

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HERITAGE TRACE

Cross References:

- (1) Special Warranty Deed dated as of October 4, 2001, and recorded October 26, 2001, as Instrument No. 2001-033096 in the Office of the Recorder of Johnson County, Indiana.
- (2) Final Plat of Heritage Trace, Section One, dated August 21, 2018, and recorded September 6, 2018, as Instrument No. 2018-019950 in the Office of the Recorder of Johnson County, Indiana, as amended by that Certificate of Correction of Heritage Trace, Section One, dated October 15, 2018, and recorded October 15, 2018, as Instrument No. 2018-023199 in the Office of the Recorder of Johnson County, Indiana.
- (3) Commitments Concerning the Use and Development of Real Estate Made in Connection with the Re-Zoning of Property dated June 15, 2004, and recorded June 16, 2004, as Instrument No. 2004-017795 in the Office of the Recorder of Johnson County, Indiana.
- (4) Settlement and Release dated February ____, 2017, and recorded June 28, 2018, as Instrument No. 2018-013939 in the Office of the Recorder of Johnson County, Indiana.

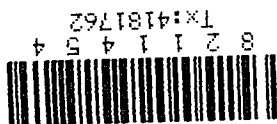


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EXHIBITS

- A Land Initially Submitted
- B By-Laws
- C Initial Rules
- D Land Subject to Annexation

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE TRACE is made as of this ____ day of _____, 2018, by BEAZER HOMES INDIANA LLP, an Indiana limited liability partnership f/k/a Crossman Communities Partnership, an Indiana general partnership (“**Declarant**”).

ARTICLE 1
CREATION OF THE COMMUNITY

Section 1.1 Purpose and Intent. This Declaration of Covenants, Conditions and Restrictions for Heritage Trace (“**Declaration**”) establishes a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance and preservation of Heritage Trace as a planned community. An integral part of the development plan is the formation of Heritage Trace Homeowners Association, Inc., an Indiana nonprofit corporation, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the Governing Documents (as defined in **Article 2** below).

This Declaration is not intended to create, nor shall it be construed or deemed to create, a condominium pursuant to Indiana law (Ind. Code § 32-25-1 et seq.).

Section 1.2 Binding Effect. Declarant hereby declares that all of the property described in **Exhibit A** and any additional property subjected to this Declaration by Supplemental Declaration (as defined in **Article 2** below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Community (as defined in **Article 2** below), their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Community.

All provisions of the Governing Documents shall apply to all owners and to all occupants of their dwellings, as well as their respective tenants, guests and invitees. Any lease on a dwelling shall provide that the lessee and all occupants of the leased dwelling shall be bound by the terms of the Governing Documents.

ARTICLE 2
DEFINITIONS

Unless otherwise specified, the capitalized terms in this Declaration and the attached exhibits shall be defined as follows:

“Area of Common Responsibility”: The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

“Articles of Incorporation” or **“Articles”**: The Articles of Incorporation of Heritage Trace Homeowners Association, Inc., as filed with the Secretary of State for the State of Indiana.

“Association”: Heritage Trace Homeowners Association, Inc., an Indiana nonprofit corporation, its successors or assigns.

“Base Assessment”: Assessments levied on all Units subject to assessment under **Article 8** to fund Common Expenses for the general benefit of all Units, as determined in accordance with **Section 8.1**.

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Board of Directors or **Board**: The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Indiana corporate law.

Builder: Any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person's business.

By-Laws: The By-Laws of Heritage Trace Homeowners Association, Inc., attached as **Exhibit B**, as they may be amended.

Commitments: That certain Commitments Concerning the Use and Development of Real Estate Made in Connection with the Re-Zoning of Property dated June 15, 2004, and recorded June 16, 2004, as Instrument No. 2004-017795 in the Office of the Recorder of Johnson County, Indiana.

Common Area: All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners; including, without limitation, any common areas or blocks identified on any Plat.

Common Expenses: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles. Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association. Common Expenses shall also include the obligations under any stormwater easement or management agreement Recorded at any time as to any portion of the Community.

Community or **Heritage Trace**: The property described in **Exhibit A** and any additional property made subject to this Declaration in the future by amendment or Supplemental Declaration in accordance with **Article 9**.

Community-Wide Standard: The standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standard may be more specifically determined by the Board and the DRC (as defined in **Section 4.2(a)** herein).

Declarant: Beazer Homes Indiana LLP, an Indiana limited liability partnership, or any successor, successor-in-title, or assign who takes title to any portion of the property described on **Exhibit A or Exhibit D** for the purpose of development and/or sale and who is designated as the Declarant in a Recorded instrument executed by the immediately preceding Declarant; provided, there shall be only one Declarant at any time.

Declarant Control Period: The period of time during which the Declarant is entitled to appoint the members of the Board of Directors as provided in the By-Laws.

Design Guidelines: The design and construction guidelines and application and review procedures applicable to the Community promulgated and administered pursuant to **Article 4**.

Exclusive Common Area: A portion of the Common Area primarily benefiting one or more Units as more particularly described in **Article 12**.

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Governing Documents: A collective term referring to this Declaration, any Supplemental Declarations, the By-Laws, the Articles, the Design Guidelines, the Rules, the Commitments, the PUD/Zoning Ordinance, the Settlement, and any applicable permits, licenses or approvals issued by any governmental agency for the Community, as they may be amended.

“Local Authority”: Johnson County, Indiana or the City of Greenwood, Indiana, as applicable.

“Master Plan”: The land use plan for the development of the Community, as it may be amended from time to time, which plan includes the property described on **Exhibit A** and all or a portion of the property described on **Exhibit D** that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on **Exhibit D** from the Master Plan bar its later annexation in accordance with **Article 9**.

“Member”: A Person subject to membership in the Association pursuant to **Section 6.2**.

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

“Mortgagee”: A beneficiary or holder of a Mortgage.

“Mortgagor”: Any Person who gives a Mortgage.

“Owner”: One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

“Person”: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

“Plat”: Any existing or future recorded subdivision plat of the Community; including, without limitation, that certain Final Plat of Heritage Trace, Section One, dated August 21, 2018, and recorded September 6, 2018, as Instrument No. 2018-019950 in the Office of the Recorder of Johnson County, Indiana, as amended by that Certificate of Correction of Heritage Trace, Section One, dated October 15, 2018, and recorded October 15, 2018, as Instrument No. 2018-023199 in the Office of the Recorder of Johnson County, Indiana.

“PUD/Zoning Ordinance”: Any existing or future zoning ordinance affecting the Community.

“Record,” “Recording,” or “Recorded”: To file, filing, or filed of record in the Office of the Recorder, Johnson County, Indiana, or such other place which is designated as the official location for recording deeds and similar documents affecting title to real estate. The date of Recording shall refer to that time at which a document, map, or plat is Recorded.

“Rules”: Those use restrictions and rules affecting the Community, which may be adopted, modified and repealed as set forth in **Article 3**. The initial Rules are set forth on **Exhibit C**.

“Settlement”: That certain Settlement and Release dated February ___, 2017, and recorded June 28, 2018, as Instrument No. 2018-013939 in the Office of the Recorder of Johnson County, Indiana.

“Special Assessment”: Assessments levied in accordance with **Section 8.4**.

“Supplemental Declaration”: An instrument Recorded pursuant to **Article 9** which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. For purposes of **Section 9.1** a Plat signed by Declarant which subjects the additional property to this Declaration shall also constitute a Supplemental Declaration.

“Unit”: A portion of the Community, whether improved or unimproved, depicted as a separately identified lot or parcel on a Plat, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residence for a single family. The term “Unit” refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a building within a condominium or other structure containing multiple dwellings for independent ownership, each dwelling shall be deemed to be a separate Unit. Vacant land or unplatted land on which improvements are under construction shall be deemed to be a single Unit until a Plat or condominium instrument is Recorded subdividing the land into more than one Unit.

ARTICLE 3 **USE AND CONDUCT**

Section 3.1 **Restrictions on Use, Occupancy, and Alienation.** The restrictions set forth in this **Section 3.1** may be amended only in accordance with **Section 18.2**.

(a) **General.** Units shall be used only for residential, recreational, and related purposes consistent with the Governing Documents. The provisions of this **Article 3** shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of the Community or its use of any Units which it owns within the Community.

(b) **No Business Use.** No business, trade, or similar activity shall be conducted within the Community except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Community; and (iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the Board's sole discretion.

The terms “**business**” and “**trade**,” as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required. Leasing a Unit shall not be considered a business or trade within the meaning of this subsection.

(c) **Leasing of Units.** “**Leasing**,” for purposes of the Governing Documents, is defined as regular, exclusive occupancy of a Unit by any Person, other than the Owner for which

(d) Subdivision of a Unit and Time-Sharing. No Unit shall be subdivided or its boundary lines changed; provided, Declarant, its successors and assigns, and Builders, with Declarant's advance approval, may subdivide, re-subdivide, change the boundary lines of, and replat Units and the Common Area in a manner consistent with the Community scheme of development, for so long as Declarant or any Builder owns any portion of the Community. No Unit shall be made subject to any type of timesharing, fraction-sharing, interval ownership or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

(e) Occupants Bound. All provisions of the Governing Documents shall apply to all occupants, guests, and invitees of any Unit. Every Owner shall cause all occupants, guests, and invitees of his or her Unit to comply with the Governing Documents and shall be responsible for all violations and losses to the Area of Common Responsibility caused by such Persons, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

Section 3.2 Framework for Regulation. The Community has been established and is administered pursuant to the Governing Documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

Section 3.3 Rule Making Authority. The initial Rules applicable to the Community are attached as Exhibit C to this Declaration. Subject to the terms of this **Article 3**, the Rules may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Rules set forth on Exhibit C. The Board shall send notice by mail to all Owners concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Rules by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) A rules change adopted under this **Section 3.3** shall take effect thirty (30) days after the date on which written notice of the rules change is given to the Owners.

(d) Nothing in this **Article 3** shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines or other provisions of this Declaration. In the event of any inconsistency between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the provisions of the Declaration and the Rules, the provisions of the Declaration shall control.

(e) The procedures required under this **Section 3.3** shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

Section 3.4 Owners' Acknowledgment and Notice to Purchasers. All Owners and occupants of Units are given notice that use of their Units is limited by the Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit may be affected and that the Rules may change from time to time. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

Section 3.5 Protection of Owners and Others. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in **Exhibit C**, neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) **Similar Treatment.** Similarly situated Owners and occupants shall be treated similarly.

(b) **Displays.** No rule shall abridge an Owner's right to display political, religious, or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number. Owners may display one "For Sale" or "For Rent" sign on their Units provided such signs are a similar size and quality as those used by local real estate brokers and agents which shall in no event exceed six square feet of surface area.

(c) **Household Composition.** No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

(d) **Activities Within Dwellings.** No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create an unreasonable source of annoyance, or that violate applicable laws, rules, or regulations.

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(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in **Article 8**.

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require minimum and maximum lease terms. Unless otherwise determined by the Board, the minimum lease term for a Unit shall not be less than one (1) year. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(g) Abridging Existing Rights. No rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(h) Reasonable Rights To Develop. No rule or action by the Association or Board shall unreasonably interfere Declarant's right to develop, market, and sell property within the Community.

(i) Interference with Easements. No rule may unreasonably interfere with the exercise of any easement.

Section 3.6 PUD/Zoning Ordinance; Commitments; Settlement. Notice is hereby given that Community is subject to the PUD/Zoning Ordinance, the Commitments and the Settlement. The PUD/Zoning Ordinance, the Commitments, and the Settlement, as they may be hereafter amended, are incorporated by reference, and each Owner by its acceptance of a deed to any Unit acknowledges that the foregoing shall burden the Unit and the Community and agrees to be bound thereby. To the extent there is any conflict between the restrictions in this Declaration and the restrictions in the PUD/Zoning Ordinance, the Commitments, or the Settlement, the more restrictive shall control.

ARTICLE 4 **DESIGN AND LANDSCAPING**

Section 4.1 General. All site work, landscaping, structures, improvements, and other items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit are subject to standards for design, landscaping, and aesthetics adopted pursuant to the Design Guidelines and the approval procedures set forth in this **Article 4**.

No Owner, other than Declarant or a Builder authorized by Declarant, may obstruct or rechannel drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant, authorized Builders, and the Association shall have such right; provided, the exercise of such

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right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme for such structures or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by the Declarant or its designee.

Approval under this **Article 4** is not a substitute for any approvals, consents, permits or reviews required by any municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This **Article 4** shall not apply to, limit, or otherwise control the Declarant's design and construction activities or to the Association's activities during the Declarant Control Period.

Section 4.2 Design Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Community, acknowledges that, as the developer of the Community and as an Owner of portions of Community as well as other real estate within the vicinity of the Community, Declarant has a substantial interest in ensuring that the improvements within the Community enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this **Article 4** ("**Work**") shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such Work, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this **Article 4** shall continue so long as Declarant owns any portion of the Community or any real property adjacent to the Community, unless earlier terminated in a written instrument executed and Recorded by Declarant.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this **Article 4** to a design review committee appointed by the Association's Board of Directors ("**DRC**"), or a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this **Article 4**, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by Declarant.

Design Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this **Article 4**, the Association, acting through the DRC, shall assume jurisdiction over design matters hereunder. The DRC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the DRC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRC or Declarant's rights under this **Article 4** terminate, the Association shall have no jurisdiction over design matters.

(c) Fees; Assistance. For purposes of this **Article 4**, the entity having jurisdiction in a particular case (i.e., the Declarant or the DRC) shall be referred to as the "**Reviewer**." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget as a Common Expense.

Section 4.3 Guidelines and Procedures

(a) Design Guidelines. Declarant has prepared the initial Design Guidelines, which may contain general provisions applicable to all of the Community. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Community or has a right to expand the Community pursuant to **Section 9.1**, notwithstanding a delegation of reviewing authority to the DRC, unless Declarant also expressly delegates the power to amend the Design Guidelines to the DRC. Upon termination or delegation of Declarant's right to amend, the DRC shall have the authority to amend the Design Guidelines with the approval of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Community. In Declarant's discretion, such Design Guidelines may be Recorded, in which event the Recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. No Work shall commence on any portion of the Community until an application for approval has been submitted to, and approved by, the Reviewer. Such application

IMAGE/COPY PROPERTY OF JOHNSON COUNTY, IA FOR "PLANS" ONLY NOT SITE LAYOUT, STRUCTURAL DESIGN, EXTERIOR ELEVATIONS, EXTERIOR MATERIALS AND COLORS, LANDSCAPING, DRAINAGE, EXTERIOR LIGHTING, IRRIGATION, AND OTHER FEATURES OF PROPOSED CONSTRUCTION, AS APPLICABLE. THE DESIGN GUIDELINES AND THE REVIEWER MAY REQUIRE THE SUBMISSION OF SUCH ADDITIONAL INFORMATION AS MAY BE REASONABLY NECESSARY TO CONSIDER ANY APPLICATION.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall, within thirty (30) days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's right to veto approval by the DRC pursuant to this **Section 4.3**. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted pursuant to **Section 4.5**. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

Until expiration of Declarant's rights under this **Article 4**, the DRC shall notify Declarant in writing within three (3) business days after the DRC has approved any application relating to proposed Work within the scope of matters delegated to the DRC by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC and the applicant.

If construction does not commence on a project for which Plans have been approved within one (1) year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this **Article 4**, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Section 4.4 **No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this **Article 4** will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

Section 4.5 **Variances.** The Reviewer may authorize variances from compliance with any of the Design Guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this **Section 4.5**, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 4.6 **Limitation of Liability.** The standards and procedures established by this **Article 4** are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this **Article 4** is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design.

Declarant, the Association, the Board, the DRC, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work, any defects in plans revised or approved hereunder, or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the Board, the DRC, and any members thereof shall be defended and indemnified by the Association as provided in **Section 7.6**.

Section 4.7 **Certificate of Compliance.** Any Owner may request that the Reviewer issue a certificate of compliance certifying that there are no known violations of this **Article 4** or the Design Guidelines. The Association shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

ARTICLE 5 **MAINTENANCE AND REPAIR**

Section 5.1 **Maintenance of Units.** Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and the Governing Documents, unless such maintenance responsibility is otherwise assumed by, or assigned to, the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with **Section 8.5**. The Association shall afford the Owner reasonable notice and an

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opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

Section 5.2 **Intentionally Omitted.**

Section 5.3 **Responsibility for Repair and Replacement.** Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with **Article 4**. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE 6
THE ASSOCIATION AND ITS MEMBERS

Section 6.1 **Function of Association.** The Association is the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association also is the primary entity responsible for administration and enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Indiana law.

Section 6.2 **Membership.** There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in **Section 6.3** and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. The Association shall maintain a current roster of all members, including, without limitation, the mailing address, legal description of their Unit; and for those members who have expressly consented to receive notice by other means, the email, fax, or other alternate means of notice that the Association shall permit.

Section 6.3 **Voting.** The Association shall have two classes of membership, Class "A" and Class "B."

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(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under **Section 6.2**; provided, there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under **Section 8.9**.

In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. So long as the Class "B" membership exists and unless otherwise expressly provided herein, no votes shall be exercised for Units owned by the Class "B" Member. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under the Governing Documents, are specified in the relevant provisions of the Governing Documents. The Class "B" Member is authorized to appoint the members of the Board of Directors during the Declarant Control Period, as specified in the By-Laws. After termination of the Declarant Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate two (2) years after expiration of the Declarant Control Period pursuant to the By-Laws unless the Declarant voluntarily terminates such membership earlier by Recording a written notice of termination. Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to one vote for each Unit which it owns.

Section 6.4 Intentionally Omitted.

ARTICLE 7 ASSOCIATION POWERS AND RESPONSIBILITIES

Section 7.1 Acceptance and Control of Association Property. The Declarant and its designees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Transfers of such real property or personal property may be made by quitclaim deed or quitclaim bill of sale, respectively, and shall be subject to all encumbrances, agreements, liens, and matters of record. No express or written acceptance of such property shall be required from the Association to be effective and acceptance of any such transfer by the Association shall be deemed granted hereby.

Upon the Declarant's written request, the Association shall reconvey to the Declarant any unimproved real property that the Declarant originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make adjustments in property lines or accommodate changes in the development plan.

The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The

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Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

Section 7.2 Maintenance of Area of Common Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) the Common Area and all improvements and structures situated thereon;
- (b) landscaping within public rights-of-way within or abutting the Community;
- (c) any ponds, streams and/or wetlands located within the Community which serve as part of the drainage and storm water retention system for the Community, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein; and any storm water management facilities subject to any agreement or easement in favor of the applicable governmental authorities;
- (d) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, Plat, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association or Declarant; and
- (e) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and to be maintained by the Association unless and until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association's obligation to maintain the Area of Common Responsibility shall include, but not be limited to, the obligation to undertake any monitoring, maintenance, repair, replacement or other action required by any applicable permits, licenses or approvals issued by any governmental agency for the Community.

There are hereby reserved to the Association easements over the Community as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and improvements within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on **Exhibit A or D** of this Declaration.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek

IMAGE/COPY PROPERTY OF JOHNSON COUNTY, IN FOR LICENSEE ONLY, NOT FOR RESALE. INFORMATION OF THE AREA OF Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof.

Section 7.3 Insurance.

(a) Required Coverages. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies the Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building codes and ordinances;

(ii) commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence and \$3,000,000.00 in the aggregate with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) directors and officers liability coverage;

(v) commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) such additional insurance as the Board, in its business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses.

IMAGE/COPY PROPERTY OF JOHNSON COUNTY, IN FORCE AS OF 11/15/2017. PLEASE CONTACT THE COUNTY CLERK FOR ANNUAL REVIEW OF THE SUFFICIENCY OF ITS INSURANCE COVERAGE BY ONE OR MORE QUALIFIED PERSONS, AT LEAST ONE OF WHOM MUST BE FAMILIAR WITH INSURABLE REPLACEMENT COSTS IN THE COUNTY IN WHICH THE COMMUNITY EXISTS.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the county in which the Community exists.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of **Section 7.3(a)**. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment pursuant to **Section 8.5**.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Indiana which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the Association's name as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, to the extent commercially available and allowed under existing insurance regulations, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(vi) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(vii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(viii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

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(ix) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(x) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(xi) a cross liability provision; and

(xii) a provision vesting in the Board exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Community covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct. In the event the Common Area damaged or destroyed is Exclusive Common Area, Members representing at least 75% of the Units to which the Exclusive Common Area is assigned must also agree not to repair or reconstruct the Exclusive Common Area. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

Section 7.4 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after

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notice and a hearing in accordance with the procedures set forth in the By-Laws. Subject to any limitations, conditions, or requirements under applicable laws, such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote subject to any limitations of applicable law including, without limitation, Ind. Code § 32-25.5-3-7;

(iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of **Article 4** and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of **Article 4** and the Design Guidelines from continuing or performing any further activities in the Community; and

(viii) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

(b) In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws but at all times subject to any limitations, conditions, or requirements under applicable law:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) Recording a notice of lien against a Unit for assessments due under this Declaration without the requirement of the signature of or any further consent of the Owner and enforcing such lien in the manner provided hereunder or in accordance with

(iii) bringing suit at law or in equity to enjoin any violation, to recover monetary damages or to foreclose a lien.

(c) In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation and may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees, filing fees, paralegal fees, title search and review charges, court costs, and all other costs and expenses reasonably incurred in such action.

(e) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

(f) The Association, by contract or other agreement, may enforce applicable Local Authority ordinances, if applicable, and permit any Local Authority having jurisdiction over the Community to enforce ordinances within the Community for the benefit of the Association and its Members.

Section 7.5 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

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Section 7.6 Indemnification of Officers, Directors and Others. To the fullest extent permitted by Indiana law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under the Articles and Indiana law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual gross negligence, intentional misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 7.7 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than it otherwise might be. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board and committees, and Declarant are not insurers and that each Person using the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

Section 7.8 Intentionally Omitted.

Section 7.9 Provision of Services. The Association may provide or provide for services and facilities for the Members, their guests, lessees, and invitees, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use and consumption fees for such services and facilities. By way of example, some services and facilities which might be offered include landscape maintenance, pest control service, cable television service, caretaker, transportation, fire protection, utilities, and similar services and facilities. Unless expressly provided otherwise herein, nothing herein shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing services provided, in its discretion, unless otherwise required by the Governing Documents. No Owner shall be exempt from the obligation to pay for such services, if provided to all Owners or Units as a Common Expense based upon non-use or any other reason. Notwithstanding the foregoing or anything to the contrary contained herein, the Board shall not enter into any contract that would result in a new assessment or the increase in an existing assessment payable by Members in the amount in excess of the amount permitted by Ind. Code § 32-25.5-3.4 (or any successor for replacement statute) unless the Board follows the applicable notice and voting procedures established by Ind. Code § 32-25.5-3.4 (or any successor for replacement statute) to the extent applicable.

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Section 7.10 Relations with Other Properties. The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services or a higher level of Common Area maintenance.

Section 7.11 Facilities and Services Open to the Public. Certain facilities and areas within the Community may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: roads, greenbelts, trails and paths, parks, docks, and other neighborhood spots conducive to gathering and interaction, roads, sidewalks, and medians. Declarant may designate such facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Area of Common Responsibility or the Board may so designate at any time thereafter. Use by the public may be made subject to the payment of user fees. The Board may adopt rules and regulations governing the public's use of any services, facilities, or areas within the Community.

ARTICLE 8 **ASSOCIATION FINANCES**

Section 8.1 Budgeting and Allocating Common Expenses. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to **Section 8.3**. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in **Section 8.6**.

The Association is hereby authorized to levy Base Assessments equally against all Units subject to assessment under **Section 8.6** to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under **Section 8.7(b)**), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budget. The budget shall be approved as provided in the By-Laws. Unless otherwise contrary to applicable law (in which event, the requirements of applicable law shall control), there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws, which petition must be presented to the Board within ten (10) days after delivery of the budget and notice of any assessment; and the failure to obtain a quorum of the membership at such meeting shall not prevent the budget from becoming automatically effective.

If any proposed budget for any year is not approved timely in accordance with the By-Laws (e.g., failure of a quorum), the Board may approve on its own a budget equal to no more than 110% of the budget most recently approved in accordance with the By-Laws until a new budget is approved.

IMAGE/COPY THE PROPERTY OF JOHNSON COUNTY IN FOR LICENSE ONLY, NOT FOR RESALE PURSUANT TO I.C. 36-2-7-10.
The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

Section 8.2 Intentionally Omitted.

Section 8.3 Budgeting for Reserves. The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to **Section 8.1** a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

Section 8.4 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment for a Common Expense shall require the affirmative vote or written consent of Owners representing more than 50% of the total Class "A" votes in the Association. Any Special Assessment shall also require the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Notwithstanding the foregoing, Special Assessments that are less than or equal to 25% of the current Base Assessment may be imposed without the affirmative vote of the Members to which such Special Assessment applies.

Section 8.5 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit, upon request of the Unit Owner, pursuant to any menu of special services which may be offered by the Association (which might include the items identified in **Section 7.9** and/or **Article 19**). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

Section 8.6 Authority To Assess Owners; Time of Payment. Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this **Article 8** and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is improved with a completed structure capable of occupancy and is conveyed by Declarant or Builder to an Owner, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this **Article 8**, whichever is later. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any installment of any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

Section 8.7 Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Indiana law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether any such assessment has been paid or remains unpaid. Such certificate shall be conclusive evidence of payment and shall be binding on the Association and the Members. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option to Make Contribution to the Association. During the Class "B" membership, Declarant shall have no obligation to pay assessments (whether Base, Special or Specific) on Units which it owns. Declarant shall have the right, but not the obligation, to make a contribution to the Association by paying assessments on Units it owns in the same manner as any other Owner or by paying the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. This contribution may, at the election of Declarant, be made in the form of a loan to the Association. Regardless of Declarant's election, Declarant's contribution hereunder may be made in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" membership, Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

IMAGE/COPY PROPERTY OF JOHNSON COUNTY IN FOR LICENSE ONLY. IT SHALL HAVE A LIEN AGAINST EACH UNIT TO SECURE PAYMENT OF DELINQUENT ASSESSMENTS, AS WELL AS INTEREST, LATE CHARGES, FINES (SUBJECT TO THE LIMITATIONS OF INDIANA LAW), AND COSTS OF COLLECTION (INCLUDING ATTORNEYS' FEES, FILING FEES, PARALEGAL FEES, TITLE SEARCH AND REVIEW CHARGES, COURT COSTS, AND ALL OTHER COSTS OF COLLECTION). SUCH LIEN SHALL BE SUPERIOR TO ALL OTHER LIENS, EXCEPT (A) THE LIENS OF ALL TAXES, BONDS, ASSESSMENTS, AND OTHER LEVIES WHICH BY LAW WOULD BE SUPERIOR, AND (B) THE LIEN OR CHARGE OF ANY RECORDED FIRST MORTGAGE (MEANING ANY RECORDED MORTGAGE WITH FIRST PRIORITY OVER OTHER MORTGAGES) MADE IN GOOD FAITH AND FOR VALUE. SUCH LIEN, WHEN DELINQUENT, MAY BE ENFORCED BY SUIT, JUDGMENT, JUDICIAL OR NONJUDICIAL FORECLOSURE IN THE SAME MANNER AS PROVIDED UNDER INDIANA LAW FOR MECHANIC'S LIENS OR OTHER COMMON LAW LIENS.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessments shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessments, its pro rata share of the assessments that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title; and such delinquent unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under **Section 8.6**, including such acquirer, its successors and assigns.

Section 8.9 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant that are included in the Area of Common Responsibility; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

Section 8.10 Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to 50% of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

ARTICLE 9 **EXPANSION OF THE COMMUNITY**

Section 9.1 Expansion by Declarant. Until all property described on **Exhibit D** has been subjected to this Declaration or twenty (20) years after the this Declaration is Recorded, whichever is earlier, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in **Exhibit D**. The Declarant may transfer or assign this right to

annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in **Exhibits A or D** and that such transfer is memorialized in a written, Recorded instrument executed by Declarant.

Such annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the Recording of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in **Exhibit D** in any manner whatsoever.

Section 9.2 Expansion by the Association. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with **Section 9.1**.

Such annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon Recording unless otherwise provided therein.

Section 9.3 Additional Covenants and Easements. The Declarant may subject any portion of the Community to additional covenants and easements by Recording a Supplemental Declaration, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the subject property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

Section 9.4 Effect of Filing Supplemental Declaration. A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

ARTICLE 10 **ADDITIONAL RIGHTS RESERVED TO DECLARANT**

Section 10.1 Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this **Section 10.1**, for the purpose of removing any portion of the Community from the coverage of this Declaration subject, however, to any limitations, requirements, and conditions required by applicable laws. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

Section 10.2 Marketing and Sales Activities. Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as,

in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, construction offices, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities and shall not be subject to fees or rental charges.

Section 10.3 Right To Develop. Declarant reserves for itself and its employees, agents and designees a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

Every Person that acquires any interest in the Community acknowledges that the Community is a planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise object to (a) changes in uses or density of property, or (b) changes in the Master Plan.

Section 10.4 Right To Approve Additional Covenants. So long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with **Section 9.1**, no Person shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

Section 10.5 Right To Approve Changes in Community Standards. No amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with **Section 9.1**.

Section 10.6 Right To Transfer or Assign Declarant Rights. Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed and Recorded by Declarant. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

Section 10.7 Exclusive Rights To Use Name of Development. No Person shall use the name "*Heritage Trace*" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "*Heritage Trace*" in printed or promotional matter where such term is used solely to specify that particular property is located within Heritage Trace and the Association shall be entitled to use the words "*Heritage Trace*" in its name.

Section 10.8 Termination of Rights. Unless expressly provided otherwise herein, the rights contained in this **Article 10** shall not terminate until the earlier of (a) 20 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased.

IMAGE/COPY PROPERTY OF JOHNSON COUNTY IN FAVOR OF THE APPLICANT AND ANY OTHER PROVISION OF THIS DECLARATION THAT
~~Section 10.9~~ **Amendment.** This ~~Article 10~~, and any other provision of this Declaration that reserves or grants Declarant any right or privilege, may not be amended without the written consent of the Declarant, so long as Declarant owns any property within the Community or has the right to subject additional property to this Declaration pursuant to **Section 9.1**.

ARTICLE 11
EASEMENTS

Section 11.1 Easements in Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) Subject to any limitations, requirements, and conditions required by applicable law, the right of the Board to:
 - (i) adopt rules pursuant to **Article 3** regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend the right of an Owner to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facilities situated upon the Common Area;
 - (v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of such use fees as the Board may establish; and
 - (vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
- (d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated Exclusive Common Areas, as described in **Article 12**.

Any Owner may extend his or her right of use and enjoyment of the Common Area to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights of use and enjoyment of the Common Area to the lessee of such Unit.

IMAGE/CO Section 11.2 OF JEFFERSON COUNTY DEEDS PUBLIC OFFICE, NOT FOR RESALE PURSUANT TO I.C. 36-2-7-10.
Section 11.2 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

Notwithstanding the foregoing, Declarant reserves for itself and its employees, agents and designees, a right of access and use and an easement over and upon all of the Community (but not through a structure) to the extent reasonably necessary for the purpose of installing and maintaining roads, trails, pathways and walkways for the enjoyment, use, access, and development of the Community. This shall include, but not be limited to, the right to locate a portion of such roads, trails, pathways and walkways on a Unit for a distance that exceeds three feet from the common boundary for the benefit of the Declarant, the Association and its Members, provided such encroachment does not eliminate the ability of the Owner of such Unit to construct or maintain a dwelling on the Unit. The Declarant further reserves for itself, the Association and the Members, a right of access and use and an easement over such roads, trails, pathways and walkways. Such encroachment, and any use of such roads, trails, pathways and walkways shall not be deemed a trespass.

Section 11.3 Easements for Utilities, Etc.

(a) **Installation and Maintenance.** There are hereby reserved to the Declarant, so long as the Declarant owns any property described on **Exhibit A or D** of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Community (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; street lights and signage; all Common Area improvements; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on any Plat. This shall include, but not be limited to, the right to temporarily place construction materials and debris on Units and the Common Area.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable; provided that except for service lines constructed on a Unit to serve such Unit, no such lines, meters, and boxes shall be installed without Declarant's consent except in utility easements created by Plat or separate easement instrument.

(b) **Specific Easements.** There is hereby reserved to the Declarant, so long as the Declarant owns any property described on **Exhibit A or D** of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on **Exhibit A or D**.

IMAGE/COPY PROPERTY OF JOHNSON COUNTY. IT IS FOR LICIT USE ONLY. NOT FOR RESALE PURSUANT TO I.C. 36-2-7-10

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this **Section 11.3** shall be promptly repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant of such Unit.

Section 11.4 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over all roads, drainage systems, detention/retention basins, sidewalks, trails, utility easements and the Common Area for the purposes of enjoyment, use, access, and development of the property described in **Exhibit D**, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over and use of the Common Area for connecting and installing utilities, roads, sidewalks, trails, and other necessary facilities for use on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.

Section 11.5 Easements for Maintenance, Emergency and Enforcement. Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under **Section 7.2**. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Section 11.6 Easements for Wetlands and Water Feature Maintenance and Flood Water. Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon any bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any portion of the Community abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this **Section 11.6**. Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 100 feet of bodies of water and wetlands within the Community, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Community; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

Section 11.7 Conservation and Preservation Easement. Pursuant to the conceptual goal established as part of the Preliminary Development Plan in the PUD/Zoning Ordinance, Declarant reserves unto itself during the Declarant Control Period, and thereafter unto the Association, conservation and preservation easements (“**Conservation and Preservation Easement**”) identified on any Plat, within which trees are not to be removed unless certain conditions exist. In addition, since the growth of trees is

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strongly encouraged in the Community, no Owner shall be permitted to remove a tree greater than three inches (3") in diameter upon his or her Unit unless it is diseased or dead. For trees that are not diseased or dead, the Owner must seek the prior approval of the Reviewer for permission to remove a tree. The Reviewer may consider whatever factors are reasonably appropriate in rendering a decision, such as the Owner's desire to make improvements on his or her Unit or whether tree removal would improve drainage.

ARTICLE 12 **EXCLUSIVE COMMON AREAS**

Section 12.1 Purpose. Certain portions of the Common Area may be designated as Exclusive Common Area and assigned for the exclusive use or primary benefit of one or more Units within the Community. By way of illustration and not limitation, Exclusive Common Areas may include common driveways, entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area. At the election of the Board, all costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area may be allocated among the Units to which the Exclusive Common Area is assigned and assessed as a Specific Assessment.

Section 12.2 Designation. Initially, any Exclusive Common Area shall be designated as such in the Supplemental Declaration submitting such property to the Declaration, in the deed conveying such area to the Association, a Recorded declaration by Declarant, or on a Plat relating to such Common Area. Any such designation shall not preclude Declarant from later assigning use of the same Exclusive Common Area to additional Units, so long as Declarant has a right to subject additional property to this Declaration pursuant to **Section 9.1**.

Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area and Exclusive Common Area may be reassigned upon approval of the Board and the vote of a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes for the Units affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with **Section 9.1**, any such assignment or reassignment shall also require Declarant's written consent.

Section 12.3 Use by Others. Upon approval of a majority of Class "A" votes of Units to which any Exclusive Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the expenses attributable to such Exclusive Common Area.

ARTICLE 13 **PARTY WALLS AND OTHER SHARED STRUCTURES**

Section 13.1 General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this **Article 13**, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 13.2 Maintenance; Damage and Destruction. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who

has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

Section 13.3 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this **Article 13** shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

ARTICLE 14 **LIMITATION ON LITIGATION**

Except as provided in this **Article 14**, the Association shall not commence a judicial or administrative proceeding without the approval of Owners representing at least 75% of the Class "A" votes in the Association and the consent of the Class "B" member. This **Article 14** shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This **Article 14** shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

ARTICLE 15 **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Community.

Section 15.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Unit or the Owner or Occupant which is not cured within sixty (60) days; or
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 15.2 Other Provisions for First Lien Holders. To the extent not inconsistent with Indiana law:

- (a) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the

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Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

Section 15.3 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 15.4 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

ARTICLE 16 **CHANGES IN OWNERSHIP OF UNITS**

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

ARTICLE 17 **CHANGES IN COMMON AREA**

Section 17.1 Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with **Section 9.1**) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with **Section 9.1**, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of **Section 7.3(c)** regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

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Section 17.2 Partition. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This **Section 17.2** shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

Section 17.3 Transfer or Dedication of Common Area. The Association may dedicate portions of the Common Area to any Local Authority or to any other state, or federal governmental or quasi-governmental entity.

ARTICLE 18 **GENERAL PROVISIONS**

Section 18.1 Duration.

(a) Unless terminated as provided in **Section 18.1(b)**, this Declaration shall have perpetual duration. If Indiana law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein.

(b) Unless otherwise provided by Indiana law, in which case such law shall control, this Declaration may not be terminated within the first twenty (20) years after the date of Recording without the consent of all Unit Owners. Thereafter, it may be terminated only by a Recorded instrument signed by Owners of at least 75% of the Class "A" votes and by the Declarant, if the Declarant owns any portion of the Community. Nothing in this **Section 18.1** shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

Section 18.2 Amendment.

(a) The Owners may amend this Declaration with the consent of (i) at least 75% of the Class "A" votes; and (ii) the Declarant; provided that Declarant's consent shall only be required to the extent (1) the Declarant still owns one (1) or more Units in the Community, and (2) not more than seven (7) years have passed since the Recording of this Declaration. Notwithstanding the following, the consent of 95% of the Class "A" votes shall be required to convey common area (except by Declarant to the Association or as otherwise expressly provided or permitted herein) or to dissolve the plan of governance. Consent may be obtained by a vote of the Owners at a meeting duly called for the purpose of considering the amendment and/or by written consent signed by the Owners.

(b) In addition to specific amendment rights granted elsewhere in this Declaration and unless otherwise prohibited by applicable law, during the Declarant Control Period the Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or

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In addition, during the Class "B" membership, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment is consistent with the overall plan of development for the Community.

(c) Notwithstanding the above, the percentage of votes necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision; and no amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon Recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 18.3 Severability. If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

Section 18.4 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this **Section 18.4** shall preclude any Supplemental Declaration or other Recorded declaration, covenants and restrictions applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same. If there are conflicts between any of the Governing Documents and Indiana law, Indiana law shall control. If there are conflicts between or among any of the Governing Documents, then the Declaration, the Articles, and the By-Laws (in that order) shall control.

Section 18.5 Savings Clause. If any covenant, restriction or provision contained in this Declaration shall be declared invalid or unenforceable, or a conflict with applicable law (including, without limitation, Ind. Code § 32-25.5-3-1 et seq.), such invalidity, unenforceability, or conflict shall not in any way affect any of the other provisions hereof, which shall remain valid and enforceable to the fullest extent permitted by law; provided that in lieu of such invalid, unenforceable, or conflicting provision, there will be added to this Declaration a provision as similar in terms to reflect the intent of Declarant as set forth herein to such invalid, unenforceable, or conflicting provision as may be possible and yet be valid, enforceable, and conforming to applicable law (or such provision shall be modified, as applicable, to the extent necessary to be valid, enforceable, and conforming to applicable law). Any mandatory obligation or provision required to be incorporated into any single family community by declaration of covenants executed on or before the date hereof (including, without limitation, Ind. Code § 32-25.5-3-1 et seq. or any successor statute(s)) is hereby incorporated by reference. Further, to the extent of a conflict in this Declaration with any mandatory requirement of Ind. Code § 32-25.5-3-1 et seq. (or any successor statute(s)) or any other mandatory requirement prescribed by Indiana or federal law with regard to notice or consent of any party (including, without limitation, any mortgagee), the terms of Ind. Code § 32-25.5-3-1 et seq. (or any successor statute(s)) or such other applicable state or federal law shall control.

Section 18.6 Exhibits. Exhibits A and D attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of **Section 18.2.**

Exhibit C attached to this Declaration is incorporated by this reference and amendment of such exhibit shall be governed by the provisions of **Article 3**. All other exhibits are attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 24 day of October, 2018.

[SIGNATURE PAGE FOLLOWS]

Land Initially Submitted

Part of the West Half of the Southwest Quarter of Section 10, Township 13 North, Range 4 East of the second principal meridian Johnson County, Indiana described as follows:

Beginning at the Southwest corner of the Southwest Quarter of said section; thence North 00 degrees 09 minutes 21 seconds East (assumed bearing) along the West line of said Quarter Section 1151.00 feet to the Southwest corner of Instrument Number 95-17809 recorded in the records of the Johnson County Recorder, the next 2 courses follow the South and East line of last said Instrument; 1) thence South 89 degrees 50 minutes 39 seconds East 355.25 feet; 2) thence North 00 degrees 52 minutes 35 seconds West 222.04 feet; thence North 88 degrees 55 minutes 34 seconds East 310.32 feet to the North line of the Southwest Quarter of said Quarter Section; thence North 88 degrees 09 minutes 46 seconds East along last said North line 661.90 feet to the Northwest Corner of said Quarter Quarter Section; thence South 00 degrees 10 minutes 03 seconds West along the East line of said Quarter Quarter Section 1347.54 feet to the Southeast corner of said Quarter Quarter Section; thence South 88 degrees 12 minutes 05 seconds West along the South line of said Quarter Quarter Section 1323.50 feet to the point of beginning containing 39.51 acres, more or less, subject to all pertinent right-of-way, easements and restrictions.

EXCEPT:

A part of the West Half of the Southwest Quarter of Section 10, Township 13 North, Range 4 East of the Seconds Principal Meridian, Johnson County, Indiana described as follows:

Beginning at the Southwest Corner of said Half Quarter Section, said point also being the southwest corner of Instrument Number 2001-033096 in the records of the Office of the Recorder of Johnson County, Indiana. Thence North 00 degrees 21 seconds East (assumed bearing) along the West line of said Half Quarter Section, said line also being the West line of said Instrument Number 540.00 feet to a railroad spike set; thence North 88 degrees 12 minutes 01 seconds East parallel with the South line of said Half Quarter Section 887.83 feet to a capped rebar set; thence South 00 degrees 09 minutes 21 seconds West parallel with the West line of said Half Quarter Section 540.00 feet to a capped rebar set on the South line of said Half Quarter Section said line also being the South line of said Instrument Number; thence South 88 degrees 12 minutes 01 seconds West along last said South lines 887.83 feet to the point of beginning containing 11.000 acres, more or less.

By-Laws

**By-Laws
of
Heritage Trace
Homeowners Association, Inc.**

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**BY-LAWS
OF
HERITAGE TRACE
HOMEOWNERS ASSOCIATION, INC.**

ARTICLE 1.

NAME, PRINCIPAL OFFICE, AND DEFINITIONS

Section 1.1 **Name.** The name of the corporation is Heritage Trace Homeowners Association, Inc. (“**Association**”).

Section 1.2 **Principal Office.** The Association's principal office shall be located at 9405 Delegates Rows, Indianapolis, Marion County, Indiana 46240. The Association may have such other offices as the Board may determine or as the Association's affairs require.

Section 1.3 **Definitions.** The words used in these By-Laws shall be given their normal, commonly understood definitions. Unless otherwise indicated herein, capitalized terms shall be defined as provided in that certain Declaration of Covenants, Conditions and Restrictions for Heritage Trace (as amended, the “**Declaration**”).

ARTICLE 2.

MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES

Section 2.1 **Membership.** The Association initially shall have two classes of membership, Class “A” and Class “B,” as more fully set forth in the Declaration and Articles. The provisions of the Declaration pertaining to membership are incorporated by this reference. Membership shall be appurtenant to, and may not be separated from, ownership of a Unit. In the event that fee title to such Unit is transferred or otherwise conveyed, the membership in the Association shall automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or evidences of such membership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership.

Section 2.2 **Place of Meetings.** The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

Section 2.3 **Annual Meetings.** The Association shall hold a meeting of its membership at least once each year. The Association shall hold its first meeting, whether regular or special meeting, within one year from the date of incorporation of the Association. Annual meetings may be conducted electronically (e.g., via internet or teleconference) if, and to the extent, permitted by law.

Section 2.4 **Special Meetings.** The President or a majority of the Board may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or upon a written petition signed by Owners entitled to cast at least 10% of the total Class “A” votes of the Association or of the Class “B” member. Any such meeting called by the Owners shall occur within thirty (30) days after the Board's receipt of the Owner's petition.

Section 2.5 **Notice of Meetings.** The President, the Secretary, or the officers or other persons calling a meeting of the membership shall deliver or cause to be delivered to each Owner entitled

to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws notice shall also state the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted by these By-Laws, at least ten (10) before the date of such meeting.

Section 2.6 **Waiver of Notice.** Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. A Member's attendance at a meeting shall be deemed a waiver by such Member of notice of the time, date, and place of the meeting, unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

Section 2.7 **Adjournment of Meetings.** If any Association meeting cannot be held because a quorum is not present, the Members entitled to cast a majority of the votes present at such meeting may adjourn the meeting to a time at least five (5) but not more than thirty (30) days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the Members of the time and place for reconvening the meeting in the manner prescribed for regular meetings. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members to leave less than a quorum. However, Members entitled to cast at least a majority of the votes required to constitute a quorum must approve any action taken.

Section 2.8 **Voting.** Members shall have such voting rights as are set forth in the Declaration and Articles, and such voting rights provisions are specifically incorporated by this reference.

Section 2.9 **Proxies; Written Ballots.** Any Member may cast the votes allocated to such Member's Unit either in person, by proxy, or by written ballot, subject to the applicable requirements of Indiana law, and subject to any specific provision to the contrary in the Declaration, Articles, or these By-Laws. Every proxy or ballot shall be in writing, shall identify the Unit for which it is given, shall be signed by the Member or the Member's duly authorized attorney-in-fact, shall be dated and filed with the Association's Secretary prior to the meeting for which it is to be effective, and shall conform at all times to the requirements of Indiana law, including, without limitation Ind. Code § 32-25.5-3-10. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast a vote. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. There shall be only one ballot permitted per Unit. In the event two or more ballots are received for one Unit the ballots for such Unit shall be deemed invalid. A proxy is effective only for the specific meeting for which it was originally given but may extend to such meeting as may be lawfully adjourned and reconvened so long as such proxy so states and further states that it expires on a stated date that may not be more than one hundred eighty (180) days after the date for which such proxy was given. Every proxy is revocable at any time at the pleasure of the Member who executes the proxy.

Section 2.10 **Majority.** As used in these By-Laws, the term "majority" shall mean those votes totaling more than 50% of the total eligible number.

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Section 2.11 **Quorum.** Except as these By-Laws, the Declaration, or applicable law otherwise provides, the presence either in person or by proxy of Owners entitled to cast 10% of the total votes in the Association shall constitute a quorum at all Association meetings and the vote of Owners entitled to cast a majority of the total eligible votes cast shall constitute the action of the membership. Upon the expiration of the Declarant Control Period the quorum requirement shall be increased to 20%. If any meeting cannot be held because a quorum is not obtained, the meeting may be rescheduled for another time not less than five (5) days nor more than thirty (30) days of the original date.

Section 2.12 **Conduct of Meetings.** The President shall preside over all Association meetings. The Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

Section 2.13 **Action Without a Meeting.** Except as provided in the Declaration, the Articles, or Indiana law any action that may be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote if approved in writing by the lesser of: eighty percent (80%) of the Members, or the number of Members required by applicable law. Such approval shall be evidenced by one or more written ballots specifically authorizing the proposed action that are dated and signed by Members holding the requisite votes. The Association need not give prior notice before soliciting such consent; however, the Association must send written ballots to all Members entitled to vote on the matter for any action authorized pursuant to this section to be valid. Members shall sign, date, and deliver such ballots to the Association within sixty (60) days after the Association's receipt of the earliest dated ballot. The Association's Secretary shall file (or cause to be filed) such ballots with the Association's minutes and the ballots shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE 3.

BOARD OF DIRECTORS: SELECTION, MEETINGS, POWERS

A. Composition and Selection.

Section 3.1 **Governing Body; Composition.** The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Class "B" Member, directors shall be Members or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within the Community. If a Member is not an individual, any officer, director, partner, or any trust officer of such Member shall be eligible to serve as a director unless a written notice to the Association signed by the Member specifies otherwise. However, no Member may have more than one such representative on the Board at a time except in the case of directors appointed by the Class "B" Member.

Section 3.2 **Number of Directors.** The Board shall consist of three (3) or five (5) directors as provided in these By-Laws. The initial Board shall consist of the three members appointed by the Class "B" Member. The number of directors on the Board shall be increased to five (5) at the first election for the Board following the Declarant Control Period. After the first election of the Board, the number of directors may be increased up to seven (7) upon a resolution approved by a majority of the Board.

Section 3.3 **Directors During the Declarant Control Period.** During the Declarant Control Period, the Class "B" Member shall have the right to appoint the members of the Board. Directors

IM appointed by the Class "B" Member shall serve at the pleasure of the Class "B" Member. The Declarant Control Period shall expire upon the sale of 100% of the Units within the Community to Owners other than Builders. Upon the termination of the Declarant Control Period, directors shall be elected as provided in Sections 3.4 and 3.5 of these By-Laws.

Section 3.4 **Nomination and Declarations of Candidacy.** Prior to each election of directors, the Board shall prescribe the opening date and closing date of a reasonable filing period in which each and every eligible person who has a bona fide interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes. The Board shall also establish such other rules and regulations it deems appropriate to conduct the nomination of directors in a fair, efficient and cost effective manner. Nominations shall also be permitted from the floor at the meeting at which any election is held. Except with respect to directors selected by the Class "B" Member, a Nominating Committee appointed by the Board may also make nominations for election to the Board. The Nominating Committee, if any, shall consist of a chairman, who shall be a Board member, and three (3) or more Members or representatives of Members. The Nominating Committee shall be appointed not less than sixty (60) days prior to each annual meeting to serve a term of one (1) year or until their successors are appointed. The names of the Nominating Committee members shall be announced in the notice of each election. In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Owners at such election. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Section 3.5 **Election and Term of Office.** The first election of the Board shall take place at the later of (a) annual meeting immediately following the termination of the Declarant Control Period; or (b) one hundred twenty (120) days after the termination of the Declarant Control Period. Of the directors elected at the first election of the Board, two will serve a one (1) year term and three will serve a two (2) year term as the directors shall determine among themselves. If the directors are unable to agree on the terms to be served by the initial members of the Board, the names of the directors shall be drawn at random from a hat. The directors whose names are the first two drawn shall serve a term of one (1) year and the remaining directors shall serve a term of two (2) years. Thereafter, directors shall be elected to serve two (2) year terms. In the event the number of directors is increased to seven (7) as provided in Section 3.2, of the directors first elected to those newly created seats on the Board, one will serve a term of one (1) year and one will serve a term of two (2) years as determined by the Board. Thereafter, directors for the two (2) newly created seats on the Board shall be elected to serve two (2) year terms.

At each election, voting shall be by written ballot. Each Owner may cast all votes assigned to the Units it represents for each position to be filled by the votes of Owners. Cumulative voting is prohibited. In the discretion of the Board and so long as it is not prohibited by applicable law, the election may be held by mail or by electronic balloting via a community intranet, website, or other means, or any combination of methods by which Owners may conveniently cast their votes. Notice of any election by which ballots may be cast other than at a meeting shall be in writing, shall include a copy of the ballot, and shall state the deadline for casting of ballots and the address to which ballots may be mailed or hand delivered. Such notice shall be given not less than ten (10) days prior to the deadline set for close of the balloting.

Section 3.6 **Removal of Directors, Resignations and Vacancies.** Any director may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Members, the Members entitled to elect the removed director shall elect a successor for the remainder of the term of such director.

who has three consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent (or resides in a Unit owned by an Owner who is so delinquent) in the payment of any assessment or other charge due the Association. The Board may appoint a successor to fill the vacancy for the remainder of the term.

Any director may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members shall elect a successor for the remainder of the term. This section shall not apply to any directors appointed by the Class "B" Member during the Declarant Control Period.

B. Meetings.

Section 3.7 **Organizational Meetings.** The Board shall hold an organizational meeting within ten (10) days following each annual Association meeting at such time and place as the Board shall fix.

Section 3.8 **Regular Meetings.** The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four (4) times during each fiscal year with at least one (1) meeting per quarter.

Section 3.9 **Special Meetings.** Special meetings of the Board may be called by written notice signed by the President or by any two (2) members of the Board other than the President.

Section 3.10 **Notice; Waiver of Notice.**

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into United States Mail at least five (5) business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or electronic communication at least 72 hours before the time set for the meeting.

(b) The Board shall notify the Members of each Board meeting by either: (i) posting notice of the meeting in a conspicuous place in the Community at least 48 hours in advance of the meeting; (ii) publication of a schedule of the Board meetings in a newspaper, newsletter, on a community intranet or website, or by similar means at least seven (7) days prior to the meeting; or (iii) mailing notice of the meeting to each Member.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present,

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and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 3.11 **Telephonic Participation in Meetings.** Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

Section 3.12 **Quorum of Board.** At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Indiana law, these By-Laws, or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

Section 3.13 **Conduct of Meetings.** The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

Section 3.14 **Open Meetings; Executive Session.**

(a) Subject to the provisions of **subsection 3.14(b)** and **Section 3.15**, all Board meetings shall be open to all Members, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may to the extent not prohibited by applicable Indiana law (including Ind. Code § 32-25.5-3-3) exclude persons other than directors, to discuss matters of a sensitive nature, such as proposed, pending, or threatened litigation, personnel matters, matters relating to the formation of contracts with third parties, or other matters specified by law. The Board also shall meet in executive session if requested by a Member who may be subject to a fine, penalty, or other form of discipline; provided the Member requesting such executive session shall be entitled to attend. The general nature of any business to be considered in executive session shall first be announced in open session and any matter discussed in executive session shall be generally noted in the minutes of the Board.

Section 3.15 **Action Without a Formal Meeting.** Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote. If the Board resolves by unanimous written consent to take action, an explanation of the action taken shall be posted at a prominent place or places within the Community within three (3) days after the written consents of all the Board members have been obtained.

C. Powers and Duties.

Section 3.16 **Powers.** The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or Indiana law require to be done and exercised exclusively by the Members.

Section 3.17 **Duties.** The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) opening bank accounts on the Association's behalf and designating the signatories required;
- (f) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (g) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (h) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;
- (i) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (j) paying the cost of all services rendered to the Association;
- (k) keeping a detailed accounting of the Association's receipts and expenditures;
- (l) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in **Section 7.4**; and

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indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Indiana law, the Articles and these By-Laws.

Section 3.18 **Compensation.** The Association shall not compensate any director for acting as such unless Owners entitled to cast a majority of the total Class "A" votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

Section 3.19 **Right of Class "B" Member to Disapprove Actions.**

(a) So long as the Class "B" membership exists and notwithstanding any other term, provision, or requirement to the contrary herein, but at all times subject to applicable law, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Class "B" Member's sole judgment, would tend to impair rights of the Declarant or Builders under the Governing Documents, interfere with development or construction of any portion of Community, diminish the level of services the Association provides, or diminish the value of unsold Units.

(b) The Association, the Board, and each committee shall give the Class "B" Member written notice of all meetings and all proposed actions approved at meetings (or by written consent in lieu of a meeting). The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Class "B" Member has registered with the Association. Such notice shall comply as to Board meetings with **Sections 3.8, 3.9, 3.10 and 3.11** and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(c) At any such meeting, the Association shall give the Class "B" Member the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy, or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of **subsections (b) and (c)** of this section have been met.

The Class "B" Member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action.

The Class "B" Member may use this right to disapprove or to block proposed actions but shall not use it to require any particular action on behalf of any committee, the Board, or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services the Association is

obligated to provide for to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 3.20 **Management.** The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(e) and 3.17(h). The Board may employ the Declarant or its affiliate as a managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

Section 3.21 **Accounts and Reports.**

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(ii) accounting and controls should conform to generally accepted accounting principles; and

(iii) the Association's cash accounts shall not be commingled with any other accounts;

(iv) the managing agent shall disclose promptly to the Board any financial or other interest which the managing agent may have in any firm providing goods or services to the Association;

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association within sixty (60) days after the end of each quarter:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 30th day following the due date unless the Board specifies otherwise by resolution). A copy of the quarterly financial report shall be made available at no charge to any Member requesting a copy.

(c) An annual report consisting of at least the following shall be made available for Members' review within one hundred twenty (120) days after the close of the fiscal year:

- (ii) an operating (income) statement; and
- (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent accountant; provided, upon written request of any holder, guarantor, or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement.

Section 3.22 **Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain approval of the Members in the same manner as provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all debt incurred within the previous 12-month period, exceeds or would exceed 10% of the Association's budgeted gross expenses for that fiscal year. During the Declarant Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Owners representing at least 51% of the votes in the Association. Any borrowing shall be further limited by, and subject to, any requirements under Indiana law including, without limitation, Ind. Code § 32-25.5-3-5.

Section 3.23 **Right to Contract.** Subject to the provisions of Indiana law, the Declaration, and these By-Laws, the Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood associations and other owners or residents associations, within and outside the Community. Any common management agreement shall require the consent of a majority of the Board.

Section 3.24 **Enforcement.** The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

- (a) Prior to the imposition of any sanction under the Governing Documents, the Board or its delegate shall serve the alleged violator with written notice (i) describing the nature of the alleged violation, (ii) describing the proposed sanction to be imposed, (iii) that the alleged violator shall have fifteen (15) days to present a written request for a hearing before the Board; and (iv) including a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within fifteen (15) days of the notice. The alleged violator shall respond to the notice of the alleged violation in writing within such fifteen (15) day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such fifteen (15) day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) day period. Prior to the effectiveness of sanctions imposed pursuant to this section, proof of proper notice shall be placed in the minutes of the Board. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

IMAGE/COF(b)ROPEIf a hearing is requested within the allotted fifteen (15) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The alleged violator shall be given written notice of the results of the hearing within ten (10) days from the date of the hearing.

(c) Notwithstanding anything to the contrary in this section, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed a trespass.

Section 3.25 **Conflicts of Interest.** Unless otherwise approved by a majority of the other directors, no director elected by the Class "A" Members may transact business with the Association or any Association contractor during his or her term as director or within two (2) years after the term expires. A director shall promptly disclose in writing to the Board any actual, potential or apparent conflict of interest affecting the directors relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members. Notwithstanding the above, directors may be employed by or otherwise transact business with the Declarant or Declarant's affiliates, and the Declarant may transact business with the Association or its contractors.

ARTICLE 4. **OFFICERS**

Section 4.1 **Officers.** The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any individual may hold two or more offices, except the offices of President and Secretary.

Section 4.2 **Election and Term of Office.** The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Association, to serve until their successors are elected.

Section 4.3 **Removal and Vacancies.** The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

Section 4.4 **Powers and Duties.** The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have general oversight responsibility for preparing the Association's budgets as provided for in the Declaration, and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 4.5 **Resignation.** Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such

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notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Section 4.6 **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

Section 4.7 **Compensation.** Compensation of officers shall be subject to the limitations as compensation of directors under **Section 3.18.**

ARTICLE 5. **COMMITTEES**

Section 5.1 **General.** The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

Section 5.2 **Design Review Committee.** The Board shall appoint all members of the Design Review Committee upon delegation or termination of Declarant's authority over design matters pursuant to **Article 4** of the Declaration. Such committee shall operate in accordance with the terms of **Article 4** and Board resolutions.

ARTICLE 6. **STANDARDS OF CONDUCT; LIABILITY AND INDEMNIFICATION**

Section 6.1 **Standards for Directors and Officers.** The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents. Board determinations of the meaning, scope and application of the provisions of the Governing Documents shall be upheld and enforced so long as such determinations are reasonable.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under Indiana law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the Association and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under Indiana law.

Section 6.2 **Liability.**

(a) Volunteer officers and directors of the Association shall not be personally liable in excess of the coverage of insurance specified in **subsection (iv)**, below, to any Person who suffers injury, including but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of his or her tortious act or omission so long as the following requirements are met by the volunteer officer, director, and Association:

- (i) the director's or officer's act or omission was performed within the scope of their duties;
- (ii) the director's or officer's act or omission was performed in good faith;

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(iii) the director's or officer's act or omission was not willful, wanton, or grossly negligent; and

(iv) the Association maintained and had in effect (at the time the act or omission of the director or other officer occurred and at the time a claim was made) one or more insurance policies which included coverage for general liability of the Association and individual liability of officers and directors for negligent acts or omissions in that capacity.

The payment for actual expenses incurred in the execution of his or her duties shall not affect the status of an officer or director as a volunteer under this **Section 6.2(a)**.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

Section 6.3 Indemnification. Subject to the limitations of Indiana law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Indiana law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) intentional misconduct or knowing violation of the law; or

- (iii) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 6.4 **Advancement of Expenses.** The Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

Section 6.5 **Board and Officer Training.** The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Indiana corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall be encouraged to complete a training seminar within the first six (6) months of assuming such position. The seminar may be live, video or audiotape, or in other format, as the Board may approve. The cost of such seminar shall be a Common Expense.

The Board also may provide, or provide for, Owner and resident education designed to foster a better understanding of the Community's governance and operations, and leadership training classes designed to educate Owners of the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

ARTICLE 7. **MISCELLANEOUS**

Section 7.1 **Fiscal Year.** The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

Section 7.2 **Parliamentary Rules.** Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Indiana law or the Governing Documents.

Section 7.3 **Conflicts.** If there are conflicts among the provisions of Indiana law, the Articles, the Declaration, and these By-Laws, the provisions of Indiana law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

Section 7.4 **Books and Records.**

(a) The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register (including mailing addresses and telephone numbers), books of account, the minutes of meetings of the Members, the Board, and committees, and any other records as required by Indiana law. The Board shall provide for such inspection to take place at the

Association's office or at such other place within the Community as the Board shall designate. Any disclosure of records shall further comply with any applicable requirements of Indiana law including, without limitation, Ind. Code § 32-25.5-3-3.

- (b) The Board shall establish rules with respect to:
 - (i) notice to be given to the custodian of records;
 - (ii) hours and days of the week when such an inspection may be made; and
 - (iii) payment of the cost of reproducing documents requested.

(c) Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

Section 7.5 **Notices.**

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Declaration or these By-Laws or by Indiana law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

- (b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:
 - (i) if to an Owner, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Owner;
 - (ii) if to the Association, the Board, a committee of either, or the managing agent, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this section; or
 - (iii) if to the Declarant, at the Declarant's principal address as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this section.

(c) Effective Date. Notice sent in accordance with **subsections (a) and (b)** shall be deemed to have been duly given and effective:

- (i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;
- (ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

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(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced
by a printed confirmation of transmission.

Section 7.6. **Amendment.**

(a) Prior to the earlier of (i) seven (7) years following the date the Declaration is recorded; or (ii) termination of the Declarant Control Period; the Class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units. So long as there is a Class "B" Member, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 5% of the Members.

(b) Except as provided above, and so long as the Class "B" membership exists, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing a majority of the Class "A" votes in the Association and the consent of the Class "B" Member. Thereafter, these By-laws may be amended by the affirmative vote or written consent, or any combination thereof, of Owners representing a majority of the Class "A" votes in the Association. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Amendments to these By-Laws shall become effective upon adoption unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its adoption, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

Notwithstanding anything to the contrary herein, no amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

EXHIBIT C

Initial Rules

The following restrictions shall apply to all of the Community until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to **Article 3** of the Declaration.

1. **General.** The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on **Exhibit A or D**, offices for any property manager retained by the Association or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. **Restricted Activities.** The following activities are prohibited within the Community:

(a) Any activity which violates local, state, or federal laws or regulations is prohibited within the Community; however, the Association shall have no obligation to take enforcement action in the event of a violation.

(b) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats, and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages is prohibited; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for any period of time reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. In addition, Declarant and authorized Builders may park and use construction vehicles, trailers, and other equipment on a Unit or Common Area for purposes relating to the construction, development, marketing, and sale of property without complying with this subsection. For purposes of this **Section 2(b)** "commercial vehicles" shall include, without limitation, semi-trucks, semi-trucks and trailers, wreckers or tow trucks, hydraulic or mechanical lift vehicles (excludes handicap lifts), cranes, trucks or vans with chemical storage chemical storage for landscaping or pest treatment, oversized trucks greater than one ton of has more than six wheels, vans or buses for commercial which seats twelve or more passengers and any vehicle with prominent advertising (e.g., vehicles "wrapped" bumper to bumper or side to side with advertising, advertising painted on portions of the vehicle or other signage or decals). Notwithstanding the foregoing, the term "commercial vehicle" shall not include any government or emergency vehicle such as police, sheriff, marshall, fire, rescue or ambulance.

(c) Raising, breeding, or keeping animals, livestock, or poultry of any kind is prohibited, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise physically restrained or confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law.

(d) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit.

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(e) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units.

(f) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes.

(g) Use and discharge of firecrackers and other fireworks.

(h) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site.

(i) No Owner, other than Declarant or a Builder authorized by Declarant, may obstruct or rechannel drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant, authorized Builders, and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

(j) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers.

(k) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit is prohibited without prior approval pursuant to Article IV.

(l) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, is prohibited except in strict compliance with the provisions of Article IV of this Declaration, the Design Guidelines, and the Rules. This shall include, without limitation, signs, permanent basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; swimming pools and other water features; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas. Children's playsets are permitted within the backyard of a Unit without being subject to the provisions of Article IV of the Declaration or the Design Guidelines. In addition, portable basketball hoops are not subject to the provisions of the Article IV of the Declaration or the Design Guidelines, however, Rules may be adopted regarding the use of portable basketball hoops (e.g. the Association could require the removal of portable basketball hoops that are broken or have fallen into disrepair).

(m) The display of signs of any kind on any Unit except as provided in **Section 3.5(b)** of the Declaration and as may be required by legal proceedings or by a governmental entity (e.g., a building permit or a foreclosure notice). Notwithstanding the above, Declarant and Builders authorized by Declarant may erect or display signs, banners, flags, balloons, or other things in connection with development, construction, marketing, and sales activities. In addition, the Board may erect or display signs that it deems reasonable and appropriate in its discretion, subject to the Community-Wide Standard.

Sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, wetlands, or other ground or surface waters within the Community, except that Declarant and the Association shall have the right to draw water from such sources.

- (o) Discharge of firearms.
- (p) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair.
- (q) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community, or any portion thereof, as determined in the Board's discretion.
- (r) Metal, plastic, fabric or chain link fences of any kind.
- (s) Accumulation or storage of combustible materials or debris on Units, except to the extent reasonably necessary during the construction of a dwelling on the Unit. This Rule shall not preclude the storage of reasonable amount of firewood on a Unit provided that it is stacked and stored in a safe manner and location.
- (t) Keeping equipment, garbage cans, service yards, woodpiles or storage piles in view of neighboring Units and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers, and any such container or garbage can left outside on any day other than collection shall be kept behind a screen.
- (u) Any structure of a temporary character, tent, shack, basement, garage, barn or other out-building for use as a residence either temporarily or permanently, or at any time is used for such purpose.
- (v) The repair of inoperative motor vehicles or material alteration of motor vehicles unless entirely within a closed garage constructed in compliance with the terms of this Declaration.
- (w) Any use of any Unit in violation of applicable zoning and subdivision control ordinances.
- (x) Connection of any house footing drain or roof water to the sanitary sewers.
- (y) Weeds, underbrush, other unsightly growths, refuse piles, or unsightly objects placed or suffered to remain on a Unit. Failure to comply shall warrant Declarant or the Association to cut weeds or clear the refuse from the Unit at the expense of the Owner, and there shall be a Specific Assessment against said Unit for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association may file suit and recover such amount together with reasonable attorney's fees and costs of collection in the manner provided in the Declaration.
- (z) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Unit within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a

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rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Unit within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

(aa) Crossing of another Unit or trespass upon any shoreline not within a Common Area owned by the Association, subject to the rights reserved unto 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, detention pond, or retention pond (jointly and severally, a "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, boating, or for any other purpose, except for drainage of the Community, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. One or more Lakes may or may not exist in the Community, and the reference throughout this Declaration to Lakes is made in order to address Lakes, if any, which now exist or are later constructed in the Community. The installation in the Community of any Lake shall be within the sole discretion of Declarant, and under no circumstances shall Declarant be required or obligated to install any Lake. Only 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. Any shoreline plantings that may be installed around any Lake are for the express purpose of: (1) providing an aesthetically pleasing and seasonally changing landscaped edge; (2) providing containment of waterfowl to the water surface; (3) buffering wave action to eliminate shoreline erosion; (4) improving water quality by filtering surface water runoff; and (4) reducing mosquito populations by increasing mosquito predator habitat. Mowing, spraying, trimming, or growth inhabiting activities in or around the shoreline planning are expressly prohibited.

(bb) Above-ground swimming pools.

(cc) Any mailboxes installed upon Units inconsistent with the type, color, and manufacture approved by the Reviewer.

(dd) If approved by the Reviewer, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Reviewer. Non-professionally installed fences may be inspected by the Reviewer after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. In general, fences shall be erected within six inches (6") the property line of such Unit unless otherwise approved by the Reviewer. Generally, fences shall not be higher than four feet (4') from ground level. All fencing must be wrought iron, its aluminum equivalent or like material. Notwithstanding the foregoing, so long as (i) a Unit is not a corner Unit, or (ii) the back of the home on the Unit is not adjacent to the Common Area or to a Lake, a wood or shadow box fence no higher than six feet (6') from ground level may be permitted by Reviewer; provided, however, in no event shall such fence be visible from the street. No fence shall be constructed until its materials, design, and location are first approved by the Reviewer. Walls above grade must be constructed of natural stone, masonry, wood or shadow box fencing. All approvals of landscape screening materials, design, and location shall be on an

flow of water therein.

In instances where privacy screening is necessary or desirable, exceptions to the above material or height restrictions may be approved by the Reviewer on a case by case basis. Opaque privacy screens up to six feet (6') in height shall be permitted around patio areas so long as they do not extend more than seventeen feet (17') from the back of the home on the Unit. For such privacy screens, the use of materials that will not fade or warp (such as vinyl or composite material) is encouraged, but the Reviewer may approve the use of wood material for a privacy screen so long as the Owner treats the wood every two years as necessary to maintain an attractive appearance.

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

(ee) Replacement or repair of driveways with any material other than concrete unless otherwise approved by the Reviewer.

(ff) No trash, leaves, or other materials shall be burned upon a Unit unless the smoke therefrom would not blow upon any other Unit. Owners shall at all times be in compliance with all applicable legal requirements for outside burning. Nothing herein shall, however, prohibit the use and operation of properly constructed and maintained wood-burning fireplaces.

(gg) 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 Community, including Units, without the written approval of the Reviewer, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Unit without the necessity of such written approval if: (a) it is not visible from the neighboring Units, streets or Common Area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Units who would have views of the device from their Units; 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 24" or less in diameter and not affixed to the roof of a home; or (e) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority.

(hh) Except on Units on which there is maintained a sales office or model home by Declarant or a Builder, no exterior lights shall be erected or maintained between the building line and rear Unit line so as to shine or reflect directly upon another Unit.

(ii) 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.

(jj) Except on Units on which there is maintained a sales office or model home by Declarant or a Builder, no awnings or patio covers will be permitted anywhere in the Community

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unless approved in advance by the Reviewer. All approved awnings and patio covers must be kept in good repair and attractive in appearance.

(kk) Subject to inclement weather or other Acts of God, every home on a Unit shall be completed within twelve (12) months after the beginning of such construction or placement. Any structure or building permitted to be constructed on any Unit by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be allowed to remain in such state for no 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, and following such time, the structure or building shall be rebuilt and restored to its previous condition, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

(ll) No heat pumps, air conditioning units or gas meters will be installed in the front yard of a Unit.

(mm) Except for children's unfiltered splash pools, no above-ground swimming pools shall be permitted in the Community, even if they are inflatable. Only permanent, in-ground pools with professional construction, approved in writing in advance by the Reviewer, shall be permitted upon a Unit. All backyard pools should be landscaped and oriented to minimize the potential effect on neighboring properties. All pool fencing shall conform to requirements, rules and regulations, and ordinances of all Local Authority and any applicable state or federal rules and requirements and shall be of harmonious design and subject to the Reviewer approvals. All approved in-ground swimming pools must have an electrically powered, locking safety cover and/or an enclosure fence that complies with all state and local rules and regulations and shall be subject to any design guidelines and the advance written approval of the Reviewer. All equipment rooms, bath houses, or dressing rooms that are not part of the original construction of the Unit shall be subject to any design guidelines and the advance written approval of the Reviewer. Hot tubs must also be approved in advance by the Reviewer.

(nn) If storm doors are installed, they must be painted to match the exterior of the home. No unfinished aluminum doors or windows will be allowed.

(oo) Decorative street signs that do not conform to the applicable governmental standards nevertheless may be installed by Declarant during the Declarant Control Period. 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 applicable governmental entity. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs and agrees to hold the applicable governmental entity harmless related thereto.

(pp) All above or below ground storage tanks, with the exception of portable gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

(qq) The roofing materials on all homes shall be similar in color and material, and shall be of a quality, style and composition acceptable to the Reviewer. No Owner shall be permitted to change or replace the shingles or other roofing materials without obtaining the prior written approval of the Reviewer unless the change or replacement is identical to what was originally in place.

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(r) No solar panels or wind turbines shall be permitted on any Unit unless approved in advance by the Reviewer.

(ss) 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 Unit.

(tt) Nothing contained in these Rules shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Community and sale of Units. During the Declarant Control Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Community at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Community and sale of the Units; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

(uu) The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Units and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of any new or amended 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 Rules concerning the Community 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 Units. These documents shall be available during normal business hours or under other reasonable circumstances.

EXHIBIT D

Land Subject to Annexation

Not applicable