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**DECLARATION OF COVENANTS  
AND RESTRICTIONS**

**FOR**

**WATERFORD PLACE HOMEOWNERS  
ASSOCIATION, CORP.**

**Schererville  
Lake County, Indiana**

**Recorded on \_\_\_\_\_  
In Plat Book \_\_\_\_\_, Page \_\_\_\_\_  
In the Office of the Recorder of Lake County, Indiana**



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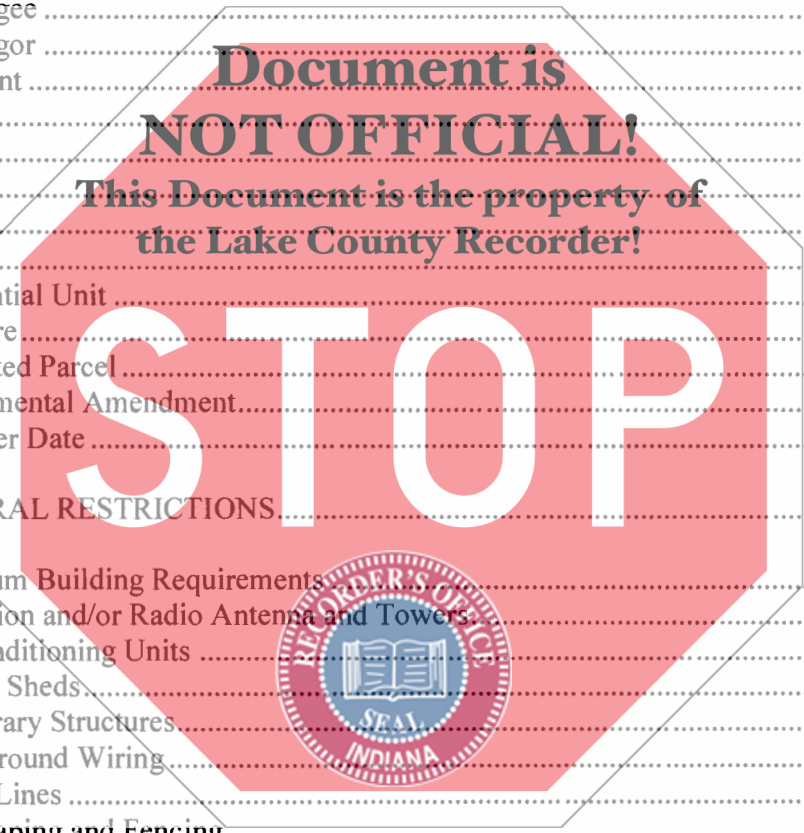
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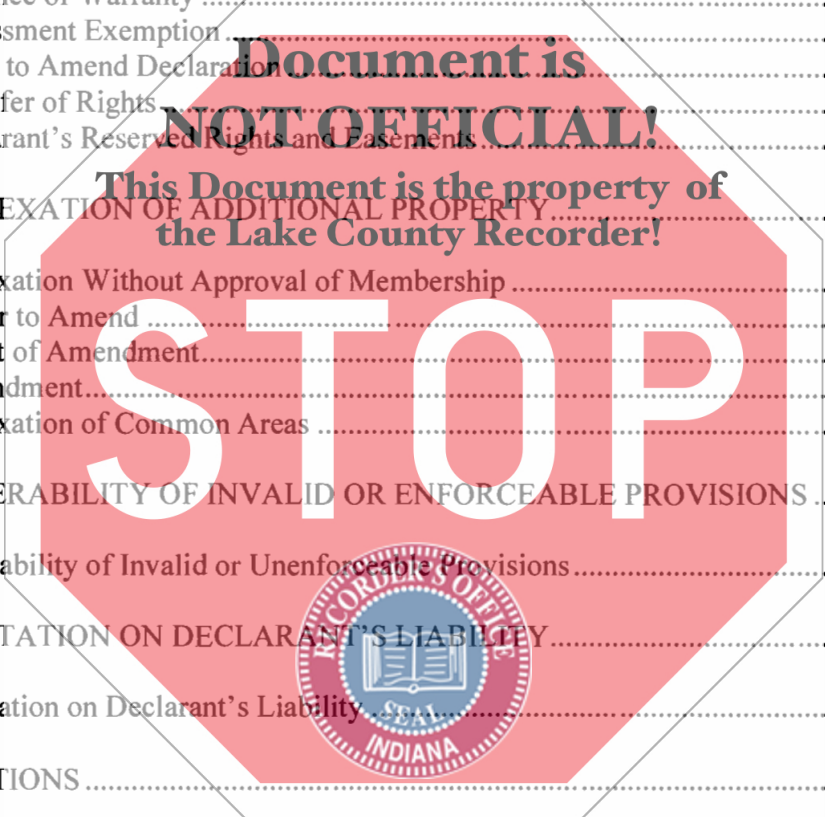
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**DECLARATIONS OF COVENANTS, CONDITIONS,  
RESTRICTIONS & EASEMENTS  
FOR WATERFORD PLACE HOMEOWNERS ASSOCIATION, CORP.**

These **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** ("Declaration") is made this day by **WATERFORD PLACE HOMEOWNERS ASSOCIATION, CORP.**, an Indiana domestic for profit corporation (hereinafter referred to as "Declarant");

**RECITALS**

1. All capitalized terms used herein shall have the meaning ascribed to them at the first time they are used herein or in the definition set forth in Article I below.

2. Declarant intends to, and by recording this Declaration does, subject and submit to the provisions of this Declaration the Submitted Parcel and legally described on Exhibit A attached hereto. The Development Area is the site of a residential development and from time to time Declarant may, but is not required to, subject additional portions of the Development Area to the provisions of this Declaration as Added Property, as more fully described in Article XVIII hereof. Those portions of the Development Area which are not made subject to the provision of this Declaration may be used for any purposes not prohibited by law. Nothing herein shall preclude Declarant from subjecting other property adjacent to or in the vicinity of the Development Area to the provisions of this Declaration.

3. In order to provide for the necessary administration, preservation, maintenance and enhancement of those portions of the Development Area and any other land subject to the provisions of this Declaration, Declarant will form the Association which shall be responsible for the maintenance of the areas described in Article V hereof and each Owner of a Residential Unit which is subject to this Declaration (excluding the Declarant) shall be assessed for his share of the cost thereof by the Association.

4. Declarant intends by this Declaration to impose upon the portions of the Development Area subject to the provisions of this Declaration mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Submitted Parcel made subject to this Declaration and amendments thereto by the recording of this Declaration. Declarant desires to provide a flexible and reasonable procedure for the development of the Submitted Parcel, and to establish a method for the administration, maintenance, enhancement, preservation, use and enjoyment of the Submitted Parcel as are now or may hereafter be subjected to this Declaration.

5. Declarant shall retain certain rights set forth in this Declaration. Prior to the Turnover Date, Declarant shall retain the right to appoint all members of the Board and the right to use the Submitted Parcel for the purposes set forth in Section 17.06 hereof.

**NOW, THEREFORE**, Declarant hereby declares that the real property legally described in Exhibit A and referred to herein as the Submitted Parcel and such additions thereto, referred to herein as Added Property, as may hereafter be made pursuant to Article XVIII hereof, is and shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, burdens, uses, privileges, charges and liens which shall exist at all times hereafter among all parties having or acquiring any right, title or interest in or to any portion of the Submitted Parcel; which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described Submitted Parcel or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. "Added Residential Units"** shall mean the Residential Units (or Parcels upon which attached, single-family townhomes are being completed) comprising the Added Property submitted to the provisions of this Declaration by a Supplemental Amendment in accordance with Article XVIII hereof.

**Section 1.02. "Added Property"** shall mean any portion of the Development Area submitted to the provisions of this Declaration in accordance with Article XVIII hereof.

**Section 1.03. "Assessments"** shall mean Assessments for Common Expenses provided for herein or by any Supplemental Amendment or by any other amendment hereof pursuant to Article XIV hereof which shall be used for the purposes of promoting the health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Residential Units against which the Assessment is levied and of maintaining the Residential Units, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below.

The Assessment shall be levied equally against Owners of Residential Units for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

**Section 1.04. "Association"** shall mean and refer to Waterford Place Homeowners Association, Corp., an Indiana corporation, and its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Indiana law. The Association shall be organized and governed in accordance with the Articles of Incorporation, By-Laws and Rules and Regulations, attached hereto as Exhibits "D", "E" and "F", respectively.

**Section 1.05. "Contractor"** shall mean any individual, entity, business or corporation which performs work, repairs, or construction on any lot, property, or residential unit located within the property association.

**Section 1.06. "Common Area"** shall mean (i) all sidewalks, lawns, landscaping, driveways, curbs, stormwater detention area, and water irrigation line improvements located on or within the Submitted Parcel, except sanitary sewer and water main improvement located within a



public easement, (ii) the ingress and egress easements shown on the Plat and the improvements therein, (iii) landmark signage with associated landscaping features, identifying Waterford Place, if installed by Developer or the Association, (iv) all personal property owned or controlled by the Association and available for the common benefit and/or use of Owners, and (v) all other improvements located on or within the Submitted Parcel owned or controlled by the Association and available for the common benefit and/or use of the Owners or for the maintenance or management of any part of the Development Area.

**Section 1.07. "Common Expenses"** shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association..

**Section 1.08. "Community-Wide Standard"** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Development Area. Such standard may be more specifically determined and set forth by the Architectural Review Committee, or by the Board of Directors.

**Section 1.09. "Declarant"** shall mean Waterford Place Homeowners Association, Corp., an Indiana domestic for profit corporation, its successors and assigns. Any such successor or assignee shall be deemed a Declarant and entitled to exercise all or any rights of Declarant as provided in Article XVII hereof.

**Section 1.10. "Developer"** shall mean and refer to Waterford Place, LLC, an Indiana domestic limited liability company, and its successors and assigns.

**Section 1.11. "Development Area"** shall mean the real estate described on Exhibit A hereto with all improvements thereon and any additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration shall be contiguous to property then subject to the scheme of this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted as residential lots, (c) said plat of added real estate shall dedicate, or commit to dedicate, the Common Area of said plat of real estate, and (d) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association.

**Section 1.12. "Insurance Trustee"** shall mean the Association and its successors, unless the Association shall have appointed another entity as Insurance Trustee pursuant to Section 6.06 hereof.

**Section 1.13. "Lot"** shall mean a part of the Submitted Parcel, the size and dimensions of which are shown on the Plat.

**Section 1.14. "Member"** shall mean and refer to a person or entity entitled to Membership in the Association, as provided herein.

**Section 1.15. "Mortgage"** shall include a deed of trust, as well as a mortgage.

**Section 1.16. "Mortgagee"** shall include a beneficiary or holder of a deed or trust, as well as a mortgagee.

**Section 1.17. "Mortgagor"** shall include the trustor of a deed of trust, as well as a mortgagor.

**Section 1.18. "Occupant"** shall mean and refer to one or more Persons or entities which may at any time be entitled to the use and possession of a Residential Unit, or any part thereof, by leave, license, contract or any other means, whether or not lawful, and shall include, without limitation, Owners, tenants, subtenants, and their guests and invitees.

**Section 1.19. "Owner"** shall mean and refer to one or more persons or entities who hold the record title to any Residential Unit which is part of the Submitted Parcel, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Residential Unit is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner.

**Section 1.20. "Parcel"** shall mean a part of a Lot, fee simple title to which shall be conveyed by deed of the Declarant to each Owner, upon which an attached, single-family townhome is located or to be located.

**Section 1.21. "Person"** means a natural person, a corporation, a partnership, trustee or other legal entity.

**Section 1.22. "Plat"** shall mean plat of Waterford Place, an Addition to the Town of Schererville, Lake County, Indiana, as per plat thereof, and recorded in Plat Book \_\_\_\_\_, page \_\_\_\_\_, in the Office of the Recorder of Lake County, Indiana and any real property added to this plat by and through Article XVIII herein.

**Section 1.23. "Project"** shall mean the townhome development area owned by the Declarant and held for development under a common plan for townhomes from time to time.

**Section 1.24. "Residential Unit"** shall mean one of the Parcels and the attached, single-family townhome located thereon, which is a part of the Submitted Parcel intended for independent ownership for use and occupancy as a single-family residence. The boundaries of Residential Units shall be the boundary lines of the Parcels of the Submitted Parcel conveyed by Declarant to the Owners. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of the Town of Schererville, Indiana, or other local governmental entity.

**Section 1.25. "Structure"** shall mean any building, pool, driveway, breezeway, pond, kennel, playhouse, trampoline, barn or any other building or fixture that is permanent that is not defined as a residential unit as described herein.

**Section 1.26. "Submitted Parcel"** shall mean that portion of the Development Area which is described on Exhibit B attached hereto, as Exhibit B may be amended from time to time, together with all rights appurtenant thereto.

**Section 1.27. "Supplemental Amendment"** shall mean a supplement to this Declaration to submit Added Property to this Declaration in accordance with Article XVIII hereof. Such Supplemental Amendment may, but is not required to impose, expressly or by reference, additional restrictions and obligations on the Added Property submitted by that Supplemental Amendment to the provisions of this Declaration.

**Section 1.28. "Turnover Date"** shall mean the date on which the right of Declarant to select and designate all of the members of the Board of Directors is terminated pursuant to Section 17.01 hereof.

## ARTICLE II

### GENERAL RESTRICTIONS

**Section 2.01. Minimum Building Requirements.** See Exhibit "C" for minimum building requirements for Waterford Place Homeowners Association, Corp. outlining specific building requirements, including but not limited to, minimum building area, setback restrictions, and exterior finish requirements in the development.

**Section 2.02. Television and/or Radio Antenna and Towers.** No freestanding or outdoor television antenna tower, satellite dish or radio antenna shall be erected or used. No antenna should be attached to the residential unit (roof mounted antennas), no satellite dishes, microwave dishes, or television dishes greater than 24 inches in diameter are permitted on any parcel. Approved dishes cannot be installed on, or be viewed from, the street number side of the home, unless specifically permitted, in writing, by the Declarant or Architectural Review Committee.

**Section 2.03. Air Conditioning Units.** No window or wall unit air conditioners or heating systems (HVAC) shall be installed.

**Section 2.04. Storage Sheds.** No free standing structures, detached garages, metal, prefab or steel storage sheds of any kind shall be erected on the property.

**Section 2.05. Temporary Structures.**

(i) No trailer, basement or incomplete building, tent, shack, garage, barn, motorized home, and any other temporary building or structure of any kind shall be used at any time for a residence either temporary or permanent.

(ii) Temporary buildings or structures used during the construction of a residential unit shall be on the same lot as the residential unit, and such buildings

or structures shall be removed upon the completion of construction. Said buildings or structures must first be approved by the Declarant.

(iii) No building shall be moved from another location to a parcel in this subdivision. No modular home, log cabin, prefabricated residential unit, steel frame or foam/concrete composite residential unit shall be erected on any parcel. No structure of a temporary nature, and no trailers, tents or accessory buildings shall be used at any time as a residence.

**Section 2.06. Underground Wiring.** No lines or wires for communication or the transmission of electrical current or power shall be constructed, placed or permitted to be placed anywhere in Waterford Place Homeowners Association, Corp. other than within buildings or residential units or attached to their walls, unless the same shall be contained in conduits or approved cable, constructed, placed and maintained underground.

**Section 2.07. Utility Lines.** Each home has an easement for the construction, installation, repair, maintenance and replacement of any utility or service line constructed on one (1) or more adjoining Lots, which easement shall be appurtenant to the ownership interest of the Waterford Place Homeowners Association, Corp. owner so benefited.

**Section 2.08. Landscaping and Fencing.**

(a) Before any residential unit erected on any lot begins constructing or installing customized landscaping, the owner must first submit plans for such improvement to the Builder and thereafter to the Association. The Association, acting through its Board of Directors, is hereby authorized to adapt reasonable rules and regulations regarding the construction of Accessory Structures or the installation of landscaping.

(b) No fencing will be permitted for any purpose on a parcel, including, but not limited to, chain link fencing of any kind. This provision shall not apply to perimeter fencing provided by the Declarant or the Developer and maintained by the association which is installed as a means of maintaining privacy for the lots on the exterior portion of the development area.

(c) Any residential unit erected on any Lot shall connect all footing and sump drainage to the public storm sewer, provided however that downspouts or other roof or surface drainage shall be discharged to the Lot surface and not the storm sewer, provided further, that driveways may drain to the street curb. No downspout, sump pump or other storm or drainage discharges shall be connected or emptied into the sanitary sewers serving the real estate.

(d) Lots abutting or adjoining wetlands, lakes, ponds and/or detention areas shall be landscaped within two (2) months of the issuance of the occupancy permit. The Developer shall implement all erosion controls as necessary and required, immediately and continuously.

**Section 2.09. Driveway Requirements.** No residential unit or building erected or placed on any Lot in the development shall be occupied in any manner at any time prior to the installation and construction thereon by the Developer thereof (at the Developer's sole expense), of a concrete, brick, or asphalt paved driveway from the street to the garage provided, however, that this requirement may be extended for a period not to exceed one hundred twenty (120) days in the event such building shall be ready for occupancy during a time when inclement weather or labor strike shall prevent the construction and installation of such driveway. No parking of mobile home or camper on property shall be permitted.

**Section 2.10. Exterior Color Plan.** The Declarant shall have final approval of all exterior color plans and each Contractor must submit to the Declarant, and then upon the Declarant's resignation to the Architectural Review Committee, a color plan showing the color of the roof, exterior walls, shutters, trim, etc. It shall then be considered the extent to which the color plan is consistent with the homes in the surrounding areas and the extent to which the color plan conforms with the natural color scheme of and for Waterford Place Homeowners Association, Corp. subdivision.

**Section 2.11. Parcel Maintenance.** Each Parcel shall at all times be kept in a clean and sightly condition. No trash, litter, junk, boxes, containers, bottles or cans shall be permitted to collect or remain exposed on any Parcel, except as necessary during the period of construction and in approved containers.

**Section 2.12. Outdoor Play Facilities.** Outdoor play equipment, toys or facilities shall not be permitted on any of the Lots.

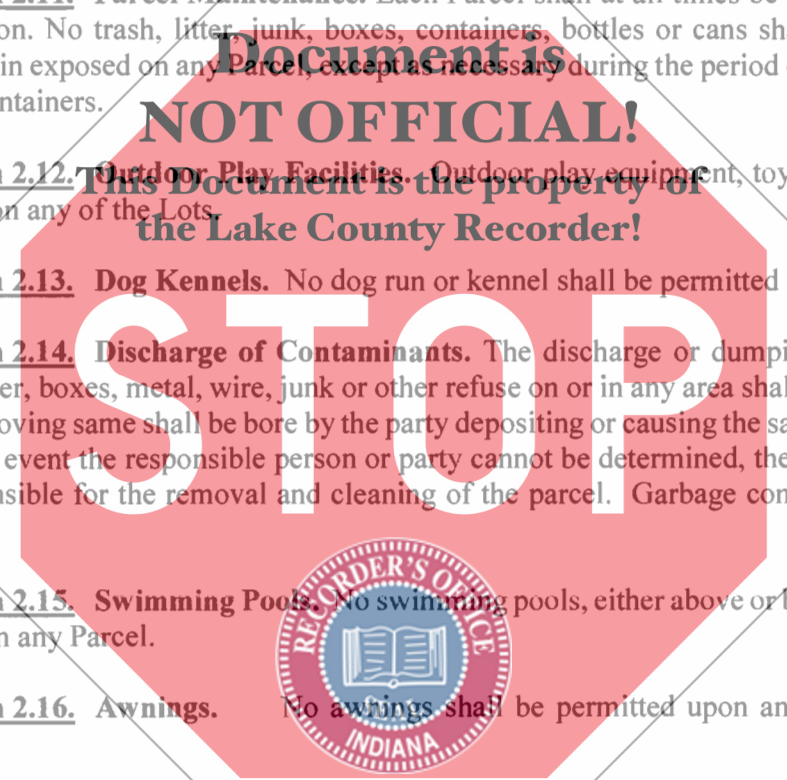
**Section 2.13. Dog Kennels.** No dog run or kennel shall be permitted on any of the Lots.

**Section 2.14. Discharge of Contaminants.** The discharge or dumping of any harmful chemicals, paper, boxes, metal, wire, junk or other refuse on or in any area shall be prohibited and the cost of removing same shall be bore by the party depositing or causing the same to be deposited thereon. In the event the responsible person or party cannot be determined, then the parcel owner shall be responsible for the removal and cleaning of the parcel. Garbage containers may not be stored outside.

**Section 2.15. Swimming Pools.** No swimming pools, either above or below ground, shall be permitted on any Parcel.

**Section 2.16. Awnings.** No awnings shall be permitted upon any home within the Association.

**Section 2.17. Exterior Appearance.** Builder has approved the site plan and design of the improvements to be constructed on the Lots. Once constructed, no Owner of a Lot may modify, alter, or customize the exterior appearance of the improvement construction on the Lots, provided however, the exterior features of the improvement may be repaired and/or replace provided that



such repair or replacement does not materially change the exterior appearance of such improvement.

**Section 2.18. Grade.** The grade and drainage of the Lots has been established by the Builder. No owner of a Lot shall alter or modify the grade or the drainage of any Lot without the express written approval of the Association.

### ARTICLE III

#### PROPERTY RIGHTS

**Section 3.01. Party Wall Rights, Restrictions and Easements.** Subject to any other or additional provisions contained in any written agreement between parties affected, each wall which is built as part of the original construction of a Residential Unit and placed on the lot line of a Residential Unit shall constitute a party wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and of liabilities for property damage due to negligence or willful acts or omissions shall apply thereto. In the event and to the extent that the center of any wall between Residential Units shall encroach into or onto the adjacent Residential Unit, the Owner utilizing said party wall shall have a perpetual exclusive easement appurtenant to his Residential Unit on and over such adjoining Residential Unit for the maintenance, repair and restoration of such wall and his Residential Unit to the extent that the same shall occupy such adjoining Residential Unit, and such wall shall be deemed a party wall for all purposes of this Declaration. The cost of reasonable repairs and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, the Owner who has soared the wall may restore it, and if the other owner thereafter makes use of the wall, they shall contribute equally to the cost of restoration thereof, without prejudice however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. Notwithstanding any other provisions of this Declaration to the contrary, any Owner who by his negligence or willful act, or the negligence or willful act of his occupancy causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other owner under this Declaration shall be appurtenant to the land and shall pass to such Owner's successors in title. Easements are hereby declared and granted to Owners having a party wall to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components through the party walls of two or more Residential Units, whether or not such walls lie in all or in part within the boundaries of a Residential Unit. Every portion of a Residential Unit which contributes to the structural support of another Residential Unit shall be burdened with an easement of structural support for the benefit of the other Residential Units.

**Section 3.02. Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment as between each adjacent Residential Unit due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance necessary to encompass any constructed encroachment, either now existing or arising in the future; provided, however, in no

event shall an easement for encroachment exist if such encroachment occurred due to the intentional, willful, or knowing conduct on the part of any Owner or Occupant.

**Section 3.03. Easements for Utilities, Etc.** Declarant hereby reserves for itself and its designees (including, without limitation, the Town of Schererville and any utility) easements upon, across, over and under the Residential Units for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Development Area.

Without limiting the generality of the foregoing, there are hereby reserved for the Town of Schererville, Indiana, easements across all Residential Units for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on Residential Units, except as may be approved by the Association's Board of Directors or as provided in the development and sale by Declarant. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Article III shall in no way adversely affect any other recorded easement on the Submitted Parcel.

**Section 3.04.** [intentionally omitted].

**Section 3.05. Ingress and Egress Easements.** The ingress and egress easements are depicted on the Plat.

**Section 3.06. Non-Exclusive Easements.** Declarant hereby declares the following non-exclusive easements are hereby created with respect to the Common Area:

(i) Each Owner and their respective guests, invitees and employees shall have a non-exclusive easement for use and enjoyment in and to the Common Area subject to the following: (a) right of the Association to pass reasonable rules and regulations relating to such use and enjoyment, (b) the right of the Association to suspend an Owner's right to use or enjoy such easement for any period during which such Owner may be in violation of this Declaration, (c) the right of the Association to levy assessments as herein provided, and (d) any and all rights reserved to Declarant, Developer and the Association as herein provided.

(ii) A non-exclusive easement for the installation and maintenance of drainage facilities and utility easements is hereby granted to the Association and reserved by

the Declarant over, under, across and through the common area. If any such drainage or utility facilities are not installed or in any easements for such purposes are not created with respect to a Lot, Parcel or Residential Unit or any portion thereof prior to delivery of a Deed to an Owner, said Owner hereby grants to the Declarant and the Association a power of attorney to execute and record any such easements with respect to any Lots, Parcels or Units owned by said Owner for the benefit of the Property. The foregoing power of attorney is hereby coupled with an interest and is therefore irrevocable.

The Declarant, Developer, Association and any of their respective agents, employees and independent contractors shall have the right to enter upon the common Area and any Parcel or Residential Unit to the extent necessary for the purpose of maintaining, repairing and replacing the common area as herein provided or for performing any of their respective obligations herein provided. In any such case, the Declarant, Developer, Association, or any of their agents, employees or independent contractors shall not be guilty of trespass.

**Section 3.07. Residential Restrictions.** The Lots subject to these covenants and restrictions may be used for a single family townhome and no other purpose. Any and all business, trade, or similar activity is prohibited, except that an owner residential dwelling on a Lot may conduct business activities within the dwelling, so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling; (ii) the business activity conforms to all zoning requirements; (iii) the business activity does not involve door-to-door solicitation of residents of the Association; (iv) the business activity does not generate a level of vehicular or pedestrian traffic or a number of vehicles being parked which is noticeably greater than that which is typical of dwelling in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Association and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of the other residents.

**ARTICLE IV**  
**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**Section 4.01. Membership and Meetings.** Every Owner shall be deemed to have a membership in the Association. No Owner, whether one or more persons, shall have more than one (1) membership per Residential Unit owned. In the event the Owner of a Residential Unit is more than one (1) person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote for each class of membership applicable to a particular Residential Unit be cast for each Residential Unit.

The first annual meeting of the Association shall not be held until such time as the rights of the Declarant to appoint directors and to thereby control the Association shall have expired as



provided in Section 4.03 of this Declaration or at such earlier time or times as may be determined by the Declarant. The next annual meeting shall be set by the Board of Directors so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board of Directors. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Members shall, at each annual meeting, elect the Board of Directors of the Association in accordance with the provisions of the By-Laws and transact such other business as may properly come before the meeting.

**Section 4.02. Voting.** The Association shall have one (1) class of membership. Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold an interest required for membership by Section 4.01 hereof; there shall be only one (1) vote per Residential Unit. When more than one (1) person or entity holds such interest in any Residential Unit, the vote for such Residential Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Residential Unit's vote shall be suspended in the event more than one (1) person or entity seeks to exercise it.

Any Owner of Residential Units which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Residential Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting and that said instrument is subscribed and sworn to before a notary.

The voting rights of Members shall be subject to the Declarant's rights pursuant to the provisions of Article XVII and Article XVIII hereof.

**Section 4.03. Number Terms and Selection of Board of Directors.** The initial Board of Directors shall consist of three (3) directors appointed by the Declarant who may but need not be Owners or Members of the Association, and who shall serve those terms of office as established by the By-Laws. The Declarant shall have the right to select and designate all of the directors, and accordingly therefore the right to operate and control the Association, until the Turnover Date. Thereafter, directors shall be elected as otherwise required by the Articles of Incorporation and By-Laws of the Association and must be Members of the Association.

Notwithstanding any other provision of this Declaration, the Articles of Incorporation, or the By-Laws, from and after the date of the recording of the Declaration until the Turnover Date, the Association shall be governed by the Board of Directors appointed from time to time by Declarant. Such Board of Directors so appointed shall exclusively hold all rights and powers which a Board of Directors or the Association would have under this Declaration, the Articles of Incorporation, or the By-Laws, except as specifically limited herein. Such Board of Directors may appoint from time to time from among the Owners of Residential Units, one or more committees to advise and assist it in the performance of its functions. The rights and powers of such Board of Directors shall be limited as follows:

- (a) All assessments shall be made in accordance with this Declaration.

(b) Such Board shall have no power to reallocate the voting power among the Members in any manner contrary to this Declaration.

(c) Such Board shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

Declarant shall have the right to waive, on behalf of the Association, the annual meeting and annual accounting provided for in this Declaration, so long as Declarant retains control of the Association. At the time of turnover of control by Declarant, a meeting of the Association will be called, at which time the rights and powers of the Declarant appointed Board of Directors shall terminate and the Association shall thereafter be governed in accordance with the other provisions of this Declaration, the Articles of Incorporation and the By-Laws. Each Member shall be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which such Member is entitled to vote under this Declaration, or under the Articles of Incorporation or the By-Laws of the Association. The proxy hereby granted to Declarant shall be deemed to be coupled with an interest and irrevocable. Such proxy shall terminate as of the Turnover Date as set forth above.

#### ARTICLE V

### Document is MAINTENANCE

## NOT OFFICIAL!

**Section 5.01. Association's Responsibility.** Unless otherwise provided by an amendment to the By-Laws of the Association by a vote of two-thirds (2/3) of the Members (not two-thirds (2/3) of a quorum), the Association's responsibility for maintenance of the Submitted Parcel (except for services provided by the Town of Schererville) shall be limited to:

- (i) the providing for the grass mowing, fertilizing and landscaping care for each lot and other common areas, inclusive of general maintenance of the irrigation systems;
- (ii) care, repair, maintenance and replacement of any perimeter fencing installed by the Developer and/or Declarant;
- (iii) the removal of the snow from sidewalks and driveways within twenty-four (24) hours, when accumulation is two (2) inches or more, to provide access to the entry door and garage located within or adjacent to any Residential Unit as defined in Section 1.24 herein;
- (iv) care, replacement, repair, and maintenance of all Common Areas, including but not limited to, maintenance of signage, street lights, signage lighting, emergency access road, as well as other common areas defined in Article I of these covenants;

(vii) repair and replacement of the roof excluding (a) flashings, (b) any damage covered by insurance or (c) any damage caused by ice damming; and

(viii) the right to repair, maintain and replace any sanitary sewer, sanitary service, storm sewer and/or water main service and the Association shall have the right to seek repayment for said repair, maintenance or replacement of the above in this Section 5.01(viii), including costs and attorney fees incurred in the collection of same.

(ix) once the building process is substantially completed, and the Developer have made the initial required repairs, all replacement or repair due to normal wear and tear of curbing or sidewalks in front of any parcel shall be at the expense of the Association in accordance with the requirements of the Town of Schererville. Any damage done to the curb or sidewalk in front of an Owner's parcel, due to the Owner's negligence shall be replaced or repaired at the expense of the Owner. In the event it becomes necessary for the Association to sue to collect the amount of said repairs to the curbs or sidewalks resulting from an Owner's negligence, the Owner shall be responsible for the payment of the Association's court costs, legal fees and other necessary expenses with recouping the cost of same.

Notwithstanding anything contained in this Section 5.01 to the contrary, the Association shall not be responsible for repair, replacement and/or maintenance of anything which occurred as a result of an insured loss. In addition, the Association shall not be responsible for repair, replacement and/or maintenance of any item listed in this Section 5.01 which is not due to normal wear and tear. Any repair, replacement and/or maintenance listed in this Section 5.01 which is not due to normal wear and tear shall be the responsibility of the Owner. Association shall have the right to enter upon any lot within the Waterford Place Townhome Lots, at reasonable times, to perform such maintenance.

**Section 5.02. Owner's Responsibility.** Except as provided in Section 5.01 hereof, the Owner thereof shall be solely responsible for the following:

- (i) exterior overhead door and its maintenance;
- (ii) exterior walls and windows;
- (iii) exterior front door and its maintenance;
- (iv) maintenance, repair and replacement of concrete driveways, patios and concrete service walks from the driveway to the entry door which are located within or adjacent to any Residential Unit as defined in Section 1.24 herein;
- (v) exterior light fixtures, light posts and bulbs, the owner is to maintain the proper function of the dusk to dawn sensor;

- (vi) any repairs required as a result of damage or other casualty to the exterior of the residential unit;
- (vii) care, repair, maintenance and replacement of brick veneer; and
- (viii) care, repair and replacement of all roof flashings and any damage to roofing materials and/or any damage to the interior of the residential unit caused by ice damming.
- (ix) To provide the Association with the name, address, phone number and insurance company information and to keep the Association informed of any changes thereto.

## ARTICLE VI

### INSURANCE AND CASUALTY LOSSES

**Section 6.01. Insurance.** The Association may, but shall not, under any circumstances, be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance in such form as the Board of Directors deems appropriate for the full replacement cost of all structures on the Residential Units, as well as public liability insurance. If the Association elects not to obtain such casualty insurance, then each Owner shall obtain such insurance in accordance with Section 6.02 hereof. All provisions of this Article shall apply to all policy provisions, loss adjustment and all other subjects of all policies of insurance whether such policies are obtained by the Association or the Owners, or both.

The Association, acting through its Board, shall obtain a master casualty policy affording fire and extended coverage insurance insuring the capital assets of the Association in an amount equal to the full replacement value thereof or any improvements located upon the Common Area or reserved easement herein as determined by a qualified property and casualty insurer. The amount shall be determined and the insurance renewed annually.

Each owner shall also obtain a public liability policy covering the Residential Unit owned by such Owner, and shall name the Association as an additional insured for all damages or injury caused by the negligence of such Owner. The public liability policy shall have at least a Five Hundred Thousand Dollars (\$500,000.00) limit per occurrence and a One Hundred Thousand Dollar (\$100,000.00) minimum property damage limit. In addition, each Owner upon request of the Association shall provide a copy of the insurance policy or a certificate to the Association.

Premiums for insurance obtained by the Association shall be a Common Expense of the Association and shall be included in the General Assessment, as defined in Article X. Premiums for insurance obtained by Owners shall be paid by such Owners.

All casualty insurance coverage obtained by the Association or by any Owner shall be for the respective benefitted parties, as further identified in subparagraph b. below. Such insurance shall be governed by the provisions hereinafter set forth.

a. All policies shall be written with a company licensed to do business in Indiana and holding a "secure rating" of A or better as reflected in the current A.M. Best Company, Inc. guide, if reasonably available, or, if not available, the most nearly equivalent rating. Additionally, property damage insurance shall be for the full replacement cost.

b. All policies on Residential Units shall be for the benefit of the Residential Unit Owners and their Mortgagees as their interests may appear. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

c. In no event shall any insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees.

d. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Schererville, Indiana area.

e. The Association's Board of Directors and the Owner shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- (1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;
- (2) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
- (3) that no policy obtained by the Association may be canceled, invalidated or suspended on account of any one or more individual Owners;
- (4) that no policy may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or Mortgagee;
- (5) that any "other insurance" clause in any policy exclude Association and individual Owners' policies from consideration; and

- (6) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association or the Owner.

**Section 6.01A. Other Association Insurance.** In addition to the other insurance required by Section 6.01 hereof, the Board shall also have the authority to and shall obtain, as a Common Expense, the following:

- (a) Comprehensive public liability and property damage insurance against claims for person injury or death or property damage suffered by the public or by any Owner occurring in or about the streets, sidewalks and passageways and other areas adjoining the Submitted Parcel and/or with respect to the Association's maintenance obligations set forth in Section 5.01 hereof, in such amounts as the Board shall deem desirable.
- (b) Such workmen's compensation insurance as may be necessary to comply with applicable laws.
- (c) Employer's liability insurance in such amount as the Board shall deem desirable.
- (d) Fidelity bond or bonds indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee of the Association or of any other person handling the funds of the Association, the Board or the Owners in such amount as the Board shall deem desirable, but may not be less than three (3) months Assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.
- (e) Directors' and Officers' liability insurance, as set forth in Section 15.02 hereof.
- (f) Such other insurance in such reasonable amounts as the Board shall deem desirable.

Such insurance coverage shall include cross liability claims of one or more insured parties against other insurance parties. The premiums for such insurance shall be Common Expenses.

**Section 6.02. Individual Insurance.** By virtue of taking title to a Residential Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Residential Unit and structures constructed thereon as provided for in Section 6.01 hereof, unless the Association carries such insurance, which they are not obligated to do. Each individual Owner further covenants and agrees that in the event of any loss or damage and destruction the proceeds of such insurance shall be used only in accordance with this Declaration. In the event that the residential unit is totally destroyed and by a vote of three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), it is determined, subject to the further requirements of Section 6.04 hereof, not to rebuild or to reconstruct, the individual Owner shall clear the Residential Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. A decision not to rebuild or reconstruct shall under no

circumstances relieve or discharge an Owner from the obligation to pay Assessments to the Association. The Association shall be named as additional payee on all such casualty policies and upon request made by the Association, all Residential Unit Owners shall provide proof of such insurance to the Declarant or Board of Directors of the Association.

**Section 6.03. Disbursement of Proceeds.** Proceeds of insurance policies shall be paid to the Insurance Trustee to be disbursed as follows:

- a. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction or, in the event no repair or reconstruction is made, shall be disbursed to the affected Owner or Owners and their Mortgagee(s) as their interests may appear. This is a covenant for the benefit of any Mortgagee of a Residential Unit and may be enforced by such Mortgagee.
- b. If it is determined, as provided for in Section 6.02 hereof, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for in Section 6.03a. hereof.

**Section 6.04. Damage and Destruction.**

a. Immediately after the damage or destruction by fire or other casualty to all or any part of a Residential Unit, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Residential Units. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Residential Units to substantially the same condition in which they existed prior to the fire or other casualty.

b. Any damage or destruction shall be repaired or reconstructed unless by a vote of at least three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed an additional sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

c. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Residential Unit shall be restored to its natural state by the Owner or Owners thereof and maintained as an undeveloped portion of the Project by the Association in a neat and attractive condition.

**Section 6.05. Repair and Reconstruction.** 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 thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owner or Owners of Residential Units affected by such damage or destruction. Additional Assessments may be made in like manner at any time during or following the completion of any repair or construction. If all or any portion of the residential unit is damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof with all due diligence, to rebuild, repair or reconstruct such residential unit in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty.

**Section 6.06. Appointment of Insurance Trustee.** The Association, as Insurance Trustee, shall have the right to appoint any federal or state bank which is qualified to offer trust services to the public as Insurance Trustee hereunder, and upon such appointment shall be relieved of all liability and responsibility as Insurance Trustee hereunder.

## ARTICLE VII

### NO PARTITION

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of a Residential Unit or any part thereof, nor shall any person acquiring any interest in any Residential Unit or any part thereof seek any such judicial partition unless the Submitted Parcel has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from requiring the repair of property which may or may not be subject to this Declaration.

## ARTICLE VIII

### CONDEMNATION

Whenever all or any part of a Residential Unit shall be taken (or conveyed in lieu of and under threat of condemnation by the Owner) by any authority having the power of condemnation or eminent domain, each Owner damaged by such condemnation shall be entitled to pursue all available remedies against the condemning authority. Should any property owned or maintained by the Association for common use be affected by the condemnation, the Association shall be entitled to pursue all available remedies against the condemning authority for the damages sustained to such property.

## ARTICLE IX

### RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION

**Section 9.01. Personal Property for Common Use.** The Association, through action of its Board of Directors, may acquire, own, lease, hold and dispose of tangible and intangible personal property.



**Section 9.02. Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the operations of the Association, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may be imposed in accordance with Article XIII. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association shall permit the Town of Schererville, Indiana, to enforce ordinances on the Submitted Parcel for the benefit of the Association and its Members.

**Section 9.03. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## ARTICLE X

### ASSESSMENTS

**Section 10.01. Creation of Assessments.** There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 10.06 hereof. Assessments shall be allocated equally among all Residential Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of this or her deed or recorded contract of sale, is deemed to covenant and agree to pay these Assessments. All such Assessments, together with interest at the rate of twelve percent (12%) per annum, costs, and reasonable attorneys' fees shall be a charge on the Residential Unit and shall be a continuing lien upon the Residential Unit against which each Assessment is made.

Each such Assessment together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Residential Unit at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Residential Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual Assessment for delinquents; unless the Board otherwise provides, the Assessments shall be paid in two semi-annual installments. Until such time as otherwise determined, assessments shall be \$ \_\_\_\_\_ semi-annually.

The Association is specifically authorized to enter into subsidy contracts with Declarant or other entities for the payment of some portion of the Common Expenses.

**Section 10.02. Computation of Assessment.** It shall be the duty of the Board, at least sixty (60) days before the beginning of the budget year (the budget year shall be from January

1 through December 31) and thirty (30) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming budget year. Subject to the provisions of Section 10.05 hereof, the budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general expenses. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Residential Unit for the following budget year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board fails for any reason so to determine the budget for the succeeding budget year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding budget year.

The Board may not, without the vote or written consent of a majority of the votes of the Association, impose an Assessment per Residential Unit which is greater than one hundred fifty percent (150%) of the amount for the previous fiscal year, except for the Assessment levied for the first time.

Until such time as a budget is prepared, the Annual Assessment will be due to the Association in semi-annual payments, paid in advance on the first day of January and 1<sup>st</sup> day of July of each year. At closing, the Annual Assessment will be prorated to the number of months left in that semi-annual period.

**Section 10.03. Special Assessments.** In addition to the Assessments authorized in Section 10.01, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year, provided, however, that such Special Assessment for any purpose other than as a sanction against an Owner shall have the vote or written assent of fifty-one percent (51%) of a quorum of Members entitled to vote at a meeting called for the purpose. The Association may also levy a Special Assessment as a sanction against any Member to reimburse the Association for costs incurred in bringing a Member and his Residential Unit into compliance with the provisions of the Declaration, the Amendments thereto, the Articles of Incorporation, the By-Laws, and the Rules and Regulations, which Special Assessment may be levied upon the vote of the Board.

**Section 10.04. Lien for Assessments.** When a notice of the lien has been recorded, such Assessment or Special Assessment shall constitute a perfected lien on each Residential Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgage or deeds of trust) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

During the period owned by the Association, following foreclosure: (a) No right to vote shall be exercised on its behalf; (b) no Assessment shall be assessed or levied on it; and (c) each other Residential Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged if such Residential Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

**Section 10.05. Capital Budget and Contributions.** In the event that the Association becomes the owner of any capital asset, or is charged with the duty for the upkeep, maintenance and repair of a capital asset, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in any amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Assessment, as provided in Section 10.02 hereof. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

**Section 10.06. Date of Commencement of Annual Assessments.** The annual Assessments provided for herein shall commence as to each Residential Unit on the first day of each year and shall be prorated to the date of conveyance of title to an Owner of said Owner's Residential Unit. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide; but until such time as the Declarant has turned over control of the Association and notwithstanding the above, the assessments shall be due and payable bi-annually January 1 and July 1 each year. The first annual Assessment shall be adjusted according to the number of months then remaining in that budget year.

**Section 10.07. Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the Assessments, including interest, late charges subject to the limitations of Indiana law, and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any bona fide first Mortgage upon any Residential Unit. The sale or transfer of any Residential Unit shall not affect the Assessment or Special Assessment lien. However, the sale or transfer of any Residential Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Unit from lien rights for any Assessments or Special Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Unit obtains title, his successors and assigns shall not be liable for the share of the Assessments by the Association chargeable to such Residential Unit which became due prior to the acquisition of title to such Residential Unit by such acquirer. Such unpaid share of the Assessments shall be deemed to be Common Expense collectible from all of the Residential Units, including such acquirer, his successors and assigns.

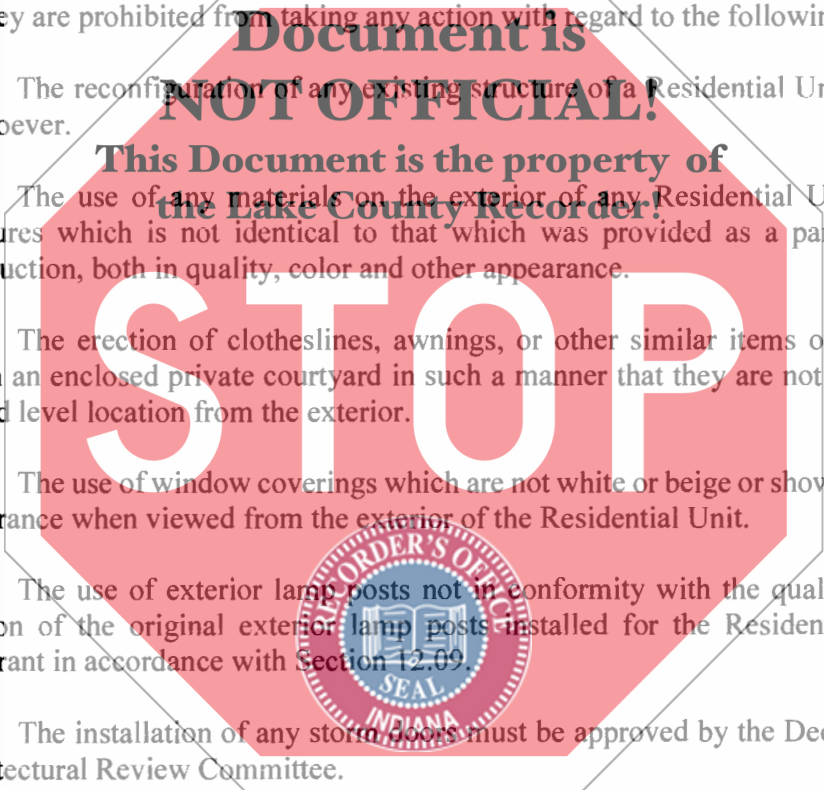
**ARTICLE XI**

**ARCHITECTURAL STANDARDS**

This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition, staking, clearing, excavation, grading and other site work, and no plantings or removal of plants, trees or shrubs outside of any enclosed private courtyard shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Architectural Review Committee has been obtained. The Architectural Review Committee (the "ARC") shall consist of three (3) members, all of whom shall be appointed by the Board of Directors. The ARC shall have exclusive jurisdiction over all modifications, additions or alterations made on or to existing Residential Units and the open space, if any, appurtenant thereto. The original construction of the unit shall be in accordance with the plans and specifications approved by the Declarant.

**Section 11.01. Architectural Standards.** Notwithstanding that it is the Owner's responsibility to maintain and repair the Residential Unit owned by him and/or her, each Owner agrees that they are prohibited from taking any action with regard to the following:

- 
- a. The reconfiguration of any existing structure of a Residential Unit in any manner whatsoever.
  - b. The use of any materials on the exterior of any Residential Unit or associated structures which is not identical to that which was provided as a part of the original construction, both in quality, color and other appearance.
  - c. The erection of clotheslines, awnings, or other similar items or devices, except within an enclosed private courtyard in such a manner that they are not visible from any ground level location from the exterior.
  - d. The use of window coverings which are not white or beige or show a white or beige appearance when viewed from the exterior of the Residential Unit.
  - e. The use of exterior lamp posts not in conformity with the quality and style and location of the original exterior lamp posts installed for the Residential Units by the Declarant in accordance with Section 12.09.
  - f. The installation of any storm doors must be approved by the Declarant and/or the Architectural Review Committee.

In addition to the foregoing prohibitions, each Owner shall have an affirmative obligation to maintain and repair his and/or her Residential Unit in such manner as to maintain at all times the uniformity of appearance of such Residential Unit with all others in the community.

Notwithstanding anything contained herein to the contrary, no permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right to an Owner to remodel the interior of his residential unit, or to paint the interior of his residential unit any color desired.

**Section 11.02. Architectural Construction and Landscaping Standards and Use Restrictions for Residential Units.** No structure shall be erected, including exterior remodeling or additions to existing residential units are permitted on any parcel in the subdivision until plans and specifications for that structure have been submitted to and approved in writing by the Declarant until control of the Association is turned over to the property owners and at that time, then approved in writing by the Architectural Control Committee. A structure is defined as any building, pool, driveway, breeze way, pond, kennel, playhouse, trampoline, barn, or any other building or fixture that is permanent.

The committee's approval or disapproval as required in these Covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after the plans and specifications have been submitted to it, approval by the committee will be presumed, provided that no structure, as previously defined, shall be erected which violates any of the Covenants or restrictions as set forth in this document.

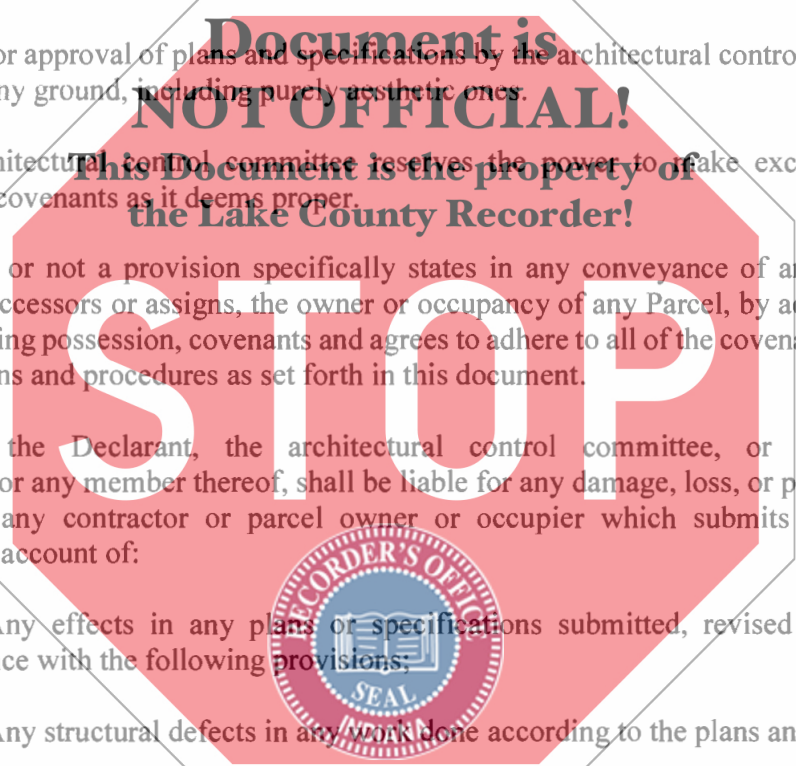
Refusal or approval of plans and specifications by the architectural control committee may be based upon any ground, including purely aesthetic ones.

The architectural control committee reserves the power to make exceptions to these restrictions and covenants as it deems proper.

Whether or not a provision specifically states in any conveyance of any Parcel by the Declarant, its successors or assigns, the owner or occupancy of any Parcel, by acceptance of title thereto or by taking possession, covenants and agrees to adhere to all of the covenants, restrictions, duties, obligations and procedures as set forth in this document.

Neither the Declarant, the architectural control committee, or their respective representatives, or any member thereof, shall be liable for any damage, loss, or prejudice suffered or claimed by any contractor or parcel owner or occupier which submits such a plan or specification on account of:

- (a) Any effects in any plans or specifications submitted, revised or approved in accordance with the following provisions;
- (b) Any structural defects in any work done according to the plans and specifications;
- (c) The approval or disapproval of any plans, drawings and specifications, whether or not defective.



(d) The construction or performance of any work, whether or not done pursuant to approved plans, drawings and specifications;

(e) The development of any property in Waterford Place Homeowners Association, Corp.

Any person or entity submitting plans or specifications to the Declarant or the architectural control committee, or their representatives, or any member thereof, shall hold them harmless from all damage, loss, or prejudice suffered or claimed by any third party, including attorney's fees incurred.

The architectural review committee shall consist of the Declarant and any persons designated by the Declarant until such time as Declarant no longer serves in such capacity.

During construction on any parcel in the subdivision, the Owner/Contractor of that Parcel shall remove all trash and debris resulting from construction on the Parcel. Each building of a residential unit in the subdivision shall maintain, for each Parcel, a dumpster for all construction debris and mud. All mud shall be removed from the street. The Contractor or Subcontractor will specifically be held responsible for clearing the roadway of all mud and debris placed on the road by any builder, contractor, subcontractor or material man. No debris shall be burned or disposed of on any property in the Association.

During construction each Contractor shall preserve the grade of all other lots in the subdivision. No contractors or subcontractor, agent or employee shall disturb or cause to be disturbed any survey stakes or markers. They further assume liability for any survey work required to re-establish said stakes and markers. No Contractor shall excavate or extract earth by any method for any purpose or change the topography of any lot which materially affects the surface grade or drainage or surrounding lots unless approval is first obtained from the Declarant or architectural control committee or its designated representative. Each contractor shall return adjoining Parcels to their original grades condition, and in particular, shall not remove or add any fill to any lot in Waterford Place Homeowners Association Corp. without the permission of the Declarant. The Contractor shall be liable for any and all damage to the subdivision property, including, but not limited to, curbs, streets, streetlights and any buried pipes, cable and drainage structures.

All exterior work in the construction of any residential unit, including driveways, shall be completed within nine months from the date of the issuance of the building permit. Extensions of time, for good cause, may be granted by the architectural control committee.

No improvement which has been partially or totally destroyed by fire or other reason, shall be allowed to remain in that state for more than ninety (90) days from the date of such destruction or damage. Extensions of time, for good cause, may be granted by the architectural control committee.

## ARTICLE XII

### USE RESTRICTION

**Section 12.01. Residential Restrictions.** The Residential Units shall be used only for residential, personal recreational and related purposes as may more particularly be set forth in this Declaration and amendments thereto. No business or professions shall be conducted in any residential unit or accessory building (per town ordinance) as more fully stated in the ordinances of the Town of Schererville, except that an Owner may conduct business activities within the dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell outside from the dwelling; (ii) the business activity conforms to all zoning requirements; (iii) the business does not involve door-to-door solicitation of residents of Waterford Place; (iv) the business activity does not generate a level of vehicular or pedestrian traffic of a number of vehicles being parked which is noticeably greater than what is typical; and (v) the business activity is consistent with the residential character of Waterford Place and does not constitute a nuisance. The Association, acting through the Board of Directors, shall have standing and the power to enforce use restrictions contained in any such declaration as if such provision were a regulation of the Association. The only exception hereto is any model provided by the Declarant to promote the sales of the townhomes.

**Section 12.02. Nuisances.** No nuisances shall be allowed upon any Residential Unit nor shall any use or practice be allowed which would annoy residents or interfere with the peaceful possession and proper use of the Residential Units by its residents, or which will obstruct or interfere with the rights of other Owners or the Association. This provision shall not be construed to prohibit or limit the enforcement of any provision of the Declaration which does not constitute a nuisance, or to prohibit the Association from adopting Rules and Regulations prohibiting conduct which does not constitute a nuisance.

In addition, the following shall apply to all Parcels and owners of any portion of a parcel described herein:

- (i) No burning of refuse shall be permitted.
- (ii) The use of any driveway or parking area which may be in front of or adjacent to or part of any parcel as a habitual parking place for campers, trailers, mobile homes, motor boats, house boats, sailboats, motor homes or commercial vehicles is prohibited.
- (iii) The term "commercial vehicles" shall include all trucks (3/4 ton or larger), construction equipment and vehicular equipment which bears signs or have printed on the side of said vehicle reference to any commercial undertaking or enterprise. The habitual violation of the parking regulations set forth in this paragraph shall be deemed a nuisance. Pick-up trucks (3/4 ton or smaller) and vans (3/4 ton or smaller), with or without a commercial name, shall be an exception to this exclusion.

(iv) No buildings shall be located or maintained within the utility and drainage easements within the real estate. The removal of such as required by the Town of Schererville, Lake County, Indiana, or any public utility or governmental agency shall be at the sole cost and expense of the parcel owner.

(v) No plants or seeds, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a parcel.

(vi) No Owner shall allow the temperature within its residential unit to fall below the minimum temperature of 60° Fahrenheit.

(vii) Trash, garbage, or other waste shall be stored in sanitary closed containers, which shall be kept inside buildings/garages.

**Section 12.03. Immoral, Improper, Offensive and Unlawful Uses.** No immoral, improper, offensive or unlawful use shall be made of any Residential Unit nor any part thereof and all laws, zoning ordinances and regulations of all governmental bodies regarding the maintenance, modification or repair of Residential Units shall be the same as provided in Article IV hereof.

**Section 12.04. Uses Affecting Insurance Rates.** An Owner shall not permit or suffer anything to be done or kept in a Residential Unit which will increase the insurance rates on any adjacent Residential Unit.

**Section 12.05. Signs and Other External Items.** No Owner shall display any sign, advertisement or notice of any type on the exterior of a Residential Unit and no Owner shall erect any exterior antennae, aerials or awnings upon any Residential Unit. No clothesline or other similar device shall be allowed on any portion of any Residential Unit, except within an enclosed private courtyard. This provision shall not prohibit the Declarant from advertising the model home or sales office.

**Section 12.06. Animals.** Pets have the potential to create significant nuisance problems within the Townhome Association. Each Owner shall be responsible for controlling all pets and preventing such pets from becoming an annoyance, nuisance or unreasonable disturbing the quiet enjoyment of any other Owner. Each Owner shall be responsible to clean up after their pet(s). Specific rules, regulations, and requirements furthering implementing this provision (including the banning of individual animals, types or specific breed) may be adopted by not less than three-quarters (3/4) of the Waterford Place Homeowners Association, Corp. Owners. Written notice shall be binding upon and enforceable by the Association and any Waterford Place Homeowners Association, Corp. Owner against all Lots.

The following breeds are prohibited within the Association: Pit bull terriers, Rottweilers, Chows, or any dog with lineage thereof. No pet owned within the Association may be over 75 pounds. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot for any commercial purpose. No Owner may have more than three (3) dogs and/or cats combined.

Notwithstanding anything contained herein to the contrary, the Association may impose a special assessment against any Parcel Owner for repairs or replacements required to be made to the exterior of the unit or the landscaped areas as a result of damage created by the Owner's animal.



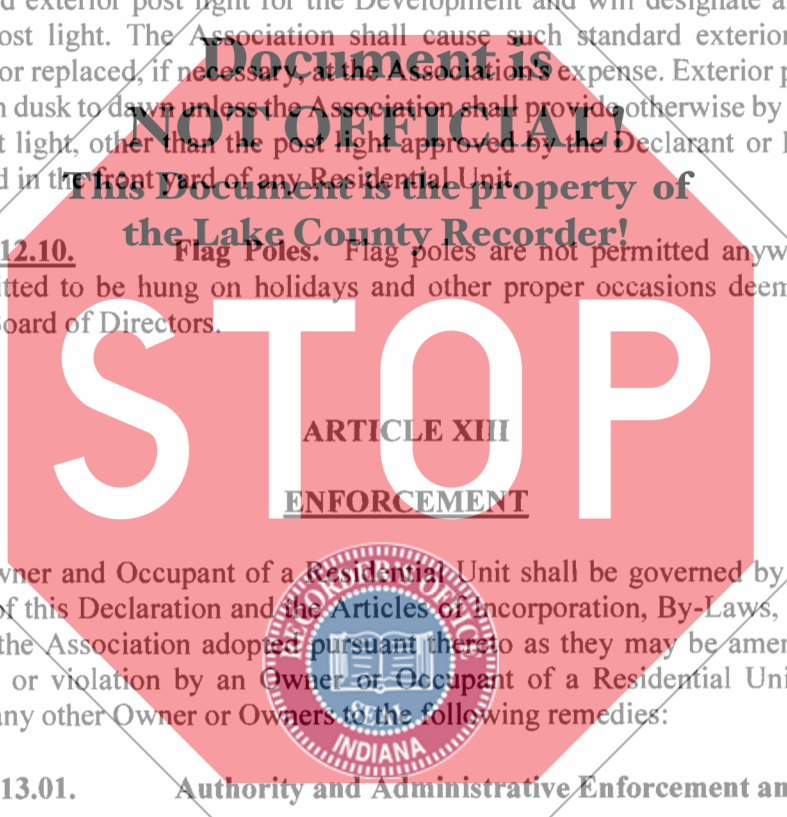
No animals shall be allowed to run loose at any time and no dog be allowed to continuously bark, yelp, whine or howl by the Owner of any Parcel in any Residential Unit. All pets shall be leashed. Owners to be responsible for fecal matter cleanup, and may be assessed fines upon repeat violations.

**Section 12.07.**      **Vehicles.** No recreational vehicles, motor homes, boats, boat trailers, recreational equipment and trailers or other motor vehicles, except four wheel passenger automobiles, shall be placed, parked or stored upon any Parcel for more than 48 hours each month, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Parcel, except within a fully enclosed building and totally isolated from public view. No roadways in the Development shall be used for habitual parking of private or commercial vehicles, boats or trailers.

**Section 12.08.**      **Mailboxes.** The Declarant shall select and designate three standard bank mailboxes and posts. Each Owner of a Residential Unit shall be granted use of a mailbox within the bank mailbox for which Declarant shall install. No exterior newspaper receptacles shall be permitted in the Development. The Association shall cause such bank mailboxes to be maintained and/or replaced, if necessary, at the Association's expense.

**Section 12.09.**      **Exterior Lamp Posts.** The Declarant shall adopt, designate and install a standard exterior post light for the Development and will designate a location for each such exterior post light. The Association shall cause such standard exterior post light to be maintained and/or replaced, if necessary, at the Association's expense. Exterior post lights shall be illuminated from dusk to dawn unless the Association shall provide otherwise by rule or regulation. No exterior post light, other than the post light approved by the Declarant or landscape lighting shall be installed in the front yard of any Residential Unit.

**Section 12.10.**      **Flag Poles.** Flag poles are not permitted anywhere on property. Flags are permitted to be hung on holidays and other proper occasions deemed proper by the Declarant and Board of Directors.



Each Owner and Occupant of a Residential Unit shall be governed by and shall comply with the terms of this Declaration and the Articles of Incorporation, By-Laws, and the Rules and Regulations of the Association adopted pursuant thereto as they may be amended from time to time. A default or violation by an Owner or Occupant of a Residential Unit shall entitle the Association or any other Owner or Owners to the following remedies:

**Section 13.01.**      **Authority and Administrative Enforcement and Procedures.**

a.      **Authority.** Residential Units shall be used only for those uses and purposes set out in this Declaration, and subject to the covenants and restrictions set forth herein, and in the By-Laws and Rules and Regulations of the Association. The Board of Directors shall have the power

and authority to impose reasonable Special Assessments in accordance with Section 10.03 hereof, which shall constitute a lien upon the Owner's Residential Unit and to suspend an Owner's right to vote, and to approve other appropriate sanctions in the event that it is determined in accordance with this Article XIII that an Owner or Occupant has violated any provision of this Declaration, the By-Laws, or the Rules and Regulations as duly promulgated.

b. **Procedure.** The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:

(1) **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation; and (c) a time period, not less than ten (10) days, during which the violation may be abated without further sanction.

(2) **Notice.** If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the violator with written notice of a hearing. The notice shall contain: (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice; (c) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf; and (d) the proposed sanction to be imposed.

(3) **Hearing.** The hearing shall be held in executive session by the Board of Directors pursuant to the notice affording the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be heard, the written result and statements of the sanction shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting.

c. **Sanctions.** The Board of Directors' power and authority to impose sanctions shall be governed by the following provisions:

(1) All Special Assessments imposed upon a violator under this Article shall bear a reasonable relationship to the violation, considering all the circumstances which may include, but shall not be limited to, the following:

(a) The actual costs and expenses incurred by the Board of Directors and the individual directors in the exercise of the power and authority under this Article XIII, and in otherwise attempting to remedy the violation.

(b) The amount of actual damage done to other Owners and Occupants and/or their Residential Units and/or to the Association arising out of the violation or the efforts to remedy the effects of same.

(c) The amount which would be reasonably required to compensate the Association for the disruption of and inconvenience to, the community, the Association or any Member thereof, or Occupant of a Residential Unit.

(d) The extent to which the violation is or was flagrant, and the extent to which the violator cooperated or hindered in any effort to remedy the violation.

(2) All Special Assessments amounts imposed hereunder as a sanction shall be deemed to be a part of the Assessment attributable to the Residential Unit occupied by the violator, and shall be assessed against said Residential Unit and its Owner as a Special Assessment to be due and payable on the date that the next Assessment payment would be due, and any such special Assessments which are not paid as of that date shall become a lien on such Residential Unit, and shall be collected and enforced in the same manner as Assessments.

(3) Nothing herein contained shall be construed as granting to the Board of Directors the power or authority to impose such a Special Assessment which is punitive in nature, or to suspend an Owner's right to vote, unless the Board of Directors finds, by specific special findings of fact in accordance with the foregoing procedure, that the violator's conduct was willful, malicious, oppressive and outrageous in nature. Said special findings of fact shall specifically set forth all facts and circumstances.

(4) All other sanctions imposed shall be reasonably related to the violation found.

(5) The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

**Section 13.02. Legal Remedies.** In addition to the administrative remedies set forth in Section 13.01 hereof, the legal remedies may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any legal proceeding including reasonable attorneys' fees.

**Section 13.03. No Waiver of Rights.** The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall not constitute a waiver of the right of the Association or Owner to enforce such right, provision, covenant or condition in the future.

**Section 13.04. No Election of Remedies.** All rights, remedies and privileges granted to the Association or any Owner pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall be

deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges.

#### ARTICLE XIV

#### AMENDMENT

The Declaration and the Articles of Incorporation, By-Laws, and Rules and Regulations may be amended in the following manner:

**Section 14.01. Declaration.** Subject to Article XVI and Article XVII, amendments to the Declaration shall be proposed and adopted as follows, provided, however, that no amendment may revoke, remove, or modify any right or privilege of the Declarant, without the Declarant's written consent.

a. **Notice.** Notice of the subject matter any proposed amendment shall be included in the Notice of any meeting of the Board of Directors or Owners at which any proposed amendment is to be considered.

b. **Resolution.** Except as provided in subparagraph d. hereof, a resolution to amend the Declaration may be adopted by the affirmative vote of not less than three-fourths (3/4) of the Members (not three-fourths (3/4) of a quorum), at any regular or special meeting of the Members called and held in accordance with the By-Laws; provided, however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum). Unless otherwise expressed by the Association in writing, First Mortgagees are not eligible nor required to consent to any amendments herein. If a First Mortgagee is deemed eligible and/or required to consent to any amendments to this document, such consent shall be in accordance with Ind. Code § 32-25.5-3-9 as amended from time to time.

c. **Recording.** The amendment shall not be effective until a certified copy thereof is recorded in the Office of the Recorder of Lake County, Indiana. A copy of any such amendment shall also be sent to each Owner and his Mortgagee by registered or certified mail; provided, however, the mailing of such amendment shall not constitute a condition precedent to the effectiveness of such amendment.

d. **Amendments by Declarant.** Notwithstanding any other provision of the Declaration, and in addition to any other right to amend elsewhere set forth herein, the Declarant alone may amend this Declaration, or the Articles of Incorporation, By-Laws, and Rules and Regulations, without the consent of the Owners, the Association, the Board of Directors or any Mortgagee, or any other Person, (1) to correct scrivener's errors, minor defects or omissions, or (2) to comply with the requirements of Indiana law, or (3) to comply with the requirements of any governmental agency, public authority, or title insurance company, or (4) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home

Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by each sell, insure or guarantee first mortgages covering Residential Units, (5) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering residential units, or (6) to add portions of the Development Area to the Submitted Parcel by Supplemental Amendment pursuant to Article XVII hereof. This subparagraph d. shall constitute an irrevocable special power of attorney to Declarant on behalf of all Owners, Mortgagees, and any and all other Persons having an interest of any kind in the Submitted Parcel, for so long as Declarant and it shall become effective upon the recording of a copy thereof in the Office of the Recorder of Lake County, Indiana. A copy of such amendment shall also be sent to all Owners and their Mortgagees in the manner provided in subparagraph c. hereof.

e. Any Amendment, whether done by virtue of Section (b.) above or Section (d.) above, must be approved by Waterford Place, LLC or its successors and assigns. This provision shall lapse once Waterford Place, LLC releases control over Waterford Place Homeowners Association Corp. pursuant to Section 6.03 of the Declaration of Covenants, Conditions, Restrictions and Easements and Homeowner's Association for Waterford Place Homeowners Association Corp.

**Section 14.02. Articles of Incorporation, By-Laws, and Rules and Regulations.** The Articles of Incorporation, By-Laws and Rules and Regulations of the Association shall be amended in the manner provided by such documents or by law.

**Document is NOT OFFICIAL! This Document is the property of the Lake County Recorder!**

**ARTICLE XV**  
**GENERAL PROVISIONS**

**Section 15.01. Term.** The covenants and restrictions of this Declaration shall run with and bind the Submitted Parcel, and shall inure to the benefit of an shall be enforceable by the Association or the Owner of any Residential Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding and the beginning of each successive period often (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

**Section 15.02. Indemnification.** The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action suite or other proceeding, (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, or

any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless each of the directors and each of the officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association, or arising out of their status as directors or officers, unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include an indemnification against all costs and expenses (including, but not limited to attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director or officer may be involved by virtue of such person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board of Directors, there is not reasonable grounds for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer. Any right to indemnification provided for herein shall be not exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 15.03. Perpetuities.** If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Barack Obama, President of the United States.

**Section 15.04. Re-recording of Declaration.** If at any time or times the Board shall deem it necessary or advisable to re-record this Declaration, or any part thereof, in the Office of the Recorder of Lake County, Indiana, in order to avoid the expiration hereof or of any of the covenants or other provisions herein contained, it shall subject the matter to a meeting of the Members of the Association called upon not less than ten (10) days notice, and unless at such meeting at least two-thirds (2/3) of said Members shall vote against such re-recording; the Board shall have and is hereby granted, power to so re-record this Declaration or such part thereof, and such re-recording shall be binding upon all Owners or any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and the re-recorded document executed and acknowledged by each of them.

**Section 15.05. Restrictions, Conditions, Covenants, Liens and Charges.** Each Grantee of Declarant, by taking title to a Parcel and each Purchaser under any contract for a deed of conveyance pursuant to which said grantee will take title, accepts said title subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every

character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Parcel as fully and completely as though such rights were recited fully and set forth in their entirety in any such documents.

**Section 15.06. Enforcement of Covenants.** Declarant and each Owner from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and obligations above set forth, or any of them, in addition to the right to bring a legal action for damages. Whenever there shall have been built (or whenever there is being built) on any Parcel any Improvement which is and remains in violation of the covenants above set forth, or any of them, for a period of thirty (30) days after delivery of written notice thereof (in the manner provided in Article XIII hereof) from Declarant or the Association to the Owner of any such Parcel, then Declarant or the Association shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily to abate or remove it at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of Declarant and the Owners to enforce any of the covenants or obligations herein provided due to a particular violation be deemed to be a waiver of the right to do so respecting any such violation or any subsequent violation.

**Section 15.07. Special Amendment.** Declarant hereby reserves the right and power to record a special amendment (hereafter referred to as "Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or grant first mortgages encumbering any Lot, Parcel or Unit, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereof. In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elects to record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the expenses to be borne by them hereunder. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be, said power shall be irrevocable. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot, Parcel or Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record Special Amendments.

Subject to the provisions of Article XVII hereof, the right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds title to any Lot, Parcel or Unit.

**Section 15.08. Ownership Under a Trust.** In the event title to any Parcel is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Parcel remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, obligations and undertakings chargeable or created under this Declaration against any such Lot, Parcel or Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply, in whole or in part, against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon said Parcel and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to any such Parcel.

## ARTICLE XVI

### MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Residential Units. To the extent applicable, necessary, or proper, the provisions of this Article XVI apply to both this Declaration and to the By-Laws of Waterford Place Homeowners Association, Inc. Where indicated, these provisions apply only to "Eligible Holders," as hereinafter defined; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

**Section 16.01. Notices of Action.** An institutional holder, insurer, or guarantor of a first mortgage, who provides written request (such request to state the name and address of such holder, insurer or guarantor and the Residential Unit address), to the Association (thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- a. any proposed termination of the Association;
- b. any condemnation loss or any casualty loss which affects a material portion of the Submitted Parcel or which affects any Residential Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- c. any delinquency in the payment of Assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such Eligible Holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
- d. any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or



- e. any proposed action which would require the consent of Eligible Holders, as required in Section 16.02 hereof.

**Section 16.02. Mortgagee's Rights Respecting Amendments to the Declaration.**

To the extent possible under Indiana law, and notwithstanding the provisions of Article XIV, any amendment of a material nature must be approved by Eligible Holders representing at least fifty-one percent (51%) of the votes of Residential Units that are subject to Mortgages held by Eligible Holders. An amendment to any of the following shall be considered material:

- a. voting rights;
- b. Assessment, Assessment liens, or subordination of Assessment liens;
- c. reserves for maintenance, repair and replacement of the Common Areas;
- d. responsibility for maintenance and repairs;
- e. boundaries of any Residential Unit;
- f. expansion of the Development Area (to include real estate not described in Exhibit "A" or not adjacent thereto nor in the vicinity thereof);
- g. insurance or fidelity bonds;
- h. imposition of any restrictions on an Owner's right to sell or transfer his or her Residential Unit;
- i. restoration or repair of the Submitted Parcel (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- j. any action to terminate the legal status of the Submitted Parcel after substantial destruction or condemnation occurs, provided, however, that any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation shall require the consent of Eligible Holder's representing sixty-seven (67%) of the votes of Residential Units; or
- k. any provisions that expressly benefit mortgage holders, insurers or guarantors.

**Section 16.03. Special FHLMC Provision.** So long as required by FHLMC, the following provisions apply in addition to and not in lieu of the foregoing two sections of this Article. Unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

- a. by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any Common Area which the Association owns, directly or indirectly (the granting of

easements for public utilities or for other public purposes consistent with the intended use of the Property shall not be deemed a transfer);

b. change the method of determining the obligations, Assessments, dues or other charges which may be levied against the Owner;

c. by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residential Units and of any Common Area;

d. fail to maintain fire and extended coverage insurance, as required by this Declaration; or

e. use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such.

The provisions of this Section 16.03 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required for any of the actions contained in this Section.

**Section 16.04. Mortgagee's Right to Cure.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for any Common Area, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**Section 17.01. Control by Declarant.** Notwithstanding any of the other provisions of this Declaration or the By-Laws to the contrary, and in addition to any other right or privilege given or granted or reserved to Declarant under this Declaration, the first and all subsequent Board of Directors shall consist solely of three (3) individuals designated by Declarant, which individuals may be need not be Owners or Members until the first to occur of any of the following (the "Turnover Date"):

(a) Thirty (30) days after Declarant has conveyed to purchasers for value all of the Residential Units proposed for the Development Area; or

(b) The expiration of five (5) years from the date of the recording of this Declaration; or

(c) The date on which the Declarant elects to terminate its sole control by the delivery of written notice of such election to the Owners.

**Section 17.02. Absence of Warranty.** The Declarant specifically disclaims any warranty or representation in connection with the Submitted Parcel or Development Area or this Declaration except as specifically set forth herein; and no Person shall rely upon any warranty or representation not specifically set forth therein. Any estimates of Assessments are believed to be accurate, but no warranty or guaranty is made or intended, nor may one be relied upon.

**Section 17.03. Assessment Exemption.** Declarant shall be exempt from any Assessment levied by the Association on any or all Residential Units owned by the Declarant and/or Declarant's designee, Waterford Place, LLC, which are unoccupied and offered by the Declarant for sale.

**Section 17.04. Right to Amend Declaration.** The Declarant shall have the right to amend the Declaration, and the Articles of Incorporation, By-Laws, and Rules and Regulations, in accordance with Section 14.01(d) hereof.

**Section 17.05. Transfer of Rights.** Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is a written instrument signed by the Declarant and duly recorded in the Office of the Recorder of Lake County, Indiana.

**Section 17.06. Declarant's Reserved Rights and Easements.** Notwithstanding any provisions herein to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel, for the benefit of Declarant, its successors, and assigns over, under, in, and/or on the real estate and any portion of the Development Area which becomes part of the Submitted Parcel, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, maintenance, repair, replacement, use and enjoyment and/or otherwise dealing with the Submitted Parcel and Development Area. The reserved easement shall constitute a burden on the title to all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel and specifically includes, but is not limited to:

(1) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel; and the right to tie into any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel with driveways, parking areas, streets, and drainage systems; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over

all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, and in connection therewith the right to store construction equipment and materials in appropriate areas in areas owned by Declarant without payment of any fee or charge whatsoever; and

(2) the right to construct, install, replace, relocate, maintain, repair, use and enjoy model units, parking spaces, signs, lighting, construction offices, business offices and sales offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction of improvements and sale of units in all or any portion of the Submitted Parcel and Development Area;

(3) no rights, privileges, and easements granted or reserved herein shall be merged into the title of any Residential Unit within the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit claim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel.

This Section 17.06 may not be amended without the advance written consent of Declarant.

**Document is  
NOT OFFICIAL!**

**ARTICLE XVIII  
ANNEXATION OF ADDITIONAL PROPERTY  
the Lake County Recorder!**

**Section 18.01. Annexion Without Approval of Membership.** As the Owner thereof, or if not the Owner, with the Consent of the Owner thereof, Declarant shall have the unilateral right, privilege and option, from time to time at any time until the end of the tenth (10th) year after the recording of this Declaration, to annex, submit and subject to the provisions of this Declaration, all or any part of the Development Area, or other property adjacent to or in the vicinity of the Development Area, including but not limited to the property described in Exhibit "A", by recording an amendment to this Declaration ("Supplemental Amendment") as hereinafter provided. For the purposes of this Article, any portion of the Development Area which is made subject to this Declaration by a Supplemental Amendment shall be referred to as "Added Property"; and any Residential Units (or Parcels upon which attached, single-family townhomes are being completed) in the Added Property shall be referred to as "Added Residential Units. Added Property may be made subject to the Declaration at different times and there is no limitation on the order in which Added Property may be made subject to this Declaration. There is no limitation on the location of improvements which may be made on Added Property and no particular portion of the Development Area must be made subject to this Declaration.

**Section 18.02. Power to Amend.** In furtherance of the foregoing, Declarant reserves the right to record a Supplemental Amendment, at any time and from time to time prior to ten (10) years from the date of recording hereof, which amends those portions of this Declaration necessary to reflect the Added property and the effect of the Added Residential Units.

**Section 18.03. Effect of Amendment.** Upon the recording of a Supplemental Amendment by Declarant which annexes and subjects Added Property to this Declaration, as provided in this Article, then:

(a) The restrictions, conditions, covenants, reservations, lien, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Property (including Added Residential Units) and inure to the benefit of and be the personal obligation of the Owners of Added Residential Units in the same manner, to the same extent, and with the same force and effect that this Declaration applies to the Submitted Parcel and Owners of Residential Units which were initially subjected to this Declaration.

(b) Every Person who is an Owner of an Added Residential Unit shall be a Member of the Association on the same terms and subject to the same qualifications and limitations as those Members who are Owners of Residential Units.

(c) Each Owner of an Added Residential Unit shall pay the same monthly Assessment as the Owner of an existing Residential Unit; provided, however, the Owner of an Added Residential Unit shall not be required to pay any installment of a Special Assessment levied to cover a deficit under a prior year's budget.

(d) The amount of the lien for Assessments, charges or payments levied against an existing Residential Unit prior to the recording of the Supplemental Amendment shall not be affected.

Such Supplemental Amendment shall not require the vote of Members. Any such annexation shall be effective upon the filing for record of such Supplemental Amendment unless otherwise provided herein. Declarant shall have the unilateral right to transfer to any other person the said right, privilege and option to annex such Added Property which is herein reserved to Declarant, provided that such transferee or assignee shall be the Developer of at least a portion of such Added Property and that such transfer is memorialized in a written, recorded instrument.

**Section 18.04. Amendment.** This Article XVIII shall not be amended without the written consent of Declarant, so long as the Declarant owns any portion of the Development Area.

**Section 18.05. Annexation of Common Areas.** If, at any time pursuant to this Article XVIII, property is annexed adjacent to or in the vicinity of the development area, including but not limited to the property described in Exhibit "A" and said property includes common area, then it shall be the responsibility of the Association to maintain, repair and replace any part of the common area, including but not limited to any retention or detention ponds.

**ARTICLE XIX**

**SEVERABILITY OF INVALID OR UNENFORCEABLE PROVISIONS**

**Section 19.01. Severability of Invalid or Unenforceable Provisions.** If any term, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other terms, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations.

If any part of this Declaration, or any term, covenant, provision, phrase or other element, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Indiana, then the said laws shall be deemed controlling and the validity of the remainder of the Declaration and the application of any other term, covenant, provision, phrase or other element in other circumstances shall not be affected thereby.

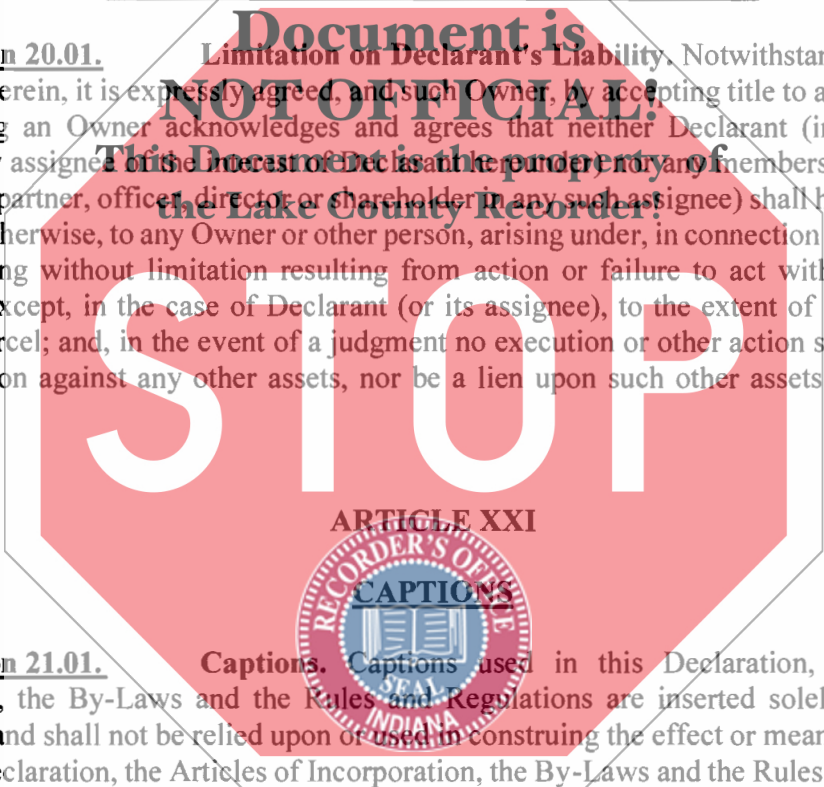
**ARTICLE XX**

**LIMITATION ON DECLARANT'S LIABILITY**

**Section 20.01. Limitation on Declarant's Liability.** Notwithstanding anything to the contrary herein, it is expressly agreed, and such Owner, by accepting title to a Residential Unit and becoming an Owner acknowledges and agrees that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any members of Declarant (or any member, partner, officer, director or shareholder in any such assignee) shall have any liability, personal or otherwise, to any Owner or other person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration except, in the case of Declarant (or its assignee), to the extent of its interest in the Submitted Parcel; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor.

**ARTICLE XXI**

**Section 21.01. Captions.** Captions used in this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations.



**ARTICLE XXII**

**BINDING EFFECT**

**Section 22.01.** **Binding Effect.** This Declaration shall be binding upon and inure to the benefit of each Owner, its successor, grantees, assigns and the legal representatives thereof.

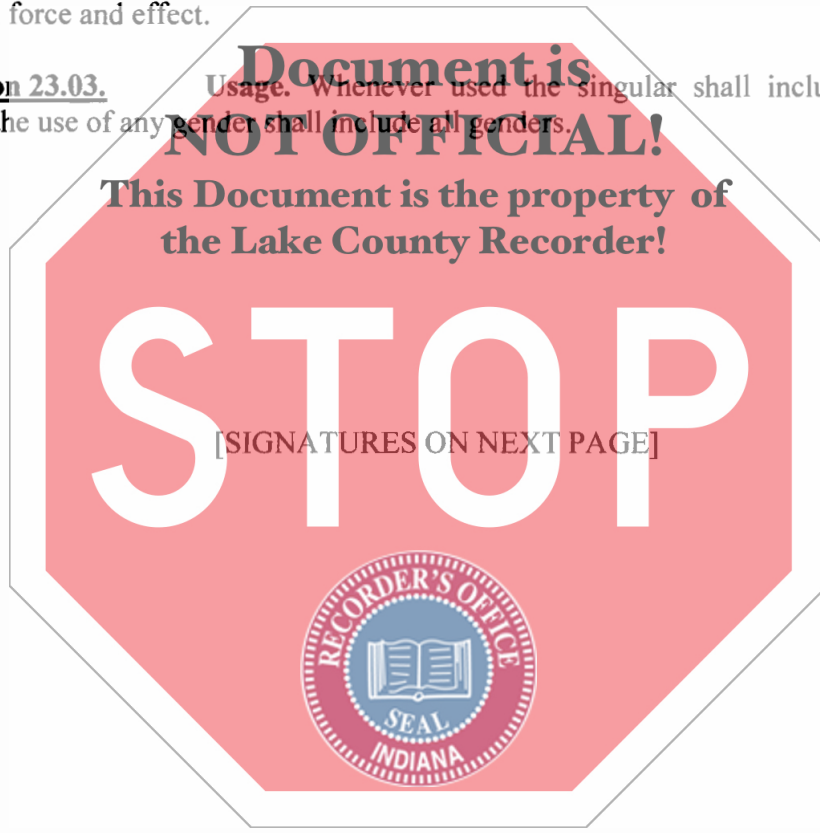
**ARTICLE XXIII**

**MISCELLANEOUS**

**Section 23.01.** **Notices.** Any notice required to be sent to any Owner under provision of this Declaration shall be deemed to have been properly sent when mail, postage paid, to the last known address of the person who appears as owner on the records of the Lake County Auditors official property tax records at the time of such mailing.

**Section 23.02.** **Severability.** Invalidation of any of one or more of these covenants and restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 23.03.** **Usage.** Whenever used the singular shall include the plural in singular and the use of any gender shall include all genders.



IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed as of this 30<sup>th</sup> day of October, 2016.

WATERFORD PLACE, LLC

By:



TIM DINGA, Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

BEFORE ME, a Notary Public in and for said County and State, personally appeared Waterford Place, LLC, an Indiana domestic limited liability company, by ~~Manager~~ <sup>Manager</sup> Tim Dinga, who acknowledged that he signed and delivered the above instrument as his own free and voluntary act as an authorized agent for and on behalf of said Waterford Place, LLC, an Indiana domestic limited liability company.

2016 OCT 30 11:32

Given under my hand and notarial seal this 30<sup>th</sup> day of October, 2016.

Document is NOT OFFICIAL!  
This Document is the property of Daniel Shorn Wilcox  
Notary Public  
the Lake County Recorder!

My Commission Expires: 11-19-2019

County of Residence: Lake

