

ARTICLES OF INCORPORATION
OF
HAVENWOOD PROPERTY OWNERS ASSOCIATION, INC.

The undersigned incorporator, desiring to form a non-profit corporation (hereinafter referred to as the "Corporation"), pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991 (hereinafter referred to as the "Act"), executes the following Articles of Incorporation:

ARTICLE I
Name

The name of the Corporation is "Havenwood Property Owners Association, Inc."

ARTICLE II
Adoption and Purposes

Section 2.1. Adoption. These Articles of Incorporation creating Havenwood Property Owners Association, Inc. are adopted as contemplated by, and in accordance with, the Declaration of Covenants and Restrictions of Havenwood (the "Declaration"). The Declaration was recorded in the Office of the Recorder of Hamilton County, Indiana, as Instrument No. 2018009292 on March 7, 2018. The Declaration is incorporated herein by reference, and all of the standards, rights, liabilities, covenants and restrictions and other terms and provisions contained in such Declaration and any amendments and supplements thereto shall apply to and govern the interpretation of these Articles and the Code of By-Laws of the Corporation.

Section 2.2. Purposes. The Corporation shall be a mutual benefit corporation. The purposes of the Corporation shall be to provide for the administration and enforcement of the standards, covenants and restrictions contained in the Declaration, to own and to provide for the maintenance, repair, upkeep, replacement, administration, management and operation of the Property, to perform such other functions relating to the operation and maintenance of the Corporation as determined by its Board of Directors to be advisable or appropriate, and to:

(a) Have and exercise all of the powers, rights and privileges and perform all of the duties and obligations of the Corporation as set forth herein and in the Declaration and the Code of By-laws of the Corporation, as the same may be amended from time to time.

(b) Establish, allocate, levy, collect and enforce by any lawful means charges, dues or assessments against any Owner of any Lot pursuant to the terms of the Declaration and By-Laws; to pay all expenses in connection with the Corporation's performance of its duties and obligations pursuant to the Declaration and By-Laws including, but not

limited to, any fees, taxes or other governmental charges levied or imposed against the property of the Corporation.

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in conducting the affairs of the Corporation.

(d) Have and exercise any and all powers, rights and privileges which a corporation organized under the Act may now or hereafter have or exercise.

Section 2.3. Definitions. Capitalized terms used but not defined herein shall have the meanings attributed to such terms in the Declaration.

ARTICLE III
Period of Existence

The period during which the Corporation shall continue is perpetual.

ARTICLE IV
Registered Agent and Registered Office

The name of the Registered Agent is R&G Management Co Inc. d/b/a Community Association Services of Indiana and the address of the Registered Office at which the Registered Agent resides is 11711 N. College Avenue, Suite 100, Carmel, Indiana 46032.

ARTICLE V
Membership

Section 5.1. Members. Every person or entity who owns one or more Lots, including but not limited to Owners and Declarant, shall automatically upon becoming an owner of a Lot be and become a Member of the Corporation (a "Member"). In addition, any original Member or any replacement Member of the Initial Board of Directors (as designated in Paragraph 11 of the Declaration) shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a Member of the Board of Directors but shall not be deemed an Owner or Member of the Corporation for any other purpose.

Section 5.2. Rights, Preferences, Limitations, and Restrictions of Classes. All Members of the Corporation shall have the same rights, privileges, duties, liabilities, limitations and restrictions as the other Members. All Members shall abide by these Articles of Incorporation, the Code of By-Laws, and the rules and regulations adopted by the Board of Directors, and all covenants, restrictions and other provisions contained in the Declaration.

Section 5.3. Voting Rights. With respect to each matter on which a Member of the Corporation is entitled to vote, the Corporation shall have two (2) classes of membership with the following voting rights:

(i) **Class A.** Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) **Class B.** Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to ten (10) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the "Applicable Date". The "Applicable Date" is the first to occur of (i) the date upon which the written resignation of the Class B Members is delivered to the Resident Agent of the Corporation, or (ii) within one hundred twenty (120) days after the date when eighty percent (80%) of all Lots have been conveyed by Declarant to third party purchasers who will reside on such Lots.

ARTICLE VI
Directors

Section 6.1. Number of Directors. The Board of Directors shall be composed of three (3) members.

Section 6.2. Appointment of Directors. All Directors, other than the Initial Board of Directors, shall be elected by the Members.

Section 6.3. Names and Post Office Addresses of the Directors. The names and post office addresses of the Board of Directors are:

<u>NAME</u>	<u>ADDRESS</u>	<u>CITY AND STATE</u>	<u>ZIP CODE</u>
Kenneth E. Windler	8500 Keystone Crossing, Suite 590	Indianapolis, IN	46240
Jonathan Isaacs	8500 Keystone Crossing, Suite 590	Indianapolis, IN	46240
David Funkhouser	8500 Keystone Crossing, Suite 590	Indianapolis, IN	46240

ARTICLE VII
Incorporator

The name and post office address of the incorporator of the Corporation is Tammy K. Haney, 760 3rd Avenue, S.W., Suite 210, Carmel, Indiana 46032.

ARTICLE VIII
Provisions for the Regulation and
Conduct of the Affairs of the Corporation

Section 8.1. Contributions and Liabilities of Members. No Member of the Corporation nor any property of a Member shall be subject to any liability for any debts of the Corporation with the sole exception of the Member's Regular Assessment, Special Assessment, Additional Assessment and any other assessments which are specifically approved by a majority of Directors elected by the Owners in accordance with these Articles of Incorporation. Such Regular Assessment, Special Assessment, Additional Assessment and any other assessments are, to the extent of the Member's proportionate share thereof, the personal obligation of the Member, or a lien upon property of the Member, pursuant to the terms and provisions of the Declaration and the Code of By-Laws.

Section 8.2. Code of By-Laws. The power to make, alter, amend or repeal the Code of By-Laws and the rules and regulations for the conduct of the affairs of the Corporation, including the power to elect officers of the Corporation, shall be vested in the Board of Directors; provided, however, any amendment that would change any provision of the Code of By-Laws that are a part of the Declaration must be approved in accordance with the amendment provisions or requirements of such Code of By-Laws; provided, however, that no acts of the Board of Directors shall be inconsistent with or contradictory to these Articles of Incorporation or any applicable law.

Section 8.3. Dissolution. The Corporation may be dissolved only with the written consent of not less than a majority of the votes of the Owners. Upon dissolution of the Corporation, any assets remaining after payment of any known debts and obligations shall be transferred or distributed ratably to the Members consistent with the provisions of I.C. 23-17-22-5(a)(7).

Section 8.4. Amendment of Articles of Incorporation. These Articles of Incorporation may be amended with the consent of a majority of the votes of the Members, but no amendment may modify or change any provision of the Declaration, unless such change is approved in accordance with the provision of the Declaration for amendment to the Declaration.

Section 8.5. Non-Liability of Directors. The Directors shall not be liable to the Members of the Corporation for any error or mistake of judgment exercised in

carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith or contrary to the provisions of the Articles of Incorporation or Code of By-Laws. The Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation, and in all matters the Board shall act for and on behalf of the Corporation and as its agent.

Section 8.6. Additional Indemnity of Directors, Officers and Employees.

The Corporation shall indemnify any person made a party to any action, suit or proceeding by reason of the fact that he is or was a director, officer, employee or agent of the Corporation against all liability and reasonable expense incurred or suffered by such person in connection therewith, if:

- (a) the individual's conduct was in good faith; and
- (b) the individual reasonably believed:
 - (i) in the case of conduct in the individual's official capacity with the Corporation, that the individual's conduct was in the Corporation's best interests; and
 - (ii) in all other cases, that the individual's conduct was at least not opposed to the Corporation's best interests; and
- (c) in the case of any criminal proceeding, the individual either:
 - (i) had reasonable cause to believe the individual's conduct was lawful; or
 - (ii) had no reasonable cause to believe the individual's conduct was unlawful.

The terms used in this section shall have the same meaning as set forth in I.C. 23-17-16. Nothing contained in this section shall limit or preclude the ability of the Corporation to otherwise indemnify or to advance expenses to any director, officer, employee or agent.

The Corporation may also reimburse to any such person the reasonable cost of settlement of, or the amount of any judgment, fine or penalty rendered or assessed in, any such claim, action, suit or proceeding, if it shall be found by a majority of a committee composed of the directors not involved in the matter in controversy (whether or not a quorum) in their judgment reasonably exercised that such person was not guilty of negligence or misconduct in the performance of his duties to the Corporation (or such

other entity) and, with respect to any criminal action or proceeding, acted in a manner which he had no reasonable cause to believe was unlawful. In making such findings, and notwithstanding any adjudication in such action, suit or proceeding, such person shall not be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties to the Corporation (or such other entity) where, acting in good faith, he relied upon the books and records of the Corporation (or such other entity) or statements or advice made by or prepared by any officer, employee or agent of the Corporation (or such other entity) or any accountant, attorney or other person, firm or corporation employed by the Corporation (or such other entity) to render advice or service, unless he had actual knowledge of the falsity or incorrectness thereof; nor shall such person be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Corporation.

The Corporation may pay in advance of the final disposition of any such claim, action, suit or proceeding the expenses incurred in defending the same pursuant to the restrictions of I.C. 23-17-16-10.

The rights of indemnification, reimbursement and advance payments set forth above shall not be deemed exclusive of any other rights to which such person may be entitled apart from the provisions of this section, and shall inure to the benefit of the heirs and legal representatives of such person.

Section 8.6. Additional Indemnity of Directors, Officers and Employees.

The Corporation shall indemnify any person made a party to any action, suit or proceeding by reason account of the Corporation, (b) statements prepared by any of its officers and employees as to the value and amount of the assets, liabilities and net profits of the Corporation, or any of such items, or (c) statements or advice made by or prepared by any officer or employee of the Corporation or any accountant, attorney, other person or firm employed by the Corporation to render advice or service.

CODE OF BY-LAWS
OF
HAVENWOOD PROPERTY OWNERS ASSOCIATION, INC.

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CODE OF BY-LAWS
OF
HAVENWOOD PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I
Identification and Applicability

Section 1.01. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Declaration (as the same may be amended and supplemented) creating Havenwood (hereinafter sometimes referred to as “Havenwood”). The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to Paragraph 1 of the Declaration containing definitions of terms. These By-Laws shall constitute the By-Laws of the Corporation (as defined herein).

Section 1.02. Name, Principal Office and Resident Agent. The name of the Corporation is Havenwood Property Owners Association, Inc. (hereinafter referred to as the “Corporation”). The post office address of the principal office of the Corporation is M/I Homes, 8500 Keystone Crossing, Suite 590, Indianapolis, Indiana 46240; the name and post office address of its Resident Agent in charge of such office is Community Management Services, Inc., 941 E. 86th Street, Suite 225, Indianapolis, IN 46240. The location of the principal office of the Corporation, or the designation of its Resident Agent, or both, may be changed at any time or from time to time when authorized by the Board of Directors by filing with the Secretary of State.

Section 1.03. Individual Application. All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Lot or any part of the Real Estate, shall be subject to the restrictions, terms and conditions set forth in the Declaration and these By-Laws, and to any rules and regulations adopted by the Board of Directors as herein provided.

ARTICLE II
Meetings of Corporation

Section 2.01. Purpose of Meetings. At least annually, and at such other times as may be necessary, a meeting of the Owners shall be held for the purpose of electing the Board of Directors (subject to the provisions of Section 3.02 hereof), receiving the annual budget, and for such other purposes as may be necessary or required by the Declaration or these By-Laws.

Section 2.02. Annual Meetings. The annual meeting of the members of the Corporation shall be held in the fourth quarter of each calendar year. At the annual meeting the Owners shall (subject to the provisions of Section 3.02 hereof) elect the Board of Directors of the Corporation

in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings. A special meeting of the members of the Corporation may be called by resolution of the Board of Directors or upon a written petition of Owners who have in the aggregate at least a majority of the votes of all Owners. The resolution or petition shall be presented to the President or Secretary of the Corporation and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04. Notice and Place of Meetings. All meetings of the members of the Corporation shall be held at any suitable place in Hamilton County, Indiana or any contiguous county, as may be designated by the Board of Directors. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Corporation to each member entitled to vote thereat not less than ten (10) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at the addresses of their respective Lots and not otherwise. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary of the Corporation to each Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Corporation with its name and address in accordance with Section 8.01 of these By-Laws. Such Mortgagee may designate a representative to attend the meeting. Attendance at any meeting in person, by agent or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. Voting and Conduct of Meetings.

(a) Number of Votes. With respect to each matter on which a Member of the Corporation is entitled to vote, the Corporation shall have two (2) classes of membership with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to ten (10) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the "Applicable Date". The

“Applicable Date” is the first to occur of (i) the date upon which the written resignation of the Class B Members is delivered to the Resident Agent of the Corporation; (ii) within one hundred twenty (120) days after the date when eighty percent (80%) of all Lots have been conveyed by Declarant to third party purchasers who will reside on such Lots; or (iii) December 31, 2022.

(b) Multiple Owners. Where the Owner of a Lot constitutes or consists of more than one person, or is a partnership, there shall be only one vote for such Lot. At the time of acquisition of title to a Lot by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Corporation an irrevocable proxy appointing one of such persons or partners as the voting representative for such Lot, which shall remain in effect until all of such parties constituting such multiple Owner or the partners in such partnership designate another voting representative in writing, or such appointed representative relinquishes such appointment in writing, becomes incompetent, dies or such appointment is otherwise rescinded by order of a court of competent jurisdiction or the Owner no longer owns such Lot. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.05, which shall not constitute a permanent relinquishment of his right to act as voting representative for the Lot.

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the board of directors of such corporation may cast the vote to which the corporation is entitled. The secretary of the corporation or a trustee of the trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Corporation stating who is authorized to vote on behalf of said corporation or trust.

(d) Voting by Mail or Proxy. An Owner may vote either in person, by mail and/or written ballot or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary of the Corporation prior to the commencement of the meeting.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws or the Indiana Nonprofit Corporation Act of 1991 (hereinafter referred to as the “Statute”), the Owners representing twenty percent (20%) of the votes of all Owners shall constitute a quorum at all meetings.

(f) Conduct of Annual Meeting. The President of the Corporation shall act as the Chairman of all annual meetings of the Corporation if he is present. At all annual meetings, the Chairman shall call the meeting to order at the duly designated time and business will be conducted in the following order:

(1) Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a majority of the votes of all Owners attending the annual meeting.

(2) Treasurer's Report. The Treasurer shall report to the Owners concerning the financial condition of the Corporation and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.

(3) Budget. The budget for the current fiscal year shall be presented to the Owners.

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by any Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Corporation at least seven (7) days prior to the date of the annual meeting. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected. Each voting Owner shall sign his ballot. The foregoing provisions are subject to the provisions of Section 3.02 hereof.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Corporation at least seven (7) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the votes of all Owners attending the annual meeting.

(6) Adjournment.

(g) Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meetings of the Corporation if he is present. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be in consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

ARTICLE III Board of Directors

Section 3.01. Management. The affairs of the Corporation and Havenwood shall be governed and managed by the Board of Directors (herein collectively called "Board" or "Directors" and individually called "Director"). The Initial Board of Directors shall be composed of three (3) persons. After the Applicable Date, the Board of Directors shall be

composed of three (3) persons. No person shall be eligible to serve as a Director unless he is, or is deemed in accordance with the Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 3.02 hereof.

Section 3.02. Initial Board of Directors. The Initial Board of Directors shall be Kenneth E. Windler, Jonathan Isaacs and David Funkhouser (herein referred to as the “Initial Board”), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these By-Laws or the Declaration or elsewhere (a) the Initial Board shall hold office until the Applicable Date, as set forth in Paragraph 10 of the Declaration, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Lot by any type of juridic acts, inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner’s agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner’s right to vote and to vote as Declarant determines on all matters as to which members are entitled to vote under the Declaration, these By-Laws, or otherwise. This appointment of Declarant as such Owner’s agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

Section 3.03. Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one person at a time.

Section 3.04. Term of Office and Vacancy. Subject to the provisions of Section 3.02 hereof, at least one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date as provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one (1) member of the Board of Directors shall be elected for a three (3) year term, one (1) member for a two (2) year term, and one (1) member for a one (1) year term so that the terms of at least one-third (1/3) of the Directors shall expire annually. If such first election is at a special meeting, the Directors elected shall serve for the applicable period plus the time from the special meeting to the first annual meeting. There shall be separate nominations for the office of each Director to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 3.02 hereof as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Owners if a Director is removed in accordance with Section 3.05 of this Article III. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for

the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 3.05. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes of all Owners at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 3.06. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Corporation, the maintenance, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of owners) the establishment of a budget and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) protection, surveillance and replacement of the Common Area; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (b) landscaping, maintenance and upkeep of the Common Area, such maintenance obligation specifically includes, but is not limited to, signage, gang mailboxes, drainage areas and related facilities, ponds and lakes, recreational facilities, and Landscape Buffer Yards in accordance with the Zoning Commitments;
- (c) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (d) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (e) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

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

(g) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area;

(h) comply with the Zoning Commitments;

(i) comply with any Operation and Maintenance Manuals relating to storm water and drainage facilities on the Real Estate;

(j) comply with all contracts, leases and other agreements related to street lights; and

(k) Resolving any eminent domain action with respect to any Common Area; provided however that any resolution involving an offer of greater than Five Thousand and 00/100 Dollars (\$5,000.00) shall require the consent of a majority of Owners.

Section 3.07. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

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

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

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

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;

(e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

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

(g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment

of the Real Estate and Common Area (in addition to those set forth in the Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners. Such rules and regulations may provide that an Owner's failure to comply with such rules and regulations may result in (i) the imposition of fines by the Corporation against the Owner; and/or (ii) such Owner losing the right to use the Common Area and related facilities.

Section 3.08. Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Ten Thousand Dollars (\$10,000.00) without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Area or Landscape Improvements damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget; and

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

Section 3.09. Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 3.10. Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

Special meetings of the Board may be called by the President or any two members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail, and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place and at such time within Hamilton County, Indiana, or any of the contiguous counties, as shall be designated in the notice.

Section 3.11. Waiver of Notice. Before any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting or his subsequent consent to the

actions taken thereat, shall, as to such Director, constitute a waiver of notice of the time, place and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.12. Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.13. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of Havenwood or the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 3.14. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in such action, suit or proceeding where such Director is adjudged liable for bad faith, gross negligence or willful misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the votes of the Owners that such Director was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 3.15. Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the Treasurer of the Corporation and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. A Managing Agent shall provide such bond at its expense. For all officers and directors, the expense of any such bonds shall be a Common Expense.

Section 3.16 HOA Act. Notwithstanding any provision of this Declaration to the contrary, the Corporation shall be run with due regard and in compliance with the Homeowner's Association Act, Indiana Code Section 32-25.5-3-1 et seq. (the "HOA Act"). As a part of this obligation, the Corporation shall (i) maintain the roster and other information regarding the Owners and make such information available to the Owners as required under Section 32-25.5-3-1 of the HOA Act, (ii) shall prepare and adopt an annual budget consistent with the requirements and procedures of Section 32-25.5-3-3 of the HOA Act, (iii) not enter into any contract or borrow funds in violation of Section 32-25.5-3-4 and Section 32-25.5-3-5 of the HOA Act, and (iv) maintain a grievance resolution procedure required under Section 32-25.5-3-6 of the HOA Act, which procedure is set forth in the By-Laws.

ARTICLE IV Officers

Section 4.01. Officers of the Association. The principal officers of the Corporation shall be the President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.02. Election of Officers. The officers of the Corporation shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Corporation. He shall preside at all meetings of the Corporation and of the Board, shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Corporation and to perform such other duties as the Board may from time to time prescribe.

Section 4.04. The Vice President. The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.05. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Corporation and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties as from time to time may be prescribed by the Board. The Secretary shall

specifically see that all notices of the Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.06. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Corporation and who shall perform such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account or accounts in the name of the Corporation. The Treasurer may permit the Managing Agent to handle and account for monies and other assets of the Association to the extent appropriate as part of its duties.

Section 4.07. Assistant Officers. The Board of Directors may, from time to time, designate and elect from among the Owners an Assistant Secretary and an Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

ARTICLE V Assessments

Section 5.01. Annual Accounting. Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by an accountant approved by the Board, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 5.02. Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments and Additional Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Owners, the Budget may be approved in whole or in part by a majority vote of the Owners present either in person or by proxy; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include (1) Regular Assessments; and (2) the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area that must

be repaired and replaced on a periodic basis. The replacement reserve fund shall be used for these purposes and not for usual and ordinary maintenance expenses. By way of example only, the replacement reserve fund will be used for repairing and replacing items such as pumps, filters, landscaping (other than annual plantings and mulch), equipment, playground facilities and clubhouse furnishings and equipment. Usual and ordinary expenses which will not be paid out of the replacement reserve fund include but are not limited to, snow removal, fertilization, annual plantings, mulch, and preventive maintenance contracts. Such replacement reserve funds for capital expenditures and replacement and repair of the Common Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hamilton or Marion County, Indiana as selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments and Additional Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred ten percent (110%) of such last approved budget, as a temporary budget.

Section 5.03. Regular Assessments. The annual budget, as adopted by the Owners, shall contain a proposed assessment against each Lot equal to the Common Expenses multiplied by a percentage equal to one divided by the total number of Lots in the Tract. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds. The Regular Assessment against each Lot shall be paid in advance in equal semi-annual installments, with the payments due on the first day of January and July. Payment of the semi-annual installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. An Owner may elect to pay assessments annually, in advance. Semi-annual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget:

- (i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal

year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as provided herein, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 8.02 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations.

The budget and Regular Assessment shall increase at such time(s) as Declarant installs or constructs any recreational areas, including but not limited to, pool(s), clubhouse, trails, basketball courts and/or playgrounds.

Section 5.04. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in these By-Laws or the Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures, to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in the Declaration.

Section 5.05. Additional Assessments. In the event that Declarant constructs any recreational or similar facilities that are for the sole benefit and use of the Owners of Lots in a

particular section, the expenses associated therewith shall be an Additional Assessment. Any Additional Assessment will be assessed only against benefited Lots in an amount equal to the expenses multiplied by a percentage equal to one (1) divided by the total number of Lots. Additional Assessments shall be included in the annual budget and shall be due monthly, on the first day of each month.

Section 5.06 Replacement Reserve Fund. Prior to the Applicable Date, ten percent (10%) of the Capital Contribution (as defined in Section 5.08 shall be deposited into the replacement reserve fund (as established by Section 5.08 until the balance of such replacement reserve fund is Twenty-Five Thousand Dollars (\$25,000.00). Thereafter, deposits into the replacement reserve fund will cease unless and until expenditures are made from such fund, at which time fifty percent (50%) of the Capital Contribution will again be deposited into such fund until the balance of such fund again reaches Twenty-Five Thousand Dollars (\$25,000.00). After the Applicable Date, one hundred percent (100%) of the Capital Contribution will be deposited into the replacement reserve fund regardless of the balance of such fund.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve fund shall be held by the Initial Board and used for those expenses described in Paragraph 5.08. To the extent that such replacement reserve fund is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Lot shall commence on the date of conveyance of such Lot by Declarant or current owner to a new owner ("Commencement Date"). The first payment shall be payable on the Commencement Date prorated to the first day of the month when the next payment is due. Thereafter, payment of the Regular Assessment shall be paid semi-annually.

Section 5.07 Payment of Assessments by Declarant. The Declarant shall not be assessed any portion of any Regular, Special or Additional Assessment. Prior to the Applicable Date, Declarant hereby covenants and agrees to pay to the Corporation an amount equal to the difference, if any, between the expenditures of the Corporation made pursuant to this Declaration and the aggregate amount of all Regular, Special and Additional Assessments collected by the Corporation. Any such payment by the Declarant shall not establish any precedent for further or additional payments. Further, Declarant may advance funds to offset deficits on terms and conditions acceptable to the Board of Directors and Declarant.

Section 5.08 Capital Contribution. At the closing of the purchase of a Lot containing a Dwelling Unit, the purchaser is required to pay an amount equal to fifty percent (50%) of the Regular Assessment due on such Lot as purchaser's initial contribution to the replacement reserve fund and working capital fund of the Corporation. This sum is not an advance payment of Regular Assessments, but is allocated to the reserve fund and working capital fund to meet unforeseen expenditures and operating expenses and to purchase additional equipment and services. After the Applicable Date, the balance of the working capital fund shall be transferred to the Corporation. At such times as the balance of the working capital fund is Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), Declarant may reimburse itself from such capital contributions for any subsidies paid or advances made to offset deficits. Once Declarant is

reimbursed, such amounts shall be deposited into the working capital fund, regardless of the balance of such working capital fund.

Section 5.09. Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments, Special Assessments and Additional Assessments, or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular, Special and Additional Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment, Special Assessment or Additional Assessment when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make payments of any Regular Assessment, Special Assessment or Additional Assessment, when due, the Board, in its discretion may accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment, Special Assessment or Additional Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment, Special Assessment or Additional Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, and interest from the date such assessments were due until paid at the rate equal to the prime interest rate as announced by Chase Bank, Indianapolis, N.A., from time to time by, or if said bank is no longer in existence then such rate charged by another national bank in Hamilton County, Indiana, as selected by the Board of Directors, during the unpaid period plus twelve percent (12%).

Section 5.10. Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Section or elsewhere in the Declaration, Articles and these By-Laws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment, Special Assessment or Additional Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments, Special Assessments or Additional Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments, Special Assessments or Additional Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot from which it arose).

ARTICLE VI
Covenants and Restrictions

Section 6.01. Covenants and Restrictions. Paragraph 21 of the Declaration establishes covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units, Real Estate and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Plat. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. An Owner and/or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, Declarant shall have, for so long as Declarant owns any Lot or any of the Real Estate, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant), as Declarant may deem advisable or necessary in its sole discretion to aid in (i) the construction of Dwelling Units; (ii) the sale of Lots and Dwelling Units; and (iii) the conducting of any business or activity attendant thereto. Such Declarant's rights shall include, but not be limited to, construction and use of model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices on the Real Estate. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

Section 6.02. Right of Entry. All Owners and occupants of a Lot and Dwelling Unit shall be deemed to have granted the right of entry thereto to the Managing Agent, if any, or any other person authorized by the Board in case of any emergency originating in or threatening his Lot or Dwelling Unit, whether the Owner is present at the time or not.

Section 6.03. Right of Board to Adopt Rules and Regulations. The Board may promulgate such additional rules and regulations regarding the operating of the Real Estate, including but not limited to the use of the Common Area, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

ARTICLE VII
Amendment to By-Laws

Section 7.01. Amendment to By-Laws. Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements, as amendments to the Declaration, as set forth in Paragraph 22 of the Declaration. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration or these By-Laws prior to the Applicable Date without the consent and approval of Declarant.

ARTICLE VIII
Mortgages

Section 8.01. Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and its name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, these By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration, these By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of the Declaration, these By-Laws, or proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

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

Section 8.02. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments, Special Assessments or Additional Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 5.03 hereof.

Section 8.03. Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on insurance for the Common Area or to secure new insurance for the Common Area on the lapse of a policy with fifteen (15) days notice to the Corporation. Any mortgagee making such payment shall be owed immediate reimbursement by the Corporation.

ARTICLE IX
Miscellaneous

Section 9.01. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

Section 9.02. Membership Certificates. Each Member of the Corporation shall receive a certificate from the Corporation, signed by the President or Vice-President, and Secretary or Assistant Secretary thereof, stating that he is a Member of the Corporation. Such certificates shall be non-transferable and a Member's certificate shall become void and of no force and effect upon sale by a Member of his Lot. Such membership certificates shall be in a form and style determined by the Board.

Section 9.03. Personal Interests. No member of the Corporation shall have or receive any earnings from the Corporation as a result of being an officer or director of the Corporation except a member may receive principal and interest on moneys loaned or advanced to the Corporation as provided in the Statute.

Section 9.04. Contracts, Checks, Notes, Etc. All contracts and agreements entered into by the Corporation and all checks, drafts and bills of exchange and orders for the payment of money shall, in the conduct of the ordinary course of business of the Corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by the President or in his absence the Treasurer. Any one of the documents heretofore mentioned in this section for use outside the ordinary course of business of the Corporation or any notes or bonds of the Corporation shall be executed by and require the signature of the President and Secretary.

Section 9.05. Dispute Resolution

(a) Introduction

The Corporation, Declarant, and all persons subject to this Declaration (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving matters such as the initial construction and development of Real Estate, the repair, restoration or replacement of the Real Estate, contributions to the Regular, Additional and Special Assessments, Replacement Reserve, working capital fund, and the budget, including Common Expenses. To that end, and to avoid the financial and emotional costs associated with litigation, the Parties agree that should a Claim (as defined below) arise out of or be in relation to the Real Estate or any Governing Documents (as defined below), and the Parties are unable to resolve the Claim through direct discussion, the Parties shall attempt in good faith to resolve the Claim promptly

by mediation between the Parties. If the mediation does not prove successful, either Party may seek to resolve the Claim through binding arbitration. Accordingly, each Party covenants and agrees that this Article applies to all Claims.

(b) Definitions

(i) "Claim" means any grievance or dispute between Parties involving the Real Estate or Governing Documents, except Exempt Claims as they are defined below. "Claims" include, without limitation:

A. Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents.

B. Claims relating to the rights and/or duties of Parties under the Governing Documents.

C. Claims relating to the design, construction, or maintenance of the Real Estate.

(ii) "Claimant" means any Party having a Claim against any other Party.

(iii) "Exempt Claims" refers to grievances or actions which are exempt from this Article, "Exempt Claims" include:

A. The Corporation's claim for Assessments due from an Owner (other than Declarant), and any action by the Corporation to collect Assessments from an Owner (other than Declarant).

B. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief to maintain the status quo and preserve the Party's ability to enforce the provisions of the Declaration.

C. Enforcement of the easements, architectural control and use restrictions of this Declaration.

D. A suit to which an applicable statute of limitations would expire within the notice period of this Section, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Section.

E. A dispute that is subject to alternate dispute resolution - such as mediation or arbitration - by the terms of applicable law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Section, unless the Parties agree to have the dispute governed by this Section.

(iv) "Respondent" means any Party responding to a Claim.

(iv) "Governing Documents" means, singly or collectively as the case may be, the Declaration, the Plat, these Bylaws and the Articles, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Governing Document is a part of that Governing Document.

(c) Mediation

(i) Notice. Claimant must notify Respondent of his demand for mediation of his Claim in writing (the "Claim Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Governing Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Claim Notice is given pursuant to this Section. The Claim Notice for mediation may be made concurrently with the filing of a demand for arbitration (as provided in sub-paragraph (d) below), but in such event mediation shall proceed in advance of binding arbitration, and the binding arbitration shall not commence until the mediation process has completely concluded.

(ii) Location of Mediation. The location of any mediation will be Hamilton County, Indiana.

(iii) Choice of Mediator. Once a Respondent receives a Claim Notice, the Respondent will have twenty (20) days to respond to the Claimant's Claims. Within ten (10) days after the Respondent submits his response, both Parties must also exchange a list of five (5) acceptable mediators. The mediation will be conducted by a single mediator mutually agreed to by the Parties from the mediator list. If the Parties do not have a mutually agreeable mediator on their lists, the Parties will have to reach an agreement upon a mediator with the only requirement being that the mediator must have experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. The Parties will have ten (10) days to agree to a mediator after the lists have been exchanged.

(iv) Role of Mediator. Once the date of the first formal mediation session is set, the mediator may require the Parties to submit (a) a mediation statement clarifying the disputed issues, as well as each Party's position and a summary of arguments supporting that position, and (b) the name and title of the person or persons who will attend and have authority to make settlement

decisions binding on the respective Parties. At all times during the mediation process, the mediator will maintain impartiality, though he may give his views, opinions or settlement proposals as a means to move the dispute toward resolution. However, the mediator's views, opinions, and settlement proposals shall not be deemed to be legal advice. Information exchanged during the mediation is confidential unless it otherwise would be discoverable or admissible at another legal proceeding.

(v) Waiver of Mediation. If Claimant does not submit the required list of mediators, cannot reach an agreement with Respondent as to an acceptable mediator within the ten days after the lists of mediators have been exchanged, ever fails to attend a formal mediation session, or in any other way fails to participate in the mediation process, the Claimant will be deemed to have waived the Claim and the Respondent will be released and discharged from any and all liability to Claimant on account of the Claim.

(vi) Enforcement of Resolution. Any settlement of a Claim through initial negotiation or subsequent mediation will be documented in writing and signed by the Parties. Any settlement agreement that they may enter into during the mediation process is fully binding and enforceable by any Court with jurisdiction of the Claim. Thus, if any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Section. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorney's fees and court costs.

(vii) Termination of Mediation. If the Parties do not settle the Claim within sixty (60) days after the Claim Notice, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may make a demand for binding arbitration if the Claimant did not already simultaneously make one at the time that the Claimant made a demand for mediation.

(viii) Partial Resolution of Claims. If the Parties were able to resolve some, but not all, of the Claims at issue at the mediation, then the issues that were resolved will be documented in writing and signed by the Parties as provided in sub-paragraph (vi) above. These claims will not be at issue in the binding arbitration and shall be enforced in the same manner as discussed in sub-paragraph (vi) above.

(ix) Allocation of Costs. Except as otherwise provided in this sub-

paragraph (ix), each Party bears all of its own costs incurred prior to and during the proceedings described above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

(d) Arbitration

(i) Matters to be submitted to Binding Arbitration. Any Claim which would be subject to mediation as set forth in this Section is also subject to binding arbitration.

(ii) Initiation of Claim. Arbitration of any Claim shall be initiated by a Claimant making a written demand therefor after all attempts at a meaningful mediation have failed. The demand for arbitration shall take the same form as the Claim Notice set forth in sub-paragraph (c)(i) above. As discussed above, a Claimant can simultaneously demand mediation and arbitration, but the demand for arbitration must be held in abeyance until the mediation process has been completed.

(iii) Location of Arbitration. The location of any arbitration will be in Hamilton County, Indiana.

(iv) Selection of Arbitration. Unless otherwise agreed to in writing by the parties to the arbitration, the Claimant and Respondent shall each choose one arbitrator. These two (2) arbitrators will, in turn, then agree upon a third arbitrator.


(v) Arbitration Procedures. The arbitrators shall commence hearings within thirty (30) days of the initiation of the arbitration process. Prior to the hearings, Claimant or Respondent may send out requests to compel document production from the other Party. Disputes concerning the scope of document production and or may be ordered by the arbitrators to the extent reasonable. When rendering a decision, the arbitrators may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of any Governing Document. Subject to the other terms hereof, if a Party fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitrators may hear and determine the Claim upon evidence produced by the appearing Party.

(vi) Applicable Rules. Notwithstanding any other provisions of the Governing Documents, the foregoing agreement to arbitrate shall be subject to the rules set forth in the Federal Arbitration Act. Except where contrary to the provisions set forth in the Governing Documents, the arbitrator shall apply the rules set forth in the Federal Arbitration Act to the arbitration of any Claim. However, the parties may agree in writing to any additions, deletions or changes to the applicable arbitration rules.

The foregoing agreement to arbitrate does not constitute any agreement or consent to arbitrate any Claim not described in this Section or with any person not named or described herein. Any arbitration proceeding initiated under the terms of this Section may, at the request of either the Parties may be joined or consolidated with other arbitration proceedings involving additional parties if the Claim and the subject of such other proceedings arise out of common or interrelated factual occurrences.

(vii) Binding Arbitration. THESE BY-LAWS CONTAIN A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES. Any award of the arbitrator shall be final and binding upon the Parties and judgment thereon shall be entered by any court having jurisdiction.

(viii) Costs. The arbitration costs shall be borne equally by the Parties, except that each Party shall be responsible for its own expenses.

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DECLARATION OF COVENANTS AND RESTRICTIONS

OF

HAVENWOOD

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Exhibit A – Real Estate

Exhibit B – Zoning Commitments

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF
HAVENWOOD**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS made this ____ day of _____, 2017, by M/I Homes of Indiana, L.P., an Indiana limited partnership (“Declarant”).

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to certain real estate located in Hamilton County, Indiana, more particularly described in the attached Exhibit A, which is incorporated herein by reference (the “Real Estate”), which lots and land will be subdivided for the development of Havenwood, a single family housing development in Hamilton County, Indiana (the “Development”) and will be more particularly described on the plats to be recorded in the office of the Recorder of Hamilton County, Indiana (the “Plats”).

B. Declarant hereby subjects the Real Estate to the provisions of this Declaration.

C. Declarant by execution of this Declaration assures that all properties which are conveyed which are a part of the Real Estate shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) “Applicable Date” means the date determined pursuant to Section 10 of this Declaration.

(b) “Architectural Review Board” means that committee of the Corporation established pursuant to Section 16 for the purpose of establishing architectural standards and approving changes and improvements to Dwelling Units and Lots.

(c) “Articles” or “Articles of Incorporation” means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(d) “Board of Directors” means the governing body of the Corporation elected by the Members in accordance with the Bylaws of the Corporation.

(e) "Bylaws" shall mean the Bylaws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation.

(f) "Common Area" means the area designated as such upon the Plat and all improvements located thereon.

(g) "Common Expense" means expenses for administration of the Corporation, expenses for the upkeep, leasing, maintenance, repair and replacement of the Common Area and all sums lawfully assessed against the Members of the Corporation.

(h) "Corporation" means Havenwood Property Owners Association, Inc., its successors and assigns, a nonprofit corporation, whose Members shall be the Owners of Lots, or appointees as provided in Section 10 of this Declaration; such Corporation being more particularly described in Section 10 of this Declaration.

(i) "Declarant" shall mean and refer to M/I Homes of Indiana, L.P., an Indiana limited partnership and any successors and assigns whom Declarant designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(j) "Drainage, Utility and Sewer Easements" means the areas of ground on the Plat marked Drainage and Utility Easement.

(k) "Dwelling Unit" means one of the living units located upon a Lot.

(l) "Easements" means all of the easements shown on a Plat or described herein as an Exclusive Landscape Easement and Drainage, Utility and Sewer Easement.

(m) "Exclusive Landscape Easement" shall mean and refer to those areas identified on the Plat to be burdened by such easement.

(n) "Havenwood" means the name by which the Real Estate which is the subject of this Declaration, shall be known.

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

(p) "Member" means a member of the Corporation.

(q) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(r) "No Access Easement" means the areas of ground on the Plat marked No Access Easement.

(s) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(t) "Plat" shall mean the survey of Havenwood Secondary Plat Section One and the Lots, Easements and Common Area shown thereon prepared by ____, certified by ____ under date of ____, recorded as Instrument Number ____ on ____ in the Office of the Recorder of Hamilton County, Indiana and any additional subdivision or similar plat executed by Developer (or any other owner of such property) recorded in the public records of the Hamilton County, Indiana, pursuant to which any additional portions of the Real Estate are platted and subjected to this Declaration as a part of Havenwood.

(u) "Zoning Commitments" means those commitments and agreements contained in the Commitments Concerning the Use and Development of Real Estate recorded on April 28, 2017 as Instrument No. 2017018462, in the Hamilton County Recorder's office, a copy of which is attached hereto as Exhibit B.

2. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Havenwood. The legal description for each Lot shall be as follows:

Lot ____ in Havenwood, a subdivision in Hamilton County, Indiana, as per plat thereof recorded _____ as Instrument Number _____, in the Office of the Recorder of Hamilton County, Indiana.

4. Lot Boundaries and Access. The boundaries of each Lot shall be as shown on the Plat.

5. Common Area. Common Area includes all the area designated as such on the Plat, including, but not limited to, the ponds, drainage areas, and recreational areas, but excluding all Lots and Easements located on the Lots. Declarant has the right, but not the obligation, to construct recreational facilities in any of the Common Area, and if such facilities are constructed, such facilities shall be part of the Common Area.

6. Ownership and Use of Common Area. The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) Except as otherwise provided in Section 11(f)(xi), the right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, two-thirds of all Class B Members and by two-thirds of all first mortgagees to dedicate or transfer all or any part of the Common Area to any public agency, authority

or utility for such purposes and subject to such conditions as may be agreed by the Corporation. Notwithstanding the foregoing, the Declarant or the Corporation may, without any approval of any of the Members, convey any walking or recreational trails constructed in Havenwood to the Town of Bargersville or Hamilton County or its respective designee.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Section 11.

(c) The Common Area in Havenwood shall be conveyed to the Corporation upon the recording of a Plat, by quitclaim deed, free and clear of all liens and encumbrances except the Zoning Commitments, the lien of non-delinquent real estate taxes and any recorded or platted easements; provided, however, that the conveyance of the Common Area to the Corporation shall not prevent Declarant from improving the Common Area as Declarant deems appropriate at any time prior to the Applicable Date.

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

8. Easements in Common Area. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in the Common Area and Easements. Such easement and right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

An easement is also granted to the Corporation, its officers, agents and employees and to the Managing Agent (as defined in Section 11(f)) to enter in or to cross over the Common Area, Easements and Lots to perform its duties; provided, however, reasonable notice shall be given the Lot Owner, except in the case of an emergency. An easement is also granted to Declarant, for so long as Declarant owns a Lot or any of the Real Estate across the Lots, the Real Estate and the Common Areas, for the purpose: (i) to erect signs on the Common Area and any Lot or Real Estate owned by Declarant, and to maintain sales offices, management offices and model homes; (ii) to construct, maintain, repair or replace any Dwelling Units, Common Area facilities, or any other improvements on the Real Estate; and (iii) to comply with the Zoning Commitments.

9. Easements.

(a) Landscape Easement. Declarant hereby declares, creates, grants and reserves the Landscape Easement as shown on the Plat as a non-exclusive easement for the use of the Declarant and the Corporation for installation, maintenance and removal of trees, shrubbery, flowers and other plantings, entryway, neighborhood and community identification signage, earth mounds, screening material, fencing, walls, directions, lighting, irrigation systems walking trails and additional similar landscape improvements. Except as installed by the Declarant or the Corporation, and except for any utility facilities or drainage facilities which may be installed in any easement that may now or

hereafter be declared, granted or reserved in or upon any portion of the Real Estate and designated on the Plat as a Landscape Easement, no structures or other improvements shall be installed or maintained in or upon any Landscape Easements. Notwithstanding the foregoing provisions of this Section and the provisions of any Plat or other recorded instrument executed by Declarant designating a Landscape Easement, a Landscape Easement shall automatically terminate as to that portion of such easement area that is located within or upon any public right-of-way hereafter dedicated to the public upon the recording of a Plat or other instrument creating such public right-of-way. All improvements and landscaping located within the Landscape Easement shall be maintained by the Corporation and the Corporation shall have an easement of ingress and egress on and over the Lots adjacent thereto for the purpose of satisfying this maintenance obligation. The landscaping and other improvements planted or installed by the Declarant and/or the Corporation within the Landscape Easement may not be removed by any Owner, nor may any Owner add any landscaping or improvements to such easement area without the prior approval of the Architectural Review Board.

(b) Drainage and Utility Easements. The Drainage and Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Corporation for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Drainage and Utility Easements include all Sanitary Sewer Easements, Drainage Easements and Utility Easements as shown on the Plat. The Drainage and Utility Easements are hereby created and reserved for (i) the use of Declarant for access to and construction, maintenance, operation, repair and control of any retention and detention ponds and improvements comprising and/or related to the storm water drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) the use of the Corporation for access to and maintenance, repair and replacement of such drainage system. The Owner of any Lot subject to a Drainage and Utility Easement shall be required to keep the Easement area on his Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without the appropriate governmental and prior written approval of the Declarant. The Drainage and Utility Easements are hereby created and reserved for the use of Declarant and the Town of Bartersville and/or Hamilton County for installation and maintenance of an underground sanitary sewer system. The delineation of the Drainage and Utility Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any portion of any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Section.

(c) No Access Easements. No Access Easements are shown on the Plat and are created for the specific purpose of restricting access to residential lots from existing public streets. No driveway or access, either permanent or temporary will be permitted across designated non-access easements.

10. Corporation; Membership; Voting; Functions.

(a) Membership in Corporation. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases at which time his membership shall terminate and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he acquires fee simple title to such Lot, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons together shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine. In no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to ten (10) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date. The "Applicable Date" is the first to occur of (i) the date upon which the written resignation of the Class B Members is delivered to the resident agent of the Corporation, (ii) within one hundred twenty (120) days after the date when eighty percent (80%) of all Lots have been conveyed by Declarant to third party purchasers who will reside on such Lots, or (iii) December 31, 2022.

(iii) Appointment of Declarant as Owner's Agent. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any method shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the Bylaws or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and

ownership of the Common Area, to pay taxes assessed against and payable with respect to the Common Area, to pay any other necessary expenses and costs in connection with the Common Area and to perform such other functions as may be designated for it to perform under this Declaration.

11. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or is a person appointed by Declarant as provided in subsection (b) of this Section 11.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of three (3) persons as designated in the Articles, to-wit: Kenneth E. Windler, Jonathan Isaacs and David Funkhouser (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in this Declaration, the Articles or the Bylaws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee of such Owner shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one (1) person at a time.

(d) Term of Office and Vacancy. Subject to the provisions of subsection (b) of this Section 11, at least one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date. After the Applicable Date, the Board of Directors will consist of three (3) members, elected by the Owners. Each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date (which, if appropriate, may be a special meeting) one (1) member of the Board of Directors shall be elected for a three (3) year term, one (1) member for a two (2) year term, and one (1) member for a one (1) year term so that the terms of at least one (1) of the members of the Board shall expire annually. If such election is at a special meeting, the term of each of

the Directors elected at the special meeting shall include the time from the special meeting to the applicable annual meeting. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of subsection (b) of this Section 11 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subsection (e) of this Section 11. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or with respect to whom there has otherwise been a vacancy.

(e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, a replacement Director shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Corporation, the management, maintenance, repair, upkeep and replacement of the Common Area and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties. The Board's duties include, but are not limited to:

(i) Protection, surveillance and replacement of the Common Area; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(ii) Landscaping, maintenance and upkeep of the Common Area, such maintenance obligation specifically includes, but is not limited to, signage, gang mailboxes, drainage areas and related facilities, ponds and lakes, and recreational facilities, and Landscape Buffer Yards in accordance with the Zoning Commitments;

(iii) Assessment and collection from the Owners of each Owner's respective share of the Common Expenses;

(iv) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;

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

(vi) Procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(vii) Paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area;

(viii) Comply with the Zoning Commitments;

(ix) Comply with any Operation & Maintenance Manuals relating to storm water and drainage facilities on the Real Estate; and

(x) Comply with all contracts, leases and other agreements related to street lights.

(xi) Resolving any eminent domain action with respect to any Common Area; provided however that any resolution involving an offer of greater than Five Thousand and 00/100 Dollars (\$5,000.00) shall require the consent of a majority of Owners.

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

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

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

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

(iv) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;

(v) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(vi) To open and maintain a bank account or accounts in the name of the Corporation;

(vii) To promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners. Such rules and regulations may provide that an Owner's failure to comply with such rules and regulations may result in (i) the imposition of fines by the Corporation against such Owner; and/or (ii) such Owner losing the right to use the Common Area and related facilities.

(h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Ten Thousand Dollars (\$10,000.00) without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

(i) Contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget; and

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

(i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm

or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in actions, suits or proceedings where such Director is adjudged liable for bad faith, gross negligence or willful misconduct in the performance of his duties. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

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

(m) HOA Act. Notwithstanding any provision of this Declaration to the contrary, the Corporation shall be run with due regard and in compliance with the Homeowner's Association Act, Indiana Code Section 32-25.5-3-1 et seq. (the "HOA Act"). As a part of this obligation, the Corporation shall (i) maintain the roster and other information regarding the Owners and make such information available to the Owners as required under Section 32-25.5-3-1 of the HOA Act, (ii) shall prepare and adopt an annual budget consistent with the requirements and procedures of Section 32-25.5-3-3 of the HOA Act, (iii) not enter into any contract or borrow funds in violation of Section 32-25.5-3-4 and Section 32-25.5-3-5 of the HOA Act, and (iv) maintain a grievance resolution procedure required under Section 32-25.5-3-6 of the HOA Act, which procedure is set forth in the By-Laws.

12. Initial Management. The Initial Board of Directors has entered or may hereafter enter into a management agreement with Declarant or a corporation or other entity affiliated with Declarant or a third party management company for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice. Declarant, such affiliate of Declarant or such third party management company will provide supervision, management and maintenance of the Common Area and in general, perform all of the duties and obligations of the Corporation. Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement and to adhere to and abide by the same. Until the Applicable Date, Declarant hereby reserves the exclusive right to manage the Real Estate and perform all the functions of the Corporation.

13. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Real Estate or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate or that part thereof that is assessed as a whole. Such Owner's proportionate share shall be the ratio that the square footage of his Lot bears to the total square footage of all the land comprising the Real Estate or part thereof assessed as a whole. Real estate taxes assessed on the improvements on the Real Estate shall be paid by the Owner of such improvements. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

14. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation. Utilities for the Common Area shall be a Common Expense.

15. Maintenance, Repairs and Replacements.

(a) By the Corporation. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses. After the Applicable Date and for so long as the Declarant owns any Lot(s), Declarant may, upon five (5) days' notice to the Corporation, undertake any maintenance, repair or upkeep which the Corporation is obligated, but has failed, to undertake. Declarant may then bill the Corporation for the cost of such maintenance, repair or upkeep. Such bill, if not paid by the Corporation within thirty (30) days of receipt, shall bear interest at the rate of twelve percent (12%) per annum.

(b) By Owners. Each Owner shall be responsible for maintaining and keeping his Lot, Dwelling Unit, and all other structural improvements located on his Lot in a good, clean, neat, sanitary and well maintained condition. The obligation to maintain a Lot shall exist, whether or not a Dwelling Unit exists on such Lot, and the Owner of such Lot shall keep such Lot maintained in the same manner as such Lot would be maintained if a Dwelling Unit existed thereon.

Each Owner shall also maintain, to the extent applicable, (i) the dusk-to-dawn lights installed on his Lot in good working condition, including but not limited to, replacement of photo cells; and (ii) any trees originally planted on his Lot in the area adjacent to the sidewalk ("Street Trees"). Each Owner shall be responsible for the maintenance of the Street Trees located on his Lot. In the event any Street Tree dies, the Owner of such Lot shall be responsible for replacing, at Owner's expense, the Street Tree with a substantially similar tree. Such tree replacement must be approved by the Architectural Review Board.

(c) Damage to Common Area. If, due to the willful, intentional or negligent acts or omissions of an Owner, a member of his family or a guest, tenant, invitee or other occupant or visitor of such Owner, any Common Area is damaged, then such Owner shall pay for such damage and necessary maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(d) Owner's Failure to Maintain. If any Owner shall fail (i) maintain and keep his Lot, Dwelling Unit and other structural improvements located on his Lot in a good, clean and sanitary condition as determined by the Board of Directors or (ii) comply with the terms of this Section 15, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment. Such cost shall be immediately due and shall be secured by the Corporation's lien on the Owner's Lot.

(e) Corporation's Easement over Lots. So long as the Real Estate is subject to this Declaration, each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Declarant for so long as Declarant owns a Lot or any part of the Real Estate and to the Corporation, its agents and employees, the right, in the form of a permanent easement, to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair, landscaping or other work contemplated herein.

16. Architectural Control.

(a) The Architectural Review Board. There shall be, and hereby is, established an Architectural Review Board consisting of three (3) persons as a standing committee of the Corporation. The Architectural Review Board may delegate its rights and obligations as the Architectural Review Board to the Management Agent.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate (including the Common Area, Easements and Lots) and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures and improvements and comply with the Zoning Commitments.

(c) Conditions. No improvements, alterations, excavation or changes in grade or other work which in any way alters any Lot or the exterior of any Dwelling Unit or other improvement thereon shall be made or done without the prior written approval of the Architectural Review Board. No building, fence, wall, pool, spa, hot tub, fire pit, pergola or other structure or improvement shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the plans by the Architectural Review Board. Additional restrictions and prohibitions regarding pools, fences, spas, decks, playground equipment, basketball goals, flag poles, storage sheds, mini-barns, fire pits and exterior painting are set forth in Section 21. Plans must comply with the requirements of this Section 16, Section 21, the Zoning Commitments, any rules and regulations adopted by the Architectural Review Board, and all applicable municipal rules, regulations and ordinances. Notwithstanding the foregoing, Architectural Review Board approval is not required for the initial construction of a Dwelling Unit by Declarant or any work by Declarant to comply with the Zoning Commitments or Declarant's obligations under this Declaration.

(d) Procedures.

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

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

(ii) Power of Disapproval. The Architectural Review Board may refuse to grant permission to construct, place or make the requested improvement, when:

(1) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of this Declaration, the plat restrictions or any rules, regulations or guidelines adopted by the Architectural Review Board;

(2) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Architectural Review Board;

(3) the proposed improvement, or any part thereof, would, in the sole opinion of the Corporation, be contrary to the interest, welfare or rights of all or part of other Owners; or

(4) the removal or placement of landscaping or structure is in any easement.

(iii) Duties of the Architectural Review Board. The Architectural Review Board shall approve or disapprove proposed improvements within thirty (30) calendar days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Architectural Review Board for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons therefore. In the event that the Architectural Review Board fails to provide written notice of approval or to request written notice for additional information within forty-five (45) days after submission of all required or requested information, the plans shall be deemed and presumed denied. **MUST HAVE WRITTEN APPROVAL BY ARCHITECTURAL REVIEW BOARD. NO VERBAL APPROVALS ALLOWED.**

(iv) No Waiver of Future Approvals. The approval of the Architectural Review Board of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Architectural Review Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatsoever subsequently or additionally submitted for approval or consent.

(v) Variance. The Architectural Review Board may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Architectural Review

Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the Architectural Review Board shall not be considered hardships warranting a variance.

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

(vii) Non-Liability of Declarant, Architectural Review Board. Neither the Declarant, nor the Architectural Review Board shall be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Architectural Review Board, or Declarant does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with this Declaration, any recorded plat governing the Real Estate or any applicable code, regulation or law.

(viii) Inspection. The Architectural Review Board and the Declarant and/or any property management organizations personnel may inspect work being performed to assure compliance with this Declaration, the plat restrictions and applicable regulations. However, neither the Architectural Review Board, nor any Member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Architectural Review Board, or Declarant, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Architectural Review Board, or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

(ix) No Compensation. Neither the Corporation nor any of its Members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

17. Assessments.

(a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a

financial statement prepared by an accountant approved by the Board, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments as that term is defined in Section 17(c) below for the next fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of those Owners present either in person or by proxy; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include (1) Regular Assessments; and (2) the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area that must be repaired and replaced on a periodic basis. The replacement reserve fund shall be used for these purposes and not for usual and ordinary maintenance expenses. By way of example only, the replacement reserve fund will be used for repairing and replacing items such as pumps, filters, landscaping (other than annual plantings and mulch), equipment, playground facilities and clubhouse furnishings and equipment. Usual and ordinary expenses which will not be paid out of the replacement reserve fund include but are not limited to, snow removal, fertilization, annual plantings, mulch, and preventive maintenance contracts. Such replacement reserve funds for capital expenditures and replacement and repair of the Common Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hamilton or Marion County, Indiana as selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses. If an annual budget is not approved by the Owners as herein provided for the then current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget, as adopted by the Owners, shall contain a proposed assessment against each Lot equal to the Common Expenses multiplied by a percentage equal to one divided by the total number of Lots in the Real

Estate. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds. The Regular Assessment against each Lot shall be paid in advance in equal annual installments, with payments due on the first day of January. Payment of the annual installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. An Owner may elect to pay assessments annually, in advance. Annual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget:

(i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot

or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 18 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations.

The budget and Regular Assessment shall increase at such time(s) as Declarant installs or constructs any recreational areas, including but not limited to, pool(s), clubhouse, trails, basketball courts and/or playgrounds.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

(e) Additional Assessments. In addition to the Regular Assessment, every Owner of a Maintained Lot will be charged an Additional Assessment for the services provided by the Corporation pursuant to Section 11(f). Furthermore, in the event that Declarant constructs any recreational or similar facilities that are for the sole benefit and use of the Owners of Lots in a particular section, the expenses associated therewith shall be an Additional Assessment. Any Additional Assessment will be assessed only against benefited Lots in an amount equal to the expenses multiplied by a percentage equal to one (1) divided by the total number of Lots. Additional Assessments shall be included in the annual budget and shall be due monthly, on the first day of each month.

(f) Replacement Reserve Fund. Prior to the Applicable Date, ten percent (10%) of the Capital Contribution (as defined in Section 17(h) below) shall be deposited into the replacement reserve fund (as established by Section 17 (b)) until the balance of such replacement reserve fund is Twenty-Five Thousand Dollars (\$25,000.00). Thereafter, deposits into the replacement reserve fund will cease unless and until expenditures are made from such fund, at which time fifty percent (50%) of the Capital Contribution will again be deposited into such fund until the balance of such fund again reaches Twenty-Five Thousand Dollars (\$25,000.00). After the Applicable Date, one hundred percent (100%) of the Capital Contribution will be deposited into the replacement reserve fund regardless of the balance of such fund.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve fund shall be held by the Initial Board and used for those expenses described in Section 17(b). To the extent that such replacement reserve fund is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Lot shall commence on the date of conveyance of such Lot by Declarant or current owner to a new owner ("Commencement Date"). The first payment shall be payable on the Commencement Date prorated to the first day of the month when the next payment is due. Thereafter, payment of the Regular Assessment shall be paid semi-annually.

(g) Payment of Assessments by Declarant. The Declarant shall not be assessed any portion of any Regular, Special or Additional Assessment. Prior to the Applicable Date, Declarant hereby covenants and agrees to pay to the Corporation an amount equal to the difference, if any, between the expenditures of the Corporation made pursuant to this Declaration and the aggregate amount of all Regular, Special and Additional Assessments collected by the Corporation. Any such payment by the Declarant shall not establish any precedent for further or additional payments. Further, Declarant may advance funds to offset deficits on terms and conditions acceptable to the Board of Directors and Declarant.

(h) Capital Contribution. At the closing of the purchase of a Lot containing a Dwelling Unit, the purchaser is required to pay an amount equal to fifty percent (50%) of the Regular Assessment due on such Lot as purchaser's initial contribution to the replacement reserve fund and working capital fund of the Corporation. This sum is not an advance payment of Regular Assessments, but is allocated to the reserve fund and working capital fund to meet unforeseen expenditures and operating expenses and to purchase additional equipment and services. After the Applicable Date, the balance of the working capital fund shall be transferred to the Corporation. At such times as the balance of the working capital fund is Twenty-Five Thousand Dollars (\$25,000.00), Declarant may reimburse itself from such capital contributions for any subsidies paid or advances made to offset deficits. Once Declarant is reimbursed, such amounts shall be deposited into the working capital fund, regardless of the balance of such working capital fund.

(i) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments, Additional Assessments and Special Assessments or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular, Additional and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment, Additional Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon

the failure of the Owner to make timely payments of any Regular Assessment, Additional Assessment or Special Assessment, the Board may, in its discretion, accelerate the entire balance of unpaid assessments and declare the same immediately due and payable. The Board may, at its option, bring suit to recover a money judgment for any unpaid Regular Assessment, Additional Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment, Special Assessment or Additional Assessment, whether by foreclosure or otherwise, the Corporation shall be entitled to recover from such Owner the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due until paid at the rate equal to the prime interest rate as announced by Chase Bank, Indianapolis, NA, from time to time by (or if said bank is no longer in existence then such rate charged by a national bank in Hamilton County, Indiana, selected by the Board of Directors) during the unpaid period plus twelve percent (12%).

(j) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment, Additional Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien will not relieve the prior owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments, Additional Assessments or Special Assessments thereafter becoming due or from the lien therefore. Any such unpaid Regular Assessments, Additional Assessments or Special Assessments shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

18. Mortgages and Unpaid Assessments.

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

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

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments, Additional Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 17 hereof.

19. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Common Area in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Common Area, unless the Board determines that a lesser amount of insurance is appropriate. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to Mortgagees.

(b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate. Such public liability

insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

(c) Other Insurance. The Corporation shall purchase officers' and directors' liability insurance in such amounts as the Board of Directors shall deem appropriate. The Corporation shall also obtain any other insurance required by law to be maintained and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, for example, liability insurance on vehicles owned or leased by the Corporation and workman's compensation insurance. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board of Directors or the Corporation.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses.

(e) Owners to Maintain Insurance. Each Owner shall be solely responsible for loss or damage to his Dwelling Unit and the contents thereof, however caused, and his personal property stored elsewhere on the Real Estate and the Corporation shall have no liability to the Owner for such loss or damage. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

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

In the event the insurance proceeds received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area or Landscape Improvements to as near as possible the same condition as it existed immediately prior to the damage or destruction.

21. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units, Real Estate and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Plat. All such covenants and

restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Corporation. An Owner and/or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family. No Lot shall be subdivided to form lots of less area. No use shall be made of any Lot except as permitted by the Zoning Commitments and applicable zoning and subdivision control ordinances under which the Real Estate is developed.

(b) All Dwelling Units shall have the minimum square footage of finished living area (exclusive of garages, carports, basements and porches) required by the Zoning Commitments.

(c) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(d) No nuisance shall be permitted on any Lot. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot; nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

(e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building. Except for features originally constructed by Declarant as part of a Dwelling Unit, no awning, canopy or shutter or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit without the prior written consent of the Architectural Review Board.

(f) No sign of any kind shall be displayed to the public view on any Lot, except that one sign of not more than six (6) square feet may be displayed to public view on any Lot at any time solely for the purpose of advertising a property for sale. Declarant may use larger signs during the sale and development of the Real Estate.

(g) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. All such pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Corporation to be removed from the property.

(h) No outdoor animal kennels or quarters can be constructed on any Lot.

(i) All rubbish, trash or garbage shall be stored in closed sanitary containers, shall be regularly removed from the Lots, and shall not be allowed to accumulate. Trash may be placed at the curb of each Lot no earlier than 8:00 p.m. the night before scheduled collection, and trash receptacles shall not be permitted to remain outside for more than twenty-four (24) consecutive hours. The burning of trash and open fires not contained within a cooking grill for the purpose of preparing food or in a fire pit approved by the Architectural Review Board under Section 16 are prohibited.

(j) No industry, trade, or other commercial activities shall be conducted on the Real Estate; provided, however, that notwithstanding the foregoing, home offices and home business activities conducted by the Owner of such Dwelling Unit are permissible provided all of the following conditions are met:

(i) there is not significant increased traffic in and around the Real Estate as a result of such use or activity;

(ii) no signs, billboards, or other advertising materials are displayed or posted on the exterior of any Dwelling Unit or anywhere else on the Real Estate;

(iii) the use or activity does not violate existing laws, including zoning laws;

(iv) the use or activity does not violate any of the other provisions of this Declaration, including, but not limited to, this Section 21;

(v) the Owner of the Dwelling Unit shall maintain all necessary casualty and public liability insurance; and

(vi) such use or activity is conducted during reasonable hours.

(k) No structure of a temporary character, tent, shack, basement, garage, barn or other outbuilding shall be maintained on any Lot, nor shall any garage or other building, except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters either temporarily or permanently.

(l) All Owners and members of their families, their guests, tenants, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof, shall observe and be

governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area.

(m) No boat docks, decks, rafts or similar structures or improvements shall be permitted on or near the lakes ("lakes" shall include all ponds and all other bodies of water in the Common Area). No Owner of any Lot and none of their families, guests, tenants or invitees or occupants of any Dwelling Unit or other persons entitled to use the same shall do or permit to be done any action or activity which could result in the pollution of the lakes, diversion of water, change in elevation of the water level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management or otherwise impair or interfere with the use of the lake for drainage and related purposes. No Owner, members of their families, guests or invitees or occupants of any Dwelling Unit or other persons entitled to use the same, may swim, boat, ice skate or engage in similar activities on the lakes. No individual using a lake has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Corporation, subject to the rights of the Declarant, the Corporation, their employees, successors and assigns as set forth in the Declaration with respect to maintenance and repair of lakes and Common Area.

(n) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trailers, trucks (larger than 3/4 ton), semi-tractor trucks, semi-trucks, semi-tractors trailers, disabled vehicles and/or trailers, motorcycles, minibikes, mopeds or personal watercraft shall be permitted, parked or stored anywhere within the Real Estate, unless stored completely enclosed within a garage or necessary or incidental to Declarant's or the Corporation's business. No repair work shall be done on the Real Estate on any vehicles, including passenger automobiles, unless completely enclosed within a garage.

(o) Except as required in Section 15(b) with respect to an Owner's maintenance of Street Trees, no Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area or Easements, except with express prior written permission from the Architectural Review Board.

(p) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease for a term of not less than six (6) months which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

(q) There are designated on the Plat building lines. Except as required for utilities to serve the Real Estate or a Lot, no building or structure will be permitted within this no-build area.

(r) Except for fences installed by Declarant as part of the construction of a model or sales office, any fences to be constructed on a Lot must be constructed in accordance with the Zoning Commitments and applicable laws and must be approved by the Architectural Review Board. All fences must be no higher than five feet (5'), be black

in color and be either wrought iron or aluminum, but wrought iron in appearance. All fences must be in the rear yard of a Lot (the fence shall adjoin the rear side of the dwelling. All fences must also comply with any rules and regulations adopted by the Architectural Review Board. All fences must be kept in good repair by the Owner. Pursuant to the requirements of the Town of Bargersville, no fences may be constructed within a Drainage Easement.

Any Owner who receives approval of the Architectural Review Board to construct a fence or other improvement within an Easement constructs such fence or other improvement at such Owner's sole risk. In the event work is required in such Easement, Declarant, any third party so authorized in this Declaration and/or any authorized municipal body or utility provider may undertake such work without liability to repair or replace any damage to any fence or other improvement. Any fence or other improvement which impedes or restricts drainage may be modified or removed by the Corporation or applicable municipal entity or utility provider. The cost thereof shall be the Owner's expense and treated as an Additional Assessment against such Owner's Lot.

(s) No antenna, satellite dishes or other device for the transmission or reception of radio, television or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground whether attached to a Dwelling Unit or otherwise on any Lot without the written approval of the Architectural Review Board. Notwithstanding the foregoing, any such device may be installed and maintained on any Lot without the written approval of the Architectural Review Board if (i) it is not visible from neighboring Lots, streets or Common Area; or (ii) the Owner prior to installation has received the written consent of the Owners of all Lots who would have views of the device from their Lots and presented such consents to the Architectural Review Board; or (iii) the device is virtually indistinguishable from structures, devices or improvements such as heat pumps, air conditioning units, barbeque grills, patio furniture and garden equipment which are allowed by this Declaration; or (iv) it is a satellite dish two (2) feet or less in diameter.

(t) No above ground swimming pools shall be erected, constructed or installed on any Lot. The construction of any in ground pool, decks, hot tub or spa requires the prior written approval of the Architectural Review Board. Notwithstanding the foregoing, temporary wading pools measuring no more than six feet (6') in diameter are permitted without approval of the Architectural Review Board. Such temporary wading pools must be drained and stored indoors on a nightly basis.

(u) Any change to an exterior color of a Dwelling Unit must be approved by the Architectural Review Board and must satisfy the Zoning Commitments.

(v) No clotheslines, equipment, garbage cans, woodpiles or storage piles shall be kept outside of a Dwelling Unit.

(w) In order to maintain the standards of Havenwood, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or allowed to remain anywhere on

a Lot. An Owner's failure to comply with this requirement shall allow the Declarant or the Corporation to cut weeds or clear the refuse from such Lot at the expense of the Owner thereof, and there shall be a lien against said Lot for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Corporation or the Declarant may file suit and recover such amount, together with reasonable attorneys' fees and costs of collection.

(x) Notice is hereby given of the Zoning Commitments, which are certain written commitments made in connection with the zoning of the Property to the Town of Bargsville.

(y) Nothing contained in this Declaration, including but not limited to this Section 21, shall be construed or interpreted to restrict the activities of Declarant in connection with the development of the Real Estate and sale of Lots. For so long as Declarant owns any of the Real Estate, Declarant shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities upon any portion of the Real Estate at any time owned or leased by Declarant, as in the sole opinion of Declarant may be reasonably required, or convenient or incidental to the development of the Real Estate and sale of the Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices, canopies, awnings and flag poles.

(z) No playground or recreational equipment shall be placed or constructed upon a Lot until after such equipment and its location have been approved by the Architectural Review Board. All such playground or recreational equipment shall be constructed of wood and not metal and maintained by the Owner thereof in a safe and functional manner.

(aa) Basketball goals are permitted subject to approval by the Architectural Review Board. Only permanent goals with black posts and glass or white/translucent fiberglass backboards may be considered for approval. No basketball goal positioned in a manner likely to result in the use of an adjoining public or private street in connection with the use of such goal may be approved.

(bb) Mini-barns and storage sheds are prohibited.

(cc) Vegetable, wild flower and other gardens may be located only in the rear yard of a Lot, may not exceed one hundred (100) square feet in size, must not be visible from any street, must be entirely behind the Dwelling Unit and not visible from the sight lines, and may not be located within five feet (5') of a property line. Compost containers and/or compost piles are prohibited outside of a Dwelling Unit.

(dd) Except for flag poles installed by Declarant, flag poles must be approved by the Architectural Review Board and there may be no more than one (1) flag pole on each Lot. No flag poles shall exceed twenty feet (20') in height. Flags exceeding thirty (30) square feet are prohibited. No more than two (2) flags may be flown from a single flag pole at any time.

(ee) Each Owner of a Lot shall comply at all times with the provisions of any drainage plan as approved for the development of all or any part of the Real Estate. It shall be the duty of every Owner of a Lot to keep any storm drainage ditches and/or swales on such Lot open, unobstructed, and in good condition and repair. Water discharged from sump pumps, geo-thermo systems or other sources located on any Lot may be discharged only into underground drainage facilities located thereon. Under no circumstances shall such water be discharged above ground and/or into any adjoining street or onto any adjacent Lot or Common Area. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

(ff) Each Owner shall install and/or maintain the street address of the Lot on the front of the Dwelling Unit utilizing numbers not less than four inches (4") in height which are permanently attached to the Dwelling Unit.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, Declarant shall have, for so long as Declarant owns any Lot or any of the Real Estate, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant), as Declarant may deem advisable or necessary in its sole discretion to aid in (i) the construction of Dwelling Units; (ii) the sale of Lots and Dwelling Units; and (iii) the conducting of any business or activity attendant thereto. Such Declarant's rights shall include, but not be limited to, construction and use of model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices on the Real Estate. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

22. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the Members of the Corporation at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the Members of the Corporation duly called and held in accordance with the provisions of the Bylaws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of

the votes of all Owners; provided however, that prior to the Applicable Date all proposed amendments shall require the written consent of the Declarant. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Section 19 with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Section 20 of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Section 16 of this Declaration establishing the Architectural Review and providing for its functions, or (5) the provisions of Section 17 of this Declaration with respect to the commencement of assessments on any Lot, or (6) the provisions of Section 22(b) of this Declaration with respect to amendments solely by Declarant without, in each and any of such circumstances, the unanimous approval of all Owners, including Declarant so long as Declarant owns any Lot, and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and by Declarant if required herein. Each amendment shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(b) Amendment. Prior to the conveyance of the first Lot to an Owner, Declarant may unilaterally amend this Declaration. After such conveyance, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is: (a) necessary to bring any provision thereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwelling Units; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Development; or (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, that any amendment permitted under subsections (a) through (f) above shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, prior to the Applicable Date, Declarant may unilaterally amend

this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

23. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles, and the Bylaws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Real Estate in any manner shall be subject to the Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

24. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation.

25. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

26. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

27. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the Bylaws, and each shall be enforced to the greatest extent permitted by law.

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

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

30. Controlling Document. In the event there is a conflict between the provisions of this Declaration and the Plat, the terms of this Declaration shall be controlling. Conflict, as used herein, shall mean a situation where the application of the language in one document contradicts the language in another document. Conflict does not occur where language in one document is simply more restrictive than language in another document.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

M/I Homes of Indiana, L.P., an Indiana limited partnership

By: M/I Homes of First Indiana, LLC
its general partner

By: *K.E. Windler*

Printed: Kenneth E Windler

Its: Area President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Kenneth E Windler, by me known and by me known to be the Area President of M/I Homes of First Indiana, LLC, the general partner of M/I Homes of Indiana, L.P., an Indiana limited partnership, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Havenwood" on behalf of said entity.

Witness my hand and Notarial Seal this 7th day of March, 2018.

David Funkhouser
Notary Public - Signature

David Funkhouser
Notary Public - Printed

My Commission Expires: 4/19/23

My County of Residence: Hamilton



This instrument prepared by Tammy K. Haney, Attorney-at-Law, Keller Macaluso LLC, 760 3rd Ave SW, Suite 210, Carmel, Indiana 46032.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each and every Social Security number from this document, unless it is required by law. Tammy K. Haney.

EXHIBIT A

Real Estate

A part of the North Half of Section 21, Township 19 North, Range 4 East located in Noblesville Township, Hamilton County, Indiana, being described as follows:

Commencing at the Northwest Corner of the Northwest Quarter of Section 21, Township 19 North, Range 4 East; thence South 00 degrees 11 minutes 20 seconds East (assumed bearing) 944.09 feet along the West line of said Northwest Quarter to a mag nail at the Point of Beginning of this description; thence North 88 degrees 48 minutes 37 seconds East 1124.69 feet parallel with the North line of said Northwest Quarter; thence North 00 degrees 38 minutes 59 seconds East 944.43 feet to a point on the North line of said Northwest Quarter; thence North 88 degrees 48 minutes 37 seconds East 1529.45 feet to an iron rod at the Northeast Corner of said Northwest Quarter; thence North 88 degrees 57 minutes 17 seconds East 1334.21 feet to a 5/8" iron rod with yellow cap stamped Miller Surveying at the Northeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 21; thence South 00 degrees 09 minutes 38 seconds West 1326.465 feet to a 5/8" iron rod with yellow cap stamped Miller Surveying at the Southeast Corner of the Northwest Quarter of said Northeast Quarter; thence South 88 degrees 55 minutes 10 seconds West 1332.35 feet to a 5/8" iron rod with yellow cap stamped Miller Surveying at the Southwest Corner of the Northwest Quarter of said Northeast Quarter; thence South 88 degrees 50 minutes 50 seconds West 2661.72 feet to a mag nail at the Southwest Corner of the North half of said Northwest Quarter; thence North 00 degrees 11 minutes 20 seconds West 381.32 feet to the Point of Beginning, containing 97.21 acres, more or less.

EXHIBIT B

[Zoning Commitments]

2017038462 ORDINANCE 433.00
04/28/2017 12:44:18A 12 PGS
Jennifer Hayden
HAMILTON County Recorder IN
Recorded as Presented
00000000000000000000000000000000

3300
(12)

ORDINANCE NO. 02-02-17

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE AND OFFICIAL ZONING MAP, ALL PART OF THE COMPREHENSIVE PLAN OF THE CITY OF NOBLESVILLE, HAMILTON COUNTY, INDIANA

Document Cross Reference No. _____

This Ordinance (the "Havenwood PD Ordinance") amends the Unified Development Ordinance for the City of Noblesville, Hamilton County, Indiana, (the "UDO") enacted by the City of Noblesville, Indiana (the "City") under authority of Chapter 334 of the Acts of the Indiana General Assembly 1947, as amended.

WHEREAS, the Plan Commission of the City of Noblesville (the "Plan Commission") conducted a public hearing on docket number 003-2016 at its November 14, 2016 meeting as required by law in regard to the application (the "Petition") filed by M.E. James of Indiana, L.P. (the "Developer") concerning a change of zoning of certain property described in Exhibit A attached hereto (the "Real Estate") and the adoption of a preliminary development plan to be known, collectively with attached Exhibits, as the "Havenwood of Noblesville Preliminary Development Plan", as further described in Section 4 below (the "Plan"); and

WHEREAS, the Plan Commission has sent an unfavorable recommendation for adoption of said amendment with a vote of six (6) in favor and one (1) opposed to the Common Council;

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Noblesville, Hamilton County, Indiana, meeting in regular session, that the UDO and zoning map, as hereby amended as follows:

- | <u>Section</u> | <u>Applicability of Ordinance</u> |
|----------------|---|
| A. | The Official Zoning Map of the City of Noblesville, a part of the UDCI, is hereby amended to change the zoning of the Real Estate from "R1" Residential to "R150D" Residential Planned Development, which is to be known as the Havenwood Planned Development (the "District"). |
| B. | The District's underlying zoning district shall be R1 Residential (the "Underlying District"). Development in the Underlying District shall be governed entirely by (i) the provisions of this Havenwood PD Ordinance and its exhibits, and (ii) those provisions of the UDO in effect as of the date of adoption of this Ordinance, and applicable to the Underlying District, except as modified, revised, supplemented or expressly made inapplicable by this Ordinance (collectively, the "Governing Standards"). |
| C. | In accordance with the provisions of this ordinance, the Official Zoning Map referred to in Article 7 of the UDCI shall be updated concurrently to reflect the changes referred to in Section 1 above. A copy of the Official Zoning Map shall be located in the Office of the City Clerk of the City of Noblesville. |
| D. | All provisions and representations of the UDO that conflict with the provisions of this Havenwood PD Ordinance and its exhibits are hereby rescinded as applied to the Real Estate and shall be superseded by the terms of this Havenwood PD Ordinance. |

Section 2. Definitions. The general rules of construction set forth in Article 2 of the UDC and the definitions set forth in this Ordinance shall apply to the regulations of this Ordinance. Words not defined herein but defined in the UDC shall be interpreted in accordance with the UDC definition.

Section 3. Permitted Uses. All uses permitted in the Underlying District shall be permitted within the District; however, the maximum number of Dwelling Units shall not exceed one hundred and eighty-one (181).

Section 4. Preliminary Development Plan.

A. Full sized, sealed development plans are on file with the City's Planning and Development Department dated March 30, 2013. What is attached hereto as Exhibit B is a general representation of the full sized plans and Exhibit B, together with the full sized plans, shall be collectively referred to as the "Preliminary Development Plan".

B. The Preliminary Development Plan is hereby incorporated herein and approved. Pursuant to Article 8 of the UDC, the Preliminary Development Plan is intended to establish the basic goals and policies, bulk standards, variances/waivers from the Underlying District and beyond of the District.

Section 5. Bulk Standards. The bulk requirements applicable to the Underlying District shall apply to all Lots except as noted below. The bulk requirements for Lots numbered 93 thru 102, on the Preliminary Development Plan ("PDP"), where different than the standards for all Lots, are shown below in italics:

A. Maximum Lot Limitation: Notwithstanding the requirements of this Section 5 the maximum number of Lots shall be limited in the areas set forth below:

1. *A maximum of six (6) Lots shall be permitted on the north side of Street A between Hinkle Creek Road and the intersection of Street A and Street B (Lots 1 thru 6 as illustrated on the PDP).*
2. *A maximum of ten (10) Lots shall be permitted on the south side of Street B adjacent to the 50' Landscape Buffer Yard along the Hinkle Creek Estates Subdivision (Lots 91 thru 102 as illustrated on the PDP).*
3. *Notwithstanding the standards of this section 5.A above: (i) a maximum of seven (7) Lots shall be permitted on the north side of Street A between Hinkle Creek Road and the intersection of Street A and Street B and (ii) a maximum of six (6) Lots shall be permitted on the south side of Street B between its intersection with Street A (on the west) and Street C (on the east) as illustrated on the PDP. The lot configuration shall be reflected on the Detailed Development Plan.*

B. The Minimum Lot Area: *Nine Thousand (9,000) Square Feet
Twelve Thousand Six Hundred (12,600) Square Feet -
Lots 93 thru 102 only*

- C. Minimum Lot Width measured at the front building setback line:
Sixty-six (66) feet
Ninety (90) feet - Lots 93 thru 102 only
Eighty (80) feet - Lots 103 thru 113 on PDP only
- D. Minimum Street Frontage: Forty (40) feet
- E. Minimum Front Yard Setback: Twenty-five (25) feet
- F. Minimum Side yard Setback: Eight (8) feet
- G. Minimum Rear yard Setback: Twenty (20) feet
- H. Maximum Floor Area Ratio: Forty (40) percent
- I. Minimum Floor Area: One-story - Eighteen Hundred (1,800) Square Feet
Twenty-four Hundred (2,400) Square Feet -
Lots 93 thru 102 only
Two-story - Twenty-two Hundred (2,200) Square Feet
Twenty-eight Hundred (2,800) Square Feet -
Lots 93 thru 102 only
- J. Maximum Lot Coverage: Fifty-five (55) percent

Section 6. Architectural Standards. The following standards shall apply:

- A. The approved elevations shall be the set of home elevations on file with the City's Planning and Development Department as submitted on October 3, 2016, as reviewed and approved by the City's Architectural Review Board at its October 20, 2016 meeting (the "Approved Elevations").
- B. The Approved Elevations are hereby incorporated and approved. All homes shall be substantially consistent with the Approved Elevations. The Director of Planning and Development, including his or her designees, shall review and approve home elevations at the time of filing of the Detailed Development Plan and/or Building Permit for compliance and consistency with the Approved Elevations.
- C. The elevations of any home that substantially varies from an Approved Elevation shall be submitted for review and approval by the Director of Planning and Development if in compliance with the Architectural Standards hereby incorporated under Exhibit E, or require approval by the Architectural Review Board if not found in compliance with the standards included in Exhibit C. The Architectural Review Board's review of said home elevation(s) shall be performed in order to determine its compatibility and consistency with the intended quality and character of the District and the Approved Elevations.
- D. Notwithstanding the above standards in this Section 6 (Architectural Standards) all homes on Lots numbered 93 thru 102 (as shown on the PDP) shall have a minimum of three (3) corner breaks on the rear elevation of the home. A fireplace bump-out,

where provided, shall not qualify in meeting this standard. The three (3) corner breaks will be in addition to any fireplace bump-out, where provided.

Section 7. Landscaping and Green Space Standards. The standards of Article 12, Landscaping and Screening, of the UDO shall apply, except as noted below:

A. Lot Landscaping.

1. All Lots shall be landscaped in accordance with the Architectural Review Board Standards (adopted on August 16, 2007).

B. Landscape Buffer Yards. Landscape Buffer Yards shall be provided as shown on the Preliminary Development Plan. The Establishment of a Peripheral Yard, as set forth in Article 8, Part II, Section 3.F.2 of the UDO, shall apply as shown on the Preliminary Development Plan.

1. A minimum fifty (50) foot wide Landscape Buffer Yard shall be provided along the entire perimeter of the Real Estate as shown on the Preliminary Development Plan. The Landscape Buffer Yards shall be planted per the requirements of the UDO unless otherwise modified by the enhancements noted below in this Section 7.B.

2. The Landscape Buffer Yard along Hinkle Creek Road shall be a minimum of one-hundred and fifty (150) feet wide. This standard will result in the closest Lot being a minimum of two-hundred (200) feet from the center line of Hinkle Creek Road.

3. The required number of trees and shrubs within the Landscape Buffer Yard along the north perimeter of the Real Estate (adjacent to the Pine Knoll Subdivision) shall consist of two (2) Evergreen Trees planted within the Common Area north of the rear yard of each adjacent Lot. The additional trees will supplement the existing trees which are being saved along the property line and create a better transition between the lots.

4. The required number of trees and shrubs within the Landscape Buffer Yard along the south perimeter of the Real Estate beginning 150 feet west of Lot 93 continuing east to the curb street connection into the County Lake Estates subdivision shall be five (5) Evergreen Trees, three (3) Canopy or Ornamental Trees and ten (10) Shrubs (per 100 linear feet).

5. The required number of trees and shrubs within the Landscape Buffer Yard (i) along the south perimeter of the Real Estate beginning 150 feet west of Lot 93 continuing west to Hinkle Creek Road and (ii) along the shared perimeter with the parcel west of and adjacent to the Real Estate, shall be three (3) Evergreen Trees, three (3) Canopy or Ornamental Trees and ten (10) Shrubs (per 100 linear feet).

6. Mounding will be provided within the Landscape Buffer Yard adjacent to the Hinkle Creek Estates Subdivision. There shall be a minimum of three (3) mounds, each with a minimum height of three (3) feet and length of twenty (20) feet. The mounds will create opportunities for water screening along the common property line. Additional mounding (a minimum of three feet in height) shall also be provided (i) west of Lot 93 and (ii) in the common area between Lot 99 and Lot 100 to better screen headlights from adjoining roadways.

7. A wood split rail board fence will be provided within the Landscape Buffer Yard along the entire perimeter of the Real Estate beginning 150 feet west of Lot number 93 continuing east to Hinkle Creek Road adjacent to the Hinkle Creek Estates Subdivisions to strategic locations in this area. The fence will be placed in two or three rail sections. The fence is intended to help create a sense of separation and act a buffer along the common property line. The location of the fence section will be shown on the Landscape Plan included in the Detailed Development Plan.
8. Trees and shrubs may be grouped within the Landscape Buffer Yard provided the minimum number of plantings meets the overall number of required number of plantings along segments of individual perimeter segments (i.e. north, east, south and west).
9. The Developer will work with the owner of the parcel to the west of the Real Estate (the "Stewart Parcel") on tree species, planting locations, mounding areas and two to three sections of fencing near the pedestrian path south of and adjacent the Stewart Parcel.

C. Open Space. Open Space shall be provided substantially in the size, configuration and location depicted on the Preliminary Development Plan.

Section 8. Parking and Landscaping Standards. The standards of Article 10, Off-Street Parking and Landscaping, of the UDO shall apply except as noted below:

- A. The minimum distance between the street centerline and the driveway for lots which front more than one public street shall be 50y (50) feet and the driveways are not required to be placed 10' from the lot line furthest from the intersection.

Section 9. Lighting Standards. The standards of Article 13, Environmental Performance Standards, of the UDO, shall apply.

Section 10. Sign Standards. The District's signs shall comply with Article 41 of the UDO as supplemented below:

- A. One temporary Off-Premise directional sign, as generally depicted on Exhibit D, shall be permitted on property at the northeast corner of the intersection of State Road 38 and Hinkle Creek Road for a period not to exceed three (3) years from the date of issuance of the first building permit on the Real Estate. The subject sign shall (i) not be illuminated, (ii) shall not advertise construction and/or builder(s) on property other than the Real Estate, and (iii) shall require a sign permit.

Section 11. Site Design, Landscape and Infrastructure Standards. Unless otherwise stated within this Havenwood PD Ordinance, all public infrastructure within the District shall adhere to the City's standards and design criteria.

- A. **Drainage Easement.** Center lots shall be permitted at a minimum of twenty-five (25) percent larger than the minimum lot area.
- B. The center line of the drainage swale along the Pine Knoll Subdivision shall be located a minimum of 20' feet from the shared property line to provide for more area between the existing tree line along the shared property line.

Section 12. Additional Standards. The following additional standards shall be applicable to the Real Estate and the repetition of such standards shall be included in the Declaration of Covenants and Restriction that will be applicable to the Real Estate.

- A. Storage sheds shall be prohibited.
- B. All fences on Lots shall be (i) black metal, vinyl or wood, (ii) of a consistent style and height and (iii) a maximum of 6' in height.

Section 13. Detailed Development Plan. Approval of a Detailed Development Plan ("DDP") shall follow the precedents set forth in Article 3 of the UDO, subject to the following classification: (i) the Director of Planning and Zoning shall approve Minor Changes; and (ii) if a DDP includes a Major Change from the approved Preliminary Development Plan, then, prior to approval of the DDP, an amended Preliminary Development Plan shall be approved in accordance with Article 3, Part C, Section 4, of the UDO. A Secondary Plat shall be submitted for review and approval as part of any approved DDP.

Section 14. Effective Date. This Havenwood PD Ordinance shall be in full force and effect from and upon its adoption and publication in accordance with the law.

[The remainder of this page intentionally left blank; signature page follows.]

Upon motion duly made and seconded, this Ordinance was fully passed by the members of the Common Council this 18th day of April, 2017.

COMMON COUNCIL OF THE CITY OF NOBLESVILLE

AYE

NAY

<u>[Signature]</u>	Brian Ayer	_____
<u>[Signature]</u>	Mark Boice	_____
<u>[Signature]</u>	Wil Hampton	_____
<u>[Signature]</u>	Christopher Jensen	_____
<u>[Signature]</u>	Ray Johnson	_____
<u>[Signature]</u>	Gregory P. O'Connor	_____
<u>[Signature]</u>	Sue Rowland	_____
<u>[Signature]</u>	Rick L. Taylor	_____
<u>[Signature]</u>	Megan G. Willis	<u>[Signature]</u>

Approved and signed by the Mayor of the City of Noblesville, Hamilton County, Indiana, this 19th day of April, 2017.

[Signature]
Mayor
City of Noblesville, IN



ATTEST:

[Signature]
Evelyn L. Long, City Clerk

I affirm, under the penalties for perjury, that I have taken reasonable care to reflect each Social Security Number in this document, unless required by law. Joe C. Dobosiewicz.

Prepared by: James E. Shinnover, attorney at law, NELSON & FRANKENBERGER and Jon C. Dobosiewicz, land use professional, NELSON & FRANKENBERGER, 550 Congressional Blvd, Suite 210, Carmel, IN 46032 (317) 844-0106.
Revised - 10/20/10 (2/11/12)

EXHIBIT A

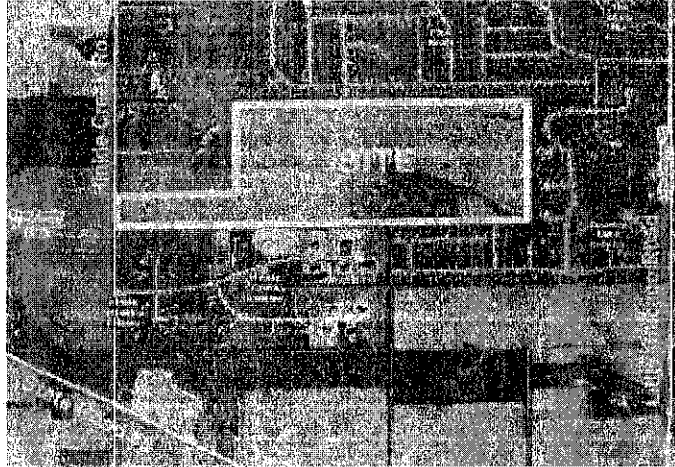
Legal Description
(Page 1 of 2)

A PART OF THE NORTH HALF OF SECTION 21, TOWNSHIP 19 NORTH, RANGE 4 EAST LOCATED IN NOBLESVILLE TOWNSHIP, HAMILTON COUNTY, INDIANA BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 19 NORTH, RANGE 4 EAST; THENCE SOUTH 00 DEGREES 11 MINUTES 20 SECONDS EAST (ASSUMED BEARING) 944.09 FEET ALONG THE WEST LINE OF SAID NORTHWEST QUARTER TO A MAG NAIL AT THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 88 DEGREES 48 MINUTES 37 SECONDS EAST 1124.69 FEET PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE NORTH 00 DEGREES 38 MINUTES 59 SECONDS EAST 944.43 FEET TO A POINT ON THE NORTH LINE OF SAID NORTHWEST QUARTER; THENCE NORTH 88 DEGREES 48 MINUTES 37 SECONDS EAST 1529.45 FEET TO A IRON ROD AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE NORTH 88 DEGREES 57 MINUTES 17 SECONDS EAST 1334.21 FEET TO A 5/8" IRON ROD WITH YELLOW CAP STAMPED MILLER SURVEYING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 21; THENCE SOUTH 00 DEGREES 09 MINUTES 38 SECONDS WEST 1326.465 FEET TO A 5/8" IRON ROD WITH YELLOW CAP STAMPED MILLER SURVEYING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER; THENCE SOUTH 88 DEGREES 53 MINUTES 10 SECONDS WEST 1332.35 FEET TO A 5/8" IRON ROD WITH YELLOW CAP STAMPED MILLER SURVEYING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER; THENCE SOUTH 88 DEGREES 50 MINUTES 50 SECONDS WEST 2661.72 FEET TO A MAG NAIL AT THE SOUTHWEST CORNER OF THE NORTH HALF OF SAID NORTHWEST QUARTER; THENCE NORTH 00 DEGREES 11 MINUTES 20 SECONDS WEST 381.32 FEET TO THE POINT OF BEGINNING. CONTAINING 97.21 ACRES, MORE OR LESS.

EXHIBIT A

Legal Description
(Page 2 of 2)



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EXHIBIT B

(PRELIMINARY DEVELOPMENT PLAN)

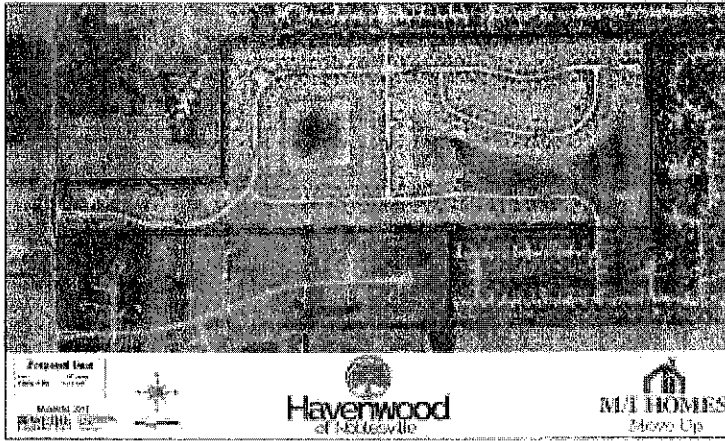


EXHIBIT D

Directional Sign



Directional Sign Data:
Maximum Height: 10'
Maximum Area: 32 sq. ft.
Minimum Setback: 10'

governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area.

(m) No boat docks, decks, rafts or similar structures or improvements shall be permitted on or near the lakes ("lakes" shall include all ponds and all other bodies of water in the Common Area). No Owner of any Lot and none of their families, guests, tenants or invitees or occupants of any Dwelling Unit or other persons entitled to use the same shall do or permit to be done any action or activity which could result in the pollution of the lakes, diversion of water, change in elevation of the water level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management or otherwise impair or interfere with the use of the lake for drainage and related purposes. No Owner, members of their families, guests or invitees or occupants of any Dwelling Unit or other persons entitled to use the same, may swim, boat, ice skate or engage in similar activities on the lakes. No individual using a lake has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Corporation, subject to the rights of the Declarant, the Corporation, their employees, successors and assigns as set forth in the Declaration with respect to maintenance and repair of lakes and Common Area.

(n) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trailers, trucks (larger than 3/4 ton), semi-tractor trucks, semi-trucks, semi-tractors trailers, disabled vehicles and/or trailers, motorcycles, minibikes, mopeds or personal watercraft shall be permitted, parked or stored anywhere within the Real Estate, unless stored completely enclosed within a garage or necessary or incidental to Declarant's or the Corporation's business. No repair work shall be done on the Real Estate on any vehicles, including passenger automobiles, unless completely enclosed within a garage.

(o) Except as required in Section 15(b) with respect to an Owner's maintenance of Street Trees, no Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area or Easements, except with express prior written permission from the Architectural Review Board.

(p) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes. Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease for a term of not less than six (6) months which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

(q) There are designated on the Plat building lines. Except as required for utilities to serve the Real Estate or a Lot, no building or structure will be permitted within this no-build area.

(r) Except for fences installed by Declarant as part of the construction of a model or sales office, any fences to be constructed on a Lot must be constructed in accordance with the Zoning Commitments and applicable laws and must be approved by the Architectural Review Board. All fences must be no higher than five feet (5'), be black