six (6) feet of the Residence. Corner Lots shall be deemed to have two (2) front property lines. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". All fencing shall be cedar, dog-eared shadow box on both sides of the fence, unless approved otherwise by the Committee. All fencing on a Lot shall be uniform in height, style, and color and substantially similar in material. No fence shall exceed six feet (6') in height. No fence shall be erected or maintained on or within any Landscaping Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence. No fence may be erected on a Lot without prior approval of the Committee, which shall approve or disapprove the location of all fences; provided, however, that all fencing erected on a Lot must be erected either (i) within six (6) inches of the property line of such Lot, or (ii) more than ten (10) feet from the property line of such Lot. Owners of Lots adjoining Lots on which a fence is erected within six (6) inches of the property line shall have the right to connect a fence to the fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Committee. The Committee may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Lake and design standards for fences. All fences shall be kept in good repair. No fence, wall, hedge, or shrub planting, or tree foliage which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Lot lines at the streets and a line connecting points 25 feet from the intersection of said street Lot lines; and, the same rule shall apply to the intersection of a driveway with a street, in which case the edge of the driveway pavement shall be substituted for one of the street Lot lines.

Section 5.11 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant, and/or the Association, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance. In the event of successful enforcement by an Owner, the Declarant, or the Association of the provisions thereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

Section 5.12 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except not more than 24 hours prior to its removal thereof, when it may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 5.13 Animals, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other customary household pets in reasonable numbers may be kept subject to rules and regulations adopted by the Board of Directors and provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. An Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by his or her pet. The Owner shall be responsible for the cleaning of any Common Area made dirty by his or her pet's excrement, and shall be fully liable for the expenses of any cleaning not performed by the Owner. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon ten (10) days' written notice from the Board to the respective Owner. The appropriate governmental authorities shall have an easement across the Property to enforce local animal control laws and ordinances.

Section 5.14 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot unless the smoke therefrom would not blow upon any other Lot. Owners shall at all times be in compliance with all applicable legal requirements for outside burning.

Section 5.15 Antennas and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any part of the Property, including Lots, without the written approval of the Committee, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from the neighboring Lots, streets or Common Area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices, or improvements, such as heat pumps, air-conditioning units, barbecue grills, patio furniture, and garden equipment, which are not

prohibited by these covenants or the rules and regulations of the Association, or (d) it is a satellite dish one (1) meter (approximately 39”) or less in diameter and not affixed to the roof of a residence; or (e) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority.

Section 5.16 Exterior Lights. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

Section 5.17 Electric Bug Killers. Electric bug killers, “zappers”, and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

Section 5.18 Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereof. Declarant and the Association shall have the right, but not the duty, to enter upon each vacant Lot and to maintain the appearance thereof by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances. The Owner shall be responsible for payment of all such expenses upon demand and the Declarant or the Association, as the case may be, shall have a lien on such Lot for the payment of such expenses, together with attorneys fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith.

Section 5.19 Association’s Right to Perform Certain Maintenance. In the event that the Owner of any Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The cost incurred by the Association shall be assessed to the Owner. The Owner shall reimburse the Association within thirty (30) days of the date on which the Owner is invoiced by the Association. The Association shall have the right to collect any outstanding maintenance assessments in the manner described in Article 10. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

Section 5.20 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no awnings or patio covers will be permitted anywhere on the Property unless approved in advance by the Committee or in compliance with the Design Guidelines. All approved awnings and patio covers must be kept in good repair and attractive in appearance.

Section 5.21 Diligence in Construction. Subject to inclement weather or other Acts of God, every Residence shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been 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 forthcoming.

Section 5.22 HVAC Units. No heat pumps, air conditioning units or gas meters will be installed in the front of the Residence.

Section 5.23 Lake and Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, ice fishing, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area unless required by the applicable municipality. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 5.24 Mailboxes. The Town requires a “cluster” mailbox/mail station that will initially be installed by the Declarant or a Builder. After initial installation, the Association shall maintain, repair and replace the “cluster” mailboxes and mail station as part of the common expenses of the Association. No Owner shall be permitted to remove or alter the mailbox associated with such Owner’s Lot.

Section 5.25 Maintenance of Lots and Improvements. Each Owner shall at all times maintain the Lot and any improvements 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 at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (B) Remove all debris or rubbish from the Lot;
- (C) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;
- (D) Cut down and remove dead trees from the Lot; and,

- (E) Within sixty (60) days following completion of a Residence, the Owner shall landscape the lot in accordance with the provisions set forth in this Declaration, weather permitting.

Section 5.26 Clotheslines. No clotheslines may be erected on any Lot unless approved in writing by the Committee.

Section 5.27 Outbuildings. Any and all forms of outbuildings, including but not limited to, mini-barns, sheds, storage sheds, animal quarters, and play houses on any Lot, are prohibited, unless the same are necessary or incident to the Declarant's or Builder's business or activities upon the Property. Notwithstanding the above, the Committee may permit a bath house or similar structure in conjunction with an approved swimming pool.

Section 5.28 Play Equipment. Play equipment such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, swing and slide sets, and trampolines shall not require approval by the Committee, provided that (i) such equipment is not more than eight (8) feet high (to the highest point of the structure) and properly painted and maintained by the Owner in good repair, (ii) such equipment is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the residence into the rear yard of the Lot, (iii) such swing and slide sets are constructed of wood or such other material that is acceptable to the Committee, and (iv) such equipment is properly secured and fastened to the ground so as to avoid being blown over onto another Lot or the Common Areas. Metal swing and slide sets are prohibited. Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee, and aluminum or metal play equipment is prohibited.

Section 5.29 Plumbing. All plumbing vent stacks are to be located on the rear of the Residence.

Section 5.30 Sidewalks. Each Residence shall have a continuous 4-foot wide by a minimum of four (4) inches thick concrete sidewalk adjacent to all interior dedicated street frontage. Sidewalks shall be installed by the Declarant or Builder and included in the purchase price of the Residence. Each Owner of a Lot shall be responsible for the repair and maintenance of the sidewalk which is adjacent to, or upon, such Owner's Lot, including but not limited to snow removal.

Section 5.31 Subsurface Drains and Sump Pump Discharges. Subsurface drains have been provided in certain areas within drainage easements as additional storm and ground water drainage sources and are part of the public storm drainage system. Subsurface drain laterals have been provided on specific Lots, and the Builder on such Lots shall connect all sump pump discharge lines to such laterals. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Lot Owner in accordance with the following:

- (A) The limits of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the home and the

connection with the publicly maintained storm sewer or subsurface drain within the drainage easement.

- (B) In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered.
- (C) Any Owner or Builder damaging, changing, or altering these subsurface drains and/or common subsurface drain laterals will be held responsible for such action and will be given ten (10) days' notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owners (and/or Builders) for immediate payment. If immediate payment is not received, the Declarant and/or the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article 10 of this Declaration.
- (D) In no case will maintenance and repair of sump pump discharge lines and subsurface drain laterals be the responsibility of the Town.

Section 5.32 Swimming Pools and Hot Tubs. Except for children's unfiltered splash pools, no above-ground swimming pools shall be permitted in the Property, even if they are inflatable. Only permanent, in-ground pools with professional construction, approved in writing in advance by the Committee, shall be permitted upon a Lot. All submittals to the Committee shall include landscape plans. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Committee approvals. All approved in ground swimming pools must have an electrically powered, locking safety cover and/or an enclosure fence of at least five feet (5') in height that complies with the Section above specifically concerning fences and shall be subject to the Design Guidelines and the advance written approval of the Declarant or the Committee. All equipment rooms, bath houses, or dressing rooms that are not part of the original construction of the Residence shall be subject to the Design Guidelines and the advance written approval of the Declarant or the Committee. Hot tubs must also be approved in advance by the Committee.

Section 5.33 Tennis Courts, Basketball Courts, Paddleball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities are not permitted. No basketball goal is permitted unless it is permanently mounted to a pole adjacent to the driveway of the Lot owner.

Section 5.34 Vents. All metal and PVC roof or range vents will be painted to blend with roof color.

Section 5.35 Windows and Doors. If storm doors are installed, they must be painted to match the exterior of the Residence. No unfinished aluminum doors or windows will be allowed.

Section 5.36 Street Signs. Decorative street signs that do not conform to the Town's standards nevertheless may be installed by Declarant in the Development. Any such decorative street signs shall be maintained by the Association, and shall be repaired or replaced by the Association if damaged in accordance with applicable rules and regulations of the Town. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs and agrees to hold the Town harmless related thereto.

Section 5.37 Fuel Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

Section 5.38 Garbage and Other Refuse. No Lot Owner in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse, including compost on his or her Lot, unless otherwise approved by the Committee.

Section 5.39 Home Occupations. No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, for any purpose other than as a single-family residence, except that a home occupation, which satisfies the following definition as well as all requirements of the applicable zoning ordinance, may be permitted: any use conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, which use is clearly incidental and secondary to the use of the Residence for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that will indicate from the exterior that the Residence is being utilized in whole or in part for any purpose other than that of a dwelling; (b) no commodity sold upon the premises; (c) no person is employed other than a member of the immediate family residing in the Residence; (d) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board of Directors) by clients, customers or other persons related to the business; and (e) no manufacture or assembly operations are conducted. Provided however, that in no event shall the following or similar activities be conducted or considered to be a permitted Home Occupation: child day care, barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog trimming, or any other similar activities. The foregoing notwithstanding, the Declarant and Builders shall be permitted to operate sales trailers, model homes, and sales offices.

Section 5.40 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales:

- (A) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant or, after the Development Period, by the Association. Lot Owners must maintain these swales as grassways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Lot Owner.

- (B) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days' notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article 10 of this Declaration.

Section 5.41 Roofing Materials. The roofing materials on all Residences shall be similar in color and material, and shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Committee. No Owner shall be permitted to change or replace the shingles or other roofing materials without obtaining the prior written approval of the Committee unless the change or replacement is identical to what was originally in place.

Section 5.42 Solar Panels. No solar panels shall be permitted on any Residence or upon any Lot unless approved in advance by the Committee.

Section 5.43 Vehicles and Parking. Only normal passenger vehicles are permitted to be parked within the Property. Normal passenger vehicles include automobiles, vans, motorcycles, mini-bikes, sport utility vehicles, and trucks with a maximum load capacity of one ton or less. Boats or other watercraft, campers, recreational vehicles, trailers of any kind, temporary storage units, dumpsters, buses, mobile homes, commercial or business trucks or vans, or any other vehicles other than normal passenger vehicles shall not be permitted to be parked or stored anywhere within the Property, unless they are:

- (A) parked or stored completely enclosed within the Owner's garage; or
- (B) parked or stored upon the Owner's Lot for no more than two (2) weeks per year total; or
- (C) the Owner receives the Board of Directors' approval upon a showing of extenuating circumstances. The Board's approval may include such conditions as deemed appropriate by the Board of Directors.

Commercial vehicles are vehicles, regardless of size, on which commercial lettering or equipment is visible and is being used for commercial purposes. No junk or disabled vehicle or other vehicle on which current registration plates are not displayed shall be kept in the Property, except as may be completely enclosed within a garage. No repair work shall be done within the Property on any vehicles, including passenger vehicles, except as may be completely enclosed within a garage.

Section 5.44 Wells. Water wells shall not be drilled on any of the Lots.

Section 5.45 Streets, Sidewalks, and Street Landscaping.

- (A) Maintenance. Declarant shall maintain all streets, sidewalks and curbs in good condition satisfactory for the purpose for which they were constructed until they have been accepted by the public authority.
- (B) Landscaping. All landscaping within the street rights-of-way is subject to the approval of the appropriate governmental authority. Each Owner shall cut all grass and trim all other landscaping in the rights-of-way adjoining his Lot lines and shall maintain all sidewalks in the rights-of-way nearest his Lot lines. Each Owner shall immediately replace any street trees and lighting required by this Declaration, the Plat, or any other document controlling maintenance of Lots.
- (C) Street Lights and Decorative Street Signs. All street lights and decorative street signs located within the right-of-way of any street shall be maintained by the Association.

Section 5.46 Construction and Landscaping. All construction upon, landscaping of, and other improvements to a Lot shall be completed strictly in accordance with a lot development plan approved by the Committee, including time limitations.

Section 5.47 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by a public agency or public or private utility) shall be installed or maintained on any Lot.

Section 5.48 Notice of Commitments. Notice is hereby given of the Commitments. They are deemed to be incorporated herein by this reference.

Section 5.49 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Areas. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Development as well as its own books, records and financial statements available for inspection by Owners or by holders, insurers and guarantors of first mortgages, that are secured by Lots in the Development. These documents shall be available during normal business hours or under other reasonable circumstances.

ARTICLE 6
ARCHITECTURAL CONTROLS

Section 6.1 Approvals. Approvals, determinations, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Association, by an officer thereof; and with respect to the Committee, by one (1) member thereof.

Section 6.2 Architectural Control Committee. An Architectural Control Committee (the "Committee"), composed of at least three (3) members, shall exist and shall be appointed by the Declarant. During the Development Period, such members shall be subject to removal by the Declarant at any time, with or without cause, and any vacancies from time to time shall be filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, relinquish for a period of time to the Association the power to appoint and remove one or more members of the Committee; provided, however, that any such relinquishment must be in writing and shall be only on the terms and conditions expressed in such writing.

Section 6.3 Continuation of Committee. Until the earlier of the time when the Declarant provides written notification to the Association of discontinuance of this Committee, or at the end of the Development Period, whichever occurs first, the Committee shall be a standing committee of the Association with like powers, consisting of a minimum of three (3) persons, appointed by a majority vote of the Board of Directors. The persons appointed by the Board to the Committee shall consist of Owners of Lots and may be, but need not be, members of the Board of Directors. The exception to this is that the Chair of the Committee must be a Board member. The Board may at any time remove any member of the Committee upon a majority vote by the members of the Board of Directors. At the Board's discretion, the Board may serve as the Architectural Review Board.

Section 6.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to and actually received by it. The Committee for its permanent files shall retain one copy of submitted material. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason(s) for disapproval and the requesting applicant may re-apply with changes. If however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered DENIED.

Section 6.5 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 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 6.6 Inspection. The Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Section 6.7 Liability. Neither the Committee nor any agent thereof, nor the Declarant, nor the Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee, Association and/or Declarant make no representation

or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advice, engineering, and inspections on each Lot prior to proposing construction.

Furthermore, the Committee shall review the elevations ONLY of any proposed Residence or other improvements such that the Committee shall not be liable for any alleged deficiencies concerning the height or placement of any improvements. Thus, neither the Declarant nor the Committee shall be responsible for anything related to height, setbacks, grade, finished floor or other elevations, drainage, or home position upon a Lot. The Town and applicable building ordinances shall control such matters.

Section 6.8 Common Areas, Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the Committee: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, and/or sign landscape easement, (ii) any entrance monument or signage identifying the Development or any section thereof and/or (iii) street signage.

Section 6.9 Lot Improvements. No dwelling, building structure, fence, deck, driveway, swimming pool, or improvement of any type or kind (including significant landscaping or stacking of wood) shall be constructed or placed on any Lot, nor shall any of the same be modified or altered, without the prior approval of the Committee. Any change in the appearance or the color of any part of the exterior of a Residence or the Lot shall be deemed a change thereto and shall also require the prior approval of the Committee. Such approval 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 construction, alteration or modification. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, setbacks, and rights-of-way and (iii) any landscape plans required by the Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Committee may require. All building 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 insure that a resident is not encroaching on an adjacent Lot or in a Common Area. If Owner has encroached on an adjacent Owner's property or in a Common Area, the encroaching Owner will, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the Committee in the Committee's sole and absolute discretion, the Committee may pre-approve a Builder's plans and specifications for the original construction of a Residence and, in the event

of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots without further approvals from the Committee.

No fence or screen of any kind will be permitted if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties shall be considered by the Committee when reviewing applications for approval.

Section 6.10 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

- (A) The plans, specifications, drawings or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of this Declaration, the Design Guidelines, the Plats, or the rules and regulations adopted by the Board of Directors;
- (B) The design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures; and
- (C) The proposal should preserve or enhance the value and desirability of the Property and be consistent with the interests, welfare or rights of the Declarant, the Association and any other Owner.

Section 6.11 Power to Grant Variances. The Committee may allow reasonable variances or adjustments of this Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Declaration. No variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development, and any such variance granted shall not be considered as precedent setting.

Section 6.12 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography, and in keeping with the intent of the Declarant.

Section 6.13 Design Guidelines. The Declarant and, after the Applicable Date, the Committee, may adopt Design Guidelines. The Declarant and the Committee reserve the right to make any amendments, repeals, or modifications to the Design Guidelines that they deem necessary or appropriate at any time and without advance notice. The Design Guidelines are incorporated into this Declaration by reference.

Section 6.14 Non-Applicability to Declarant. Declarant and its designees shall have no obligation to submit plans to, or receive approval from, the Committee. The Declarant shall have exclusive control of new construction within the Development. No provision of this Declaration, as the same relates to new construction, may be modified without Declarant's consent.

Section 6.15 Non-Applicability to Residences to be Newly Constructed. The Declarant shall always have the sole authority to approve the original Residence and landscaping on any Lot within the Development even after the Declarant no longer serves as or appoints the Committee. The Declarant intends to build all of the Residences within Harvest Park. However, that is not a requirement. Thus, the Declarant may choose to sell Lots to one or more Builders who would then build Residences. The architectural control provisions and requirements set forth above in this Article 6 shall not be applicable to any new, originally constructed Residences and related structures, improvements and landscaping to be constructed on unimproved Lots. However, after such original construction, the provisions of this Article 6 shall be applicable.

ARTICLE 7 CONTIGUOUS LOTS

Section 7.1 Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, such Owner must apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying this Declaration to said Lots, so long as the Lots remain improved with one single-dwelling house. In addition, the Owner must obtain from the Town all requisite and necessary permits and approvals.

ARTICLE 8 USE AND OWNERSHIP OF COMMON AREA; PUBLIC STREETS

Section 8.1 Ownership. A license upon such terms, conditions, rules and regulations as the Declarant, and successor, assigns or licensees of the Declarant, shall from time to time grant, for the use and enjoyment of the Common Area, is granted to the persons who are from time to time members of the Association; provided, however, that no residential development shall occur in the Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment in common with all other Owners in and to the Common Areas which nonexclusive right and easement of enjoyment shall be appurtenant to and pass with the title to every Lot. The Common Areas shall be conveyed by quitclaim deed to the Association. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Area to the Association.

Section 8.2 Use. The Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Board of Directors of the Association. Any Common Area depicted on the recorded plats of the Development or designated by the Declarant as a Common Area shall remain for the exclusive use of the Owner(s), and their family members, guests, tenants, or contract purchaser who reside on the Lot(s). Neither the Declarant's execution or recording of the plats nor the doing of any other act by the Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area.

Section 8.3 Certain Obligation and Access Rights to the Common Area.

- (A) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners and the Development, as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.
- (B) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder’s warranty.

Section 8.4 Public Right of Way. The rights-of-way of the streets as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way.

**ARTICLE 9
THE ASSOCIATION**

Section 9.1 Association Duties. The duties of the Association shall include the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the property, (ii) the maintenance and repair of the Common Areas including, but not limited to, any and all lighting, landscaping, amenity areas, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments and signage, and the landscaping surrounding such entrances monuments and signage, (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and/or any sign landscape easement, and (v) the performance of any other obligations and duties of the Association specified or reasonably inferred herein.

Section 9.2 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association’s Articles of Incorporation and By-Laws. The Board of Directors shall manage the affairs of the Association. During the Development Period, Directors need not be members of the Association. However, thereafter, all Directors must be Owners and members of the Association.

Section 9.3 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

- (A) Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

- (B) Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. It shall also be assumed that the number of Lots in the Property shall be the maximum number allowed by the applicable zoning approval which shall include the current extent of the Property plus the potential number of lots in the Additional Real Estate. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier (hereafter "Applicable Date"):
 - (i) December 31, 2025; or
 - (ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership; provided, however, that the Class B Membership shall recommence in the event that the Declarant records a plat of part of or all of the Additional Real Estate and, by virtue thereof, total number of votes outstanding in the Class A Membership is no longer equal to the total number of votes outstanding in the Class B Membership.

Section 9.4 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the members (the "Initial Member(s)"). The Initial Member(s) shall remain members of the Association until the Association's Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be members, unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 9.5 Professional Management. At all times, the Association shall employ the services of a professional manager or management company to assist the Board of Directors in the management and administration 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 sixty (60) days or less. Also, no such management

agreement or contract shall contain an automatic renewal provision; any such a provision shall be deemed null and void.

Section 9.6 Association Insurance. The Association shall purchase the following coverage:

- (A) Liability Insurance. The Association shall purchase and pay the costs of the policy or policies of insurance in the form generally known as Public Liability and/or owners policies insuring the Association against any and all claims and demands made by any person or persons whomsoever for injuries received in connection with the fulfillment by the Association of its obligations specified in this Declaration, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against, including, without limitation, claims arising out of the Common Areas. Each policy purchased by the Association shall have limits of not less than Two Million Dollars (\$2,000,000.00) covering all claims for personal injury and Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage arising out of a single occurrence. The coverage of the liability insurance policies purchased by the Association shall include protection against liability for property damage, bodily injuries and deaths of persons in connection with the fulfillment by the Association of its obligations specified in this Declaration, liability for non-owned and hired automobiles, liability for property of others and liability arising out of the Common Areas. All such policies will name the Association as the insured under such policy or policies. The insurance purchased shall contain a “severability of interest endorsement”, or equivalent coverage, which would preclude the insurer from (i) denying the claims of an Owner because of the negligent acts of either the Association, the Declarant or any other Owners or (ii) denying the claims of either the Declarant or the Association because of the negligent acts of an Owner.
- (B) Casualty Insurance. The Association may purchase and pay the costs of a policy or policies of insurance to allow the Association to insure from the fulfillment by the Association of its obligations specified in this Declaration. Such casualty insurance may insure, without limitation, any improvements located within the Common Areas.
- (C) Fidelity Coverage. The Association shall purchase adequate (i) errors and omissions insurance protecting and insuring the Association and its officers and directors against liability for negligence in the fulfillment of their obligations and duties, and (ii) fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all others who handle and are responsible for handling funds of the Association (including, if practicable, the Association’s property manager and property management company), such coverage to be in the form of fidelity bonds which meet the following requirements unless one or more of such requirements are waived by the Board of Directors.
 - (i) Such bonds shall name the Association as an obligee;

- (ii) Such bonds shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual budget of the Association; and,
- (iii) Such amounts shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of “employee” or similar expression.

Section 9.7 Limitations on Rights of the Association. As long as there is a Class B Member, the Association may not use its resources, nor take a public position in opposition to future phases of Harvest Park proposed by the Declarant or changes to current phases of Harvest Park proposed by the Declarant. Nothing in this paragraph shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name, or on the behalf of the Association.

Section 9.8 Other Matters Concerning the Association. The Articles of Incorporation as filed with the Indiana Secretary of State and the By-Laws of the Association, both as amended, are incorporated herein by reference.

Section 9.9 Means of Communication. To avoid the costs of paper, postage and handling that would otherwise be incurred when distributing documents or information to Owners by regular mail, and also to be more efficient in transmitting information that Owners can receive even when out of town, the Association will, to the extent possible, make Association matters available online through the Association’s website and/or via email or similar means, including but not limited to:

- (A) Notices of Annual or Special Meetings
- (B) Proxies and Ballots
- (C) Proposed and finalized Annual Budgets
- (D) Nominees for the Board of Directors for an upcoming election
- (E) List of current members of the Board of Directors
- (F) Recorded copy of this Declaration and all amendments thereto
- (G) The By-Laws and Articles of Incorporation and all amendments thereto
- (H) The Design Guidelines
- (I) Architectural Control Request for Change form
- (J) Rules and Regulations adopted by the Board of Directors
- (K) Name of the Association’s property management company
- (L) Invoices, statements or coupon booklets for payment of Assessments
- (M) Voting through a secure website or equivalent
- (N) Payment of Assessments through a secure website or equivalent

In lieu of the above, any Owner can choose to receive documents by regular mail by notifying the Association in writing.

ARTICLE 10 ASSESSMENTS

Section 10.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant and any Builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following:

- (A) Annual Assessments (hereafter defined);
- (B) Initial Operating/Reserve Fund Assessment (hereafter defined);
- (C) Special Assessments (hereafter defined) for costs of enforcement of this Declaration, capital improvements and operating deficits, copies of Association documents if requested by a member, and such assessments to be established and collected as hereinafter provided or established by the Board; and
- (D) Violation Assessments (hereafter defined) levied for a violation of this Declaration.

The Assessments above, together with interest, costs, late charges, and reasonable attorneys' fees, shall be a charge on the land until paid in full and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Boone County, Indiana. No charge, lien, or assessment shall ever be levied by the Association or individual Lot Owners against the Declarant. The Declarant shall not be liable for paying any Annual Assessments to the Association for any Lots owned by it or its designated successor developer.

The Association and/or Declarant are hereby empowered to cause a lien to be filed with the County Recorder against any Lot for the purposes of (1) recovering any funds due for any of the Assessments set forth in this Article 11, or recovering any funds expended by the Declarant or the Association in maintaining any Lot in a neat and attractive condition as contemplated by this Declaration, and (2) recovering any attorneys' fees and related costs and expenses incurred by either the Declarant or the Association in any proceeding initiated pursuant to the collection of the above funds or any proceeding initiated pursuant to this Declaration.

Section 10.2 Annual Budget. The Board of Directors shall prepare an annual budget for the subsequent fiscal year which shall be the basis for the Annual Assessment, which shall provide for the allocation of expenses in such a manner that the obligations imposed by this Declaration and all Supplemental Declarations can effectively be met.

Section 10.3 Annual Assessment.

- (A) Amount. The Annual Assessment provided for herein shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an Owner other than Declarant or a Builder. The obligation to pay the Annual Assessment shall commence for each Lot on the date it is conveyed to an Owner other than the Declarant or a Builder. The Annual Assessment for the calendar year shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the Annual Assessment at least thirty (30) days in advance of the effective date of such increase. The initial due date for annual assessments shall be January 1st, and such assessment shall be subject to collection and late charges beginning on January 31st.
- (B) Purpose of Assessments. The annual assessment levied by the Association shall be used in the reasonable discretion of the Board of Directors to fulfill the duties and obligations of the Association specified in or reasonably inferred by this Declaration, including, without limitation, the cost of maintaining and repairing Common Areas, as well as the cost of insurance, Refuse Collection and professional property management.
- (C) Method of Adoption of the Annual Budget and Annual Assessment. Prior to the Applicable Date, without any approval or vote by the Owners, the Board of Directors shall fix the amount of the Annual Assessment in advance of the effective date of such assessment. Written notice of Annual Assessments and such other assessments as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The Board during any calendar year prior to the Applicable Date shall be entitled to increase the Annual Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners.

After the Applicable Date, the annual budget must reflect the estimated revenues and expenses for the budget year, and the estimated surplus or deficit as of the end of the current budget year. The Association shall provide each Owner with: (1) a copy of the proposed annual budget; or (2) written notice that a copy of the proposed annual budget is available upon request at no charge to the Owner. At the same time, the Association shall provide each Owner with a written notice of the amount of any increase or decrease in the Annual Assessment paid by the Owners that would occur if the proposed annual budget is approved. After all of the foregoing take place, the Association shall hold a meeting pursuant to the following subsection (D).

- (D) Association Meeting to Approve the Budget. After the Applicable Date, and subject to subsection (E) below, the Association budget must be approved at a meeting of the members by a majority of the members of the Association in attendance at a meeting called and conducted in accordance with the requirements of this Declaration, the Articles of Incorporation and the By-Laws. For purposes of this meeting, a member is considered to be in attendance at the meeting if the member attends: (1) in person; (2) by proxy; or (3) by any other means allowed under Indiana law or under this Declaration, the Articles of Incorporation or the By-Laws.

- (E) Power of the Board to Adopt a Budget in the Absence of a Quorum. If the number of members in attendance at the meeting held under subsection (D) above does not constitute a quorum as defined in the By-Laws of the Association, the Board may adopt an annual budget for the Association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved Association annual budget.

Section 10.4 Initial Operating/Reserve Fund Assessment. Upon the closing of the initial conveyance of each Lot by Declarant to an Owner or a 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 an advance contribution to the Association's operating fund and/or capital reserve fund, an amount of Three Hundred Fifty Dollars (\$350.00) against such Lot (the "Initial Operating/Reserve Fund Assessment"), 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. This fund may be used 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, or to acquire additional equipment or services deemed necessary by the Board.

Additional funding of the capital reserve fund may thereafter be charged as part of the Annual Assessments in an amount determined by the Declarant or Board of Directors.

Section 10.5 Special Assessment. In addition to the annual operating assessment, the Board of Directors or Declarant may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided, however, that after the Applicable Date such assessment shall have the assenting vote of more than fifty percent (50%) of the total possible votes that may be cast by members of the Association, including both Class A members and Class B members. The votes shall be cast either in proxy or in person at a meeting duly called for such purpose. Written notices for such meetings shall be sent and voting quorums required as set forth in the By-Laws of the Association. The Developer shall not be liable for paying any special assessments under this Section 10.6.

Section 10.6 Violation Assessment. In addition to all other assessments as be authorized herein, the Board of Directors may levy a Violation Assessment to an Owner: (i) for a violation against this Declaration, the Plats or rules and regulations adopted by the Board of Directors 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 or replacement is in the sole discretion of the Board.

Section 10.7 Basis for Assessment.

- (A) Lots Generally. Each Lot owned by a person other than Declarant or a Builder shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.
- (B) Lots Owned by Declarant or Builder. Declarant and any Builder shall not pay the Annual Assessment and Special Assessment so long as any Residence constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Residence as a residence or leased to an individual or an entity for use as a Residence.

Section 10.8 Notice and Due Date. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors.

Section 10.9 Collection. All Assessments, together with interest thereon, late charges, 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, late charges and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

Section 10.10 Effect of Nonpayment of Assessments; Remedies of the Association. Except for Developer and its designated successors or any Builder, no Owner may exempt himself or herself from paying Annual or Special Assessments or any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Lot belonging to such Owner. Except for Developer and its designated successors or any Builder, each Owner shall be personally liable for the payment of all applicable Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Assessments when due, the lien for such assessment on the Owner's Lot may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (i) Impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board;
- (ii) Suspend such Owner's right to use the Common Areas within the Development;
and
- (iii) Suspend such Owner's right to vote if the Owner is more than six (6) months delinquent.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessments without foreclosing or waiving the lien securing the same. In connection with any effort to collect or in any action to recover an Assessment, regardless of whether litigation is initiated, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the Lot, not only the delinquent Assessments, but also all late charges imposed, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to a managing agent (if any) for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees. The Association need not accept any tender or a partial payment of an Assessment, or any installment of an Assessment, and all costs, expenses, charges and attorney fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter. In addition, the Board shall have the power to adopt by Board resolution additional rules and regulations or delinquency procedures.

Section 10.12 Certificates. The Association shall, at any time and for a reasonable fee of up to and including \$150.00, furnish a certificate in writing signed by an officer or managing agent of the Association stating that the Assessments on a specific Lot have been paid or that certain Assessments or other charges against said Lot have not been paid, as the case may be.

Section 10.13 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein against a Lot shall be subordinate to the lien or any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of assessments levied under this Article 10. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessments which became due or are attributable to the period of time prior to such sale or transfer. No sale transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10.14 Approval of Certain Contracts; Meeting; Vote by the Members. The Board may not enter into any contract that would result in a Special Assessment or the increase in the existing Annual Assessment payable by the affected Owner in the amount of more than five hundred dollars (\$500) per year for each affected Owner unless: (1) the Board holds at least two (2) Association meetings of the Owners concerning the contract; and (2) the contract is approved by the affirmative vote of at least two-thirds (2/3) of the affected Owners. The Board shall give notice of the first such Association meeting to each member of the Association at least ten (10) calendar days before the date the meeting occurs.

The provisions in this Section do not apply to a contract entered into by a Board that would resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law.

Section 10.15 Borrowing Money; Approval by the Members. The Association may not borrow money during any calendar year on behalf of the Association in an amount that exceeds the greater of:

- (1) five thousand dollars (\$5,000) during any calendar year; or
- (2) if the Association operated under an annual budget in the previous calendar year, an amount equal to at least ten percent (10%) of the previous annual budget of the Association;

unless borrowing the money is approved by the affirmative vote of a majority of the members of the Association voting under this provision. A vote held under this provision must be conducted by paper ballot. The Association shall distribute paper ballots to persons eligible to vote at least thirty (30) days before the date the votes are to be opened and counted. Votes cast under this provision shall be opened and counted at a public meeting held by the Association. None of the provisions and requirements in this Section shall apply to money borrowed by the Association that is needed to: (a) resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law; or (b) address an emergency that affects the public health, safety, or welfare.

ARTICLE 11 REMEDIES

Section 11.1 Delay or Failure to Enforce. No delay or failure on the part of the Declarant, the Association, an Owner or any other aggrieved party to invoke any available remedy with respect to a violation of any one or more of covenants, conditions, and restrictions in this Declaration or of the rules and regulations of the Association shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration or the rules.

Section 11.2 Enforcement in General; Costs and Attorneys' Fees; Indemnification. Subject to the requirements and provisions of the By-Laws concerning "Grievance Resolution Procedures", the Declarant, Association, and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Plats, and any rules and regulations adopted by the Board of Directors of the Association.

If the Declarant, Association, or any Owner is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien or charge now or hereinafter imposed by the provisions of this Declaration, the rules and regulations, the limitations, easements and approvals appended to and made a part of the plats of the Development, it shall be entitled to recover from the party against whom the

proceeding was brought all of the reasonable attorneys' fees and related costs and expenses it incurred in such proceeding.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, any structure or part thereof erected without proper approval or maintained in violation hereof, is hereby reserved to the Declarant, the Association and to the Owners of the Lots in this Development and to their heirs, successors, and assigns.

Notwithstanding the above, no Owner may claim, collect, or recover attorney fees against the Declarant, the Association, the Committee, or from any officer, director, employee, agent, or other authorized agent of the Declarant, arising from any failure or alleged failure to comply with any provision of this Declaration, or of the Plat Covenants, or of any action taken or omission of any alleged duty or responsibility of any of the above with regard to the planning, development or operation of The Haven, or the operation of the Association prior to the Applicable Date.

Further, in the event that an action or omission of any Owner, home builder, or other contractor or agent, or any other person coming onto Harvest Park (referred to herein as an "Indemnifying Party"), results in a claim against the Declarant, the Association, the Committee, or from any officer, director, employee, agent, or other authorized agent of any of the above (collectively referred to herein as the "Indemnified Parties") entities results in any suit or claim against any of the Indemnified Parties, the Indemnifying Party shall indemnify and hold the Indemnified Parties harmless from any action or omission, whether based on contract, tort, or any other claim, theory or basis of recovery, including attorney fees, costs for expert witnesses and consultants, and other costs of litigation; and whether such Indemnifying Party is wholly or partially at fault.

ARTICLE 12 EFFECT ON BECOMING AN OWNER

Section 12.1 The Owner(s) of any Lot, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof whether from Declarant, a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restrictions contained in this Declaration. By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of the Declarant, Committee, and Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, Committee and the Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

**ARTICLE 13
TITLES AND INTERPRETATION**

Section 13.1 The titles preceding the various sections and subsections of this Declaration are for convenience of reference only and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 13.2 Controlling Document. If there is any conflict between the provisions of this Declaration and any Plat of a part of the Development, the terms and provisions of this Declaration shall be controlling. If there is any conflict between the provisions of this Declaration and Articles of Incorporation or By-Laws of the Association, the terms and provisions of this Declaration shall be controlling. Conflict, as used herein, shall mean a situation where the application of the language in one document contradicts the language in another document. Conflict does not occur where language in one document is simply more restrictive than language in another document.

**ARTICLE 14
SEVERABILITY**

Section 14.1 Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof; which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions

**ARTICLE 15
DECLARANT'S RIGHTS**

Section 15.1 Any and all of the rights and obligations of the Declarant set forth in this Declaration may be transferred, b whole or in part, to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded with the Recorder of Boone County, Indiana.

Section 15.2 Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant and/or any Builders in their development of the Property and construction of residences thereon. Therefore, notwithstanding anything herein to the contrary, the Declarant and/or any Builders authorized by Declarant may maintain and carry upon portion of the Common Area, and other portions of the Property owned by the Declarant, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or

incidental to the construction or sale of Residences including, but not limited to, business offices, signs, model units, sales offices, and sales trailers.

ARTICLE 16 TERM AND AMENDMENTS TO THIS DECLARATION

Section 16.1 The foregoing Declaration is to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date of recording with the Boone County Recorder, at which time said Declaration shall be automatically extended for successive periods of ten (10) years unless changed by vote of a majority of the then Owners of the Lots in whole or in part. The Declarant may amend this Declaration, from time to time, prior to the Applicable Date. After the Applicable Date, this Declaration may be amended by the approval of the Owners of at least two-thirds (2/3) of the total number of Lots. Any and all amendments to this Declaration must be filed with the Boone County Recorder.

Section 16.1 If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth II, Queen of England.

ARTICLE 17 ADDITIONAL RESTRICTIONS APPLICABLE TO HARVEST PARK

Section 17.1 Limited Common Areas. The Plats shall depict some of the Common Area parcels as being Limited Common Areas. The Association shall be responsible for all management, maintenance and upkeep of the Limited Common Areas. The costs incurred shall be part of the Association's common expenses. Access to the Limited Common Areas shall be restricted to those Lot Owners whose Lots are immediately adjacent to the applicable portion of the Limited Common Area parcel.

Section 17.2 Parks. Pursuant to the Commitments, the Harvest Park Development shall contain a minimum of three parks. The largest park is planned to be constructed in the second phase of the Development and shall include a covered pavilion including restrooms (for seasonal use only), picnic tables, trash cans, two age-appropriate play grounds, park benches, and three half basketball courts. Upon completion of that largest park, and per the requirements of the Commitments, the Declarant shall notify the Director of the Town's Parks & Recreation Department. If the Town notifies the Declarant within six (6) months of receiving such completion notice that it desires to have the completed park dedicated to the Town, the Declarant shall promptly dedicate such park to the Town at no cost to the Town.

Section 17.3 Street Lighting. Pursuant to the Commitments, all fixtures utilized as street lighting shall be shielded, contain sharp cutoffs or otherwise designed to direct light predominately downward as opposed to laterally.

Exhibit X

Legal Description of "Real Estate"

Harvest Park, Section One

HARVEST PARK
SECTION 1
LAND DESCRIPTION

A part of the Southeast Quarter of Section 30, Township 18 North, Range 2 East, Worth Township, Boone County, Indiana, being more particularly described as follows:

BEGINNING at the Southwest corner of said Southeast Quarter Section; thence North 00 degrees 33 minutes 14 seconds West (bearing system based on Indiana State Plane West Zone, NAD 1983) along the West line thereof a distance of 1289.84 feet to the Southwest corner of a tract of land described in Instrument Number 200700011369 in the Office of the Recorder of Boone County, Indiana; thence North 88 degrees 36 minutes 24 seconds East along the South line thereof a distance of 272.25 feet to the Southeast corner of said tract; thence North 00 degrees 33 minutes 14 seconds West along the East line thereof a distance of 81.84 feet; thence North 89 degrees 26 minutes 45 seconds East a distance of 366.06 feet; thence South 87 degrees 22 minutes 46 seconds East a distance of 83.30 feet; thence South 78 degrees 45 minutes 10 seconds East a distance of 75.88 feet; thence South 70 degrees 29 minutes 38 seconds East a distance of 191.62 feet; thence South 86 degrees 31 minutes 28 seconds East a distance of 58.94 feet; thence North 89 degrees 26 minutes 45 seconds East a distance of 139.90 feet; thence South 00 degrees 33 minutes 15 seconds East a distance of 35.32 feet; thence North 89 degrees 26 minutes 45 seconds East a distance of 125.00 feet; thence South 00 degrees 33 minutes 15 seconds East a distance of 99.68 feet; thence North 89 degrees 26 minutes 45 seconds East a distance of 17.00 feet; thence South 00 degrees 33 minutes 15 seconds East a distance of 50.00 feet; thence South 89 degrees 26 minutes 45 seconds West a distance of 64.00 feet; thence South 00 degrees 33 minutes 15 seconds East a distance of 770.00 feet; thence South 89 degrees 26 minutes 45 seconds West a distance of 614.00 feet; thence South 29 degrees 34 minutes 29 seconds West a distance of 98.73 feet; thence South 41 degrees 16 minutes 44 seconds West a distance of 180.54 feet; thence South 00 degrees 49 minutes 06 seconds East a distance of 108.60 feet to the South line of said Southeast Quarter; thence South 89 degrees 10 minutes 54 seconds West along the South line thereof a distance of 468.95 feet to the POINT OF BEGINNING. Containing 32.841 acres, more or less.

Exhibit Y

Legal Description of the
“Additional Real Estate” for Harvest Park

A part of the Southeast Quarter of Section 30, Township 18 North, Range 2 East, Worth Township, Boone County, Indiana, being more particularly described as follows:

BEGINNING at the Southwest corner of said Southeast Quarter Section; thence North 00 degrees 33 minutes 14 seconds West (bearing system based on Indiana State Plane West Zone, NAD 1983) along the West line thereof a distance of 1289.84 feet to a "Mag" nail marking the Southwest corner of a tract of land described in Instrument Number 200700011369 in the Office of the Recorder of Boone County, Indiana; (the next 3 courses being along the perimeter lines of said tract) thence North 88 degrees 36 minutes 24 seconds East a distance of 272.25 feet to a 5/8 inch capped rebar marked "C2LS Firm #0035" (hereafter referred to as capped rebar); thence North 00 degrees 33 minutes 14 seconds West a distance of 160.00 feet to a capped rebar; thence South 88 degrees 36 minutes 24 seconds West a distance of 272.25 feet to a "Mag" nail on the West line of said Southeast Quarter; thence North 00 degrees 33 minutes 14 seconds West along the West line thereof a distance of 1160.00 feet to a "Mag" nail marking the Northwest corner of said Southeast Quarter; thence North 88 degrees 30 minutes 50 seconds East along the North line thereof a distance of 1318.32 feet to a capped rebar marking the Northeast corner of the Northwest Quarter of said Southeast Quarter; thence South 00 degrees 33 minutes 16 seconds East along the East line thereof a distance of 1321.37 feet to a capped rebar in a fence line; thence North 88 degrees 34 minutes 41 seconds East along a fence line a distance of 579.64 feet to a capped rebar marking the Northwest corner of a tract of land described in 201300009890 in said Recorder's Office; thence South 00 degrees 09 minutes 14 seconds East along the West line thereof a distance of 237.00 feet to a pipe marking the Southwest corner of said tract; thence North 88 degrees 18 minutes 00 seconds East along the South line thereof a distance of 280.00 feet to a capped rebar marking the Northwest corner of a tract of land described in Instrument Number 201100008219 in said Recorder's Office; thence South 01 degrees 02 minutes 16 seconds East along the West line thereof a distance of 285.00 feet to a pipe marking the Southwest corner of said tract; thence North 88 degrees 25 minutes 41 seconds East along the South line thereof a distance of 457.97 feet to a "Mag" nail marking the Southeast corner of said tract, said point also being on the East line of said Southeast Quarter; thence South 00 degrees 33 minutes 18 seconds East along the East line thereof a distance of 608.29 feet to a "Mag" nail marking the Northeast corner of a tract of land described in Instrument Number 200500512578 in said Recorder's Office; thence South 89 degrees 10 minutes 54 seconds West along the North line thereof a distance of 460.00 feet to a capped rebar marking the Northwest corner of said tract; thence South 00 degrees 33 minutes 18 seconds East along the West line thereof a distance of 190.00 feet to a capped rebar marking the Southwest corner of said tract, said point also being on the South line of said Southeast Quarter; thence South 89 degrees 10 minutes 54 seconds West along the South line thereof a distance of 2176.37 feet to the POINT OF BEGINNING. Containing 108.866 acres, more or less.

EXCEPT FOR:

SECTION 1

A part of the Southeast Quarter of Section 30, Township 18 North, Range 2 East, Worth Township, Boone County, Indiana, being more particularly described as follows:

BEGINNING at the Southwest corner of said Southeast Quarter Section; thence North 00 degrees 33 minutes 14 seconds West (bearing system based on Indiana State Plane West Zone, NAD 1983) along the West line thereof a distance of 1289.84 feet to the Southwest corner of a tract of land described in Instrument Number 200700011369 in the Office of the Recorder of Boone County, Indiana; thence North 88 degrees 36 minutes 24 seconds East along the South line thereof a distance of 272.25 feet to the Southeast corner of said tract; thence North 00 degrees 33 minutes 14 seconds West along the East line thereof a distance of 81.84 feet; thence North 89 degrees 26 minutes 45 seconds East a distance of 366.06 feet; thence South 87 degrees 22 minutes 46 seconds East a distance of 83.30 feet; thence South 78 degrees 45 minutes 10 seconds East a distance of 75.88 feet; thence South 70 degrees 29 minutes 38 seconds East a distance of 191.62 feet; thence South 86 degrees 31 minutes 28 seconds East a distance of 58.94 feet; thence North 89 degrees 26 minutes 45 seconds East a distance of 139.90 feet; thence South 00 degrees 33 minutes 15 seconds East a distance of 35.32 feet; thence North 89 degrees 26 minutes 45 seconds East a distance of 125.00 feet; thence South 00 degrees 33 minutes 15 seconds East a distance of 99.68 feet; thence North 89 degrees 26 minutes 45 seconds East a distance of 17.00 feet; thence South 00 degrees 33 minutes 15 seconds East a distance of 50.00 feet; thence South 89 degrees 26 minutes 45 seconds West a distance of 64.00 feet; thence South 00 degrees 33 minutes 15 seconds East a distance of 770.00 feet; thence South 89 degrees 26 minutes 45 seconds West a distance of 614.00 feet; thence South 29 degrees 34 minutes 29 seconds West a distance of 98.73 feet; thence South 41 degrees 16 minutes 44 seconds West a distance of 180.54 feet; thence South 00 degrees 49 minutes 06 seconds East a distance of 108.60 feet to the South line of said Southeast Quarter; thence South 89 degrees 10 minutes 54 seconds West along the South line thereof a distance of 468.95 feet to the POINT OF BEGINNING. Containing 32.841 acres, more or less.