

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
CYNTHEANNE WOODS

City of Fishers
Hamilton County, Indiana

Cross Reference: Instrument No. _____ (Secondary Plat Cyntheanne Woods)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CYNTHEANNE WOODS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CYNTHEANNE WOODS (the "Declaration") is made by Oakshire Holdings, LLC, an Indiana Limited Liability Company.

WITNESSETH:

WHEREAS, Oakshire Holdings, LLC, an Indiana Limited Liability Company (hereinafter referred to as the "Developer" or "Declarant") is the owner of certain real estate described in what is attached hereto and incorporated herein by reference as **Exhibit "A"** (the "Real Estate");

WHEREAS, Developer is the developer of a single-family residential development in Hamilton County, Indiana that shall be known and designated as Cyntheanne Woods (hereinafter referred to as the "Development");

WHEREAS, Developer may in the future elect to subject to this Declaration the Additional Real Estate, and to amend this Declaration with respect to such Additional Real Estate and, as well, to impose additional protective covenants, conditions and restrictions on such Additional Real Estate and, as may be necessary and appropriate, on each neighborhood if any;

WHEREAS, the term "Property" shall mean the Real Estate together with such portions of the Additional Real Estate as have from time to time and at any time been subjected to this Declaration per the terms of this Declaration;

WHEREAS, the Developer desires to impose certain protective covenants, conditions and restrictions on the Property to have, hold, and possess all of the rights, powers, and authority of the Developer as set forth in this Declaration;

WHEREAS, this Declaration is intended to provide for the preservation and enhancement of property values, amenities and opportunities in the Property and contributing to the general health, safety and welfare of residents and for the maintenance of the Property and Improvements thereon and, to this end, the Property is declared to be subject to the protective covenants, conditions, restrictions and other provisions hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner thereof; and

WHEREAS, Developer, may from time to time, convey, lease or grant a license, easement or other use right to lands within or without the Property, by deed, easement or other means to the Association (defined below), which must accept the same, or to third parties for the

purpose of maintenance, landscaping, drainage, recreation, or other purposes for the use and benefit of members and their families, tenants and guests.

NOW THEREFORE, the Developer hereby declares that the Property is and shall be owned used, and conveyed subject to the covenants, restrictions, easements, and conditions, and all other provisions of this Declaration as it may be amended from time to time, all as hereinafter set forth, which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. The Developer reserves the right, in its sole discretion, to add or withdraw property from the submission to the Declaration, except that the Developer shall not be permitted to withdraw any portion of the Property from the Declaration if such property has been conveyed to an Owner other than the Developer.

ARTICLE I **DEFINITIONS**

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

- A. "Additional Real Estate" means and refers to all real estate that is contiguous with the Real Estate together with all real estate that is contiguous with a Public Street with which the Real Estate is contiguous.
- B. "Agreement" means that certain Lot Purchase Agreement dated May 1, 2023, by and between Declarant and Builder, as the same may be amended, modified, supplemented or restated from time to time by the parties thereto.
- C. "Adjacent Parallel Garage Wall" means the Contiguous Dwelling Unit garage wall that is nearest and parallel to the Shared Lot Line.
- D. "Annual Assessment" means the assessment described in Article VI, Section 6.C.
- E. "Applicable Date" shall mean the date of the first meeting of the members of the Association occurring on or after the first of the following 1) Developer relinquishes its power to appoint the Board of Directors or 2) Developer no longer owns any of the Lots or Common Area in Cyntheanne Woods.
- F. "Applicable Laws" shall mean all federal, state or local laws, statutes, codes, ordinances, rules or regulations.
- G. "Articles" shall mean the Articles of Incorporation of the Association.
- H. "Association" shall mean The Cyntheanne Woods Homeowners' Owners' Association, Inc., an Indiana not-for-profit corporation, the membership and powers of which are more fully described in Article IV herein and in the Association's By-Laws and Articles of Incorporation which are incorporated herein by this reference.

- I. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.
- J. "Builder" means a person or entity (i) regularly engaged in the business of constructing single-family residences for sale and responsible for the original construction of a residence on a Lot; and (ii) deemed by the Declarant, in its sole discretion, to be a Builder. Pyatt Builders, LLC, an Indiana liability company, and any of its successors and assigns that it designates in writing to Declarant, shall be deemed a Builder for purposes of this Declaration.
- K. "By-Laws" shall mean the written Code of By-Laws of the Association.
- L. "City" shall mean the city of Fishers, Indiana.
- M. "Committee" shall mean Cyntheanne Woods Architectural Control Committee, composed of and operated under the terms of Article II herein.
- N. "Common Areas" shall mean the (i) alphabetically numbered parcels and (ii) parcels designated as "Common Area" or "C.A." within the plat(s) of Cyntheanne Woods designed for the mutual use and enjoyment of all Lot Owners of Cyntheanne Woods.
- O. "Common Expenses" means all expenses incurred to fulfill the obligations of the Association per the terms of this Declaration including, without limitation, the Common Expenses in Article VI, Section 6.C.
- P. "Contiguous Dwelling Unit" means a detached single-family Home with an Adjacent Parallel Garage Wall that is located within zero to fourteen (0-24) inches of the Shared Lot Line.
- Q. "Declaration" shall mean the recorded terms and conditions of this Declaration of Covenants, Conditions and Restrictions for Cyntheanne Woods together with any rules and regulations adopted by the Board of Directors.
- R. "Developer" or "Declarant" shall mean Oakshire Holdings, LLC, or its assigns.
- S. "Development" shall mean Cyntheanne Woods development and all real estate contained therein as shown on the recorded plat(s) recorded in Hamilton County, Indiana.
- T. "Guidelines" means the architectural and ecological guidelines, standards, rules and regulations established by the Committee from time to time.
- U. "Home" shall mean a building erected on a Lot within the Property for residential living purposes.

- V. "Improvement(s)" means all buildings, Homes, structures, parking areas, loading areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, lakes, trails, gates, signs, changes in any exterior color or shape, excavation and all other site work, including, without limitation, grading, road construction, utility Improvements, removal of trees or plantings, and any new exterior construction or exterior Improvement which may not be included in the foregoing. "Improvement(s)" does not include turf, shrub or tree repair or replacement of a magnitude that does not change exterior colors or exterior appearances. "Improvement(s)" does include both original Improvements and all later changes and Improvements.
- W. "Landscape or Landscaping" shall mean, any design element (whether structural, flora, or earthen) that modifies the visible features of the Lot, and which may or may not be physically connected to a Home.
- X. "Landscape Maintenance Access Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Landscape Maintenance Access Easements, either separately or in combination with any other easement designated on such Plat.
- Y. "Lot(s)" shall mean (i) a distinct lot or building parcel for a Home, as reflected on a plat of lands, recorded with the Recorder, forming a part of the Property and (ii) the numerically numbered parcels within the plat(s) of Cyntheanne Woods designed for the exclusive use of the construction of a single-family residence thereon.
- Z. "Majority" means greater than fifty percent (50%).
- AA. "Master Founding Documents" means this Declaration, any amendment to this Declaration, and the Articles of Incorporation and Bylaws of the Association.
- BB. "Owner(s)" shall mean the person or persons that have been deeded and hold ownership in any Lot within Cyntheanne Woods.
- CC. "Person" means an individual, corporation, governmental agency, business trust, estate trust, partnership, association, two or more Persons having a joint or common interest, or any other legal entity.
- DD. "Private Streets" or "Private Roads" means any streets and/or alleys situated on the Property, which are neither dedicated to the City of Fishers, Indiana, for public use nor maintained by the City of Fishers, Indiana.
- EE. "Public Street(s)" means all streets which are dedicated for public use and accepted for maintenance by the City of Fishers.
- FF. "PUD Ordinance" means the change of zoning ordinance adopted by the City of Fishers pertaining to the Real Estate known as the "Cyntheanne Woods Planned Unit Development (PUD) District" recorded as Instrument No. 2023002204 on January 23, 2023, in the office of the Recorder of Hamilton County, Indiana, as may be amended from time to time.

- GG. “Reciprocal Use Access Easement Area” means the area of easements shown and designated on any Plat as “Reciprocal Use Access Easement” or “R.U.A.E.”
- HH. “Recorder” means the Recorder of Hamilton County, Indiana.
- II. “Right of Way Enhancements” shall mean the property located between the street curb and the sidewalk along both sides of all internal City of Fishers’ streets in Cyntheanne Woods and all the improvements located thereon including but not limited to grass, plants and trees.
- JJ. “Rules And Regulations” means and refers to any and all rules and regulations of the Association promulgated in furtherance of, and not in conflict with, the Master Founding Documents by and through the Board, that may include, without limitation, the rules and regulations pertaining to the use, occupancy and leasing of Homes, to the use and enjoyment of the Common Areas, and to the use of Water Management Systems on the Property.
- KK. "Sanitary Sewer Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Sanitary Sewer Easements, either separately or in combination with any other easement designated on such Plat.
- LL."Sewer Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Sewer Easements, either separately or in combination with any other easement designated on such Plat.
- MM. “Shared Lot Line” means a common property line located between two Residential Lots which contains a Two Foot Jog.
- NN. “Special Assessment” means the assessment described in Article VI, Section 6.D.
- OO. “State” shall mean the state of Indiana.
- PP. “Two Foot Jog” means the segment of a Shared Lot Line that is approximately two (2) feet in length and perpendicular to the rest of the Shared Lot Line.
- QQ. "Utility Access Easement" means that area designated on any Plat of all or any part of the Real Estate as a Utility Access Easement.
- RR. "Utility Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Utility Easements, either separately or in combination with any other easement designated on such Plat.
- SS. “Water Management Systems” (i) means and refers to the surface and/or underground system and facility for the storage of surface water, and storm water

located within and throughout the Property including, without limitation, lakes, ponds, swales and other water management areas but (ii) shall not mean or refer to the surface and/or underground system and facility for the storage of surface water including, without limitation, lakes, ponds, swales and other water management areas that are not located within and throughout the Property.

ARTICLE II

DEVELOPER'S RIGHTS AND POWERS

Section 1. General Provisions Any or all of the rights and obligations of the Developer set forth in this Declaration or the Association may be transferred, in whole or in part, to other Persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Association. No such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded with the Recorder. No such transfer shall effect the termination of the Developer Membership unless, in the written document evidencing such transfer, the Developer expressly states specifically the intention to terminate the Developer Membership.

The Developer and Builder may maintain and carry on upon portions of the Common Areas such facilities and activities as, in the sole opinion of the Developer, may be reasonably required, convenient, or incidental to the construction or sale of Homes, including, but not limited to, business offices, signs, model units, and sales offices. The Developer, Builders and prospective purchasers shall have easements for access to and use of such facilities.

The Developer shall undertake the work of developing all Lots and Homes within the Property. The completion of that work, or the sale, lease, or other disposition of Homes is essential to the establishment and welfare of the Property as an ongoing residential community. In order that such work may be completed and the Property established as a fully-occupied residential community, nothing in this Declaration shall be understood or construed to prevent the Developer, or the employees, contractors or subcontractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonable, necessary or advisable for the completion of the work and the establishment of the Property as a residential community. As used in this Article II, Section 1, the words, "its transferees" specifically excludes purchasers of Lots improved with completed residences.

Until the occurrence of the Applicable Date, the following shall apply, notwithstanding any other provisions in this Declaration to the contrary:

(i) The Developer reserves the right to carry on construction, development and sales activities, place equipment, machinery, supplies and signs, construct and maintain models or other structures, and park vehicles of prospective or actual purchasers, lessees or employees and personnel of Developer, on any part of the Property owned by Developer or the Association.

(ii) Neither the Owners nor the Association (nor their use of the Lots and Homes), shall unreasonably interfere with the completion of the contemplated Improvements or sales of Lots or any other part of the Property. The Developer may make any use of the unsold Lots as

may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of construction and sales offices, display of signs, leasing Homes, and showing the Homes for sale to prospective purchasers.

(iii) All or any portion of the rights, privileges, powers and duties of the Developer set forth in the Master Founding Documents may be assigned in whole or in part by the Developer to any Person or entity, without the consent of any other Owner or any holder of a mortgage secured by any Lot. Upon the acceptance of such assignment by the assignee, the assignor shall be relieved of all liabilities and responsibilities to the extent of the assignment. In the event of the foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the Person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer in and to such interest.

(iv) Developer reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, or the right to direct the size, shape, and composition of the Property, and the right to create and/or designate Lots, Common Area or to subdivide all or any portion of the Property, subject to any limitations imposed on portions of the Property by any applicable Plat. Without limiting the preceding sentence, Developer reserves the right, at any time and in Developer's sole discretion, to (a) plat any unplatted land within the Property, in whole or in part and in phases, (b) replat any platted land within the Property, in whole or in part, and (c) convert residential lots to Common Areas, (d) convert Common Areas to residential lots, (e) impose or remove easements, and (f) effect any other land use or change in land use which is conducive to the completion of the development of the Property or the sale of land owned by Developer within the Property. Collectively, the rights reserved to the Developer as set forth in this Declaration shall be known as the "Development Rights" and Developer hereby reserves the right and privilege for itself, and/or its assigns, to exercise the Development Rights, and any other rights reserved on behalf of the Developer as set forth in this Declaration until the Applicable Date, except the right to appoint and remove Board members and officers of the Association which shall be governed by the provisions of the Bylaws. These rights may be exercised with respect to any portions of the Property or the Common Area. As each portion of the Property is developed or dedicated, Developer may designate the use, classification and such additional covenants, conditions and restrictions as Developer may deem appropriate for such Property.

No Person shall record with the Recorder any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Developer's review and prior written consent. Any attempted recordation with the Recorder without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by a written consent signed by the Developer and recorded with the Recorder.

Section 2. Additions To and Withdrawal From The Property.

(a) Developer shall have the right, and the power but neither the duty nor the obligation, in its sole discretion to add part or all of the Additional Real Estate to the Property, thereby increasing the size and scope of the development, including Lots and/or amenities, without notice to or the consent of the Regular Members (but with the consent of the owner of the Additional Real Estate, if such owner is different than the Developer), so long as Developer is a Developer Member of the Association, and thereafter only with the consent of a Majority of the Regular Members. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Developer records with the Recorder, an instrument so declaring the same to be part of the Property, which Supplemental Declaration may be as part of a subdivision plat for any portion of the Additional Real Estate, or an amendment or supplement to this Declaration. Such Supplemental Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, percentage voting rights, reduced assessments and/or additional assessments as determined by the Developer in its sole discretion or as may be necessary to reflect the different character, if any, of the Additional Real Estate and/or the type and character of the Homes to be constructed thereon.

Upon recording with the Recorder of any such instrument on or before the expiration of the Applicable Date, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Developer's right and option to add and expand the Property as to any part or parts of the Additional Real Estate shall preclude Developer from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Developer from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the Applicable Date. Such expansion of the Property is entirely at the discretion of the Developer and nothing contained in this Declaration or otherwise shall require Developer to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate, and any part of the Additional Real Estate not annexed or subjected by the Developer to this Declaration per the terms of this Article II, Section 2 shall remain free and clear and unaffected by this Declaration.

(b) In addition to other amendment rights granted in this Declaration, at any time Additional Real Estate is made subject to this Declaration, Developer may also record with the Recorder an instrument which (i) modifies any of the provisions of this Declaration insofar as they may apply to such Additional Real Estate; or (ii) creates new provisions applicable only to such Additional Real Estate; or (iii) omits the applicability of any of the provisions of this Declaration as to any such Additional Real Estate; or (iv) does any, all or none of the above.

(c) So long as it has a right to annex or subject to this Declaration the Additional Real Estate pursuant to Article II, Section 2, Developer reserves the unilateral right in its sole discretion to amend this Declaration for the purpose of removing any portion of the Property, which has not yet been improved with Homes, from the coverage of this Declaration. Such

amendment shall not require the consent of or notice to any Person other than the Owner(s) of the property to be withdrawn, if not the Developer.

(d) The execution and recordation with the Recorder of this Declaration shall not be construed to require Developer to subject any lands to the covenants, conditions, restrictions or other provisions of this Declaration or any other recorded instrument with the Recorder. No amendment to any of the Master Founding Documents shall be effective to diminish or alter Developer's rights, powers and privileges.

Section 3. Developer's Right To Convey, Lease Or Grant A License

(a) Developer shall have the right and the power, but neither the duty nor the obligation, in its sole discretion, to convey, lease or grant a license, easement or other use right to real property located within or without the Property, to the Association, or other parties for such purposes as may be expressed in the instrument of conveyance, lease or grant of license or use.

(b) Any such conveyance, lease or grant of license or use right to the Association may be exclusive or non-exclusive so that Persons or entities other than the Association may or may not have a right, power, duty, or privilege with respect to all or any part of any real property so conveyed, leased, licensed, or the use of which has been granted. The Association must accept from Developer any such conveyance, lease, grant of license or grant of use right subject to the terms and conditions upon which it is conveyed by the Developer. The Association shall not accept, from any Person other than Developer, a conveyance, lease, grant of license or grant of use right except upon the prior written approval of the Developer.

(c) Prior to any conveyance, lease or grant of license or other use right by Developer to Association of any property, Developer shall have the right to charge reasonable fees for the use of such property. Thereafter, the right to use such property may be subject to reasonable rents, fees and other charges in favor of the Association. In any event, rents, fees and other charges required to be paid to Developer under leases, grants, licenses or contracts creating use rights shall continue to be paid.

Section 4. Enforcement

(a) The Developer, each Owner, and the Association shall have the right and the power to enforce the covenants, conditions, restrictions, and other provisions of this Declaration. Upon the assumption by the Association of all Developer's rights hereunder pursuant to the Master Founding Documents, the Association shall be responsible for all of the duties and rights which Developer previously had hereunder, and Developer shall be released from liability and association therewith.

(b) The Developer, each Owner, and the Association shall have the right and the power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by a proceeding at law or in equity against any Person violating or attempting to violate any such provisions, to restrain any violation or attempted violation of such provisions, to require specific performance of such provisions, and to recover damages for violations of such provision and to

levy against the land and enforce any lien created or allowed by this Declaration. Failure by Developer, or the Association, or any Owner, or any other Person, to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter.

(c) The costs and reasonable attorney's fees, including those resulting from any appellate proceedings, incurred by Developer, the Association, in any action against an Owner to enforce any provision of this Declaration, shall be a personal obligation of such Owner which shall be paid by such Owner and any amount thereof which remains due and unpaid shall be a continuing lien upon such Owner's Lot, collectible in the manner provided in Article VI below.

Section 5. Developer's Inaction

Neither the execution and recordation with the Recorder of this Declaration, nor the creation of any Association, nor the recordation with the Recorder of any Supplemental Declaration shall obligate or require (a) Developer to grant any right, power, duty or privilege or any nature or kind to the Association or to another entity, or (b) Developer, the Association or any other entity to perform any act permitted by this Declaration or by any other instrument recorded with the Recorder, or to enforce any covenant, condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to so do.

Section 6. Assignment

Developer reserves the right and the power to delegate or assign, either exclusively or non-exclusively to any Person, any or all of its rights, powers, duties or privileges created or provided for by this Declaration or by any other instrument recorded with the Recorder. No such delegation or assignment shall be effective unless it is in writing, signed by the Developer. Developer shall be under no obligation to delegate or assign any of its rights, powers, duties and privileges contained in this Declaration to any Person. No such delegation or assignment shall effect the termination of the Developer Membership unless, in the written document evidencing such delegation or assignment, the Developer expressly states the intention to terminate the Developer Membership.

Section 7. Amendment

This Article II may not be amended without the written consent of the Developer.

ARTICLE III GENERAL RESTRICTIONS, OBLIGATIONS, AND RIGHTS

Section 1. Lot Use and Maintenance.

A. All Lots in this Development are reserved for residential use and no building other than a single-family Home shall be erected thereon. All plans for such Homes are to be submitted to the Developer for approval prior to any construction.

B. Not more than one Home shall be erected or used for residential purposes on any Lot in this Development. No trailer, tent, shack, attached shed, basement, garage, barn, or other outbuilding or temporary structure shall be used for temporary or permanent residence on any Lot in this Development.

C. No Lot or any part thereof be sublet, assigned or suffered to be used for transient occupancy.

D. No Lot in this Development shall be used or maintained as a dumping ground for trash, grass clippings, garbage or other waste and the same shall only be deposited and kept in sanitary containers. It shall be the duty of the Owner of each Lot to maintain the same in a good, clean and sanitary condition, to keep the grass on the Lot and adjacent right of way properly cut and keep the Lot free of weeds, trash or other debris and otherwise neat and attractive in appearance, including, without limitation, the proper and customary maintenance of the exterior of any structures on such Lot. The Lot Owner or Builder shall also be obligated to maintain the Lot in accordance with the erosion control guidelines as set forth by the City of Fishers throughout all construction activity on the Lot. If the Owner of any Lot fails to maintain the Lot in a manner satisfactory to the City of Fishers, Developer or Association, the Developer or Association shall have the right (but not the obligation), to take action as set forth in Section 21. Enforcement.

Section 2. Lot Lines and Lot Dimensions. The minimum yard building setback requirements are as follows: (i) front yard building setback is ten (10) feet, (ii) rear yard building setback is fifteen (15) feet, and (iii) side yard building setback is one (1) foot, all (a) as are denoted on the recorded plats, excluding elements such as drives, fences, walls, and trellises and (b) subject to further requirements set forth in this Declaration and the PUD Ordinance. Between the front setback line and the property lines of the street, there shall be erected or maintained no building or structure. These set back requirements are the minimum required and the Developer may require the Home to be located beyond the minimum requirements for aesthetic harmony or preservation of natural features.

No Lot or combination of Lots may be further subdivided until approval therefore has been obtained from the City of Fishers Planning Commission; excepting, however, the Developer and its successors in title shall have the absolute right to increase the size of any Lot by joining to such Lot a section of an adjoining Lot (thereby decreasing the size of such adjoining Lot) so long as the effect of such joining does not result in the creation of a "Lot" with less than the requirements set forth in the Fishers Zoning Ordinances.

Section 3. Home Dimensions. The living area for a Home, exclusive of open porches, terraces and garages, shall not be less than One Thousand Eight Hundred (1,800) square feet. For purposes of this Section 3, "living area" means all enclosed floor space within a Home, excluding floor space contained within any basement, cellar, crawl space, porch, terrace, garage, carport, or other area of such Home that is not equipped and intended for regular and continuous human habitation.

Section 4. Exterior Materials. Exterior materials shall generally be as permitted by the PUD Ordinance and approved by the Developer or the Committee. The Developer, or Committee prior to construction, must approve colors of all exterior materials, including but not limited to shingles, paint, and masonry.

Section 5. Roofs. Roof materials must be asphalt/fiberglass dimensional or architectural shingle, but only as permitted by the PUD Ordinance. All primary roofs shall generally have a minimum pitch of 5/12. All overhangs shall be a minimum of eleven (11) inches.

Section 6. Garages. All garages must comply with the PUD Ordinance and be finished and conform to the above exterior material requirements. All homes must have a minimum of a two (2) car attached garage. Each garage shall have a decorative design as required by the PUD Ordinance.

Section 7. Accessory Structures. No detached structures, mini-barns, tree houses, docks, or other similar structures shall be permitted on any Lot in Cyntheanne Woods. No clothesline or clothes poles, or any other free-standing semi-permanent poles, rigs or devices, regardless of purpose (with the exception of recreational equipment permitted herein), shall be constructed, erected or located or used on any Lot. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Committee. The Committee may adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible from public view from the street. It is the intent of this provision that the Committee shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Committee conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect. Solar panels shall not be permitted on any Home unless the solar panel is approved by the Committee. The Committee, in reviewing a request for a solar panel, shall consider landscaping, location, size, aesthetics, and the visibility of the solar panel.

Section 8. Drives. Each driveway on a Lot shall be of concrete material.

Section 9. Swimming Pools. All swimming or wading pools, other than professionally constructed, permanent, in-ground pools, are prohibited. An above-ground spa or hot tub in a rear yard may be permitted if approved by the Committee and only if it is appropriately landscaped and screened, as deemed appropriate by the Committee. No swimming pool of any type shall be permitted on any Lot except as approved by the Committee. Notwithstanding the foregoing, temporary wading pools measuring no more than six (6) feet in diameter are permitted without Committee approval in a rear yard. Such temporary wading pools must be drained and stored indoors on a nightly basis. All submittals to the Committee for approval of a swimming pool shall include landscape plans. All pools shall be oriented to minimize the potential effect on neighboring Lots, shall be enclosed by a fence which obstructs unauthorized access or shall have an automatic pool cover, and shall comply with all other Applicable Laws. All fencing shall conform to Applicable Laws and shall be of harmonious design and subject to Committee approval.

Section 10. Fences. For purposes of this Declaration, a fence is defined as that which is installed in proximity of the Lot boundary lines for the purposes of enclosing any portion of the Lot. All fences require review and approval by the Committee prior to installation, and shall comply with the following:

a. Fences are required to be black aluminum with a “wrought iron” design and maximum height of forty-eight inches (48”). Shadow box, stockade-type, wood, and privacy fences are not permitted; however, the Committee, in its sole discretion, may consider and approve a privacy panel located along the side of a deck or patio which is intended to screen the patio or deck from an adjacent Lot.

b. No part of any fence may extend forward on the affected Lot beyond the plane of the primary rear wall of the Home nor be located in a manner that impedes or restricts drainage of any Lot. Fences may not encroach into easements that otherwise prohibit the installation of fences (e.g., drainage and utility easements). Underground “pet fences” (e.g., Invisible Fence®) are permitted throughout the entire Lot.

c. All fencing erected on a Lot must be located either (i) on, (ii) within three inches (3”) of, or (iii) a minimum of thirty-six inches (36”) away from any rear or side property line of such Lot. An Owner of a Lot adjoining another Lot on which an existing fence already approved by the Committee has been erected on or within three inches (3”) of the common property line shall have the right to abut a fence to the fence on the adjoining Lot provided that the new fence satisfies all of the criteria expressed herein and is approved by the Committee. Such a connection in no way means the abdication of property or establishment of grounds for adverse possession. If an Owner chooses not to connect to an abutting fence, or cannot connect due to easement encroachment or other restrictions, then the fence must be a minimum of thirty-six inches (36”) away from the adjoining property line.

d. Gates shall be installed, at a minimum, along the front fence line and rear fence line to provide access to maintain all areas of the Lot. Where no common fence is shared, each Owner shall be responsible for maintaining their portion of the Lot outside of the fence, and such Owner has the right to enter the adjoining Owner's property in order to perform such maintenance. If, however, a common fence is shared, then each Owner shall only be responsible for maintaining the portion of property on their side of the fence.

e. All fences shall be of professional quality/construction and be routinely maintained.

f. Lot owners are responsible for obtaining all applicable municipal approvals and/or building permits. Approval by the Committee does not relinquish the homeowner’s responsibility to obtain any required permits from governing agencies.

g. Lot owners are responsible for determining the location of their property lines by having their property corners staked by a Professional Engineer or Land Surveyor to ensure that their fence does not encroach upon adjacent properties, except as stated in Section 10.c., or within restricted easements. Lot owners shall contact a utility locator before digging.

Section 11. Sidewalks. Plans and specifications for this Development, on file with the City of Fishers, require the installation of five (5) foot wide concrete sidewalks within the street rights-of-way in front of all Lots as shown on the approved plans. Installation of said sidewalks shall be the obligation of the Builder of the home on any such Lot, not of the Developer, and shall be completed prior to the closing on the purchase of the Lot from Builder. In the event the Builder has not installed the sidewalk within the time period allotted, the cost of said installation shall be the personal obligation of the Owner and a lien against any such Lot enforceable by the Fishers Planning Commission or the Developer or their successors.

Section 12. Exterior Lights and Mailboxes. All homes shall have a dusk to dawn exterior light; provided, however, all Homes shall either have garage door lights or yard lights on a photo cell system. Illumination intensity for fixtures without shielding shall be limited to 160 watts for incandescent bulbs or the equivalent for other types of bulbs. It shall be the homeowner's responsibility to maintain the exterior lights and to replace burned out bulbs or make any other necessary repairs immediately upon failure of the lights to illuminate properly. Each Home must include a mailbox complying with the design, color, and placement standards established by the Committee from time to time. Mailbox posts shall include a metal guard or protector, as determined by the Committee, to prevent damage to the mailbox post from lawn equipment.

Section 13. Address Identification. The numbers representing the address of each Home shall be generally of a uniform appearance on each Home and throughout the neighborhood, and shall be displayed in a uniform location and manner as determined the Committee and/or municipality.

Section 14. Landscaping. All Lot Owners will be required to submit a landscape plan to the Developer or Committee which shall (i) fully comply with the PUD Ordinance and (ii) be approved in writing by the same prior to installation. Landscaping shall be designed to include at a minimum the number of trees and bushes required by the PUD Ordinance (the "Landscaping Standards") and; sod to the back corners of the Home. Hydro-seed or seed when accompanied with fertilizer and straw with tacking shall be permitted in rear yards. Regardless of the manner in which the yards are treated, the end result shall be a good stand of grass as determined by the Developer. The Builder/Lot Owner may be required to re-seed or hydro-seed, contract with a lawn care service provider, or take other measures Developer deems appropriate to ensure a good stand of grass.

Installation of sod in the right-of way in front of each Lot (the area located between the sidewalk and street curb) shall be the obligation of the Builder or Owner of any such Lot, not of the Developer. The maintenance of this area shall be the continued responsibility of the Lot Owner.

All trees and bushes must meet the City of Fisher's Landscaping Standards and shall be maintained in an appropriate manner by the Lot Owner. In the event any trees or bushes die, they or it, as applicable, shall be replaced with the same or equivalent.

All landscaping shall be the obligation of the Builder or Owner of any such Lot, not of the Developer, and shall be completed within Thirty (30) days of home completion weather permitting.

Section 15. Flag Poles and Signs. No free-standing flag poles, or signs of any kind shall be displayed to the public view on any Lot except one (1) professional sign or licensed real estate agent sign of not more than six (6) square feet advertising the home for sale. Signs or flag poles used by the Builders, Developer or their realtors to advertise the Home or Lot during the construction and sales periods shall be exempt from these requirements.

Section 16. Playground Equipment. Playsets and other recreational equipment (e.g., trampolines) or items (collectively, "Recreational Equipment") are permitted on Lots within the Development; however, must be reviewed and approved by the Committee prior to placement or installation. All approved playsets must be constructed primarily of wood and either stained and/or painted, and may not exceed twelve (12) feet in height. All approved Recreational Equipment must be located: (i) behind the Home in the rear yard; (ii) a minimum of ten (10) feet from the Lot's property line; and, (iii) may not be located within any drainage easement on the Lot. All Recreational Equipment shall be kept in good condition and repair, as reasonably necessary as determined by the Committee.

Section 17. Parking of Vehicles. No trucks larger than one (1) ton, vehicles with exposed work-related equipment (e.g., ladders, generators, construction materials), campers, trailers, motor homes, boats, snowmobiles, wave runners, junk or inoperable automobiles, fuel tanks or similar vehicles shall be parked on a driveway for more than 48 hours on any Lot in the Property. No vehicle shall be parked upon an unpaved area. At no time shall any vehicle be parked in such a way as to block pedestrian access along the public sidewalk adjacent to the street, or prevent mail delivery, or prevent access to any driveway. Each Owner shall be responsible for this or her own vehicles as well as those vehicles belonging to the Owner's guests. Any vehicles of any kind parked in the public right-of-way shall comply with all Applicable Laws.

Section 18. Pets, Livestock and Poultry. All Owners must comply with all Applicable Laws related to animals of any kind that are kept on the Owner's Lot.

Section 19. Gardens. Vegetable, wild flower, and other gardens may be located only in the rear yard of a Lot and may not exceed one hundred (100) square feet in size.

Section 20. Time Period to Commence and Complete Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the plans approved by the Developer or Committee. All landscaping specified on the landscaping plan approved by the Developer or Committee shall be installed on the Lot strictly in accordance with such approved plans within thirty (30) days following substantial completion of the Home unless the Developer or Committee agrees to a later landscaping completion date. Unless a delay is caused by strikes, war, court injunction or act of God, the Owner of any Lot shall commence construction of a Home upon the Lot within one (1) year from the date the owner acquired title thereto, unless written extension by Developer is given or unless such Lot is adjacent to a Lot upon which the Owner has constructed a Home in which such owner permanently resides. All homes shall be completed within 12 months of commencement,

unless written extension by Developer is given. If the Owner fails to commence or complete construction of a Home within the time periods specified herein, Developer may:

- (i) Re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Hamilton County the lesser of (i) the same net dollar amount as was received by Developer from such Owner as consideration for the conveyance by Developer of the Lot, together with such actual costs, if any, as the Owner may prove to have been incurred in connection with the commencement of construction of a Home on the Lot, and (ii) the then fair market value of the Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Hamilton County Circuit or Superior Court;
- (ii) Obtain injunctive relief to force the Owner to proceed with construction of any Home, a plan for which has been approved by the Developer or Committee upon application by such Owner; or
- (iii) Pursue other remedies at law or in equity as may be available to Developer.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Developer or Committee of a plan shall not relieve such Owner from his obligation to commence and complete construction of a Home upon the Lot within the time periods specified herein. For the purposes of this Section, construction of a Home will be deemed "completed" when the exterior of the Home (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the submitted plans.

Section 21. Enforcement. If the Owner of any Lot fails to; 1) maintain the Lot or 2) complete the Home per the requirements and within the time frames set forth herein or 3) install the sidewalk, landscaping, or mailbox per the requirements and within the time period allotted in a manner satisfactory to the Developer or Association, the Developer or Association, after approval by two-thirds (2/3) of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon the Lot and to clean, repair, complete, maintain or install the Lot, Home, sidewalk, landscaping, or mailbox, as the case may be. The cost of any such work shall be the personal obligation of the Owner and a lien against any such Lot enforceable by the Developer or Association. If the Owner fails to reimburse Developer or Association for these costs within Thirty (30) days, the Developer or Association is hereby authorized to place a lien against the Lot. In addition, interest on those expenditures shall accrue at a rate of twelve percent (12%) per annum and Developer or Association shall be entitled to recover in an action at law or in equity from the Owner of the Lot, all of the attorneys' fees and related costs and expenses it incurred pursuant to the collection of the above funds.

Section 22. Water Management And Drainage Restrictions And Easements

(a) No structure, Home or Improvement, planting or other material (other than lawn) of any kind shall be constructed, erected or installed, unless constructed, erected or installed by Developer, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of a Water Management System and drainage area reserved for, or intended by Developer to be reserved for, drainage way, sluiceways or for the accumulation of runoff waters, as reflected in any Lot or instrument of record with the Recorder, without the specific written permission of the Association, and the Developer.

(b) An Owner shall in no way deny or prevent ingress and egress by Developer or the Association to any Water Management System and drainage area for maintenance or landscape purposes. The right of ingress and egress, and easements therefore, are hereby granted in favor of the Developer, the Association, any appropriate governmental or quasi-governmental agency or any public or private utilities that may reasonably require such ingress and egress and easements therefore are hereby specifically reserved and created.

(c) No Lot shall be increased in size by the filling in of any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established water retention and drainage areas without the prior written consent of the Association and the Developer. No Owners may draw water for irrigation or other purposes from any lake, pond or other water management area.

(d) All Water Management Systems within the Property will be the ultimate responsibility of the Association. The Association may enter any Lot or Common Area and make whatever Improvements or repairs are deemed necessary to restore proper water management. The cost shall be an expense of the Association.

(e) Nothing in this Section 22 shall be construed to allow construction of any new water management facility or alteration of Water Management Systems without first obtaining the necessary permits from all governmental regulatory agencies having jurisdiction.

Section 23 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales:

- (A) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant or, after the Applicable Date, by the Association. Lot Owners must maintain these swales as grassways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Lot Owner.
- (B) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days' notice, by registered mail or other verifiable method of delivery, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional

agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article VI of this Declaration.

- (C) Water from roofs or parking areas shall be contained on each Lot long enough so that drainage swales or ditches shall not be damaged by such water. Directly piping water to a drainage swale is prohibited unless approved by the appropriate jurisdictional agency.
- (D) Driveways may be constructed over swales or ditches but only when appropriately sized culverts or other approved structures have been permitted by the appropriate jurisdictional agency. Culverts shall be protected, especially at the ends, by head walls or metal end sections, and, if damaged enough to retard the water flow, shall be replaced by the Lot Owner responsible.

ARTICLE IV ARCHITECTURAL CONTROLS

Section 1. Cyntheanne Woods Architectural Control Committee. Until the Developer resigns its position as the Architectural Control Committee or until the Developer no longer owns any of the Lots in Cyntheanne Woods, the Developer shall serve as the Architectural Control Committee, which shall consist of at least three (3) members who need not be members of the Association. After one of the above events occurs, the members of the Architectural Control Committee (“Committee”) shall be appointed by the Board of Directors of the Association.

Section 2. Purpose. The Committee shall regulate size, type, external design, appearance, use, location and maintenance of any change or addition to the original Home placed on any Lots subject to this Declaration and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures.

All fences, walls or other construction, improvements of any kind or landscaping shall not be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made without the prior approval of the Committee. Such approval shall be obtained only after the Owner of the Lot has made written application to the Committee. The manner of application shall be in the form as prescribed from time to time by the Committee and shall be accompanied by two sets of plans and specifications. Such plans shall include Lot plan showing location of proposed improvements, specification of all exterior materials and colors and any proposed landscaping. In the event said Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required as long as said design meets all other requirements of the Declaration herein and the PUD Ordinance, and this Section 2 will be deemed to have been fully complied with.

The Developer and the Committee shall have no duty, responsibility nor liability to an Owner, the Association, or any other Persons whomsoever in respect to the exercise of its rights or the failure to exercise its rights. The Committee may reject plans, proposals and specifications based on any grounds or reason whatsoever, including purely aesthetic grounds, in its sole, subjective, and absolute discretion. The Committee's decision to approve, reject or withhold its approval of such work may in the sole exercise of its discretion, be based upon: (i) the harmony of its exterior design, color and location in relation to, and its effect upon, surrounding structures, Homes, Improvements, vegetation, topography, and the overall community design; (ii) the character of the exterior materials; (iii) the planned quality of the exterior workmanship; (iv) Committee's design and construction standards; and/or (v) any other material and relevant factors.

Neither the Developer nor the Committee, their respective successors or assigns shall be liable for damages to anyone submitting plans to them for approval, or to an Owner affected by this Declaration, by reason of mistake of judgment, negligence or non-feasance arising out of or in connection with the approval, disapproval or failure to approve any such plans or specifications. Every Person who submits plans to the Committee for approval agrees, by submission of such plans and specifications, and every Owner of a Lot agrees, by acquiring title thereto or an interest therein, that such Owner will not bring any action or suit against the Association, Committee or Developer or their directors, officers or employees, to recover any such damages.

WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION, SUBJECT TO ANY LIMITATIONS IMPOSED UNDER APPLICABLE LAW OR IN THE BY-LAWS, THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE COMMITTEE AND DECLARANT PARTIES FROM AND AGAINST ALL DAMAGES, CLAIMS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, REASONABLY INCURRED IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED ACTION, SUIT OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY SUIT OR PROCEEDING, IF APPROVED BY THE THEN BOARD) TO WHICH ANY MEMBER OF THE COMMITTEE OR ANY OF THE DECLARANT PARTIES MAY BECOME A PARTY BY REASON OF ITS ACTIVITIES UNDER OR IN CONNECTION WITH THIS DECLARATION.

Section 3. Requirements. All applications and plans shall be submitted to the Architectural Control Committee in duplicate, and shall contain the following information:

- (i) Required Building Plan Information -
 - Home floor plan.
 - Residential/building elevations.
 - Materials and colors proposed for exterior walls, roof and driveway.

- (ii) Required Site Plan Information -

- Existing grades; finished grading plan (coordinated with Hamilton County’s approved architectural planning criteria, if any).
- Building location with dimensions to property lines.
- Drives, walks, walls, pools and enclosures, terraces and docks.
- Areas to be grassed and irrigated; type of grass planted.
- Irrigation system design.
- Landscape planting plan.

**ARTICLE V.
OTHER RESTRICTIONS, GUIDELINES AND RIGHTS**

Section 1. Sanitary Sewer, Drainage and Utility Easements. There are strips of ground as shown on the plat(s) and marked Sanitary Sewer, Drainage, and Utility Easements both solely and in combination with other easements, which are reserved for the use of public utilities for the installation of water, sewer, and storm sewer mains, detention and retention areas, poles, ducts, lines and wires, subject at all times to the proper agencies and authorities and to the easement herein reserved. No structures of any kind are to be erected or maintained upon said strips of land, but Owners of Lots in this Development shall take their titles subject to the rights of public utilities. The Developer, utility companies, City and County authorities reserve the right to enter said easements at any time and perform work deemed necessary. These areas shall be maintained free of weeds, trash or other obstruction, and in the event the easement is a Drainage Easement, proper drainage as outlined in the development plan shall be maintained at all times by the Owner of each applicable Lot or Association as owner of the Common Areas. Within Drainage Easements there shall be located no structures which may impede proper drainage including but not limited to landscape mounds, fences, out buildings, swing sets, play equipment, docks, decks, boats, etcetera and shall be maintained with a properly cut stand of grass at all times. No change of grade that adversely impairs storm water drainage shall be permitted within Drainage Easements.

Section 2. Drainage of Storm or Other Water. In the event storm water drainage from any Lot flows across another Lot, provisions shall be made to permit such drainage to continue without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, even in the event no specific drainage easement for such flow of water is provided on said plat(s).

No rain or storm water runoff or such things as roof water, street pavement or surface water caused by natural precipitation, shall at any time be discharged into or permitted to flow into the sanitary sewer system, which shall be a separate sewer system from the storm water and surface water runoff sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the above-mentioned Storm Water and Surface Water Runoff Sewer System.

Section 3. Common Areas. There are strips of ground as shown on the plat(s) and marked as Blocks and or Common Areas, which are reserved for the use and enjoyment of the residents of Cyntheanne Woods. Said areas may also contain or consist of drainage, sewer, utility, and or other easements which are reserved for the use of public utilities and government authorities for

the installation of water, storm water, and sewer mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. Any Common Areas depicted on the recorded plat(s) of the Development shall remain private, and neither the Developer's execution nor recording of the plat(s) nor the doing of any other act by the Developer is, or is intended to be, a dedication to the public of the Common Areas. Ownership of any of the Common Areas shall be conveyed in fee simple title, free of financial encumbrances, to the Association at the sole discretion of the Developer and no later than the Applicable Date. Such conveyance shall be subject to easements and restrictions of record, and such other conditions, as the Developer at the time of conveyance deems appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall be members thereof from time to time.

Developer shall be responsible for improving all Common Areas (including the required landscape plantings within them) until such time as the Common Areas are conveyed to the Association at which time the Association shall be responsible for the maintenance and repair of the Common Areas including the required landscaping plantings as presented in any primary plat of Cyntheanne Woods.

Section 4. Right of Way Enhancements. Association shall be solely responsible for maintenance, replacement and upkeep of the grass, plants and trees within Right of Way Enhancements to the standards set forth in the City of Fisher's Landscape Ordinance only in the event these areas are located adjacent to Common Areas. In the event that these areas are located adjacent to a Lot, then it shall be the Lot Owner's responsibility to maintain these areas as set forth above and as set forth in Article III, Section 13 of this Declaration. If after notice from the City, the Owner or person in control fails to maintain or remove a dead tree or shrub or any dead or dangerous limbs or branches thereon, the City may remove said shrub or limbs and collect the costs thereof from the Owner or person in control. The City and all public utilities retain their ownership and right to access the Right of Way Enhancements area and they retain the right to reasonably remove any tree or shrub impeding necessary work to be performed by the City and/or all public utilities, or other properly authorized users. Neither the City nor any public utility or other properly authorized user of the City's property located in the Right of Way Enhancements shall be liable to the owner of the adjacent Lot or Common Area, as appropriate, for any damages done to trees or shrubs, located upon Right of Way Enhancements area as a result of actions of the City or any public utility or other authorized user or their agents or employees in the performance of their duties.

Section 5. Street Signs, Traffic Control Signs, and Street Light Fixtures. If other than the standard City street signs and traffic control signs are installed, it shall be the Developer's responsibility to install said items and the Association's responsibility to maintain them. All signs shall meet and be maintained to all of the City's minimum safety standards. The Association shall be solely responsible for the maintenance of all the streetlights within the Development including fixtures and lamps.

Section 6. Invalidation of Covenant. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 7. Additional Easements

(a) The following rights and easements reserved and retained in this Section 7 shall not be exercised with respect to a Lot, after the conveyance of such Lot by Developer to an Owner, in a manner that (i) unreasonably affects any Home or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably affects the rights of ingress and egress to such Lot:

(i) During the term of this Declaration, the Developer, until the occurrence of the Applicable Date and, thereafter, the Association hereby reserves and shall have the right (i) to grant telephone, gas, water, sewer, irrigation, drainage, cable television or other easements, including rights of access to maintain, repair, replace, or install fixtures and appurtenances necessary for such utility and government services for the benefit of the appropriate utility companies, agencies, franchises, or government agencies, and to relocate any existing easement in any portion of the Property, and (ii) to grant access easements and to relocate any existing access easements in any portion of the Property as the Developer or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Property, or any portion thereof, or for the general health or welfare of the Owners, or for the purpose of carrying out any provision of this Declaration.

(ii) There is hereby created a blanket easement over, across, through, and under the Property for ingress, egress, installation, replacement, repair, and maintenance of underground utility and service lines and systems including, but not limited to, water, sewers, gas, telephone, electricity, television, cable or communication lines and systems; provided, however, that such easements may not be utilized or exercised except as approved by the Developer prior to the Applicable Date or by the Committee thereafter. By virtue of this easement, it shall be expressly permissible for Developer or the providing utility or service company to install and maintain facilities and equipment on the Property and to excavate for such purposes if the Developer or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. Should any utility furnishing a service covered by this general easement request a specific easement by separate document to be recorded with the Recorder, Developer or the Declaration shall have the right to grant such easement on the Property without conflicting with the terms hereof. Notwithstanding anything herein to the contrary, however, this blanket easement shall in no way affect any easements on the Property that are recorded with the Recorder, shall be limited to Improvements as originally constructed, and shall not cover any portion of a Lot upon which a Home has been constructed.

(iii) Developer hereby reserves to itself and its designees the right and power, during a period of fifty (50) years from the date of the recordation with the Recorder of this Declaration, to declare and file or record with the Recorder of additional easements granting full, free right, power and authority to lay, operate, and maintain such drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, communication lines, cable television lines, and such other public service facilities as the Developer may deem necessary along, through, in, and over a strip of land ten (10) feet in width

from all side, front, and rear lines of any Lot. These easements may be granted for the benefit of the Property or burden the Property for the benefit of other real estate.

(b) Common Areas Easements. All Common Areas are hereby declared to be subject to a perpetual, non-exclusive easement in favor of the Association and its employees and agents in order that such employees and agents may carry out their duties on behalf of the Association. Notwithstanding anything else to the contrary set forth in this Declaration, the Developer, solely at the Developer's discretion, reserves the right to grant perpetual, non-exclusive easements over the Common Areas for ingress, egress, utilities, water, sewer, cable television, drainage and other purposes for the benefit of the Common Areas, or any Lot or of other real property.

(c) Signage Easement. Any signage placed on any Lot or Common Areas by the Developer is hereby allowed, and an easement is hereby reserved to the Developer to enter upon any Lot or Common Areas for the purpose of replacing, improving, altering, landscaping, and maintaining any signage thereon. The aforesaid reservation of easements shall be freely assignable by Developer, either in whole or in part, to any entity or entities at the Developer's sole and absolute discretion, and without further approval from the Association. Except for the aforesaid Developer's reservation of easement right, together with the Developer's right of assignment thereof, no signs shall be placed on or allowed to be placed on or adjacent to a Lot or Common Areas by any Owner without the prior written approval of the Committee.

(d) Sales and Development Easement. Notwithstanding anything to the contrary contained in this Declaration or any other instrument or agreement, the Developer or its sales agents, contractors, or designees shall have the right and easement to use, without charge, any Lot or part of the Property owned by it, and any Common Areas, (i) for all purposes in connection with the development of the Property, and (ii) in order to establish, modify, maintain, and utilize, as it and they may deem proper, model homes, sales homes, and such other offices and facilities as, in the sole opinion of the Developer, may be reasonably required, convenient, or incidental to the construction, sale, or rental of Lots and Homes including, without limitation, a general business office, storage area, construction signs, model Homes, sales and leasing offices, and any signs or other promotional material to advertise Lots and Homes for sale or lease, and to take all other action helpful for the sales and promotion of the Property.

(e) Developer's Easement to Correct Drainage. For a period of fifty (50) years from the date of the conveyance of the first Lot, Developer reserves a blanket easement and right on, over and under the ground within the Property to maintain and correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Developer shall restore the affected Property to its original condition as nearly as practicable. Developer shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Developer an emergency exists which precludes such notice.

(f) Enforcement Easements. Each Owner hereby grants to the Association a non-exclusive easement for ingress and egress over the Common Areas and over the Owner's Lot, to

enter upon the same at reasonable times to enforce the provisions of this Declaration, and the same shall not constitute a trespass.

(g) Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Areas adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Areas or as between said adjacent Lot, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

(h) Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance pursuant to this Declaration, and to inspect for the purpose of ensuring compliance with this Declaration and any Supplemental Declaration, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency Personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into Home without permission of the Owner, except by emergency Personnel acting in their official capacities.

(i) Landscape Easements. Declarant hereby declares, creates, grants and reserves for the benefit of the Owners and the Association for purposes of maintaining and preserving the Common Area in accordance with the provisions of this Declaration, any strips of grounds shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, or landscape maintenance access easements (collectively, "Landscape Easements"). The Landscape Easements are hereby reserved unto Declarant, until the Applicable Date, and, thereafter, unto the Association, for the purposes of (i) providing and maintaining signs which either advertise the Development and the availability of Lots or identify the Development and (ii) installing and maintaining landscaping, mounding, fencing, masonry walls, and screening. Declarant reserves unto itself until the Applicable Date and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected in the area of such easements, except by the Declarant until the Applicable Date, and thereafter by the Association or as approved by the Committee. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between

(i) any landscape easement or landscape maintenance easement and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Development, except by the Declarant until the Applicable Date and thereafter by the Association or as approved by the Committee.

(j) Non-Buildable Easement. There are strips of ground designated on the Plat as Non-Buildable Easements ("N.B.E."). No structure (except for masonry siding) or portion thereof shall be constructed or allowed to exist within said easements. Should any violation of this prohibition be discovered, then the Association has the authority to require the Owner of the Lot to remove such structure or the Association may elect to remove the structure should the Owner be unwilling. In either event, the cost of the removal shall be at the Owner's expense.

(k) Pedestrian Access Easements. Any strips of ground shown or designated on a Plat as "Pedestrian Access Easements" or "P.A.E." are created for the use and enjoyment of the Owners and their family members and their guests.

(l) Private Utility Lines. The Owner of each Lot shall be responsible for the maintenance, repair or replacement of utility distribution lines and connections, as well as private sanitary sewer laterals (which connect a Lot to a sewer main) on such Lot. On such Lot, the Owner shall also be responsible for the maintenance, repair or replacement of storm sewer lines, mains, drains and other storm sewer system components located on the Lot, except to the extent such items are located within a Sewer Easement, in which case such maintenance, repair and replacement shall be the Association's responsibility until such time as the sewer system is accepted by the appropriate governmental agency.

(m) Reciprocal Use Access Easements. There are strips of ground designated on the Plat as "Reciprocal Use Access Easements" or "R.U.A.E.". Owners of Lots upon which Contiguous Dwelling Units are constructed are hereby granted in the Reciprocal Use Access Easement area located on the adjacent Lot an easement allowing (i) access for construction, maintenance and repair of the Adjacent Parallel Garage Wall and (ii) the encroachment by walls, brick, eaves, roof overhangs, gutters and other such similar structures, and as necessary or appropriate, for underground utility lines and utility services. The Owner of the adjacent Lot shall at all times use the Reciprocal Use Access Easement area on its Lot in a manner that is consistent with the purpose of the Reciprocal Use Access Easement area as set forth herein. The Reciprocal Use Access Easement area shall promptly be restored by the person using the Reciprocal Use Access Easement area to the condition as existed prior to any disturbance, and storage of anything by the adjacent Owner in the area of the Reciprocal Use Access Easement area is strictly prohibited.

(n) Sight Visibility Easements. There are strips of ground designated on the Plat as "Sight Visibility Easements" or "S.V.E" which are created for the specific purpose of maintaining vision clearance. No fence, wall, tree, shrub planting or any other object which obstructs sight lines and elevations between 2 and 8 feet above street shall be placed or permitted to remain within said easement area.

(o) Public Trail Easement. There are strips of ground designated on the Plat that are designated as “Public Trail Easement” or abbreviated as “P.T.E.”. Such easements are hereby established in favor of the adjoining property owner ('Grantee') and grant the community and general public the right to enter the easement for purposes of outdoor recreation such as walking, hiking, jogging, and bicycling. such easements also grant the City the right to enter the easement area to construct, install, maintain, and repair the trail and associated trail facilities such as signs, benches, wastebaskets, water fountains and bicycle racks. These easements prohibit any development within the easement without written approval from the City. Vertical clearance of at least (10) feet must be maintained over the trail at all times. These easements are binding on all heirs, successors, and assigns to the Property on which they are located. The Grantee or the City may enforce the provisions of the easements. Said easement shall only be modified or vacated in the manner stipulated in the City of Fishers Unified Development Ordinance, or its successor ordinance.

(p) Emergency Access Easement. There are strips of ground designated on the Plat that are marked "E.A.E." or “Emergency Access Easement”. This strip is reserved for the installation of an emergency access drive and allow access emergency vehicles and to the Owners of Lots with the subdivision across the parcel subject at all times to the proper authorities and to this easement herein reserved. No other structures are to be erected or maintained upon said strip of land.

(q) Tree Preservation Easements (the “Preservation Areas”), if any, are shown on the Plat as “Tree Preservation Easements”. As shown, Tree Preservation Areas are located in Common Areas and upon Lots or lots. Except as noted below, each Builder, and/or Owner shall endeavor to preserve trees within the Preservation Areas and shall not remove trees, small trees and/or underbrush within the Preservation Areas:

- (i) The clearing of dead trees by the Developer or the Association shall be allowed;
- (ii) The removal of trees and underbrush by the Developer as necessary for the installation of utilities, drainage improvements and infrastructure, landscaping, walls and fencing shall be allowed;
- (iii) The removal of trees for public health and safety shall be allowed, but only when such removal is first approved by the Committee, unless there exists an emergency necessitating immediate removal, in which case the removal may occur before the approval of the Committee, provided that the Committee shall thereafter review the circumstances surrounding the removal.

ARTICLE VI.
CYNTHEANNE WOODS HOMEOWNERS' OWNERS' ASSOCIATION

There is or shall be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "The Cyntheanne Woods Homeowners' Owners' Association, Inc.

Section 1. Membership in Association. Each Lot Owner shall automatically, upon taking a deed to a Lot that is part of the Property or in the Development, become a member of the Association and agree to abide by this Declaration and By-Laws of the Association and shall remain an abiding member until such time as their ownership of a Lot ceases. Membership in the Association shall terminate when such Owner ceases to be an Owner 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 in this Development merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Association.

Section 2. Voting Rights. The Association shall have the following classes of membership, with the following voting rights:

A. Class A. Class A members shall be all Owners except Class B Members (hereafter, "Class A Member" or "Regular Member"). Each Class A Member shall be entitled to one (1) vote for each Lot of which such Class A Member is the Owner with respect to each matter submitted to a vote of the 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 Association, 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. The membership in the Association shall only be transferred by the transfer of the record title of a Lot.

B. Class B. Class B members shall be the Developer and all successors and assigns of Developer designated by Developer as Class B members in a written notice mailed or delivered to the President of the Association (hereafter, "Class B Member" or "Developer Member"). Each Class B Member shall be entitled to five (5) votes for each Lot of which it is the Owner and five (5) votes for each individually numbered parcel of land shown upon, and identified as a Lot on, any Development plat(s) of the Development, or any part thereof, of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this Declaration, plus one hundred (100) votes, on all matters requiring a vote of the members of the Association. The Class B membership shall cease and terminate upon the Applicable Date.

Section 3. Election Of Board Of Directors. It is anticipated that the day-to-day operation of the Association shall be conducted by the Board. Until the Applicable Date, Developer will retain the exclusive powers to appoint and remove and replace Board and Officers of the Association. After the Applicable Date, Board of the Association shall be elected at the annual meeting of the Regular Members in the manner provided in the Association's Bylaws, and the Board may be removed and vacancies on the Board shall be filled in the manner

provided in this Declaration and the Bylaws of the Association. The Board of the Association shall manage the affairs of the Association.

Section 4. Control Of Board By Developer. So long as there is a Developer Member, the Developer has the right to designate, elect, remove or replace all of the Board of Directors, and the Board so designated by the Developer need not be Regular Members of the Association. The Developer may waive its right to designate any one or more Board, as provided in the Association's Bylaws.

Section 5. Functions.

A. The Association shall maintain the Common Areas shown on the plat(s) including the improvements thereon and shall keep such area in a neat, clean and presentable condition at all times.

B. The Association shall be responsible for the maintenance of street signs, traffic control signs, and streetlights to the standards set by the City of Fishers.

C. The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance and such other insurance, as it deems necessary or advisable.

D. The Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

E. Owning all Common Areas when deeded to it and paying taxes and assessments levied and assessed against, and payable with respect to, the Common Areas paying any other necessary expenses and costs in connection with the Common Areas

Section 6. Assessments.

A. **Authority to Create Lien.** The Association and or Developer are hereby empowered to cause a lien to be placed against any Lot for the purposes of (1) recovering any funds due for Annual Assessments, Special Assessments, or recovering any funds expended by the Developer or the Association in maintaining any Lot in a neat and attractive condition as contemplated by Article III, Section 1 and for the installation of sidewalks and or street trees as required within this Declaration, together with interest on those expenditures accruing at a rate of twelve percent (12%) per annum, or (2) recovering any attorneys' fees and related costs and expenses incurred by either the Developer or the Association in any proceeding initiated pursuant to the collection of the above funds or any proceeding initiated pursuant to Article III, Section 21, Article VI, Section 6, or as otherwise allowed under this Declaration. No private individual Owner shall have such a right to create a lien against a neighboring Lot pursuant to the terms of this Section. No liens shall be created on any Lot or Common Area owned by the Developer.

B. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot in the Development, except the Developer, by acceptance of a deed or other conveyance

therefore, whether or not it shall be expressed in such a deed, is deemed to covenant and agree to pay to the Developer or Association: (1) annual assessments or charges; (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided; (3) assessments or charges for expenditures by the Developer or the Association in maintaining the Lot in a neat and attractive condition as contemplated by Article III, Section 1, (4) a One-Time Assessment (hereafter defined), and (5) Violation Assessments (hereafter defined) levied for a violation of this Declaration. The annual assessments, special assessments, maintenance assessments, One-Time Assessment and Violation Assessments, together with interest, costs, late fees, and reasonable attorney's fees, shall be a charge on the land until paid in full and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hamilton County, Indiana. No charge, lien, or assessment shall ever be levied by the Association or individual Lot Owner against the Developer.

C. Date of Commencement of Annual Assessment. Annual Assessments shall be set for each calendar year and due and payable in one lump sum in advance on the first day of January of each year or, if so determined by the Association's Board of Directors or Developer, in such other periodic installments or due dates as may be specified by the Board of Directors or Developer. If ownership of a Lot is conveyed after the first of January, the Annual Assessment shall be paid at closing and the Annual Assessment shall be pro-rated, based on the calendar year, as of the date of closing. The Association shall, at any time and for a reasonable fee, furnish a certificate in writing signed by an officer of the Association stating that the assessments on a specific Lot have been paid or that certain assessments or other charges against said Lot have not been paid, as the case may be. Annual Assessments shall not commence for any Lot until the date the Lot is first sold or conveyed by the Developer to any person or entity. Prior to such time, the Developer shall not be liable for paying any assessments to the Association.

Prior to the Applicable Date, by a vote of a Majority of the Board, the Board (i) shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration (the "Annual Budget") and (ii) fix the Annual Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board shall establish the date(s) the Annual Assessment shall become due, and the manner in which it shall be paid.

The Common Expenses to be funded by the Annual Assessments may include, but shall not necessarily be limited to, the following:

- (a) management fees and expenses of administration, including legal and accounting fees;

(b) utility charges for utilities serving the Common Areas and charges for other common services for the Property, security services, if any such services or charges are provided or paid by the Association;

(c) the cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board determines to be in the interests of the Association and the Owners;

(d) the expenses of landscaping, mowing, maintenance, operation, repair and/or replacement of (i) those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration; together with (ii) all Improvements and trails located within such Common Areas;

(e) the expenses of maintenance, operation, and repair of other amenities and facilities serving the Development, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Association;

(f) the expenses of the Committee that are not defrayed by plan review charges;

(g) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(h) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, tenants, guests, and invitees;

(i) in the sole and absolute discretion of the Board, the Board may from time to time elect to provide services including, without limitation, snow removal from Public Streets, and Private Streets and/or Private Roads and trash collection from Homes (provided such trash collection is not undertaken by the City of Fishers, Indiana) in which case the costs of such snow removal and trash collection shall be included within the Common Expenses;

(j) the expense of maintaining any entrance gates, gate house, guard houses, and entrance systems and features installed by the Developer in any Common Area or elsewhere;

(k) the expense of maintaining any street lights installed by the Developer in any Street or elsewhere; and,

(l) such other expenses as may be determined from time to time by the Board to be Common Expenses, including, without limitation, all taxes and governmental charges not separately assessed against Lots or Homes.

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

(i) After the Applicable Date, and subject to subparagraph (ii) immediately below, the Annual Budget must be approved at a meeting of the Regular Members by a Majority of the Regular Members of the Association in attendance at a meeting called and conducted in accordance with the requirements of this Declaration, the Association's Articles and the Association's By-Laws. For purposes of this meeting, a Regular Member is considered to be in attendance at the meeting if the Regular Member attends: (1) in Person; (2) by proxy; or (3) by any other means allowed under Indiana law or under this Declaration, the Association's Articles or the Association's By-Laws.

(ii) If the number of Regular Members in attendance at the meeting held under subparagraph (i) immediately above does not constitute a quorum as defined in the Association's By-Laws, the Board may adopt an Annual Budget for the Association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved annual budget last approved by the Association.

The total Annual Assessments shall be divided among the Lots or Homes, as hereinafter provided: (i) the Owner of each Home or Lot on which a Home shall be constructed shall pay Annual Assessments which, beginning in 2024 and subject to increase as provided herein, shall be in an amount determined by Developer before completion of construction of the first Home on the Property; and, (ii) notwithstanding anything to the contrary in this Declaration, no Lot owned by Developer shall be assessed for Annual Assessments and no Lot owned by a Builder, other than a Lot on which there exists a Home in which the Builder resides, shall be assessed for Annual Assessments.

D. Special Assessments. In addition to the annual operating assessment, the Board of Directors or Developer may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur in the event the Annual Assessment for the current year is, or will become, inadequate to meet all Common Expenses for any reason, provided that any such assessment shall have an assenting vote of the majority of the members who are voting in person or by proxy at a meeting duly called for this purpose. Written notices for such meetings shall be sent and voting quorums required as set forth in the By-Laws of the Association. Notwithstanding anything to the contrary in this Declaration, no Lot owned by Developer shall be assessed for Special Assessments and no Lot owned by a Builder, other than a Lot on which there exists a Home in which the Builder resides, shall be assessed for Special Assessments

E. One-Time Assessment. Upon the closing of the initial conveyance of each Lot by Declarant to an Owner other than Builder, the purchaser of such Lot and/or Home shall pay to the Association, as a contribution to its working capital and start-up fund, an amount of Four Hundred and Fifty Dollars and 00/100 (\$450.00) against such Lot (the “One-Time Assessment”), which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owned the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation, and enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

F. Violation Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the Owner’s Resident Family, tenants, agents, guests, or invitees of any Owner shall be specially assessed against such Owners and their respective Lots or Homes (a “Violation Assessment). The Violation Assessments provided for in this Section 6.F shall be levied by the Board and the amount and due date of such Violation Assessment so levied by the Board shall be as specified by the Board in its discretion.

G. Reserves. The Board may establish reserve accounts funded from Initial Assessments, Annual Assessments and/or Special Assessments in reasonable amounts and in such categories as are determined by the Board for deferred maintenance and repair and replacement, including maintenance of all Common Areas, or emergency repairs as a result of casualty losses. All amounts collected as a reserve shall be deposited or invested by the Board in separate accounts to be held in trust for the purposes for which such funds are collected, and shall not be commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Regular Members.

H. Liens. All sums assessed against any Lot or Home pursuant to this Declaration, together with court costs, reasonable attorneys’ fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Home in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot or Home except only for: (i) liens of ad valorem taxes, and (ii) liens for all sums unpaid on a first priority Institutional Mortgage from any Owner or the Developer, or its affiliates, successors, or assigns, and all amounts advanced pursuant to any such first priority Institutional Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of Annual Assessments and charges to the lien of such Mortgages shall only apply to such Annual Assessments and charges that have become due and payable prior to acquisition of title at a foreclosure sale or by a deed in lieu of foreclosure. All other Persons acquiring liens or encumbrances on any Lot or Home after this Declaration has been recorded with the Recorder shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for Annual Assessments and charges as provided herein.

Whenever provisions in this Declaration, including, without limitation, provisions in this Article VI, provide for a lien for Annual Assessments, Special Assessments or otherwise, the

Developer and/or the Association may, in its sole discretion, cause a lien against the subject Lot to be recorded with the Recorder, which lien may be foreclosed in the same manner as mortgages are foreclosed in the State of Indiana or as otherwise specified under the laws and statutes of the State of Indiana.

I. Failure of Owner to Pay Assessments. No Owner (except Declarant) may exempt himself or herself from paying Annual Assessments, Special Assessments, One-Time Assessments or Violation Assessments (collectively, the "Assessments"), or any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Assessments when due, the lien for such assessment on the Owner's Lot may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Assessments within ten (10) days after such are due, the Board, in its discretion, may:

(1) impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board of up to twenty-five percent (25%) of the amount of the Assessment;

(2) suspend such Owner's right to use the recreational facilities within the Development as provided in the Indiana Nonprofit Corporation Act of 1991, as amended; and

(3) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits there from for the benefit of the Association to be applied to the unpaid Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessments without foreclosing or waiving the lien securing the same. In any action to recover Assessments, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorney's fees, from the Owner of the respective Lot.

J. Notification. Every Owner of a Lot in the Development and any person who may acquire any interest in any Lot in the Development, whether as Owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said Lot at the time of acquisition of such interest are valid liens and shall be paid. Every person who shall become an Owner of a Lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association and Developer all charges that the Association or Developer shall make pursuant to this Article VI of the Declaration.

K. Subordination of Assessment Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a first 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 Annual Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishments of such lien cannot relieve the prior owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Annual Assessments or Special Assessments thereafter becoming due or from the lien, therefore. Such unpaid share of any Annual Assessments or Special 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).

Section 7. Initial Board of Directors. The initial Board of Directors (“Initial Board”) shall be composed of the persons designated or to be designated by the Developer. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration or the Articles, (a) the Initial Board shall hold office until the first meeting of the members of the Association occurring on or after 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 such first meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Developer, who shall thereafter be deemed a member of the Initial Board.

Each Owner, by acceptance of a deed to a Lot with, or by acquisition of any interest in a Home house by any type of juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed the Initial Board of Directors 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 the Initial Board of Directors determines, on all matters as to which members of the Association are entitled to vote under the Declaration, these Articles or otherwise.

Section 8. Additional Qualifications of Board of Directors. 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 or Home house may be represented on the Board of Directors by more than one person at a time.

Section 9. Term of Office and Vacancy of Board of Directors. Subject to the provisions of Section 3 and Section 4 of this Article VI, the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date each

member of the Board of Directors shall be elected annually. 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 and Section 4 of this Article VI as to the Initial Board, any vacancy or vacancies occurring in the Board after the Applicable Date 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 Section 10 of this Article VI. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

Section 10. 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 cast 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 11. Duties and Powers of the Board of Directors. The duties and powers of the Board of Directors shall be set forth in the By-Laws.

Section 12. Limitation of 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 \$5,000.00 without obtaining the prior approval of a vote 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 Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;
- b. Proposed contracts and proposed expenditures expressly set forth in the annual budget as approved by the Board of Directors; 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 13. Compensation of Board of Directors. No Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a 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 14. Non-Liability of Directors and Officers. The Directors and officers of the Association 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 and officers, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors and officers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad

faith. It is intended that the Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Association.

Section 15. Additional Indemnity of Directors and Officers. The Association 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 or Officer of the Association, 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 relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or officer is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director or Officer the reasonable costs of settlement of or judgment rendered in any action, suite or proceeding, if it shall be found by a vote of the Owners that such Director or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or Officer 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 or officer relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any other officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advise or service unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or officer 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 16. Bond of Board of Directors. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and any other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, 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. The expense of any such bonds shall be a Common Expense.

Section 17. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Developer shall have, and Developer hereby reserves to itself, the exclusive right to manage or designate a managing agent for the Property and Common Areas, and to perform all the functions of the Association, until the Applicable Date. Developer may, at its option, engage the services of a managing agent affiliated with it to perform such functions and, in either case, Developer or such managing agent shall be entitled to reasonable compensation for its services.

Section 18. Termination of the Initial Board of Directors. The Initial Board of Directors shall hold office until the first meeting of the members of the Association occurring on or after the Applicable Date.

Section 19. Means of Communication. To avoid the costs of paper, postage and handling that would otherwise be incurred when distributing documents or information to Owners by regular mail, and also to be more efficient in transmitting information that Owners can receive even when out of town, the Association will, to the extent possible, make Association matters available online through the Association's website and/or via email or similar means, including but not limited to:

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

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

Section 20. Manner of Voting and Meeting Participation. Voting and meeting participation may be held or performed in any manner set forth in the Act as well as any manner that is not prohibited by the Act, or deemed acceptable by the courts as a practical way to collect votes and allow Members to participate in Association actions. The Board of Directors shall have discretion to provide for such procedures and to set the terms of use.

Specifically, the Board of Directors shall have the power to authorize voting by the Members through a secure, internet-based online voting system ("electronic voting"). The Board of Directors can adopt rules and regulations concerning the use of acceptable, verifiable means of technology, including electronic means for Lot Owner notice, voting, signatures, consents and approvals. A verifiable electronic signature satisfies any requirements for signatures on documents. If an Owner either does not have the capability or desire to conduct business electronically, the Association shall make reasonable accommodation, at its expense, for the person to conduct business without the use of electronic or other similar means.

Section 21. Indemnification for Association Operations. THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT AND ITS PARTNERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AND DECLARANT'S SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "DECLARANT PARTIES") FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, DAMAGES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES

AND COSTS, IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING) ASSERTED AGAINST ANY OF THE DECLARANT PARTIES OR TO WHICH ANY OF THEM MAY BECOME A PARTY ARISING OUT OF OR RELATED TO THE MANAGEMENT OR OPERATION OF THE ASSOCIATION, INCLUDING WITHOUT LIMITATION, THE ENFORCMENT OF THE MASTER FOUNDING DOCUMENTS, THE COLLECTION OF ASSESSMENTS, AND THE OPERATION, MAINTENANCE AND REPAIR (OR FAILURE TO OPERATE, MAINTAIN OR REPAIR) THE COMMON AREAS.

ARTICLE VII **CONTIGUOUS DWELLING UNITS**

Section 1. Encroachments. To the extent a Contiguous Dwelling Unit, or any portion thereof such as a footing or overhang, encroaches upon the adjacent Lot, by taking title to said Lot, the Owner of said adjacent Lot consents to said encroachment.

ARTICLE VIII **GENERAL AND PROCEDURAL PROVISIONS**

Section 1. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the properties designed to make the Property safer than they otherwise might be. Neither the Association, the Developer, nor any successor Developer shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any gatehouse, fence, buffer area, fire protection system, burglar alarm system, security camera system or other security system cannot be compromised or circumvented, or that any such systems or security measures undertaken will in any or all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, Developer, and any successor Developer are not insurers and that each Person using the properties assumes all risks for loss or damage to Persons, to Homes and to the contents of Homes resulting from acts of third parties.

Section 2. Insurance/Reconstruction.

The Association (i) shall obtain the insurance noted in Sections (a) and (b) below, and continue in effect as a Common Expense, and (ii) shall have the authority to obtain insurance noted in Sections (c) – (e) below, and continue in effect as a Common Expense, as follows:

(a) A comprehensive policy of public liability insurance covering the Common Areas with limits to be approved by the Board, covering claims for personal injury and/or property damage, including protection against water damage liability, liability for non-owned and hired

automobiles, and liability for property of others and such other risks as shall customarily be covered with respect to similar developments and risks. Such policy shall contain a “severability of interest” endorsement or the equivalent, which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners.

(b) A policy of fire and casualty insurance with extended coverage for the replacement value of all Improvements to the Common Areas and tangible personal property as shall be determined annually by the Board.

(c) Such other policies and in such other amounts and coverage as the Board shall from time to time determine to be appropriate and desirable including, without limitation, errors and omissions coverage insuring the Board, the officers of the Association, and the Committee.

(d) The Association shall purchase adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Board and all others who handle and are responsible for handling funds of the Association, such coverage to be in the form of fidelity bonds which meet the following requirements unless one or more of such requirements are waived by the Board.

(e) Such bonds shall name the Association as an Obligee;

(ii) Such bonds shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual Association expense; and,

(iii) Such amounts shall contain waivers of any defense based upon the exclusion of Persons who serve without compensation from any definition of “employee” or similar expression.

(f) The Developer shall be named as an additional insured in any liability policy obtained by the Association.

Section 3. Owner’s Insurance/Reconstruction. The Association is only obligated to provide insurance as set forth in Section 2 herein. The Association is neither authorized to nor shall it obtain any insurance with respect to any Lot and/or Home, or to provide any insurance with respect to liability, fire, theft, damage or any other casualty loss for any private property of any Owner, his tenant or their guests or family members, all of which shall be the responsibility of the Owner.

Unless otherwise expressly specified in a Supplemental Declaration, each Owner shall at all times maintain casualty insurance on his Home and all other insurable Improvements in an amount equal to the full replacement cost thereof. Each such insurance policy shall contain a waiver of subrogation provision as to both Developer and the Association. If any Improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner of such Improvements shall cause repair or replacement

to be commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must restore the Improvements to substantially their original character, design and condition, and shall utilize and conform with the original foundation and appearance of the original Improvements except as otherwise approved by the Committee.

If the Owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed Improvements within the time periods provided for above, the Association shall give written notice to the Owner of his default. If after thirty (30) days the Owner has not made satisfactory arrangements to meet his obligations, the Association shall be deemed to have been granted the right by the respective Owner, as such Owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the Improvements to their original condition, according to the plans and specifications of the original Improvements. If the Association exercises the rights afforded to it by this Section 3, which shall be in the sole discretion of the Board, the Owner shall be deemed to have assigned to the Association any right such Owner may have to insurance proceeds that may be available because of the damage or destruction of the Improvements. The Association shall have the right to recover from the Owner any costs not paid by insurance and shall have a lien on the Lot and Home to secure payment.

Section 4. Damage And Destruction Any damage or destruction to the Common Areas shall be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost of repair or reconstruction, the Board shall, without the necessity of a vote of the Developer Member and the Regular Members, levy a Special Assessment against all Owners as permitted in Article VI.

Section 5. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the Developer prior to the Applicable Date and thereafter by a Majority vote of all the Developer Member and the Regular Members entitled to vote. This Section 5 shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments as provided in Article VI; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

Section 6. Other Documents. Developer, the Association, or other entity provided for herein, or in any applicable instrument recorded with the Recorder, shall have such rights, powers, duties, and privileges as set forth herein or in the Master Founding Documents and other constituent documents of such entity; however, no such entity may have rights, duties, powers or privileges that are in conflict with the provisions of this Declaration, which shall prevail in all events of conflict.

Section 7. Duration Of Restrictions. The covenants, reservations, restrictions, and other provisions of this Declaration shall run with and bind the Property and shall inure to the benefit of the Developer or any Owner subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for an initial term of seventy-five (75) years from this date this Declaration is recorded with the Recorder. Upon the expiration of such initial period, this Declaration shall automatically be extended for successive periods of ten (10) years. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last renewal period, three-fourths (3/4) the votes cast at a duly held meeting of the Developer Member and the Regular Members of the Association vote in favor of terminating this Declaration at the end of its current term. It shall be required that written notice of any meeting at which such proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the of the Developer Member and the Regular Members vote to terminate this Declaration, the president and secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate must be signed by all votes cast in favor such resolution and signed by all Institutional Mortgages in existence one (1) years prior to the termination of such term or extension agreeing to terminate this Declaration. Said certificate shall be recorded with the Recorder, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration, upon which event this Declaration shall be terminated upon the expiration of the original term or the ten (10) year extension during which such instrument of termination was recorded with the Recorder.

Section 8. Modification And Amendment Of Declaration. Until after the occurrence of the Applicable Date, the Developer reserves the exclusive right, at any time, in its sole discretion and without notice to or consent of any Person, to make modifications or amendments to this Declaration and other Master Founding Documents by a written instrument, executed by the Developer and recorded with the Recorder. After the Applicable Date, modifications and amendments to this Declaration may be made from time to time upon the affirmative vote of two-thirds (2/3) of all Regular Members of the Association at any Annual or Special meeting called for that purpose, provided, however, that the full text of any proposed amendments shall be included in the notice of such Annual or Special meeting and the voting requirements specified for any action under any provisions of this Declaration shall also apply to any amendment of such provisions, and no amendment shall be effective which is in contravention of the duties, responsibilities or obligations of the Association or the Regular Members as provided in this Declaration. This Declaration is supplemental to and independent of any zoning, present or future, of Hamilton County, Indiana, or of any other applicable County, or of any other governmental entity, and no variance or zoning change permitted by the appropriate governmental authority shall in any way be construed to reduce or modify the covenants contained herein. The foregoing provisions of this Section 8 and any other provisions of this

Declaration notwithstanding, under no circumstances shall this Declaration be amended in a manner that is expressly prohibited elsewhere in this Declaration.

Section 9. Amendment Limitations. No amendment in derogation of any rights or privileges reserved or granted in this Declaration to the Developer, may be made, other than by the Developer, without the written approval of the Developer.

Section 10. Condemnation. If at any time during the term of this Declaration, the whole or any portion of the Common Areas shall be taken for any public purpose by any lawful power or authority by the exercise of the power of eminent domain or by agreement between those authorized to exercise such power, this Declaration and all obligations hereunder as to the taken area shall terminate and expire on the date of such taking and expenses provided to be paid for such taken area shall be apportioned and paid to the date of such taking. To the extent that Developer owns any Homes or Lots, Developer shall participate in any award or awards after any condemnation, due to its interest in the Common Areas taken along with and to no lesser extent or degree than other Owners. If any Improvements upon the Common Areas not included in the area taken shall be damaged or partially destroyed by such condemnation, then the Association shall proceed with reasonable diligence to demolish, if necessary, and to construct, repair, replace or rebuild such Improvements so such Improvements are complete and in good condition and repair.

If the temporary use of the whole or any part of the Common Areas shall be taken at any time during the term of this Declaration by the exercise of the right of condemnation by any authority have such power, then the term of this Declaration shall not be reduced or affected in any way and the Association expenses herein provided to be paid shall continue to be due and payable and the Owners shall be entitled to the entire award granted by reason of such temporary taking.

Section 11. Acceptance Of Declaration By Owners. Each Owner, by accepting an interest in any Lot, hereby agrees to be bound by all the conditions, limitations, reservations and restrictions as contained herein, and in the event of a breach agrees to pay all costs, including reasonable attorney fees, for the enforcement of this Declaration.

Section 12. Remedies. The provisions of this Declaration may be enforced by (i) any Owner, (ii) the Developer, and (iii) the Association. In the event of a violation or breach of the Declaration, the Association and/or Developer shall have the right to proceed at law, or in equity, to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The failure to enforce any right, reservation restriction, condition or limitation herein contained, however long delayed, shall not be deemed a waiver or the right to do so thereafter.

Section 13. Severability And Non-Waiver. If any covenant, condition, restriction or other provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, then such ruling shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect. Waivers,

omissions, errors, or other allowances, however made, shall not create a precedent or invalidate this Declaration, and no Regular Member shall make a claim for relief based on any prior waiver or omission or error.

Section 14. Gender. Whenever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

Section 15. Administration. The administration of the Association shall be in accordance with the provisions of this Declaration and Association's Articles of Incorporation and Bylaws.

Section 16. Non-Liability Of Developer. The Developer shall not in any way or manner be held liable or responsible for any violation of this Declaration by any Person other than itself.

Section 17. Notices.

(a) To Developer. Notice to Developer, as may be required herein, shall be in writing and delivered or mailed to Developer at its principal place of business or any other location designated by Developer.

(b) To Association. Notice to Association, as may be required herein, or in the Bylaws of the Association shall be in writing and delivered or mailed to the Association at its principal place of business as shown by the records of the Secretary of State of Indiana, or at any other location designated by the Association.

(c) To Owner. Notice to any Owner for Annual Assessments, of a violation of any of these restrictions, or any other notice as may be required herein, shall be in writing and shall be delivered or mailed to the Owner at the address shown on the tax rolls of Hamilton County, Indiana, or if not shown thereon, to the address of the Owner, as shown on the deed recorded with the Recorder, or at any other location designated by the Owner.

Section 18. Interpretation. The Board of the Association shall be responsible for interpreting the provisions of this Declaration and of any of the exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel representing the Association that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

Section 19. Use Of The Words "Cyntheanne Woods". No Person shall use the words the "Cyntheanne Woods" or any derivative or any other term which Developer may select as the name of this development or any component thereof in any printed or promotional material without the Developer's prior written consent. However, Owners may use the words the "Cyntheanne Woods" in printed or promotional matter solely to specify that particular property

is located within the Property, and the Association shall be entitled to use the words the “Cyntheanne Woods” in its name.

Section 20. Compliance. Every Owner and occupant of any Home shall comply with this Declaration and the Association’s Bylaws, Articles, and the Rules and Regulations. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Developer, the Association or, in a proper case, by any aggrieved Owner(s) of a Home.

Section 21. Annexation. Each owner of a Lot, by acceptance of a deed thereto, shall be deemed to have waived and shall have waived such owner’s right to remonstrate or object, in any manner, to the annexation of all or any portion of the Property to the City.

Section 22. Notice Of Zoning Requirements and PUD Ordinance. Notice is hereby given that the development of the real estate is governed, in part, by the PUD Ordinance including provisions pertaining, without limitation, to development and architectural standards, landscaping, and signage.

(remainder of page intentionally left blank; signature page follows)

Exhibit "A"

PART OF THE NORTHWEST CORNER, SECTION 29, TOWNSHIP 18 NORTH, RANGE 6 EAST IN FALL CREEK TOWNSHIP, HAMILTON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A RAILROAD SPIKE AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 18 NORTH, RANGE 6 EAST; THENCE NORTH 00 DEGREES 13 MINUTES 38 SECONDS WEST 521.12 FEET ON AND ALONG THE WEST LINE OF SAID NORTHWEST QUARTER TO A MAG NAIL AT THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 00 DEGREES 13 MINUTES 38 SECONDS WEST 1215.34 FEET ON AND ALONG SAID NORTH LINE TO A MAG NAIL; THENCE NORTH 89 DEGREES 25 MINUTES 51 SECONDS EAST 1321.25 FEET PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER TO A 5/8" IRON ROD WITH YELLOW CAP STAMPED S0083; THENCE SOUTH 00 DEGREES 10 MINUTES 37 SECONDS EAST 1435.34 FEET TO A 5/8" IRON ROD WITH YELLOW CAP STAMPED S0038; THENCE SOUTH 89 DEGREES 25 MINUTES 51 SECONDS WEST 980.00 FEET PARALLEL WITH SAID SOUTH LINE TO A 5/8" IRON ROD WITH YELLOW CAP STAMPED S0083; THENCE NORTH 00 DEGREES 13 MINUTES 35 SECONDS WEST 220.00 FEET PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER TO A 5/8" IRON ROD WITH YELLOW CAP STAMPED S0083; THENCE SOUTH 89 DEGREES 25 MINUTES 51 SECONDS WEST 340.00 FEET PARALLEL WITH SAID SOUTH LINE TO THE POINT OF BEGINNING. CONTAINING 41.80 ACRES, MORE OR LESS.

EXCEPT and Excluding: Block "A" as identified on the Secondary Plat of Cyntheanne Woods recorded as Instrument No. _____ in the Office of the Recorder of Hamilton County Indiana.