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**ANITA MATHER  
ALLEN COUNTY RECORDER  
FORT WAYNE, IN**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR COBBLE CREEK**

This Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") for COBBLE CREEKs made this 19<sup>th</sup> day of December 2019 by North Eastern Development Corp., an Indiana corporation ("Declarant").

The covenants, restrictions and easements that may be created hereunder affect real property that is not currently located within a platted subdivision. The most recent deeds conveying the real property on or within which these covenants, conditions, restrictions and easements may be located are recorded as Instrument No 2019038176 + 2019038240 in the Office of the Recorder of Allen County, Indiana. This cross-reference is made pursuant to IC 32-23-2-5. Only Property and Additional Property (as defined hereinafter) platted as a Subdivision or a Section thereof (as hereinafter defined) shall be subject to this Declaration and these covenants, conditions, restrictions and easements.

**WITNESSETH:**

WHEREAS, the Declarant is the Owner of certain real property located in Allen County, Indiana, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Property").

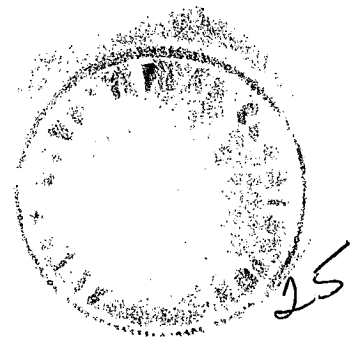
WHEREAS, capitalized terms as used herein shall have the meaning as defined or ascribed to them in this Declaration;

WHEREAS, the Declarant desires in the future to subject from time to time some or all of the Property to the provisions of this Declaration as specific platted Subdivisions (as hereinafter defined) of COBBLE CREEK, including platting one or more section within such Subdivisions, all within an overall development to be known as COBBLE CREEK, and to provide a flexible and reasonable method for the administration and maintenance of such Property so subjected to this Declaration from time to time;

WHEREAS, the Declarant presently intends for there to be one (1) single family residential Subdivisions within COBBLE CREEK, with such Subdivision to be identified and known as Cobble Creek, Section I, but nothing herein shall prohibit the addition of additional Sections or Subdivisions;

AUDITOR'S OFFICE  
Duly entered for taxation. Subject  
to final acceptance for transfer.

**DEC 27 2019**



*[Handwritten signature]*

*[Handwritten signature]*  
AUDITOR OF ALLEN COUNTY

WHEREAS, as hereinafter provided in this Declaration, the Declarant retains and reserves the right, privilege, and option to submit to the provisions of this Declaration at a later time as a part of COBBLE CREEK all or any portion of the Property together with such Additional Property (as hereafter defined) as the Declarant may acquire desire to subject to the terms of this Declaration.

NOW, THEREFORE, the Declarant hereby declares that all of the Property that is by a subsequent Specific Subdivision Covenant (as hereinafter defined) recorded amendment to this Declaration subjected to this Declaration, as well as any Additional Property that is by a subsequent Specific Subdivision Covenant recorded amendment to this Declaration subjected to this Declaration, shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the desirability of, and which shall touch and concern and run with title to the real property subjected to this Declaration, and which shall be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner (as hereinafter defined) thereof and where provided herein, shall benefit the Property and any Additional Property on which certain Common Areas may be located. None of the Property or any Additional Property shall be subject to the terms of this Declaration unless and until a Specific Subdivision Covenant amendment is recorded as an amendment to this Declaration, and then only the real property identified and subjected to this Declaration in such amendment shall be subject to this Declaration.

## **ARTICLE I** **DEFINITIONS**

1.01 Definitions. Capitalized terms as used in this Declaration shall have the meaning ascribed to them in these Definitions or Declaration. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Additional Property" shall mean and refer to any real property now owned or hereafter acquired that becomes subject to the terms of this Declaration by either amendment to this Declaration or by a Specific Subdivision Covenant amendment to this Declaration that is recorded in the Office of the Recorder of Allen County, Indiana.

(b) "Advisory Committee" shall mean the Advisory Committee to the Board of Directors that may be established pursuant to Section 4.3.

(c) "Architectural Control Committee" shall initially mean the Developer or an entity or persons appointed by the Developer from time to time that has authority to approve the construction of any Dwelling, structure or any other improvement on any Lot pursuant to this Declaration. Until Dwellings are constructed on all Lots within the Subdivision, the Developer or an entity or persons appointed by the Developer from time to time shall serve as the Architectural Control Committee. After Dwellings have been constructed upon all Lots in all of the Subdivisions within COBBLE CREEK, the "Architectural Control Committee" shall mean a Committee of one or more entities or persons appointed by the Board of Directors of the Association from time to time that has the authority to approve the construction of any Dwelling, structure or other improvement to any Lot pursuant to this Declaration. During the period that the Developer or an entity or persons appointed by the Developer is serving as the Architectural Control Committee, the Developer shall have the right to delegate or appoint all or portions of such approval authority with respect

to Dwelling, additions or renovations to existing Dwellings, fences and any other improvement upon a Lot in the Subdivision to the Association or to one or more persons, including officers or members of the Board of Directors of the Association. The approval authority of the Architectural Control Committee includes by way of illustration and not limitation, the authority to review, approve, modify or reject or any proposed Dwelling, structure, improvement or other activity upon a Lot, and to file an action for enforcement of this Declaration as an aggrieved party.

(d) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Cobble Creek Community Association, Inc., an Indiana nonprofit corporation, as amended from time to time.

(e) "Association" shall mean and refer to Cobble Creek Community Association, Inc., an Indiana nonprofit corporation.

(f) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(g) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of Cobble Creek Community Association, Inc., in effect for internal governance of the Association from time to time which govern the administration and operation of the Association, as the same may be amended from time to time.

(h) "Builder" means any individual or entity that owns a Lot, is regularly engaged in the business of constructing new dwellings and is licensed to construct and build a new Dwelling on the Lot. A Lot owner not engaged in the regular business of constructing new dwellings shall not be deemed to be a Builder.

(i) "Common Area" shall mean and refer to all real property now or hereafter owned and/or maintained by the Association for the common use and enjoyment of the Owners. Included within the Common Area may be the following, if any: entry signs and monuments, center islands in streets and cul-de-sacs, storm water ponds, storm water facilities and landscaped areas not platted as Lots, except to the extent any of the foregoing have been publicly dedicated. The dedication of any land or improvement as Common Area shall not mean or imply that the public at large acquires any easement of use or enjoyment therein. Declarant may, but shall not be required to, designate and/or convey property other than Common Area to the Association. The legal description of the Common Areas shall be designated on the plats of each Section of a Subdivision added to this Declaration.

(j) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(k) "Cobble Creek Subdivisions" means all Subdivisions within the Property and any Additional Property, including all Sections within each Subdivision of COBBLE CREEK that are by a recorded Specific Subdivisions Covenant amendment to this Declaration added and subjected to this Declaration.

(l) "Declarant" or "Developer" shall mean North Eastern Development Corp., and its successors and assigns. Declarant shall have the right to transfer in whole or part its rights as the Declarant of this Declaration, including to an assignee acquiring Lots from Declarant.

(m) "Declarant Control" means the time period during which Declarant has the right to appoint the members to the Board of the Association as provided in Sections 4.04 and 12.01 of the Declaration.

(n) "Declarant Rights" shall mean any and all rights, powers and privileges reserved, granted or otherwise provided for herein which may be exercised by, or which benefit primarily or only the Declarant.

(o) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for COBBLE CREEK and all recorded amendments, including any Specific Subdivision Covenants amendment thereof recorded in the Office of the Recorder of Allen County, Indiana.

(p) "Development" shall mean and refer to the overall development of COBBLE CREEK to be located on some or all of the Property and/or any Additional Property submitted to the provisions hereof pursuant to Section 2.02.

(q) "Dwelling" shall mean and refer to any improvement intended for use as a single-family attached or detached dwelling located on a Lot in any Subdivision, including by way of illustration and not limitation the Living Space, garages, decks, patios and porches.

(r) "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

(s) "Lease" shall mean and refer to any lease, sublease, or rental contract, whether oral or written.

(t) "Living Space" shall mean and refer to enclosed and covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics, and basements.

(u) "Lot" shall mean and refer to any platted lot upon which a Dwelling (or Dwellings may be constructed in any Section of this Subdivision. The Lots shall be created and established in each recorded plat and the corresponding Specific Subdivisions Covenants amendment thereto.

(v) "Member" shall mean an Owner who holds Membership in the Association pursuant to Section 4.01 of this Declaration.

(w) "Membership" shall mean the Membership in the Association which is appurtenant to a member's Lot as provided in Section 4.01 of this Declaration.

(x) "Mortgage" shall mean and refer to a security deed, deed of trust, mortgage, installment land sales contract or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot or Dwelling.

(y) "Mortgagee" shall mean and refer to the holder of a Mortgage.

(z) "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Dwelling within the Development.

(aa) "Owner" shall mean and refer to one (1) or more persons or entities, including Declarant, who or which owns fee simple title to any Lot, excluding, however, those persons having such an interest under a Mortgage. In the event that there is recorded in the Office of the Recorder of Allen County, Indiana, any installment land sales contract or a memorandum thereof covering any Lot, the Owner of such Lot shall be the purchaser under said contract and not the fee simple title holder. An

installment land sales contract shall be an instrument whereby the purchaser is required to make payment for a Lot for a period extending beyond one (1) year from the date of the contract, and where the purchaser does not receive title to such Lot until all such payments are made, although the purchaser is given use of such Lot.

(bb) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

(cc) "Property" shall mean and refer to those tracts or parcels of land described on Exhibit A and upon submission to the provisions of this Declaration any Additional Property. Unless and until any portion of the Property is platted and added as a to Subdivision to the Development by a recorded amendment containing applicable Specific Subdivision Covenants, such portion shall not be subject to any of the terms, conditions or restrictions of this Declaration. As provided in this Declaration, the Developer may remove any of the Property and/or any Additional Property from this Declaration at any time and from time to time except that any platted Subdivision or Section thereof or Lots therein may not be removed after any Lot in that Section of the Subdivision has been sold to a third party without the consent of all Lot owners in the Section of the Subdivision sought to be removed.

(dd) "Record" or "recorded" or "place of record" means to record a document in the Office of the Recorder of Allen County, Indiana.

(ee) "Specific Subdivision Covenant" and "Specific Subdivision Covenants" means a recorded amendment that plats and establishes a Section of the Subdivision in the Development. Specific Subdivision Covenants may set forth, establish and impose, by way of illustration and not limitation, specific Association dues, front, side and rear setback requirements, minimum Dwelling and garage square footage requirements, size and number of garage doors required for a Dwelling, driveway width, front/street elevation exterior facade Dwelling materials composition and yard light requirements, for any the Subdivision (including Lots and Common Areas located thereon), and which Specific Subdivision Covenants will be applicable only to that Subdivision and any Sections within that Subdivision.

(ff) "Section" means any separately recorded plat of Lots that creates and establishes a Section of a the Subdivision located.

(gg) "Subdivision" shall mean the to be platted Subdivisions to be known as Cobble Creek, Section I and Cobble Creek, Section II. None of the Property shall be deemed to be a Subdivision unless and until it is platted and made a Subdivision within COBBLE CREEK by a Specific Subdivision Covenant.

## **ARTICLE II**

### **DEVELOPMENT AND SUBDIVISIONS**

2.01 Development of Property. Except as otherwise set forth in Section 10.01, all Lots within any Subdivision or any Section thereof shall be and are hereby restricted exclusively to single family residential uses and purposes and shall be subject to the standards and restrictions set forth in Article X hereof. Declarant shall have the right, but not the obligation, for so long as either Declarant owns any Lot primarily for the purpose of sale or Declarant has the unexpired option (as defined in Section 2.02), to submit Additional Property to the terms of this Declaration and to make improvements and changes to all Common Area and to any other portion of the Property owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Area, (ii)

changes in the location of the boundaries of any Lots owned by Declarant or of the Common Area, (iii) installation and maintenance of any water, sewer, and other utility systems and facilities, and (iv) granting any utility or other easements over all or any portion of any Common Area or Lots owned by Declarant. Any and all improvements, easements or changes made, as aforesaid, shall not result in an encroachment on Lots not owned by Declarant. In no event shall Declarant be obligated to plat any of the Property as a Subdivision or to submit the Property or any Additional Property, or any portion thereof, to the provisions of this Declaration or to impose upon the Property or any Additional Property, or any portion thereof, any covenants, conditions, or restrictions whatsoever. Nothing contained in this Declaration shall require Developer to subject all or any portion of the Property or any Additional Property to this Declaration. Unless and until a portion of the Property or any Additional Property is added as a Subdivision or a Section thereof by a recorded Specific Subdivision Covenant amendment, such portion of the Property and Additional Property not platted as a Subdivision or a Section thereof shall free from the terms of this Declaration, shall not be subject to any of the terms, conditions or restrictions of this Declaration, and may be removed as Property or as Additional Property by the Developer at any time and from time to time. In no event shall Declarant be obligated to submit the Property or Additional Property, or any portion thereof, to the provisions of this Declaration or to impose upon the Additional Property, or any portion thereof, any covenants, conditions, or restrictions whatsoever, or to plat any portion of the Property or the Additional Property as a Subdivision or Section thereof. The Declarant may also remove any of the Property or Additional Property, however, once a Specific Subdivision Covenant amendment is recorded, that Subdivision or Section thereof may only be removed with the consent of all Lot owners in the Section of the Subdivision to be removed.

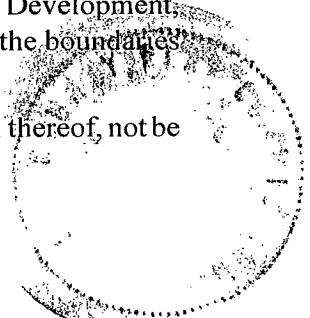
2.02 Development of Additional Property. Declarant hereby reserves the option to submit from time to time the Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. This option may be exercised by Declarant in accordance with the following rights, conditions, and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Development:

(a) The option to add Additional Property may be exercised from time to time during a period of twenty (20) years from the date of this Declaration; provided, however, that Declarant reserves the right to terminate such option at any time prior to the expiration of such twenty (20) year period by executing and filing a document evidencing such termination in the Office of the Recorder of Allen County, Indiana, and, except for such termination by Declarant, no other circumstances will terminate such option prior to the expiration of such twenty (20) year period.

(b) Declarant may add Additional Property to become part of the Development and to the terms of this Declaration at different times and there are no limitations fixing the boundaries of those portions or regulating the order, sequence, or location in which any of such portions may be added to the Development. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property. The Declarant may also remove property from the Additional Property, however, once a Specific Subdivision Covenant amendment is recorded, that Section may only be removed with the consent of all Lot owners in the Section of the Subdivision to be removed.

(c) If the Additional Property or any portion thereof is added to the Development, Declarant reserves the right to designate the Specific Subdivision Covenants as well as the boundaries of the Lots and any Common Area, if any, to be added as a Section of a Subdivision.

(d) Should the option to add the Additional Property, or any portion thereof, not be



exercised within the term specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect.

(e) The option reserved by Declarant to cause all, or any portion of, the Property or any Additional Property to become a Subdivision or Section thereof within the Development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of Property or any Additional Property to the Development or to construct thereon any improvements of any nature whatsoever.

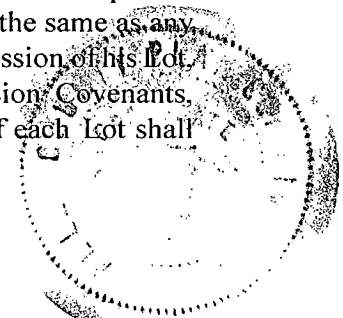
The options reserved under this Declaration in Section 2.01 and 2.02 may be exercised by Declarant by the execution of an amendment to this Declaration filed in the Office of the Recorder of Allen County, Indiana, together with a legal description of the Property or the Additional Property or such portion or portions thereof being removed or added as Property or as Additional Property to the Development by such amendment. For Additional Property added to the Development, simultaneously therewith or at any time thereafter, Declarant may, at its option, convey to the Association the Common Area, if any, contained within the Additional Property, or such portion thereof so submitted, and any such conveyance to be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Section, Property and/or the Additional Property, and any exceptions which would be disclosed by survey or physical inspection of such Common Area, Lots, land or parcels. Any such amendment adding Additional Property shall expressly submit the Additional Property to all the provisions of this Declaration. Specific Subdivision Covenants shall only be applicable to that added Section and no other Sections, unless otherwise provided in the recorded Specific Subdivision Covenants amendment. Upon the exercise of such option or options to add Additional Property, the Property so added shall then be construed as provisions embracing the real property described in Exhibit A.

2.03 Interest Subject to Plan of Development. Every purchaser of a Lot or Dwelling shall purchase such Lot, and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, subject to Declarant's right to add or remove Property and Additional Property, or any portion or portions thereof, to the Development as hereinabove provided, and to convey to the purchaser thereof the title to the Lot or Dwelling and its appurtenant Membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

2.04 Subdivisions. As Subdivisions are platted by Declarant for inclusion in COBBLE CREEK, the Subdivisions and Sections thereof so platted shall be subject to both this Declaration and their applicable Specific Subdivision Covenants and to no other Specific Subdivision Covenants of other Subdivisions or Sections thereof, unless otherwise provided in the recorded Specific Subdivisions Covenants.

### **ARTICLE III** **PROPERTY RIGHTS**

3.01 General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration and any applicable Specific Subdivision Covenants, and each Lot may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive Ownership and possession of his Lot, subject to the provisions of this Declaration and any applicable Specific Subdivision Covenants, including, without limitation, the provisions of this Article III. The Ownership of each Lot shall



include, and there shall pass with each Lot as an appurtenance thereto, Membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his Ownership ceases for any reason, at which time his Membership in the Association shall automatically pass to his successor-in-title to his Lot. Lots shall not be subdivided, and, except as otherwise provided hereunder, the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the consent of at least a majority of the Owners in the Subdivision of the Section of the Development in which the Lot is located and with the written consent of Declarant, so long as Declarant owns a Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two (2) or more Lots into a larger parcel in order to create a larger Lot for one (1) Dwelling nor shall this prohibition against the subdivision of Lots and relocation of Lot boundaries between Lots apply to the Declarant or to the relocation of Lot boundaries and the subdivision of Lots by a Builder if the relocation and subdivision are approved by Developer. In the event of a combination on two or more Lots into a larger parcel for one (1) Dwelling site, any assessment obligation shall be imposed on the original pre-combined Lots, but any side yard setback requirements, if any, shall apply as if the larger parcel was only one Lot.

3.02 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Area. The Common Area in any Subdivision is for the benefit of all Subdivisions within Development. The non-exclusive right, privilege and easement of use and enjoyment in and to the Common Area shall be appurtenant to and to pass and run with title to each Lot, subject to the following provisions:

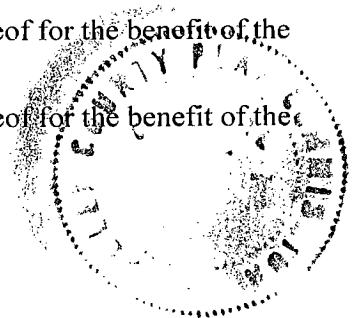
(a) The right of the Association to borrow money (i) for the purpose of improving the Common Area, or any portion thereof, (ii) for acquiring additional Common Area, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Common Area, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 8.03 hereof, to give as security for the payment of any such loan a mortgage deed or other security instrument conveying all or any portion of the Common Area; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(b) The rights and easements reserved to Declarant in this Declaration.

(c) The right of the Association to grant and accept easements over any portion of the Common Area to Allen County, Indiana or to any other public agency or authority, public service district, public or private utility, or other person, provided that any such conveyance of an easement must be approved by a majority of those Lot owners in the Section of the Subdivision in which such property is located that are present in person or by proxy at a duly held meeting of that Section of the Subdivision and also approved by Declarant for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

(d) The rights and easements reserved in Section 3.07 hereof for the benefit of the Association, its directors, officers, agents, and employees.

(e) The rights and easements reserved in Section 3.09 hereof for the benefit of the Additional Property.





(f) The rights of the holder (and its successors and assigns) of any Mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

(g) The right of the Association to enforce reasonable rules and regulations.

(h) The right of the Association to suspend the use of any facilities located upon the Common Area by a Member for the period of time during which any assessment against his or her Lot remains unpaid and delinquent for more than six (6) months or for any other violation for a reasonable period for any infraction of its rules and regulations.

(i) The right of the Association to charge reasonable admissions and other fees for the use of any facilities situated upon any Common Area.

(j) The right of the Association to limit the use of any Common Area to the Lot Owners of the Subdivision in which such Common Area is located.

(k) The right of the Association to transfer title to or dedicate all or any part of the Common Area to any public agency, authority, corporation, or utility for such purposes and subject to such conditions as may be agreed by the Members, provided that any such conveyance of title or dedication must be approved by a majority of those Lot owners in the Section of the Subdivision in which such property is located that are present in person or by proxy at a duly held meeting of that Section of the Subdivision and also approved by Declarant for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

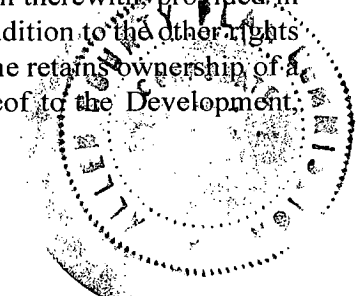
(l) The right of the Association to limit the number of guests of Members and the types of activities that may be conducted on the Common Areas.

(m) The right of the Declarant to grant ingress, egress, drainage, utility and other easements and environmental conditions and restrictions over any Common Area until such time as the Declarant no longer owns any Lots in any Section of the Subdivision and no longer owns any of the Property or the Additional Property.

(n) The right of the Association to levy assessments as provided in the Declaration.

3.03 Access. All Owners, by accepting title to Lots conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such Lot and acknowledge and agree that such access, ingress, and egress shall be limited to access from dedicated roads, sidewalks and walkways located within the applicable Section of the Subdivision. Vehicular access to and from all Lots shall be provided at all times from public right of way as set forth in the recorded Subdivision plat.

3.04 Easements for Declarant. During the period that Declarant owns any Lot, Property, or has the unexpired option to add Additional Property to the Development, Declarant shall have an alienable and transferable right and easement on, over, thru, under, and across all Common Area and all Lots owned by Declarant for the purpose of ingress and egress for the purpose of construction and improving the Development in its sole discretion, including, without limitation, constructing any improvements or changes permitted and described by Article II hereof or desired by Declarant, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot or has the right to submit the Additional Property or any portion thereof to the Development,



Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress, and egress to the Common Area and to Lots owned by Developer for such purposes as Declarant deems appropriate, and to grant easements in, on and through any Common Area, provided that Declarant shall not exercise such right so as to adversely and unreasonably interfere with the rights of Lot Owners in the Development to the use of the Common Area and Lots not owned by Developer.

3.05 Changes in Boundaries: Additions/Deletions to Common Area. Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Area, any Lots owned by Declarant and the realignment of boundaries between adjacent Lots and/or Dwellings owned by Declarant. Declarant expressly reserves for itself and its successors and assigns the right to convey to an adjacent Lot Owner a portion of any Common Area, including to Declarant, if Declarant is the Owner of the adjacent Lot. In the event the Association is the owner of the Common Area to be conveyed to an adjacent Lot Owner, the Declarant shall have the power, coupled with an interest, to act as the Association's attorney in fact to convey the portion of the Common Area to the adjacent Lot Owner. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of the Property or Additional Property to the Association as an addition to the Common Area and subject to the title exceptions set forth in Section 2.02 hereof. Furthermore, Declarant reserves for itself, its affiliates, successors, and assigns the right, but shall not have the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an addition to the Common Area, such other portion of the Development owned by Declarant as it, in its discretion, shall choose.

3.06 Easements for Utilities and Public Services.

(a) There is hereby reserved for the benefit of Declarant the transferable, perpetual and alienable right and easement, as well as the power and obligation to grant and accept easements to and from Allen County, Indiana or any other public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (i) all or any portion of the Common Area, and (ii) over all portions of any Lots owned by Declarant as Declarant deems necessary by executing and recording a grant of easement, for the purpose of installing, replacing, repairing, maintaining any public or private drainage or utility or easement (including by way of illustration and not limitation, detention ponds, drainage, electrical, natural gas, telephone, water and sewer) for the Development or any portion thereof, provided that such easements shall not unreasonably affect the developability of any such Lot not then owned by Developer. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board, provided, however, that notwithstanding anything contained herein to the contrary, the Board shall not have any rights to grant any easements over any portion of any Lots or Common Areas or to revoke, amend or annul easements over the Common Areas granted by Declarant, without the written approval of Declarant during the period of Declarant Control. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, landscaping, trees, bushes, shrubbery or other obstructions or impediments to the use of the easement, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacements, and use of such utilities and systems.

(b) Declarant hereby grants to the relevant governmental authority or agency, as

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

3.07 License for Association. There is hereby reserved a license and right for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any property manager or agent retained or employed by the Association and any employees of such manager, to enter upon any Lot or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this license is to be exercised only upon reasonable prior notice to and with permission of the Owner.

3.08 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns, including Builders acquiring Lots from Declarant (but only if approved in writing by Declarant), the alienable and transferable right and easement for the maintenance of signs, sales offices, construction offices, business offices, and model Dwellings on Lots owned by Declarant and as to Builders on Lots owned by that Builder, together with such other facilities as in the sole opinion of Declarant as may be reasonably required, convenient, or incidental to the completion, improvement, and/or sale of Lots, Dwellings, Common Area, or the Additional Property.

3.09 Maintenance License. Subject to the terms of Section 5.02(b) hereof, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and license to enter upon any Lot and upon unimproved portions of any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such license shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

3.10 Environmental Easement. There is hereby reserved for the benefit of Declarant and its respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all portions of the Common Area for the purpose of taking any action necessary to effect compliance with environmental or wetland rules, regulations, and procedures from time to time promulgated or instituted by the Declarant or the Board or by any governmental entity, such easement to include, without limitation, the right but not the obligation to implement erosion control procedures and practices, the right to maintain any and all wetland and environmentally sensitive areas on the Property, the right to drain standing water, and the right to dispense pesticides.

3.11 Partition. There shall be no judicial partition of any Lot or Common Area unless the Lot or Common Area has been removed as Property or Additional Property.

3.12 Burden upon the Property. Declarant hereby declares that this Declaration and the covenants, restrictions and easements established herein shall be covenants to run with each Subdivision in COBBLE CREEK. Said covenants and restrictions shall inure to the benefit of and be binding upon each and every Lot Owner, and his or her respective heirs, representatives, successors, purchaser, lessees, grantees and mortgagees. By the recording or acceptance of the conveyance of a Lot in any Subdivision or Section thereof or any interest therein, the person or entity to which such interest is conveyed shall be deemed to accept and agree to be bound by the provisions of this Declaration, the applicable Specific Subdivision Covenants and the Articles and By-Laws of the Association.

3.13 Non-Severability of Rights. The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of any portion of the Property platted as a Section of the Subdivision, as more specifically set forth herein and may not be severed or alienated from such Ownership.

**ARTICLE IV**  
**MEMBERSHIP AND VOTING**  
**RIGHTS IN THE ASSOCIATION:**  
**BOARD OF DIRECTORS OF THE ASSOCIATION**

4.01 Membership. Every Owner of a Lot (including the Declarant) is hereby declared to be a Member of the Association. Membership is appurtenant to and shall not be separated from Ownership of such Owner's Dwelling or Lot. Each such Owner, by acceptance of a deed or other conveyance of Lot, thereby becomes a Member, whether or not this Declaration or such membership is made a part of, incorporated by reference in, or expressed in said deed or conveyance. There shall be one (1) membership allocable to each Lot (herein called a "Membership") and any Member who is the Owner of more than one (1) such Lot shall have the number and type of Memberships equal to the number of such Lots. If the record Ownership of a Lot shall be in more than one (1) person, or if an Owner of a Lot is a trustee, corporation, partnership or other legal entity, then the individual who shall enjoy the Membership and be responsible for the obligations attributable thereto, shall be designated by such Owner or Owners in writing.

4.02 Method of Voting. The total number of votes which may be cast on any matter requiring assent of a class of Members of the Association shall be equal to the total number of Memberships for such class at the time of any such vote. Unless this Declaration or the Articles of Incorporation or By-Laws of the Association, or any law, shall specify a greater vote, all Association matters requiring action by Members shall be decided by a majority of the votes cast by Members of the respective class voting at a meeting at which a quorum (as defined in the By-Laws) is present. In the event of a tie, the tie shall be broken by a mediator chosen by the Members. Should the Members be unable to reach an agreement on the selection of a mediator, the current Administrator (Manager) of Allen County Building Department shall choose a mediator.

4.03 Board of Directors and Advisory Committee.

(a) After the period of Declarant Control has expired as set forth in Section 4.04 hereof, the Association shall be governed by its Board of Directors ("Board") comprised of five (5) or more persons duly appointed or elected as provided herein and in the Articles of Incorporation and By-Laws of the Association. Prior to the expiration of the period of Declarant Control, the Board shall be comprised of that number of persons as Declarant determines from time to time, all of which shall be appointed by the Declarant pursuant to its rights under Section 4.04 hereof, until such time as the initial meeting to elect the first Board occurs.

(b) During the period of Declarant Control, the Declarant may create, appoint and remove from time to time representatives of Declarant or of Owners as members to an Advisory Committee to the Board which Advisory Committee may, if permitted and invited by the Board, participate in meetings of the Board or separately advise the Board from time to time, but such Advisory Board members shall have no voting rights. During the period of Declarant Control, the Declarant may also appoint and remove from time to time Owners as voting members of the Board, but no action taken by such Board during the period of Declarant Control shall be binding upon the Association or the Developer unless the Developer has in writing approved the action so taken within twenty (20) days after the Developer receives written notice of the Board action.

(c) The Board shall administer the Common Area in accordance with the terms and provisions of this Declaration, and in accordance with the Articles of Incorporation and By-Laws of the Association. All matters requiring action by the Board shall be decided by the majority vote of the Board.

(d) Prior to the appointment of the first Board of the Association pursuant to Paragraph 4.06 hereof, Declarant (or its beneficiary or designees) may exercise all rights, powers and privileges of the Board and may perform all of its functions, including its functions under Article IV of this Declaration, without the consent, approval or vote of any Lot Owners.

4.04 Declarant Control and Appointment of Directors by Declarant. Notwithstanding any other provisions of this Declaration or the Articles of Incorporation or By-Laws of the Association, the first and each subsequent Board shall exclusively consist of, and vacancies on the Board shall be filled by, such persons as Declarant shall from time to time appoint, until the first to occur of any one of the following events: (i) Declarant surrenders such authority by an express and irrevocable waiver and release of this right that is executed and recorded by Declarant; or (ii) Declarant and Builders acquiring Lots from Declarant no longer own any Lots in the Development. Such right of Declarant to appoint directors to the Board shall be to the exclusion of the right of the Members so to do. The Owners or Members shall not, without the prior written consent of Declarant, have the right to amend, modify or change the Articles of Incorporation or By-Laws of the Association to in any way diminish the authority of the Board during the period of Declarant Control in which Declarant has the exclusive right to appoint any Members of the Board. During this period of Declarant's Control, the Declarant shall have the right to remove any Board member and re-appoint a successor Board Member.

Declarant may, from time to time, by written notice to the Association, voluntarily terminate its right to appoint one (1) or more voting or non-voting Directors and continue to exercise its right to appoint the remaining Members of the Board for the period hereinabove specified. Declarant's election to terminate its right in whole or part to appoint any number of Members of the Board or to terminate its control of the Association, shall not affect the right of Declarant to participate in the Association as a Member thereof. All directors who are not subject to appointment by Declarant shall be elected in accordance with the provisions of Paragraphs 4.05 and 4.06 hereof.

4.05 Initial Meeting of Members to Elect Directors. Upon receipt by the Directors or the President or other officer of the Association of a copy of the written notice of Declarant to voluntarily terminate its control of the Association, described in Paragraph 4.04(i), or of any other appropriate evidence of the termination of Declarant's right to appoint all the directors of the Board, the President or other officer of the Association shall promptly convene a meeting of the Members for the purpose of electing a new Board or to elect those directors who no longer are to be appointed by Declarant.

4.06 Election of Directors. Upon termination of Declarant's right to appoint all the Directors of the Board, pursuant to Paragraph 4.04 hereof, the Board shall consist of seven (7) or more persons, and those directors not subject to appointment by Declarant shall be selected by vote of the Members in accordance with the provisions of this Article. Directors shall be elected for two (2) year terms. The Members in all of the Subdivisions shall by majority vote of those present in person or by proxy the Directors to the Board. Notwithstanding such election, any Director theretofore appointed by Declarant who does not elect to resign may stay in office for the balance of his unexpired term and until his successor is elected and qualified, and upon termination of Declarant's right to appoint all of the Directors of the Board, the Board shall have the right to fill any vacancy in the Board for the remaining term of any Director whose office is vacated for any reason.

4.07 Informal Action by Directors. Unless specifically prohibited by applicable law, the Articles of Incorporation or By-Laws of the Association, any action permitted or required by to be taken by the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed or approved by vote, either in person or electronically, by a majority of the directors of the Board entitled to vote with respect to the subject matter thereof. Such consent vote or approval shall have the same effect as a majority vote of the Board.

4.08 Informal Action by Members. Any action required by this Declaration to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a majority of the Members entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a majority vote of the Members.

4.09 Declarant, Board Liability. The Declarant and its directors, officers, shareholders, partners, members, employees and agents, the Association and its directors, officers, employees and agents, and the agents and employees of any of them all as intended third party beneficiaries (all of the above hereinafter referred to as the "Protected Parties"), shall to the maximum extent lawfully allowable not be liable to the Owners or any other persons for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions which shall occur subsequent to the date of the recording of this Declaration, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Association shall to the maximum extent lawfully allowable indemnify, hold harmless, protect and defend any and all of the Protected Parties against all claims, suits, losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees incurred, and amounts paid in reasonable settlement or compromise incurred in connection therewith. The Board may assess each Lot its share of the cost of such indemnification, and such assessment shall be collectible and enforceable in mode and manner as set forth in Article IX hereof. To the extent possible the obligation of each Lot for indemnification and the Board's liability hereunder may be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association.

4.10 Nonprofit Purposes of Association. Nothing herein shall be construed to give the Association authority to conduct an active business for profit on its own behalf or on behalf of the Members, or on behalf of the Declarant.

4.11 Governing Law. Except as otherwise provided in this Declaration, the Association, the Board, officers and Members shall be governed by the Indiana Nonprofit Corporation Act. Any provisions of Indiana law in effect from time to time governing homeowner associations shall apply to the Association, and to the extent of any contravention of such laws by or in this Declaration, the laws shall control and govern the operation of the Association.

4.12 Board as Representative of Owners. The Board shall have standing and capacity to act in a representative capacity in relation to matters involving the Common Area or more than one (1) Lot, on behalf of the Lot Owners as their interests may appear.

## **ARTICLE V MAINTENANCE**

5.01 Responsibilities of Owners. Unless specifically identified herein, all maintenance and repair of Lots and Dwellings, together with all other improvements thereon or therein and all sidewalks in

front of a Lot, lawns (including parkways), landscaping, and grounds on and within a Lot or Dwelling shall be the responsibility of the Owner of such Lot. Unless otherwise provided, the maintenance and repair of all Common Areas (including all landscaping and grounds and all recreational facilities and other improvements) shall be the responsibility of the Association. Each Owner shall be responsible for maintaining his or its Lot and Dwelling, as the case may be, in a neat, clean, and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. All allowed and approved exterior wood, trim or other finishes that are not maintenance free shall be repainted or restained the original color at least every five (5) years, and pre-approval from the Architectural Control Committee is necessary to change colors. Each Owner must provide evidence of such maintenance upon request by the Association. As provided in Section 5.02(b) here of, each Owner shall also be obligated to pay for all of the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner but which responsibility such Owner fails or refuses to discharge as well as all administrative, legal and accounting fees and expenses incurred by the Association.

5.02 Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Area and any landscaping and sidewalks located in any public right of way directly in front of and adjacent to a Common Area, which responsibility shall include the maintenance, repair, and replacement of (i) all sidewalks and trails (if any), landscaped area, facilities, and other improvements made by Declarant or the Association situated within the Common Area or within easements encumbering Lots or Dwellings pursuant to Section 3.03 hereof, (ii) such common US Mail/postal boxes, utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Area and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping and all detention and other ponds situated within or upon the Common Area, and (iv) all stormwater management areas and facilities constructed by Declarant in the Common Area, and (v) entrance monument signs, subdivision signs, entrance areas and other equipment and facilities situated within the Common Areas. The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Area, or (C) caused by any sidewalk, trail, pipe, plumbing, drain, conduit, appliance, equipment, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Area or any other portion of the Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of the Owner.

(b) In the event that Declarant or the Board determines that: (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused

through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, shall give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have ten (10) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be added to and become a part of the assessment to which such Owner and his Lot or Dwelling are subject and shall become a lien against such Lot or Dwelling shall be added to and become a part of the assessments for all Owners and shall become a lien against such Owners' Lots or Dwellings. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs, expenses and reasonable attorney fees.

5.03 Detention and Retention Ponds. Detention ponds, retention ponds, stormwater drainage swales, conduits, pipes, drainage easements and other facilities located within easements, Common Areas or dedicated right of way have been constructed and established for the purpose of controlling stormwater. The Association shall perform all maintenance, repair and replacement including, but not limited to, mowing, weed control, sediment protection, wetland protection and all other maintenance in a manner in compliance with the Allen County Surveyor and Allen County Drainage Board requirements in effect from time to time. The Association assumes all of the obligations set forth in any recorded Detention Pond and Maintenance Agreement applicable to any Subdivision. If at any time in the future the Association fails and/or refuses to perform any and all necessary maintenance, repair, mowing or weed control or sediment control in a manner consistent with the Allen County Surveyor and Allen County Drainage Board requirements, either of them may, but shall not be obligated to, perform the necessary maintenance and the Association shall be directly liable for all costs and expenses incurred by the Allen County Surveyor and Allen County Drainage Board in performing any and all maintenance, repair, mowing or weed control of the detention and retention ponds, drainage swales, pipes, conduits and other drainage facilities. Such cost and expenses that may be incurred by the Allen County Surveyor and Allen County Drainage Board shall constitute a lien upon the Common Areas of the Association. Said lien shall be certified by the Surveyor of Allen County in an instrument identifying the total cost and expenses incurred by the Allen County Surveyor and Allen County Drainage Board and shall be recorded with the Office of the Allen County Recorder, which lien may be foreclosed in accordance with applicable law. In the event that the Allen County Surveyor or Allen County Drainage Board initiates legal proceedings to foreclose such lien, it shall be entitled to recover and collect from the Association its reasonable attorneys' fees and costs in recovering and collecting.

## **ARTICLE VI** **CASUALTY LOSSES**

6.01 Damage or Destruction to Common Area. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance written in the



name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Area, Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with majority approval of the Board of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, such special assessment to be in an amount sufficient to provide funds to pay such excess costs of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied or as one lump sum payment, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all funds paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the portions of the facilities and ruins of the Common Area damaged or destroyed by fire or other casualty shall be cleared and the Common Area left in a clean, orderly, safe, and sightly condition.

6.02 Damage or Destruction to Lots or Dwellings. In the event of damage or destruction by fire or other casualty to any Lots or Dwellings, and in the further event that either the Owner of such Lot or Dwelling responsible for the repair and replacement of such elects not to repair or rebuild the damaged or destroyed Lot or Dwelling, such Owner making such election shall promptly clear away within thirty (30) days the ruins and debris of any damaged improvements or vegetation and leave such Lot or Dwelling in a clean, orderly, safe, and sightly condition. Should such Owner elect to repair or rebuild such Lot, Dwelling, or other improvements, such Owner shall repair or rebuild such Lot, Dwelling, or other improvements to substantially the same condition as existed prior to such fire or other casualty, or as otherwise approved by the Architectural Control Committee, and in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable Architectural Control Committee approval, zoning, subdivision, building, and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion. All construction and other work of any new Dwelling or any other structure or improvement shall be completed within nine (9) months from the commencement of such activity.

6.03 Insurance. The insurance which may be carried upon the Common Area and personal property of the Association shall be governed by the following provisions:

(a) Authority to Purchase. All insurance policies upon the Common Area and personal property shall be purchased by the Association for the benefit of the Members of the Association. If the insurance companies issuing said policies agree, such policies shall provide that the

insurer waives its rights of subrogation as to any claims against Owners, the Association, the Members thereof and their respective servants, agents and guests. Such policies and endorsements shall be deposited with the Association and held as part of the records of the Association.

(b) Policies to be Secured by the Association. Nothing contained in this Declaration shall require the Association to procure any insurance policy. The policies that may be secured by the Association include by way of illustration and not limitation are as follows:

(1) Casualty. The buildings and other insurable improvements upon the Common Area and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against:

(a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement;

(b) Such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the building, including, but not limited to, vandalism, malicious mischief, windstorm and water damage;

(2) Errors and Omissions. Public liability, officers, directors and employees' liability for errors and omissions, and Property damage in such amounts and such forms as may be required by the Association.

(3) Workmen's Compensation. Workmen's Compensation policy to meet the requirements of law.

(4) General Liability. Liability insurance to cover liabilities of the Association.

(c) Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as Common Expenses.

(d) Beneficiary of Policies. All insurance policies purchased by the Association shall be for the benefit of the Association and shall provide that all proceeds payable as a result of losses thereunder shall be paid to the Association. Proceeds received from insurance policies shall be used by the Association to repair or replace the Property damaged. In the event the proceeds are insufficient, the Association may levy assessments to cover such deficiency.

(e) Disposal of Proceeds. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance after payment of all costs of the reconstruction or repair for which the proceeds of the policies were received, such balance shall be retained by the Association and regarded as miscellaneous revenue to the Association.

(f) Insurance Adjustments. Each Member shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association.

(g) Lots and Dwellings. Each Owner of a Lot or Dwelling shall be solely responsible to procure any and all property damage and liability insurance relating to the Lot and/or Dwelling and any and all personal property of the Owner.

**ARTICLE VII**  
**CONDEMNATION**

7.01 Condemnation of Common Area. Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the agreement or approval of a majority of those present in person or by proxy of (which conveyance may only occur with the approval of Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development), the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with the approval of a majority of those present in person or by proxy shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Area which are available therefore, in accordance with the plans approved by the Board, the Architectural Control Committee, and by Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, or as a lump sum payment, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.

(b) If the taking or sale in lieu thereof does not involve any improvements to the Common Area, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds shall be retained by and for the benefit of the Association.

(c) If the taking or sale in lieu thereof includes all or any part of a Lot or Dwelling and also includes any part of the Common Area, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the Owners of any Lot or Dwelling taken for their interest in such Lot or Dwelling; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board, (ii) the Owners of all Lots or Dwellings wholly or partially taken or sold, together with the Mortgagees for each such Lot or Dwelling, and (iii) Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

7.02 Condemnation of Lots or Dwellings.

(a) In the event that all or any part of a Lot or Dwelling is taken by any authority

having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Lot or Dwelling responsible for the maintenance and repair of such Lot or Dwelling, then such Owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Lot or Dwelling and any remaining undamaged improvements thereon in a clean, orderly, safe, and slightly condition. In addition, if the size or configuration of such Lot or Dwelling remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations, then such Owner shall have the option, but only with the written consent and approval of the Association, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and slightly condition referred to above, of deeding the remaining portion of the Lot or Dwelling (at no cost to the Association) as a part of the Common Areas, and thereafter any such Owner shall not have any further voting rights or membership rights or privileges in the Association or with respect to the Development and shall not be subject to any further assessments imposed by the Association and payable after the date of such deeding.

(b) In the event that any part of a Lot or Dwelling is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Lot or Dwelling responsible for the maintenance and repair of such Lot or Dwelling elects to restore the remainder of the Lot or Dwelling, such Owner making such election shall restore such remainder of such Lot or Dwelling as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion and completed within nine (9) months from the commencement of such activity.

## **ARTICLE VIII ADMINISTRATION**

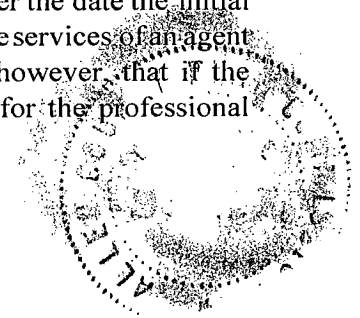
8.01 Common Area. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Furthermore, the Association may be responsible to maintain dedicated areas if such maintenance is required by the applicable governmental authority. Except to the extent otherwise required by the provisions of the laws of Indiana relating to nonprofit corporations, this Declaration, the By-Laws of the Association in effect from time to time, or the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Owners.

8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the laws of Indiana relating to nonprofit corporations and IC 23-17-1-4 et. Seq and 32-25.5-1-1 et. Seq. (and as said statutes may be amended from time to time), this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the laws of

Indiana, this Declaration, the Articles of Incorporation, or the By-Laws, the provisions of the laws of Indiana, this Declaration, the Articles of Incorporation and the By-Laws, in that order, shall prevail, and each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance therefore, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall not be limited to, the power to purchase one (1) or more Lots to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to Lots, to furnish trash collections, snow removal for dedicated public streets, landscaping, landscape services, mowing, pond maintenance and repair, pond services, water, sewer, and/or security service for the Common Area and/or the Lots. Notwithstanding the foregoing provisions of this Section 8.02 or any other provisions of this Declaration to the contrary, for so long as Declarant shall own any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Area.

8.03 Agreements. Subject to the prior approval of Declarant for so long as Declarant shall have the right to appoint the Board pursuant to Section 4.04 hereof, all agreements and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development; and in performing its responsibilities hereunder, the Association, through the Board, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a professional property manager or manager or management company of the Association shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the Declarant or to directors, officers, or Members of the Association by this Declaration. Such manager may be an individual, corporation, or other legal entity, as the Board shall determine, and may be bonded in such a manner as the Board may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

8.04 Management Agreement. The Declarant or the Board may hire or contract with a management organization under contracts expiring not later than one (1) year after the date the initial meeting of Members is held ("Transfer Date"). Thereafter, the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board provided, however, that if the Association, Declarant or Board shall enter into an agreement or agreements for the professional



management of the Property before the Transfer Date, such agreement or agreements shall be terminable by the Association without cause and without any penalty at any time not later than one (1) year after the Transfer Date and shall not require the payment of any penalty by the Association.

8.05 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The undivided interest of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the Ownership of a Lot or Dwelling also transfers the membership in the Association which is an appurtenance to such Lot or Dwelling.

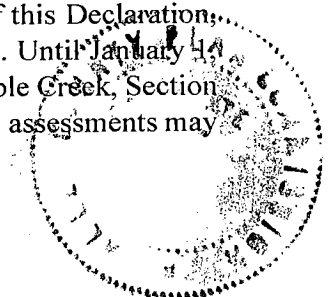
8.06 Rules and Regulations. The Association, through the Board, may make and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, and Common Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

8.07 Indemnification. The Association shall indemnify, save and hold harmless every officer, director, Architectural Control Committee member or Advisory Committee Member of the Association against any and all expenses, including court costs and reasonable attorney fees, reasonably incurred by or imposed upon any officer, Director, Architectural Control Committee member or Advisory Committee Member of the Association in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the Board) to which he may be made a party by reason of being or having been an officer, director, Architectural Control Committee member or Advisory Committee Member of the Association at the time such expenses are incurred, unless the officer, Director, Architectural Control Committee member or Advisory Committee Member of the Association is found to have engaged in gross negligence, gross malfeasance, willful or wanton misconduct or fraud. The officers, Directors, Architectural Control Committee member or Advisory Committee Member of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association) and the Association shall indemnify, save and hold harmless each such officer, director, Architectural Control Committee member or Advisory Committee Member of the Association free, including reasonable attorney fees, against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may in its discretion as a Common Expense maintain general liability and officers' and directors' liability insurance to fund this obligation.

## **ARTICLE IX**

### **COVENANTS FOR MAINTENANCE ASSESSMENTS**

9.01 Creation of the Lien and Personal Obligations. Each Owner of Lot, except Declarant and a Builder temporarily exempted in writing by Declarant as provided hereinafter, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance for each Lot owned by such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association such assessments as are levied pursuant to the provisions of this Declaration, the applicable Specific Subdivision Covenants and the By-Laws of the Association. Until January 1, 2022, the maximum annual assessment for Lots in Cobble Creek, Section I and Cobble Creek, Section II shall not exceed Six Hundred Dollars (\$600.00). After December 31, 2021, annual assessments may



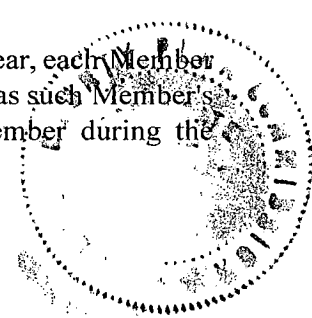
be increased above the maximums set forth herein in an amount not to exceed 8% per annum on said maximum amounts accruing on and after December 31, 2021. Such assessments, together with interest thereon and cost of collection, if any, as hereinafter provided, shall be a charge and continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the personal obligation of the Owner of such Lot at the time when the same fell due. Builders that are the Owner of Lots may be granted a temporary exemption in writing by Declarant from being assessed for annual and special assessments, but any such exemption so granted shall expire at the earlier of six (6) years from the date the Builder acquires title to the Lot or on the date that the Builder first conveys title of the Lot to a third party or on the date that the Dwelling on the Lot is occupied as a residence. Upon the sale or transfer of an exempted Lot by a Builder, or the occupancy of a Lot as a residence, the assessments due in the year of the sale or occupancy shall be prorated to the date of the sale or occupancy, and the prorated portion owing on and after the date of the sale or occupancy by the purchaser or occupant shall be collected and paid to the Association, and if a sale, paid at the closing of the sale, and shall be a lien on the Lot until so paid. Declarant shall not be obligated to pay any assessment of the Association with regard to any Lots owned by Declarant at any time.

9.02 Purpose of Assessments. The assessments for Common Expenses levied by the Association (or by Declarant acting on its behalf pursuant to Section 4.03(c) hereof shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and in particular, without limiting the foregoing: (i) for the maintenance, repair, and improvement of the Common Area grounds and facilities, elements and equipment as well as any detention ponds and drainage facilities, (ii) for the making of repairs, replacements and additions to the Common Area, defraying the cost of labor, equipment, and material required for the maintenance of the Common Area, (iii) for the operation, care, upkeep, maintenance, replacement and of any Common Areas, (iv) for trash removal on a regular basis, to the extent such services are contracted for and by the Association; (v) snow and ice removal from dedicated public roads and on public sidewalks; and (v) in general for carrying out the duties of the Board as set forth in this Declaration and the By-Laws of the Association; and for carrying out the purposes of the Association as stated herein and in its Articles of Incorporation.

9.03 Assessment Procedures.

(a) Preparation of Estimated Budget. Each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services, fees, supplies and other items which, in the judgment of the Board, will be required to be provided to the Association or required to meet the Association's obligations during the ensuing calendar year to effect the purposes of the Association, a copy of which estimated budget shall be provided to all Owners at least thirty (30) days prior to its adoption by the Board. The annual budget shall take into account any estimated net operating income or deficit which may result from the operation of the Common Area during such year and income from user charges to be received pursuant to Section 9.03 hereof. Said estimated cash requirement shall be allocated among and assessed to Members in accordance with the provisions of Section 9.06 hereof. The Board shall give written notice by electronic email, and/or posted electronically on any Association website, and/or mailed or delivered, to each Owner no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of any proposed budget or any increase or establishment of an assessment.

(b) Date Payments Due. On or before January 1 of the ensuing year, each Member shall be personally obligated to pay, in the manner prescribed by Section 9 hereof as such Member's annual and special assessment, together with all user charges incurred by such Member during the



preceding year. The Board shall be entitled to bill on a monthly, quarterly, semi-annual or annual basis as it so determines. If the actual expenditures paid or provided for by the Board during said year shall be more or less than said estimated cash requirement, any net shortage or excess shall be applied as an adjustment to the installments under the current year's estimate falling due after the amount of such net shortage or excess for the preceding year has been determined. The Board may in its sole and absolute discretion offer payment options for any annual or special assessment, and if payment options are offered and elected by a Member, the failure to timely pay any installment shall cause all of the remaining payments for the assessment to be accelerated and due and payable.

(c) Commencement of Assessments. The assessments provided for herein shall commence for Lots upon the conveyance of title to the Lot by the Declarant other than to a successor Declarant or to an exempted Builder as provided in Section 9.01 (and Builders shall be exempted only during the period of the applicable exemption). The Board shall fix the amount of the assessment against each Dwelling or Lot at least thirty (30) days in advance of each assessment period and in lieu thereof, the amount of the prior year's assessment shall be the fixed amount. An Owner shall first be liable for payment of the assessment on the date of the conveyance of title to him, prorated through the end of the calendar year. The Association shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association setting forth whether the assessments on a specified Dwelling or Lot have been paid and, if not paid, the amount of any such deficiency. Such certificate shall be conclusive evidence of payment of any assessment therein.

(d) Adjustments to Estimated Budget. If any "estimated cash requirement" proves inadequate for any reason (including nonpayment of any Member's assessment), the Board may at any time levy a further assessment. The board shall serve notice of such further assessment on all Members by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the assessment payment which is due more than thirty (30) days after the delivery of any electronic email or other electronic notification or the mailing of such notice of further assessment. All Members shall be personally liable for and obligated to pay their respective adjusted amount.

(e) Failure to Prepare Annual Budget. The failure or delay of the Board to prepare an annual or an adjusted estimated budget shall not constitute a waiver or release in any manner of any Member's obligation to pay his share of the estimated cash requirement as herein provided, whenever the same shall be determined and in the absence of any annual estimate or adjusted estimate, each Member shall continue to pay the charge at the then existing rate plus eight percent (8%) of the assessment established for the previous year. If a budget is subsequently adopted by the Board, then the Owners shall pay at the new rate, and make up any shortfall between what has been paid to date and the assessment so adopted.

9.04 Special Assessments for Capital Improvements. In addition to the annual assessment authorized by Section 9.01 and 9.03, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of construction or purchase of a specified capital improvement upon or to the Common Area, and the necessary fixtures and personal Property related thereto; provided, however, that, except for special assessments which shall not exceed in any one (1) year the sum of Five Hundred Dollars (\$500.00) per assessed Lot, any such special assessment shall first be approved at a meeting of the Members by the affirmative votes of Members entitled to cast at least sixty percent (60%) of all votes cast at a meeting called and held in accordance with the provisions of Section 9.06. The provisions of this Section 9.04 shall not limit the power of the Board, without such prior approval, to levy assessments to reconstruct, replace or restore any portion of the Common Area.

9.05 Specific Assessments. Any other expenses benefiting less than all of the Lots shall be



specifically assessed equitably among all of the Lots that benefited as established in each Specific Subdivisions Covenant amendment. Any other expense occasioned by the conduct of less than all of those entitled to occupy the Lots or by occupants, licensees or invitees of any such Lot shall be specifically assessed against the Lot, conduct of any occupant, licensee, or invitee of which occasioned any such expense.

9.06 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing any special assessments requiring approval pursuant to Section 9.04 hereof shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast at least thirty percent (30%) of all the votes shall constitute a quorum; provided, that if Members entitled to cast thirty percent (30%) of all votes do not attend in person or by proxy, a second meeting may be called with the same notice requirements as herein provided, except that the quorum therefor shall be reduced to Members entitled to cast fifteen percent (15%) of all votes.

9.07 Payment of Assessments.

(a) Each such Member shall pay the assessment levied by the Association to the Association upon demand.

(b) Upon written demand of an Owner or a Mortgagee at any time, the Association shall furnish such Owner or Mortgagee a written dated Certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's Dwelling or Lot. Such Certificate shall be conclusive evidence of payment of any assessments theretofore levied and not stated therein as unpaid.

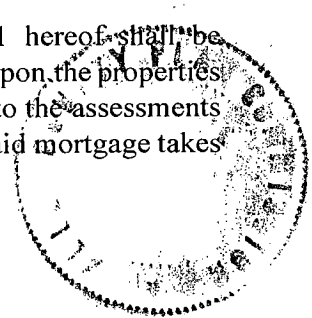
(c) The Declarant or Board may provide that the assessments may be paid in full the first day of the calendar year until otherwise provided.

9.08 Nonpayment of Assessments.

(a) Any installment of an assessment which is not paid to the Association within thirty (30) days after the due date shall be delinquent and a late charge of Twenty-Five Dollars (\$25.00) shall be added to it for every thirty (30) days it continues to be delinquent. The assessment shall bear interest from the date of delinquency at the rate of seven percent (7%) per annum and the Association may bring an action against the Member personally obligated to pay assessments and recover the same, including interest, Association administrative costs, and all other costs, expenses and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action; and the Association may enforce and foreclose any lien it has or which may exist for its benefit. The Association shall have the right to increase the Twenty-Five Dollar (\$25.00) late charge from time to time.

(b) No Member, other than Declarant and exempted Builders as provided in Section 9.01, shall be relieved of personal liability for the assessments and for other amounts due as provided herein by nonuser of the Common Area or abandonment or transfer of ownership a Lot, provided that upon transfer of ownership of Lot, the transferor shall not be responsible for assessments accruing after the date of transfer.

(c) The lien of the assessments provided for in Section 9.01 hereof shall be subordinate to the lien of any first mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the earlier of the date the holder of said mortgage takes



possession of the Lot, accepts a conveyance of any interest in Lot or has a receiver appointed in a suit to foreclose its mortgage lien. Such taking of possession, conveyance or appointment shall not relieve the holder of said mortgagee from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. Except for the foregoing, the lien for assessments provided for in Section 9.01 and 9.04 shall not be affected by any sale or transfer of a Lot.

**ARTICLE X**  
**USE RESTRICTIONS**

10.01 Use. No Lot or Dwelling located therein shall be used or occupied for any use or purpose other than single family residential uses and purposes. A home occupation or home based business shall be considered a permitted use for single family residential uses and purposes if and only if all of the following are complied with: (1) all required governmental zoning and other approvals are obtained and complied with; (2) the Architectural Control Committee has been provided with detailed information regarding the proposed home occupation or business and has approved the proposed home occupation or business in its sole and absolute discretion; (3) the home occupation is conducted entirely within the Dwelling on the Lot and is incidental and secondary to the primary use of the Dwelling as a single-family residence; (4) there are no attached exterior sign or signs on the Dwelling, in the windows, doors, or elsewhere on the Lot identifying the home occupation or business; (5) if the home occupation is for the care or daycare of persons, the home occupation involves the care or daycare of no more than three (3) persons that are not immediate family members of the Lot Owner, and (6) no one is employed or working in the home occupation or business inside the Dwelling that is not an immediate family member of the Lot Owner.

10.02 Flood Protection Grade. No Dwelling or other structure or improvement shall be constructed or maintained in violation of the flood protection grades established on the recorded plat for each Lot so that the minimum elevation of the first floor, and the minimum sill elevation for any opening into the Dwelling equals or exceeds the minimum flood grade protection elevation. The flood grade protection levels have been approved by the Allen County Surveyor's office and are to minimize potential damage from flooding, surface water and rain events.

10.03 Building and Lot Appearance and Quality.

(a) General. Every Lot and Dwelling located thereon shall be located and in accordance with the applicable governmental building and zoning codes, the Specific Subdivision Covenants, and with such additional specifications and standards as may be required by the Architectural Control Committee after all construction plans and specifications (which may if requested include but not be limited to those for grading and site work, excavation, and specifications showing the nature, kind, shape, heights, materials, color scheme, location, elevations and approximate cost of all Dwellings), along with a staked survey (showing the elevations of all corners of the Lot), have been submitted to, and approved in advance in writing by, the Architectural Control Committee.

(b) Driveways. All driveways not more than one-hundred thirty feet (130) in length shall be constructed of poured concrete not less than sixteen (16) feet in width, except that a driveway serving a side loaded garage may be fourteen (14) feet in width. Driveways of more than one-hundred thirty feet (130) in length may be constructed and paved of asphalt.

(c) Sidewalks. Concrete sidewalks must be installed on each Lot at the Lot Owner's expensed and in compliance with all governmental requirements.

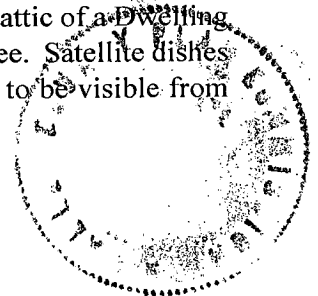
(d) Landscaping. The Architectural Control Committee may, in its sole and



absolute discretion require the submission and approval of a landscaping plan and landscaping plans and specifications prior to or during the construction of any Dwelling, and for submission and approval of any substantial change, alteration or landscaping improvement constructed thereafter. All sod, seeding and landscaping required as a condition of approval by the Architectural Control Committee for the initial Dwelling shall be installed upon the earlier of (i) eight (8) months after issuance of a building permit for the construction of the Dwelling, subject to extensions only as made necessary by the weather, or (ii) thirty (30) days after the date of occupancy, subject to extensions only as made necessary by the weather. Any failure to complete the sod, seeding and landscaping will result in a One Hundred Dollar (\$100.00) per day fine that can be assessed by the Association against the Lot. Once construction of any structure is commenced on any Lot, there shall be no lapse of construction activity greater than sixty (60) consecutive days (excluding any days where construction is delayed or not possible due to adverse weather conditions). All Owners, except Developer, shall landscape or cause to be landscaped the Owner's Lot in a manner as to maintain consistency with the integrity of the landscaping contained on other Lots in the Subdivision on which Dwellings have been constructed. The burden of proof shall be upon the party submitting the plans and specifications to conclusively establish that the landscaping plans and specifications were actually submitted for approval and that the landscaping was installed in compliance with these landscape covenants and the approved landscaping plans and specifications. Upon completion of a Dwelling, all landscaping as approved in the plans and specifications shall be installed promptly, and in no event, later than one hundred eighty (180) days following the issuance of the certificate of occupancy for the Dwelling constructed thereon or fifteen (15) months from the initial commencement of construction, whichever is earlier. In the event landscaping plans were not submitted to the Architectural Control Committee for approval, or in the event landscaping plans were submitted and approved by the Architectural Control Committee but the landscaping installed was not in accordance with the approved landscaping plans and specifications, then and in either of such events, the Developer shall the right, upon thirty (30) days prior written notice to a Lot Owner, to require the Lot Owner to install the previously approved, or to submit landscaping plans and specifications for approval by the Architectural Control Committee and install such landscaping. In the event an Owner fails to submit landscaping plans and specifications or in the event the Architectural Control Committee denies approval of any submitted landscaping plans and specifications, the Architectural Control Committee shall have the right to determine and require that landscaping be installed consistent with the integrity of the landscaping contained on other Lots in the Subdivision on which Dwellings have been constructed. The Developer shall have the right to file an action to enforce compliance and recover all its costs, expenses, and attorney fees as well as to require the Lot Owner to install landscaping pursuant to plans and specifications imposed by the Developer upon the Lot Owner, within thirty (30) days from the date of the Developer's written demand. In the event a Lot Owner fails to comply therewith, the Developer and any contractor or agent of the Developer shall be and is hereby granted a license to enter upon the Lot, to install the landscaping, to recover the costs thereof, together with interest and attorney fees from the Lot Owner, in the same manner and pursuant to the same procedures that Assessments may be recovered and liens foreclosed against a Lot Owner pursuant to these Covenants.

(e) Sheds, Temporary Structures, Poles, Above Ground Pools and Fencing. No storage sheds, temporary structures, outbuildings, portable basketball pole or rim, above ground pool, chain link fence or outside clothes lines are permitted on any Lot.

10.04 Antennas, Satellite Dishes. Radio, television, transmission and reception antenna may not be installed on the roof of a Dwelling. All antennas must be installed within the attic of a Dwelling unless prior written approval is obtained from the Architectural Control Committee. Satellite dishes may not be installed on the front elevation or front portion on the roof of a Dwelling to be visible from



the adjacent road and sidewalks, and satellite dishes may not be installed in the front yard of a Lot. Satellite dishes less than one meter in diameter may be installed on the rear elevation to the extent not visible from the adjacent road and sidewalks. Satellite dishes less than one meter in diameter may be discreetly installed in the ground in a rear yard, in the rear portion of the side yard, to the rear elevation of the Dwelling or to the side elevations of the Dwelling (closer to the rear elevation than the front elevation). Notwithstanding the foregoing, satellite dish size, location and installation are permitted if allowed under the Telecommunications Act of 1996 or other applicable and superseding federal or state law.

10.05 Activity. No obnoxious or offensive trade or activity shall be carried on or upon any Lot, nor shall anything be done thereon which is nuisance under applicable law.

10.06 Appearance.

(a) All garbage and recycling cans shall be kept inside an enclosed garage except as otherwise permitted by the Architectural Control Committee. The Architectural Control Committee may in its sole and absolute discretion permit garbage and recycling cans to be screened and stored outside of an enclosed garage so long as it is in a manner that generally permits the garbage and recycling cans to be concealed from the street view of neighboring Lots and streets. All garbage and recycling cans shall be regularly removed from all Lots and shall not be allowed to accumulate on the Lots within the Development. No Owner shall burn or permit the burning of garbage or other refuse. No Owner, or Builder or contractor for such Owner, shall dump construction debris, dirt, sand, trash or rubbish on any Lot, street or other area on the Development. Each Owner shall be responsible for the appropriate removal of all such construction debris, dirt, sand, trash and rubbish, and the Declarant shall not have any liability or responsibility therefor. Garbage and recycling cans receptacles shall only be left out on days of pickup (or after 5PM on the day before) and shall promptly be returned the same day of the pickup to a place out of view after pickup.

(b) Decorative planters and other potted plants are permitted on front porches and rear patios. Rear patios may have acceptable patio furniture, umbrellas and grills, provided they are maintained in good condition. Christmas decorations are permitted from Thanksgiving through the end of the year and need to be removed at all other times. Christmas and other Holiday decorations must be moderate and tasteful, as determined by the Board. Christmas and Holiday decorations shall not be installed more than thirty (30) days prior to the holiday and removed within fifteen (15) days after the holiday.

10.07 Parking Restrictions. No tractor, semi-tractor, truck (as defined hereinafter) motor home, trailer, boat, jet ski, trailer, camper and any vehicle not currently titled, registered and having a current license plate shall be parked on any Lot or anywhere in any Subdivision, including on public streets, for more than forty-eight (48) continuous hours or for a period in excess of sixteen (16) days in any calendar year, unless completely in an enclosed garage. A short-term removal done primarily for the purpose of evading the forty-eight (48) continuous hours or the sixteen (16) day period of these parking restrictions shall not be deemed to be a removal. The term "truck" as used herein means a truck that has a gross vehicle weight rating in excess of 15,000 pounds. It is the intent of the Declarant to restrict parking of the above-mentioned vehicles, trailers, campers and boats to enclosed garages upon the Lots and to further restrict motor vehicular parking in any Subdivision to passenger motor vehicles regularly used by the Lot Owners for their non-business personal use. No Owner shall repair or restore any vehicle or boat of any kind upon any Lot, street, alley, right of way or other thoroughfare except for emergency repairs or in an enclosed garage.

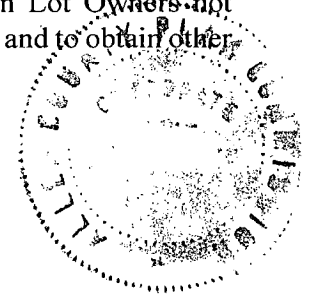


10.08 Easements and Public Right of Way. Utility easement and public rights of way as shown on the plat of any Subdivision are reserved for the use of the public and private utilities as well as the Association, including for the installation and maintenance of street lights, power for signage, common wells and irrigation lines, poles, ducts, wires, pipelines, and lines. Any public or private utility providing utility service to a Subdivision shall have the right to use and utilize these utility easements and public rights of way. Drainage easements as shown on the plat of any Subdivision, are for drainage, and may be utilized by the Allen County Surveyor, the Allen County Drainage Board, the Association and Lot Owners on whose Lot such drainage easement is located. No permanent or other structures are to be erected or maintained upon any dedicated utility or drainage easement. Lot Owners shall not alter the elevation, grade or drainage swales or otherwise do any act to adversely the utility, usefulness and operation of any drainage swales, conduits, facilities and drainage easements. Lot Owners shall take their title subject to such easements, and such easements are for the benefit of all Owners in any Subdivision. No Lot Owner shall erect or grant to any person or utility the right to erect, install or maintain any overhead wires or poles for any utility service. Nothing contained herein shall prohibit street and yard lights that are served by buried electrical service lines nor overhead electrical or other public utility distribution lines providing service to any Subdivision or the Development. None of the foregoing restrictions shall apply to existing overhead high tension medium and high voltage transmission and sub-transmission electrical lines that are located within existing dedicated easements.

10.09 Fencing. Any fencing to be installed by an Owner may only be constructed pursuant to Exhibit B. Permitted fencing may only be constructed around the side and rear yards on Lots in the Development, and shall not be constructed within the front yard or within any building setback area of any Lot that is adjacent to a public road. A height greater than that permitted pursuant to Exhibit B may be allowed around swimming pools only if required by an applicable ordinance or statute. Any fencing installed on any Lots adjacent to public parks, detention ponds and Common Areas must be a maximum of four (4) feet in height, must be an ornamental type fence as set forth on Exhibit B, must have the prior written approval of the Architectural Control Committee and must have the prior written approval of the Association if the fence is adjacent to a Common Area. Permitted fencing may only be tan, white vinyl or black powder coated aluminum as set forth on Exhibit B. The Architectural Control Committee may grant variances from these fence requirement to Lot Owners upon written request, but any variance shall be in the sole and absolute discretion of the Architectural Control Committee.

10.10 Storm Water Runoff. No rain or storm water runoff, sump pump or surface water shall be discharged into any sanitary sewer serving any Lot or the Subdivision.

10.11 Animals and Animal Waste. No animals, livestock or poultry of any kind shall be boarded, raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept on any Lot, provided that: they are not kept, bred or maintained for commercial purposes; they are not left unattended by an Owner outside of a Dwelling; they do not create a nuisance; and they are not permitted to roam elsewhere in any Subdivision except on a leash and under adequate physical control. No outdoor cages, kennels or fenced dog runs are permitted. Owners are responsible to follow all local laws, rules, regulations and ordinances regarding animals and are responsible for any injury to persons or property. The feces of all pets and other animals shall be removed by the Owner or possessor of the pet or animal from any public right of way, Common Areas and other Owner's Lots immediately after defecation. The Association shall have the right to issue and impose fines upon Lot Owners not complying with these defecation removal requirements, and for repeated violations, and to obtain other legal and equitable relief.



10.12 Erosion Control. Lot Owners shall be responsible for complying with all laws and regulations applying to the Owner's Lot with respect to erosion control during construction of their Dwelling and other improvements, and shall be obligated to comply with all requirements of the Indiana Department of Environmental Management and the Soil Conservation Division of the Indiana Department of Natural Resources, regarding the installation and maintenance of erosion/sediment control facilities and practices during the construction period of the Dwelling and other improvements. Without in any way limiting the generality of the foregoing, the Owner shall be obligated for the installation and maintenance all erosion control measures applicable to the Lot shown on the erosion control plan for the Subdivision approved by the Allen County Soil and Water Conservation District.

10.13 Architectural Control. No Dwelling, building, structure, fence, wall, in-ground pool, hot tub, spa, or other improvement or structure shall be commenced, erected or maintained on any Lot in a Subdivision, and no exterior addition, change or alteration shall be made until the plans and specifications, plot lay-out, exterior elevations and landscaping which shall show the nature, kind, shape, height, materials, and location of the improvement to be made shall have been submitted to and approved in writing as to the harmony of external design and location in relationship to the surrounding structures, topography, and Lot lines by the Architectural Control Committee appointed by the Board of Directors of the Association in its sole and absolute discretion. In the event the Architectural Control Committee fails to approve, approve with conditions, or deny approval of any submitted plans and specifications within forty-five (45) days of submission, such plans and specifications shall be deemed approved. In the sole discretion of the Architectural Control Committee, landscaping may be required to be submitted for approval prior to the installation of the landscaping for a Dwelling, and if so required, landscaping must be consistent with the integrity and quality of the landscaping contained on other Lots in the Subdivision on which Dwellings have been constructed. In the sole discretion of the Architectural Control Committee, an Owner that is not a Builder intending to serve as Lot Owner's own general contractor to construct or install any such improvement may be required to submit a resume as to the experience and financial responsibility. These provisions shall not apply to any construction or improvement made by the Declarant in connection with the development of any Subdivision.

Neither the Declarant, any Board member, the Association, nor the Architectural Control Committee, nor any officer, director, employee or agent thereof, shall be liable for any damage, loss or prejudice suffered or claimed by any Owner or contractor who submits such plan on account of (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, and (e) the development of any property within the Properties. Any person submitting plans to the Architectural Control Committee shall hold the Declarant, the Association, the Architectural Control Committee, or any member thereof, harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred.

10.14 Approval Prior to Construction and Occupancy. No construction requiring Architectural Control Committee approval pursuant to Section 10.12 shall be commenced, erected, or maintained on any of the Property until the plans and specifications have been submitted to and approved by the Architectural Control Committee as provided in this Article. Declarant is not required to obtain approval from the Architectural Control Committee. No Dwelling shall be occupied unless and until a Certificate of Occupancy and all other governmental approvals are issued.

10.15 Signs. One "For Rent" or "For Sale" signs for Lot sales may be erected, placed or

permitted to remain on the Lots during the period the Lot is for sale or rent. The Association shall have the power to adopt and enforce rules, regulations and other requirements as to the size, number, location and duration of maintenance of political signs and campaign signs in accordance with Indiana Code 32-21-13-1 et.seq and any other applicable law.

10.16 Responsibilities of the Owner during Construction. The Owner is responsible for the removal of any and all debris including but not limited to excess soil from excavation and construction materials on the Lot. No soil or debris shall be allowed on any roads or streets at any time. Every Dwelling and other improvement and structure shall be constructed in a good and workmanlike manner. Every Owner shall require its Builder to comply with these requirements which shall be specified in the contract. If the Owner or Builder does not correct any of the above conditions, the Declarant, after notification, may correct the condition and charge the Owner fair market value for the work performed.

10.17 No Impediment of Pond Views. No fence, tree, bush, shrubbery, earthen mound or other planting or sight obstruction shall be erected, planted or maintained in the rear yard of Lots abutting a retention pond that unreasonably obstructs the sight or view of lakes and ponds in the Subdivision by other Lots unless approved by the Architectural Control Committee in its sole and absolute discretion. In exercising its discretion, the Architectural Control Committee may, in its discretion, approve reasonable sight or view obstructions of lakes and ponds in such rear yards in the Subdivision, such as by way of illustration and not limitation, certain types of trees, or black wrought iron fences, and may deny approval of unreasonable sight or view obstruction, such as stockade fences, spruce trees or arborvitae plantings. The Architectural Control Committee reserves the right to come on or about Lots violating these sight restrictions to remove sight obstructions, including removing fences or trimming or removing trees, bushes, shrubbery and other plantings or erected sight obstruction located in such rear yards that obstruct the sight or view thereon, at the offending Lot Owner's expense, if the Lot Owner fails to promptly eliminate or reduce the sight or view obstruction after written request from the Architectural Control Committee. For purposes of this Section, the rear yard is defined as any portion of a Lot that is located between the rear of the exterior of the Dwelling located on the Lot and the rear Lot line.

10.18 Vacant Lots. In the event the Owner of a Lot other than a Builder fails to commence construction on a Lot within twelve (12) months after the purchase of said Lot, the Lot Owner shall seed the entire Lot with grass and regularly mow and maintain same. Should the Lot Owner fail to comply with the requirements as set forth herein, the Architectural Control Committee shall have the right to enter upon the Lot and seed the entire Lot with grass, and to mow and maintain the Lot and shall have the right to claim a lien upon the Lot and to recover personally from the Lot Owner for all their costs, expense and attorney fees incurred as a result of any default or breach of this covenant, which lien shall be subject to the same collection rights and remedies granted to the Association in Sections 9 and 11. The Lien shall not become effective against bona fide purchasers for value without notice thereof, unless and until said lien is duly recorded in the Recorder's Office of Allen County, Indiana.

## **ARTICLE XI** **RULE MAKING/FINES**

11.01 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots, Dwellings, and the Common Area and facilities located thereon. In particular but without limitation, the Board may promulgate from time to time rules and regulations which shall govern activities which may, in the judgment of the Board, be environmentally hazardous to any wetland or other areas. Copies of such rules and regulations and

amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation is specifically overruled, canceled, or modified by the Board or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant shall have the right to appoint the Board pursuant to Section 4.04 hereof.

11.02 Authority and Enforcement. Subject to the provisions of Section 11.03 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners or Occupants of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guest, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of the recreational facilities located in the Common Area, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his co-owner or the family, guests, or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.

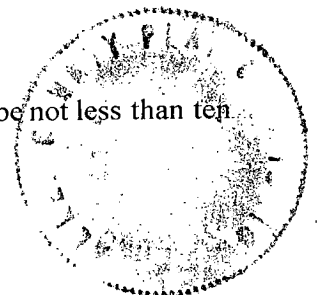
11.03 Procedure. Except with respect to the failure of an Owner to pay assessments, the Board shall not impose a fine exceeding the amounts set forth in Section 11.04 per day, suspend voting rights as permitted under Indiana law, or infringe upon or suspend any other rights of an Owner or other occupant of the Development for violations of the Declaration, the By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:

- (i) The alleged violation;
- (ii) The action required to abate the violation; and
- (iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

- (i) The nature of the alleged violation;
- (ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;





- (iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and
- (iv) The proposed sanction to be imposed.

(c) The hearing shall be held in executive session of the Board pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. 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 other individual who delivered such notice. In addition, the notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

11.04 Fine Assessed by Association/Dues Statements. Notwithstanding any other provision herein to the contrary, for fines imposed pursuant to this Declaration, the Association may record a lien against the Owners, Lot and/or Dwelling to collect such fines. The Association shall be entitled to impose such a fine provided: (i) the Association gives written notice of the violation to the Owner; and (ii) the Owner does not respond within ten (10) days of receipt of the notice of violation. If the Owner objects to such notice of violation, it shall provide all written evidence as to why such act or omission does not constitute a violation of the Declaration and the Rules and Regulations within ten (10) days of receipt of the notice of violation, and thereafter the Board shall consider all written evidence and shall make a final determination thereon within fifteen (15) days of receipt of the Owner's written material. The Association shall respond to an Owner's objection in writing with a final determination on the issue. If the Owner does not adhere to the Association's final determination, the Association shall be entitled to levy a fine against the Owner not exceeding the amount set forth One Hundred Fifty Dollars (\$150.00) per day and said maximum may be increased by four percent (4%) per annum from and after January 1, 2022. The Association shall also have the right to charge a reasonable fee for issuing assessment and dues statement letters and payoff statements.

## **ARTICLE XII**

### **GENERAL PROVISIONS**

12.01 Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws of the Association, Declarant hereby retains the right to appoint and remove any Member or Members of the Board and any officer or officers of the Association as provided by and for the term set forth in Section 4.04 hereof. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 4.04. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 4.04 and this Section 12.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board in accordance with Section 4.06 which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

12.02 Amendments by Declarant. During the period of the Declarant's Control during which period the Developer retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration and any recorded Specific Subdivision Covenant by an instrument in writing filed and recorded in the Office of the Recorder of Allen County, without the approval of any other Lot Owner or Mortgagee; provided, however, that with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, or as otherwise provided in Section 12.03 hereof, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot, Dwelling, or the Common Area as set forth in this Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then adversely affected Owners or (ii) in the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such adversely affected Mortgagees. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting Additional Property or any portion thereof to the provisions of this Declaration has provided in Section 2.02 hereof. Any amendment made pursuant to this Section 12.02 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees but only if required and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. The Declarant may in any recorded Specific Subdivision Covenant further limit its rights to amend this Declaration or any Specific Subdivision Covenant with respect to an individual Section of the Subdivision. After the expiration of the period of the Declarant's Control, this Declaration may be amended by a majority vote, consent or approval of all Lots in all of the Subdivisions in the Development.

12.03 Special Amendments. Anything herein to the contrary notwithstanding, Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal national Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Lots and Dwellings, (iii) to correct clerical or typographical errors in the Declaration or any Exhibit, or (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, lease, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate on the date Declarant no longer has the right to appoint all directors of the Board pursuant to Section 4.06 hereof.

12.04 Litigation. Unless at least sixty-six and two-thirds percent (66.666%) of the Owners of the individual Lots have given their prior written approval, the Owners shall not be entitled to commence any class-action or other collective action against the Declarant, or any other persons acting on behalf of or in association with Declarant in connection with the development of the Property or this Declaration. Any action against the Declarant shall proceed in accordance with Section 12.05 of this Declaration. An Owner, Member and the Association agree to give Declarant sixty (60) days prior

written notice of a claim to allow Declarant to investigate and cure if appropriate, before instituting any arbitration.

12.05 Arbitration. Excluding (a) any suit by the Association to collect Assessments under Article IX; (b) any suit by the Association to obtain a temporary restraining order to enforce the provisions of Article X; and (c) arbitration conducted by the Board under Article X, any and all claims, disputes and controversies by and between the Association, an Owner, Declarant, Managing Agent or any other party connected in any way to the Association, or any combination of the foregoing, arising from or related to the Property, the Association, any improvements to the Property, the sale of any Dwelling or Lot on the Property, including, without limitation, any claim of breach of contract, negligence, negligent or intentional misrepresentation or non-disclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealings, shall be submitted to arbitration by and pursuant to the rules of JAMS (hereinafter JAMS) in effect at the time of the request for arbitration or by such other arbitration service as Declarant shall, in its sole discretion select, and pursuant to the rules of that arbitration service in effect at the time of the request for arbitration. This arbitration agreement shall inure to the benefit of and be enforceable by all successors and assigns of the parties. The Declarant and the Association, but no other party, shall be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self-executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement, and notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The arbitrator's compensation shall be borne equally by the arbitrating parties. Any additional fees may be assessed in accordance with the arbitration rules and fees. Parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC §1 *et seq.*) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or (ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms.

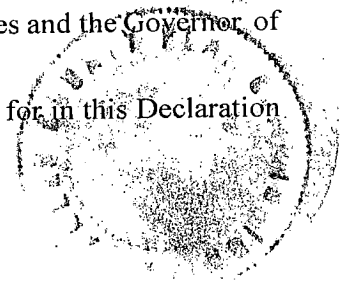
12.06 Enforcement. Each Owner shall comply strictly with the By-Laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set both in this Declaration and in the deed or other instrument of conveyance to his Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or for instituting an action to recover sums due, for damages and/or for injunctive relief and/or any other remedy available at law or in equity such actions to be maintainable by Declarant, the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association

employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the By- Laws, and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction or other equitable action to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of Declarant, the Association, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue, nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws, or any rules and regulations of the Association, however long continued.

12.07 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive twenty (20) year periods. The number of twenty (20) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each twenty (20) year renewal period for an additional twenty (20) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of the initial twenty (20) year, eighty-five percent (85%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be duly filed, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation or transfer, to the covenants, conditions, restrictions, easements, rights, benefits and privileges of every character contained herein, shall be deemed and taken to be appurtenant to and covenants running with such Property, and shall be binding upon any such grantee, mortgagee or trustee and their successors and assigns as fully and completely as though the provisions of this Declaration were fully recited and set forth in their entirety in such documents.

12.08 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until the expiration of twenty-one (21) years after the death of the last survivor of any of the now living descendants of the President of the United States and the Governor of Indiana.

12.09 Interpretation. In all cases, the provisions set forth or provided for in this Declaration



shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board, will best affect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance, building codes or other regulations which are less restrictive. The effective date of this Declaration shall be the date of its filing for record. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana. This Declaration shall not be construed against Declarant or any Builder.

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

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

12.12 Notice of Sale, Lease, or Mortgage. In the event an Owner sells otherwise disposes of any Lot, the Owner must promptly furnish to the Association in writing the name and address of the new Owner. All delinquent assessments, dues and fines must be paid current prior to the sale of a Lot to a new Owner.

12.13 No Trespass. Whenever the Association or Declarant and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

12.14 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots or Dwellings. All notices to the Association shall be delivered or sent in care of Declarant at the following address:

Cobble Creek Community Association, Inc.  
Attention: President  
10808 LaCabreah Lane  
Fort Wayne, IN 46825

With a copy to:  
Attention: President  
North Eastern Development Corp.  
10808 LaCabreah Lane  
Fort Wayne, IN 46845



or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant at the above address or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association. All notices are deemed delivered when delivered by hand or when deposited in the United States mail.

12.15 Declarant's Rights. All Declarant's Rights shall be mortgageable, pledgeable, assignable or transferable. The Declarant shall have the right to assign some or all of the Declarant Rights reserved or granted hereunder to Declarant, subject to the following:

(a) Declarant may assign to a Person which acquires title to a portion of the Property the non-exclusive right to exercise some or all of the Declarant Rights, subject to such terms, conditions and limitations as the Declarant shall deem appropriate, in their discretion.

(b) If Declarant conveys all of the Additional Property owned by it to a Person, then the Declarant shall no longer have the right to exercise any Declarant Rights and the person which acquires such portions of the Additional Property from Declarant may become the successor to the Declarant and, if so, shall have the right to exercise all Declarant Rights hereunder, subject to any assignments previously made by the Declarant permitted hereunder.

(c) Any Declarant Rights may be collaterally assigned by the Declarant to a lender which makes a development or construction loan to Declarant with respect to a portion of the Additional Property.

(d) Except as provided in Section 13.14 hereof, no transfer of Declarant Rights shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Recorder's Office of Allen County, Indiana.

12.16 Disclaimer of Other Entities. Owner and the Association acknowledge and understand that their relationship is with the Declarant, pursuant to the written terms of this Declaration, and no other entity notwithstanding anything to the contrary in advertising, promotional or other materials. Owner and the Association acknowledge that they have no claim against any entity including affiliates, subsidiaries, parents or otherwise under common control of Declarant, Owner and the Association waive and release any such claims, if any.


12.17 Disclaimer of All Warranties. Declarant hereby disclaims and excludes any and all warranties, expressed or implied (including, without limitation, any implied warranty of habitability, merchantability, quality or fitness for particular purpose), with respect to the Property, Common Areas, the Lots and the Dwellings. The Association and any Owner knowingly agree to waive any and all rights that they may have pursuant to the implied warranty of habitability. The Association and Owners acknowledge and agree that the sole warranties that apply to the Property, Common Areas, Lots and Dwellings are solely contained within the purchase agreement for the acquisition of the Lot or Dwelling from the seller thereof.

IN WITNESS WHEREOF, North Eastern Development Corp. has caused its name to be signed to these presents by its President this 19<sup>th</sup> day of December, 2019.

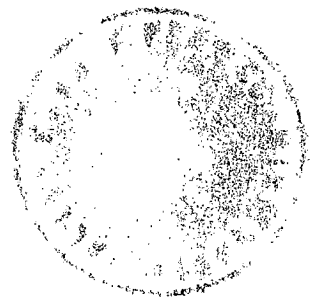


**NORTH EASTERN DEVELOPMENT CORP.**

By: \_\_\_\_\_

  
\_\_\_\_\_

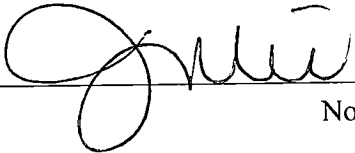
Joseph L. Zehr, its President



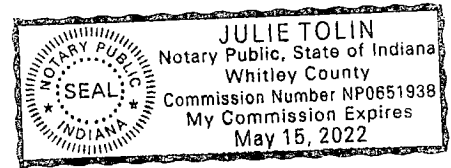
STATE OF INDIANA )  
 ) SS:  
COUNTY OF ALLEN )

Before me, a Notary Public in and for said County and State, do hereby certify that Joseph L. Zehr, the President of North Eastern Development Corp., personally appeared before me this day and acknowledged that by authority duly given as the acts of North Eastern Development Corp., the foregoing instrument was signed in its name by its President.

WITNESS my hand and official seal, this 19<sup>th</sup> day of December, 2019.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
My County of Residence: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_



This Declaration prepared by Vincent J. Heiny, Carson LLP, 301 W. Jefferson Boulevard, Suite 200, Fort Wayne, IN 46802.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. /s/ Vincent J. Heiny

MAIL TO: 10808 LaCobreak Lane Fort Wayne In 46845  
Grantee's Mailing Address to which the tax statement should be mailed under I.C. 6-1.1-22-8.1

\_\_\_\_\_  
Grantee's Street Address or Rural Route Address if different than Mailing Address



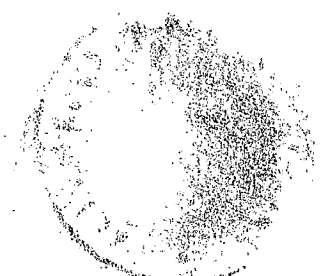


**EXHIBIT A - The Property**

**Legal Description:**

A tract of land located in the Northeast Quarter of Section 35, T32N, R11E, in Allen County, the State of Indiana, more fully described as follows:

**COMMENCING** at a Harrison Marker situated in the Northeast corner of said Northeast Quarter; South 00 Degrees 50 Minutes 24 Seconds East (Indiana State Plane Coordinate System East Zone-GPS Grid Basis of Bearings), a distance of 674.93 feet along the East line of said Northeast Quarter; Thence South 89 Degrees 09 Minutes 36 Seconds West, a distance of 255.00 feet; Thence South 00 Degrees 50 Minutes 24 Seconds East, a distance of 45.27 feet; Thence South 89 Degrees 09 Minutes 36 Seconds West, a distance of 130.00 feet; Thence South 72 Degrees 32 Minutes 28 Seconds West, a distance of 515.86 feet; Thence North 84 Degrees 09 Minutes 53 Seconds West, a distance of 30.00 feet to the **TRUE POINT OF BEGINNING**; Thence North 05 Degrees 41 Minutes 28 Seconds East, a distance of 68.56 feet; Thence North 00 Degrees 08 Minutes 57 Seconds East, a distance of 60.08 feet; Thence North 07 Degrees 15 Minutes 52 Seconds West, a distance of 53.69 feet; Thence North 09 Degrees 12 Minutes 42 Seconds West, a distance of 90.00 feet; Thence North 11 Degrees 56 Minutes 17 Seconds West, a distance of 103.64 feet; Thence North 26 Degrees 00 Minutes 37 Seconds West, a distance of 119.23 feet; Thence North 37 Degrees 54 Minutes 35 Seconds West, a distance of 56.87 feet; Thence North 45 Degrees 58 Minutes 23 Seconds West, a distance of 62.65 feet; Thence South 39 Degrees 48 Minutes 00 Seconds West, a distance of 21.12 feet; Thence North 58 Degrees 24 Minutes 55 Seconds West, a distance of 19.95 feet; Thence North 00 Degrees 50 Minutes 31 Seconds East, a distance of 28.66 feet; Thence North 60 Degrees 48 Minutes 45 Seconds West, a distance of 81.67 feet; Thence North 68 Degrees 21 Minutes 33 Seconds West, a distance of 94.85 feet; Thence North 68 Degrees 33 Minutes 11 Seconds West, a distance of 189.11 feet; Thence North 00 Degrees 29 Minutes 14 Seconds West, a distance of 131.13 feet to a point in the North line of said Northeast Quarter that is 1431.03 feet South 89 Degrees 30 Minutes 46 Seconds West from a Harrison Marker situated in the Northeast corner of said Northeast Quarter; Thence South 89 Degrees 30 Minutes 46 Seconds West, a distance



of 1207.08 feet along the North line of said Northeast Quarter to a Survey Nail in the Northeast corner of the tract of land described in the conveyance to Jonathan D. Adams in Allen County Document No. 2014037630; Thence South 00 Degrees 25 Minutes 56 Seconds East, a distance of 815.89 feet along the East line of said Adams tract and along the East line of the tract of land described in the conveyance to Amy R. Hoover & Jonathan D. Adams in Allen County Document No. 2017054480 to a Rebar stake with cap (Sauer) in the Southeast corner thereof; Thence North 89 Degrees 08 Minutes 35 Seconds West, a distance of 29.92 feet along the South line of said Hoover/Adams tract; Thence South 00 Degrees 17 Minutes 08 Seconds East, a distance of 230.20 feet along the centerline of the Benward Branch Drain; Thence South 83 Degrees 13 Minutes 17 Seconds East, a distance of 1347.18 feet along said centerline; Thence South 84 Degrees 11 Minutes 10 Seconds East, a distance of 376.59 feet along said centerline; Thence North 05 Degrees 50 Minutes 07 Seconds East, a distance of 210.98 feet; Thence South 84 Degrees 09 Minutes 53 Seconds East, a distance of 12.19 feet; Thence North 05 Degrees 50 Minutes 07 Seconds East, a distance of 180.00 feet to the **POINT OF BEGINNING**, said tract containing 42.763 Acres, more or less, and being subject to all public road rights-of-way and to all easements of record.



RECORDED  
AS  
RECEIVED

### EXHIBIT B – Fence Requirements

The styles of fence shown below are allowed around the side and rear yard of lots that are not adjacent to town parks, Common Area parks or ponds. The requirement is to have a tan or white polyvinyl fence or black powder coated aluminum fence. The three styles of polyvinyl fence allowed here are the shadow box (board on board) style (Figure A), the ornamental style (Figure B), and the tongue and groove style (Figure C). The style of the black powder coated aluminum fence is shown in Figure D. The fence cannot exceed six feet in height and cannot be installed in the front yard setback or any setback adjacent to the road.

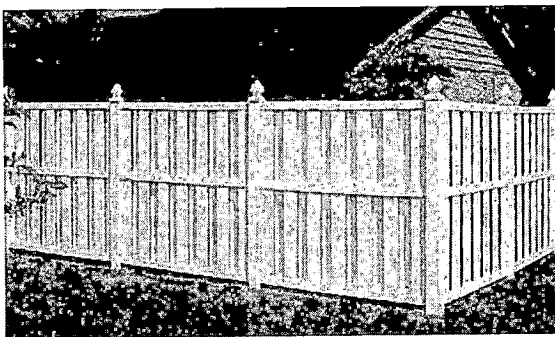


Figure A

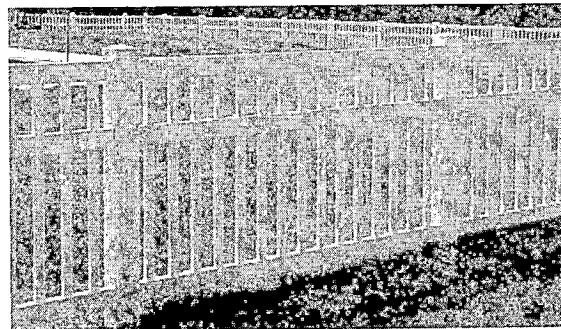


Figure B

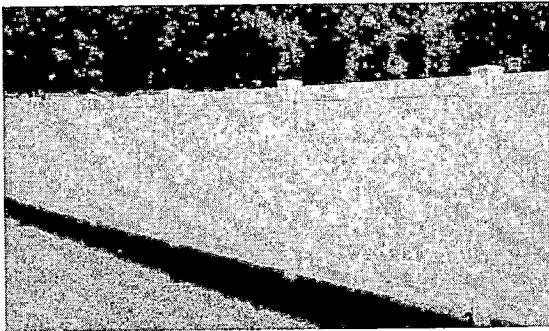


Figure C

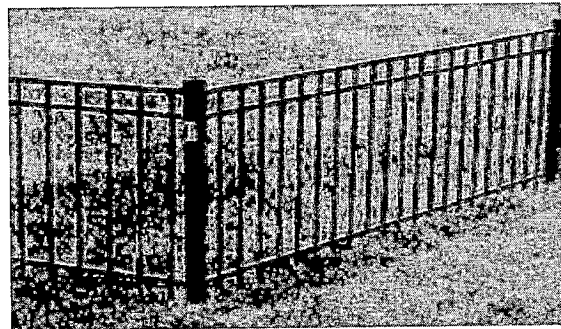
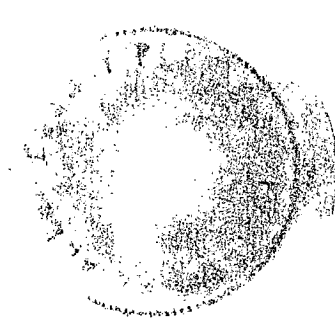
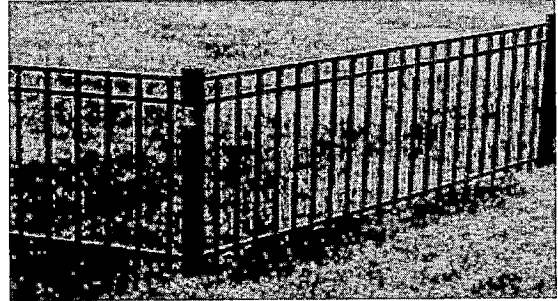
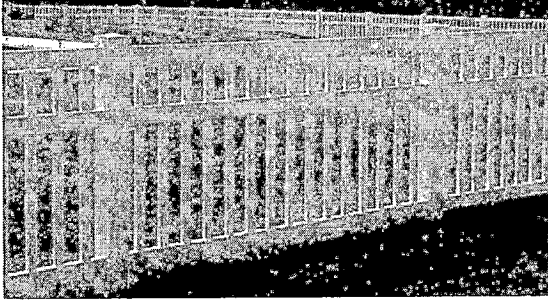


Figure D

The ornamental style fence is shown below. The fence is allowed around the side and rear yard of lots that are adjacent to town parks, Common Area parks and ponds. The requirement is to have a white or tan polyvinyl fence or black powder coated aluminum fence. The fence cannot exceed four feet in height and cannot be installed in the front yard setback or any setback adjacent to the road.



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AS  
RECEIVED



\*Reference the Use Restrictions for additional fencing requirements and restrictions.

