

DECLARATION OF COVENANTS AND RESTRICTIONS

WARREN PINES

(Retyped July 09)

This Declaration (hereafter "Declaration") made as of the 15 day of February, 2002  
By HERITAGE Development of Indiana, LLC;

60.00 PAGES: 24  
*[Handwritten signature]*

WITNESSETH: WHEREAS, the following facts are true:

WHEREAS, Declarant is the owner of the real estate located in Marion County, Indiana, described in Exhibit "A" (hereafter "Real Estate"), upon which they have purchased 38.265 acres and developed Section 1A being 25.196 acres of that ground. The remaining 13.069 acres of vacant ground will be developed as Section 1B.

WHEREAS, Declarant has under option part of the real estate being some 70.612 acres which is more particularly described in Exhibit "A" attached hereto and incorporated hereir by reference (hereinafter referred to as the "Additional Real Estate");

WHEREAS, Declarant has purchased certain improvements and amenities which shall constitute Community area;

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate;

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Warren Pines for the maintenance of the Property and the improvements thereon and to this end desire to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Property and the future owners thereof;

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in Warren Pines to create an agency to which may be delegated and assigns the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restriction, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots.

WHEREAS, Declarant will incorporate under the laws of the State of Indiana a not-for-profit corporation known as The Warren Pines Homeowner's Association, Inc. for the purpose of exercising such functions

NOW, THEREFORE. Declarant hereby declares that all of the Lots and lands in the Property, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the values, desirability and attractiveness of the Property as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the Land and shall be binding upon Declarant, its respective successors and assigns, and upon the

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parties having or acquiring any interest in the Property or any part thereof subject to such Restrictions. The Restrictions shall inure to the benefit of Declarant and its respective successors in title to the Property or any part or parts thereof.

- 1) Definitions \_ The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:
  - a) “Architectural Review Board” means that entity established pursuant to Paragraph 14 of this Declaration for the purposed therein stated.
  - b) “ Articles” means the Articles of Incorporation of the Corporation, as amended from time to time
  - c) “Assessments” means all sums lawfully assessed against the members of the Corporation, as amended from time to time.
  - d) “ Board of Directors” means the governing body of the Corporation elected by the members in accordance with the By-Laws.
  - e) “Bylaws” means the Code of By-Laws of the Corporation, as amended from time to time
  - f) “Warren Pines” means the name by which the Property shall be known.
  - g) “Common Area” (C. A. #) means the area referred to on a Plat as a Common Area or Areas.
  - h) “Community Area” means( i ) the Lake Control Structures (ii) the Drainage System, (iii) the Lake and Lake access Easements, (L.A.K.E #) (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that serve more than one Lot, and (v) any area of land (1) shown on the Plat as a Common area, (2) described as Common Area in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of all, of the Owners of Lots.
  - i) “Corporation” or “Association” means Warren Pines Homeowners Association, Inc. an Indiana not-for-profit, its successors and assigns.
  - j) “Declarant” means, Heritage Development of Indiana, LLC, its successors and assigns to its interest in the Property other that Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated on intent that the grantee assumes the rights and obligations of Declarant).
  - k) “Drainage Board” means the Marion County Drainage Board, its successors or assigns.

- l) “Drainage System, means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and /or detention areas, and the other structures, fixtures, properties, equipment and facilities(excluding the Lakes and the Lake Control Structures) located in the Property and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Property, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board
- m) “ Sign and Landscaping Easement: (S. L. E.) Means a portion of the common Area as denoted on the Plat as an area to be landscaped with Entry Monuments and maintained by the Corporation.
- n) “Lake” means the lake as depicted on the Plat. A numerically designated Lake means the Lake so designated by such number on the Plat.
- o) “Lake Maintenance access Easement” (L.M.A.E.) means an area designated on the Plat and
- p) “Lake Control Structures” (L.C.S.) means the structure, outfalls, pipes and appurtenances associated therewith or integral thereto, all or part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.
- q) “Lot” means a platted lot as shown on the Plat.
- r) “Lot Development Plan”: means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (v) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) of the construction or alteration of a Residence or other structure or improvement thereon.
- s) “ Maintenance Costs” means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any portion of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.
- t) “Member” means a Class A or Class B member of the Corporation and “Members” means Class A and Class B members of the Corporation.

- u) "Mortgagee" means the holder of a first mortgage on a Residence.
  - v) "Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such as interest merely as security for the performance of an obligation.
  - w) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.
  - x) "Plat" means the final secondary plat of the property recorded in the Office of the Recorder of Marion County, Indiana.
  - y) "Reserve for Replacement" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.
  - z) "Residence" means any structure intended for occupancy by a single family together with all appurtenances thereto, including private garage and outbuilding and recreational facilities usual and incidental to the use of a single family residential lot.
  - aa) "Restrictions" means the covenant, conditions, easements, charges, liens restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.
  - bb) "Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.
  - cc) "Roadway" means all or any part of a street, land or road (including the right-of-way) designated to provide access to one or more Lots which has not be accepted for maintenance by a public authority.
  - dd) "Zoning Authority" with respect to any action means the Marion County Board of Zoning or, where it lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals, or review action, or the failure to act..
- 2) Declaration – Declarant expressly declares that the Property shall be held, transferred and occupied subject to the Restrictions. As of the date of the execution of this Declaration the Property consists solely of the Real Estate. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained.

By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenant, agrees and consents to and with Declarant, the Corporation, and the Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

- 3) The lake – Declarant shall convey title to the Lake to the Corporation. The Corporation shall be responsible for maintaining the Lake. One hundred percent (100%) of the maintenance costs of the Lake shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot which abuts the Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes part of, or abuts, his Lot and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonable clean condition. No Owner shall pump water out of the Lake. No boats shall be permitted upon any part of the Lake and no dock, pier, wall or other structure may be extended into the Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction therefor. No swimming or ice-skating will be permitted in the Lake except if and to the extent expressly authorized by written resolution of the Board of Directors. Except as otherwise provided herein, no individual using the Lake has the right to cross another Lot or trespass upon the shoreline not within a Common Area, subject to the rights of the Declarant, the Corporation and their employees, agents, designees and assigns as set forth in the Declaration. Each Owner of a Lot, (other than Declarant or any Builder) abutting the lake shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, the Lake by any Person who gains access thereto from, over or across such Owner's Lot. Neither Declarant nor any Builder shall have liability to any Person with respect to the Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from the Lake or the proximity of a Lot thereto, including loss or damage from erosion.
- 4) The Lake Control Structures – Declarant shall convey title to the lake Control Structures to the Corporation. The Corporation shall be responsible for maintaining the lake Control Structures to the extent not maintained by the Drainage Board, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots.
- 5) Drainage System – Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of July 1, 2006, or the date the Drainage System is accepted by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage system to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot,

which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

- 6) Common Area Easement and Common Area – The Corporation shall maintain the Landscaping Easement and all improvements and plantings thereon, and the maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment, Grass, trees, shrubs, and other plantings located in a landscaping Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive appearance.
- 7) Roadways
  - a) Maintenance – Declarant shall maintain each Roadway in good condition satisfactory for the purpose for which it was constructed until the Roadway has been accepted as a public roadway.
  - b) Cul-de-sac Parking – There shall be no parking on the Cul-de-sacs shown on the Plat.
- 8) Construction of Residences
  - a) Land Use – Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of Marion County, Indiana without the written consent of the Declarant. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Warren Pines than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any “Special Use” that is not clearly incidental and necessary to single-family dwelling. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a “special use” and which is incidental to a business, profession or occupation of the Owner or occupant of such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.
  - b) Size of Residence & Garage – Except as otherwise provided herein, no Residence may be constructed on any Lot unless such residence, exclusive of open porches, attached garages and basements, shall have total floor areas of at least 1200 square feet. All Residences shall have an attached garage capable of storing at least two (2) vehicles.

Lots requiring additional floor areas:

Lots 280 thru 285 inclusive, Lots 93 thru 97 inclusive, Lots 56 thru 59 inclusive and Lots 49 thru 51 inclusive shall have a minimum of 1600 square feet of Living spaces.

Lots 271 thru 279 inclusive shall have a minimum of 1500 square feet of Living space.

- c) Temporary structures – No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.
- d) Building Location, Set back Minimums and Finished Floor Elevation – No building may be erected between the building line shown on the Plat and the front Lot line but in any event no building shall be erected nearer than twenty-five feet to the right of way of the street in front of the Lot, and no structure or part thereof maybe built or erected nearer that-six feet to any side Lot line or nearer that twenty feet to any rear Lot line. The side yards must aggregate sixteen feet at the building setback line. No accessory building may be erected in front of a main building or in the required front yard on the side of a corner lot unless the accessory building is attached to the main building by a common wall. A minimum finished floor elevation shown on the development plan for Warren Pines, has been established for each Lot depicted on the Plat and no finished floor elevation with the exception of permitted basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage n conformity with both on Lot and overall project drainage plans shall be a prerequisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and certified by a licensed professional engineer or a licensed land surveyor.
- e) Driveways – All driveways shall be paved with concrete or asphalt and maintained dust free.
- f) Yard Lighting- The builder on each Lot shall supply and install twin coach lights on the garage in operable condition on such Lot at a location, having a height and of a type and manufacture approved by the Declarant or Architectural Review Board prior to the installation thereof. Each such light fixture shall have a bulb of a maximum wattage approved by the Architectural Review Boar to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic I illumination from dusk to dawn each day. The Lot Owner thereafter shall maintain the lights in proper working order.
- g) Storage Tanks – all above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

- h) Construction and landscaping – All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural review Board. Landscaping shall include a minimum of two 2 and ½ “deciduous trees planted near the street right-of-way, taking care to avoid easements and not to violate site distance requirements. At least eight evergreen shrubs shall be provided for each Lot in the front yard and adjacent to the foundation of the Residence. Yards will be sodded or seeded.
- i) Masonry Requirement – all homes shall have a minimum of 50% brick or masonry on the front elevation of the home. On corner Lots the side of the Home facing a public Street shall have a minimum of 25% of the first floor elevation in Brick or masonry. The areas to which these percentages are applies shall exclude doors and windows.
- j) The failure of the Owner of a Lot to apply for approval of, or receive approval from the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the Lot within the time periods specified herein. For the purposed of this sub paragraph (i) the construction of a Residence will be deemed “completed” when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.
- k) Mailboxes – All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the architectural Review Board. The 6”x6” Standard Painted Cedar post with paper holder as supplied by Chaparral Posts, Inc. is approved provided it is painted to the specifications as provided by the Declarant to Caporale
- l) Septic Systems – No septic tank, absorption field or any other on site sewage disposal system, other than a lateral main connected to a sanitary sewage collection system, shall be installed or maintained on any Lot.
- m) Water Systems - Each owner shall connect to such water line maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connections, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use irrigation water well on his Lot.
- n) Drainage – in the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of the other Lot to permit such drainage to continue, without restriction or reduction, across the downstream. Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board “Drainage Easements” reserved as drainage



swales shall be maintained by the owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of any drainage swale. Perimeter foundation drains and sump pump drains, shall be connected whenever feasible into a subsurface drainage tile or drainage swale. Downspouts and drains shall be designed to disperse runoff for overland flow to street or swale collections systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

- o) Vacant Lots – It shall be the duty and obligation of the Owner (including Declarant) of a vacant Lot to maintain such Lot and mow the lawn thereon. Declarant and the Corporation shall have the right, but not the obligation, to mow the lawn and maintain vacant Lots owned by others.
- p) Out building and sheds – These shall be prohibited except that Declarant may allow them on a case by case basis.

#### 9) Maintenance of Lots

- a) Vehicle parking – No camper, motor home, commercial truck, trailer, boat or disables or unlicensed vehicle may be parked or stored overnight or longer on any Lot in open public view. No carports shall be installed on any Lot. No mechanical work shall be performed in the driveway of any Lot.
- b) Signs – Except for such signs as Declarant may in its absolute discretion display in connection with the identification or development of Warren Pines and the sale of Lots therein and such signs as may be located in any Common area or Community Area, no signs of any kind shall be displayed to the on any Lot except that two (2) signs of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or may displayed by the builder to advertise the property during construction and sale. All houses shall have uniform permanent house numbers visible from the street.
- c) Fencing – No fences, wall, hedge or shrub planting higher that eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Corner Lots shall be deemed to have two (2) front yards. Trees shall not be deemed “shrubs” unless planted in such a manner as to constitute a “hedge”. No chain Link Fence shall be erected upon a Lot except those that are vinyl covered in brown or black. No fence shall be erected or maintained on or within any Landscaping Easement or Sign Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. No fencing shall be erected on the street side of any perimeter landscaping and/or mounding. No fence may be erected on a Lot without the prior approval of the Architectural Review Board,

which may establish further restriction with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Lake and design standards for fences. All fences shall be kept in good repair. No fences, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersections of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. All fencing along the perimeter of the Plat shall be of the same style, color and materials.

- d) Vegetation – an Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an owner fails to comply with this restriction, the architectural Review board may (but shall not be obligated to) cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Association shall have a lien against the cleared Lot for the expense thereof. All Lots shall be landscaped with at least (2) 2 and ½ “ caliper trees, one of which shall be a hardwood variety. On all front elevations of homes 8 evergreen shrubs shall be installed.
- e) Nuisances – No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.
- f) Garbage and Refuse Disposal – No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.
- g) Pets, Livestock and Poultry – No animals livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine to their respective Lots such that they will not be a nuisance. Barking Dogs shall constitute a nuisance. owners of dogs shall so control or confine them so as to avoid barking, which will annoy or disturb adjoining Owners. No exterior dog runs are permitted
- h) Outside Burning – No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and then, only in acceptable incinerators and in compliance with all applicable legal requirements.
- i) Antennas and Receivers – No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of

electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, except for one satellite dish of no more than two feet (2) in diameter on each residential Lot and be subject to the written approval of the Architectural Review Board, provided, however, that any such device may be installed and maintained on any lot without the necessity of such written approval if: (a) it is not visible from neighboring Lots, streets or common area; or (b) the owner, prior to installation, has received the written consent of the Owners of all Lots who would have a view of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices or improvements, such as heat pumps, air conditioning units, barbecue grills, patio furniture and garden equipment, which are not prohibited by these covenants or by laws, or (d) it is a satellite dish two (2) feet or less in diameter and not affixed to the roof of a residence.

- j) Exterior Lights – No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.
- k) Electric Bug Killers – Electric Bug Killers, “zappers” and other similar devices shall be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.
- l) Tennis Court – No tennis court shall be installed or maintained on any Lot.
- m) Swimming Pools – No swimming or equipment or building related thereto shall be constructed without the prior approval of the Architectural Review Board. No above ground pools shall be permitted. No swimming shall be located on a Lot abutting within 35 feet from the water’s edge of a Lake at normal pool elevation as established on the engineering design plans for the Lake filed with the zoning authority. If a variance permitting installation of a mechanical pool cover in lieu of fencing has been or may be obtained from the Zoning Authority, then the Architectural Review Board may require, as a condition to the location of a swimming pool on a Lot, the Owner install a mechanical pool cover. If the Board imposes such improvement, then a mechanical pool cover of a type and manufacture approved by the Architectural Review Board shall be installed by the Owner in compliance with all applicable legal requirements established by the Zoning authority as condition to such variance, and all requirements established by the Architectural Review Board.

10) Warren Pines Homeowners Association, Inc.

- a) Membership – Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person holding a mortgage on a Lot realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the

payment of Assessments.

- b) Powers – The Corporation shall have such powers as are set forth in this Declaration and in the Articles and By-Laws, together with all other powers that belong to it by law.
- c) Classes of Membership and Voting Rights – The Association shall have the following two(2) classes of voting membership:
  - i) Class A- Class A members shall be all Owners with the exception of the Declarant. Class A member shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such shall be members. The vote for each Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.
  - ii) Class B – The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B. membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when seventy five percent (75%) of all Lots have been deeded to individual Owners other than Declarant, (b) December 31, 2019.
- d) Reserve for replacement – The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant of such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.
- e) Limitations on action by the Corporation – Unless the Class B Member and (i) at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or (ii) two-thirds (2/3) of the Class A Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 13 (a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community area (but the granting or easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a

transfer for the purposed of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable values (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for each other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence;(v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacement in the amount required by this Declaration.

- f) Mergers- Upon a merger or consolidation of another corporation with he Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or alternatively the properties, rights and obligations of another corporation may be operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.
- g) Termination of Class B Membership –Wherever in this Declaration the consent, approval or vote of the Class B Member is required, such requirement shall cease at such time as the Class B Membership terminated, but no such termination shall affect the rights and powers of Declarant set forth in Paragraphs 16(b), 16(f), 17 or 20(b)
- h) Board of Directors –During the development Period, the Declarant shall appoint all directors, shall fill all vacancies in the Board of Directors, and shall have the right to remove any director at any time, with or without cause. After the Development Period, the Owners shall elect a Board of Directors of the Association as prescribed by the Association’s Articles and By-Laws. The Board of directors shall manage the affairs of the Association. Directors need not be members of the Association.

#### 11) Assessments

- a) Creation of the Lien and Personal Obligation of Assessments – Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Corporation the following: (1) General assessments, (2) Special Assessments, such assessments to be established and collected as hereinafter provided. All assessments, together with interest thereon and costs of collection thereof, shall be

charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the owner of the Lot at the time when the assessment became due.

b) General Assessment

i) Purpose of Assessment – The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance and operation of the community Area and all sign easements and landscape easements. The General assessment shall also be levied for the payment of real estate taxes allocable to the community Areas, which real estate taxes shall be paid by the Corporation from the date hereof, notwithstanding that the Declarant may retain title to all or part of the community Area. It shall further be the obligation of the Corporation to (i) maintain and pay all costs of maintenance of all public lighting installed and existing in any right-of-way (ii) pay the costs of all electricity and energy usage attributable to public lighting installed and existing in any right-of-way and (iii) maintain and pay the costs of maintenance of any sidewalks which abut a right-of-way but are not within the right-of-way, and the General Assessment shall also be levied by the Corporation to comply and pay for with the foregoing maintenance requirements and obligations

ii) Basis for Assessment

- (1) Lots Generally – Each Lot owned by a person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.
- (2) Lots Owned by Declarant – No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.
- (3) Change in Basis – The basis for assessment may be changed with the assent of the Class B Member and of two-thirds (2/3) of the Class A Members (excluding Declarant).

iii) Method of Assessment – By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declarant upon the Corporation. The Board of Directors shall establish the date(s) the General assessment shall become due, and the manner in which it shall be paid.

iv) Allocation of Assessment –Except as otherwise expressly provided herein, the cost of maintaining, operating, restoring or replacing the Community Area shall

be allocated equally among owners of all Lots and shall be uniformly assessed.

- c) Special Assessment – The Corporation may levy in any fiscal year a Special assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon or constituting a part of the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Class B Member and of a majority of the votes of the Class A members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.
- d) Date of Commencement of Assessments – The General Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot to an Owner who is not Declarant provided that, in the case of Lots conveyed to builders, the General Assessment shall commence as of the earlier of (1) the first day of the month following conveyance of the Lot by Builder to Builder’s customer who will occupy the residence, or (2) one year following the date the Lot is initially conveyed to Builder. The initial assessment on any assessable Lot shall be adjusted according to the number of whole months remaining in the assessment year.
- e) Effect of Nonpayment of assessments; Remedies of the Corporation – any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses of costs, including attorneys’ fees, incurred by the corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the community Area or abandonment of his Lot.
- f) Subordination of the Lien to Mortgages – The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, 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 Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

- g) Certificates – The Corporation shall demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have paid or that certain Assessments remain unpaid, as the case may be.
- h) Exempt Property – The following property subject to this Declaration shall be exempt from the Assessment, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use and (2) the Community Area.
- i) Annual Budget – By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met.

## 12) Architectural Control

- a) The Architectural Review Board – Until the end of the Development Period, the Declarant shall appoint an Architectural Review Board consisting of three (3) persons. After the expiration of the Development Period, the Board of Directors shall appoint the Architectural Review Board.
- b) Purposes – the Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such manner as to preserve values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.
- c) Change in Conditions – Excepts as otherwise expressly provided in this Declaration, no improvements, alterations, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by an Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, pier, dock, recreational equipment, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board and no building, fence, wall, Residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any planting made, by any Person other than Declarant without the prior written approval by the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents,



permits and/or variances required by law from governmental authorities having jurisdiction over Warren Pines, and no Owner shall undertake any construction activity within Warren pines unless legal requirements have been satisfied. Each Owner shall complete improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Board.

Notwithstanding the foregoing Declarant shall have the sole right to pre approve standard floor plans and elevations to be offered and sold in Warren pines by Builders and, once such pre- approvals are obtained, Builders shall not be required to submit individual Lot Development Plans or otherwise obtain individual approvals from Declarant or The Architectural Control Board in order to offer, build and sell in Warren Pines floor plans and elevations that have been so pre approved. As used in this subparagraph (c), “plantings” does not include flowers, bushes, shrubs or other plants having a height of less than 18 inches.

- d) Procedures – In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within (30) days after such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a Class B member, the Board of Directors’ approval will be deemed granted. If Declarant is no longer a Class B member, a decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.
- e) Guidelines and Standards – Architectural Review Board shall have the power to establish such architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. If Declarant is no longer a Class B, member, any such guidelines or standard may be appealed to the Board of Directors which may terminate or modify such guidelines or standard by a two-thirds (2/3) vote of the Directors then serving.

### 13) Community Area

- a) Ownership – the Community area shall remain private, and neither Declarant’s execution or recording of any instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.
- b) Density of Use or Adequacy – Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon or the adequacy thereof for the purpose intended.

- c) Obligations of the Corporation - The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon. (Including furnishing and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.
- d) Easements of Enjoyment – No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provision of, this Declaration or resolution adopted by the Board of Directors. Such rights and easement as are thus granted shall be appurtenant to and shall pass with the title to every lot for whose benefit they are granted. The Owners Of lots abutting the Lake may use the Lake, but such use shall be limited and such uses shall be authorized by resolution adopted by the Board of Directors. Each Owner shall have the right to use parts of the Community Area as are Reasonably required to afford access to and from such Owner’s Lot.
- e) Extent of Easements – The easement of enjoyment created hereby shall be subject to the following:
  - i) The right of the Corporation to establish reasonable rules for the use of the Community Area.
  - ii) The right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the community Area or facilities constructed thereon, pursuant to approval of the Class B member and (i) two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgage (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose; and
  - iii) The right of the Corporation after the development period to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B member and (i) the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgages (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded.
- f) Additional Rights of Use – The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area and facilities subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Corporation and included within the Register of Regulation.
- g) Damage or Destruction by Owner – In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licenses, agents, or member of

his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in good workmanlike manner in Conformance with the original plans and specifications of the area involved or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. The amount necessary for such repairs shall become a Special Assessment upon the Lot of said owner.

- h) Conveyance of Title – Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the lakes and Lake Control Structure (and on or before the expiration of the Development Period, any remaining Community Area,) to the Corporation free and clear of all liens and financial encumbrances. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

#### 14) Easements

- a) Plat Easements – In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the Office of the Recorder of Marion County, Indiana, lots are subject to drainage easements, sewer easements, utility easements, sign easements, entry way easements, landscaping easements, lake maintenance access easements and non-access easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Owners, public utilities companies and governmental agencies as follows:
  - i) Drainage Easements – (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Warren Pines and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each owner not to divert, prevent, alter or obstruct the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Corporation, but neither Declarant nor the Corporation shall have any duty to undertake any such construction or reconstruction. In the event the Declarant or the Corporation undertakes any such construction or reconstruction, its obligations to restore the affected real estate after any such construction or reconstruction shall be limited to regrading and re-seeding. Under no circumstances shall be Declarant or the Corporation be liable for any damage or destruction to any fences, structures, or other improvements, which are damaged, destroyed or remodeled by Declarant or the Corporation, or their respective

agents or employees as a result of such construction or reconstruction. Said easements are for mutual use and benefit of the Owners.

ii) Sewer Easements (SE) – Created for the use of the local government agency having jurisdiction over any storm or sanitary waste disposal system including the drainage system, which may be designed to serve Warren Pine for the purpose of installation and maintenance of sewers that are a part of said system.

iii) Utility Easements (US) – Created for the use of Declarant, the Corporation and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

iv) Entry Way Easements (EWE) – Created in the area of the Entry Ways for the use of Declarant and the Corporation for the installation, operation and maintenance of the Entry Ways.

v) Landscaping Easements (LE) – Created for the use by Declarant and the Corporation for the planting and maintenance of trees, shrubs and other plantings.

vi) Lake Maintenance Access Easements (LMAE) – Created for the use of Declarant, the Corporation and the Marion County Drainage Board for the purpose of gaining access to the Lake, the Lake Control Structures and the Drainage System in the course of maintenance, repair or replacement of any thereof.

vii) Non-Access Easements – Depicted on the Plat and created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements. No planting shall be done, and no hedges, walls or other improvements shall be erected or maintained on the area of such easements except by the Declarant during the Development Period and, thereafter, by the Corporation. No fences shall be erected or maintained on the area of such easements.

viii) Sign Easements – There are strips of ground shown on the Plat and reserved for mounding easements, landscape easements, and sign easements. Declarant hereby reserves unto itself during the Development Period and thereafter unto the Corporation, such easements for the purposes of providing signs which either (i) advertise the Property, and the availability of Lots the identity of participating builders, or events, or (ii) identify the Property. Declarant reserves unto itself during the Development Period and thereafter unto the Corporation, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground on the Plat as landscaping, mounding and sign easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development period and, thereafter, by the Corporation. No fences shall be erected or maintained in the

area of such easements, except as may be installed by the Declarant.

- b) General Easement – There is hereby created a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant, the Corporation or the providing utility or service company or any of their respective agents, employees or designees to install and maintain facilities and equipment on the Property and to excavate for such purposes if Declarant or such company restores the disturbed area. All such restoration shall be limited to re-seeding and re-grading only and Declarant or such company shall be under no obligation to repair or replace any improvements or landscaping. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Property except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Property to an Owner or by the Corporation thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by recordable document. Declarant or the Corporation shall have the right to grant such easement on the Property without conflicting with the terms thereof. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence (which for purpose of this Section 14(b), only, shall include driveways or walks and mailboxes associated with the normal construction of a Residence) has been constructed.
- c) Public health and Safety Easements – An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.
- d) Drainage Board Easement – An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Property and all Lots therein to the extent necessary to exercise its rights with respect to all or any part of the Drainage System or Lake Control Structures which are included within any drain.
- e) Crossing Underground Easements – Easements utilized for underground service may be crossed by driveways, walkways and Lake Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossing, driveways, walkways or Lake Access Easements and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to buildings, patios or other

pavings, shrubbery, trees, flowers or other improvements of the owner located on the land covered by said easements.

- f) Declarant's Easement to Correct Drainage – For a period of ten (10) years from the date of conveyance of the first Lot in the Property, Declarant reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary. If such grading or cutting of trees, bushes or shrubbery is in an area designated on the Plat as a Drainage Easement, then Declarant's obligation to restore the affected real estate shall be limited to re-grading and re-seeding, and neither the Declarant nor its agents, employees or assignees shall be liable for any damage or destruction to any improvements, structures or fencing located on or in such existing Drainage Easement. If such grading or cutting of trees, bushes or shrubbery is not in an area already designated on the Plat as a Drainage Easement, Declarant will restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.
  
  - g) Water Retention – The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.
- 15) Declarant's use During Construction – Notwithstanding any provisions to the contrary contained herein on in any other instrument or agreement, Declarant, any builder or their respective sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Property, upon such portion thereof as is owned or leased by Declarant or Builder, such facilities as in the sole opinion of Declarant or Builder, may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, trash bins, construction trailer, porta-potties, model Residences and sales offices.
- 16) Enforcement – The Corporation, any owner or Declarant shall have the right to enforce by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action by Declarant, the Corporation or an Owner to enforce this Declaration,

such party shall be entitled to recover all costs of enforcement, including attorney' fees, if it substantially prevails in such action.

- 17) Approvals by Declarant – As long as there is a Class B Member, the following actions shall require the prior approval of Declarant; (a) the dedication or transfer of the community Area; (b) the merger or consolidation of the Property with other real estate; (c) mortgaging of the Community Area; (d) amendment of this Declaration; and (e) changes in the basis for assessment or the amount, use and time of payment of any proposed Initial Capital Assessment.
- 18) Amendments
  - a) Generally – This Declaration may be amended at any time by an instrument signed by both (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less that two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, (ii) the Declarant, so long as Declarant still owns at least (1) Lot.
  - b) Effective Date – Any amendment shall become effective upon its recordation in the office of the Recorder of Marion county, Indiana.
- 19) Interpretation – The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any work shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.
- 20) Termination – These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2022 and thereof, shall continue automatically until terminated or modified by vote of a majority of all Owners at any time thereafter, provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.
- 21) Severability – Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or “running” quality of any other one of the Restrictions.

22) Non-Liability of Declarant - Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed, and

An Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described except in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

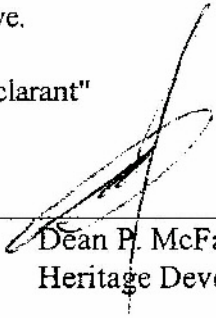
23) The laws of the State of Indiana shall govern this Declaration.

24)-Declarant hereby declares, creates and reserves assess licensee over and across all the Real Estate (subject to the limitations hereinafter provided in this Paragraph (24) for the use of Declarant and its representatives. Agents, contractors, designees and affiliates during the Development Period. Notwithstanding the foregoing, the area of access license created by Paragraph (24) shall be limited to that part of the Real Estate that is not in, on, under, over, across or through a building or other improvement or foundation of a building or other improvement properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

IN TESTIMONY WHEREOF, witness the signature of the Declarant as of the date set forth above.

"Declarant"

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


  
Dean P. McFarland, Vice President  
Heritage Development of Indiana, LLC

"Lot Owners"

Davis Homes, LLC

By: Davis Holding Corporation, Managing Member

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

  
C. Richard Davis, Vice President



STATE OF INDIANA            )  
  ) SS:  
COUNTY OF MARION    )

Before me a Notary Public, in and for said County and State, personally appeared Dean P. McFarland, Vice president of Heritage Development of Indiana, LLC, and C. Richard Davis, Vice President, Davis Homes, LLC, and acknowledged the execution of the foregoing declaration of Covenants and Restrictions.

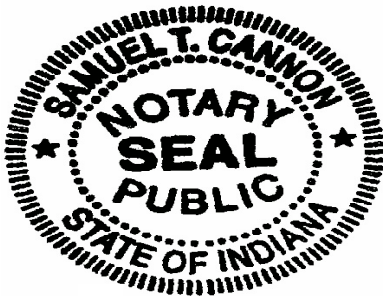
Witness my hand and Notarial Seal this 15<sup>th</sup> day of February, 2002.

County of Residence: MARION

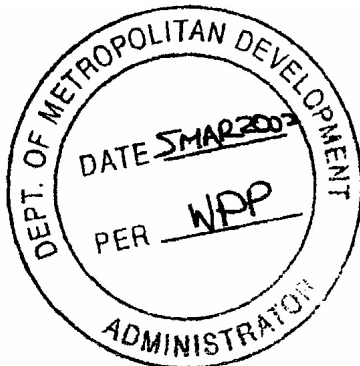
Samuel T. Cannon  
Notary Public

My commission expires: 12-17-09

SAMUEL T. CANNON  
Print Name



This document was prepared by Dean P. McFarland



APPROVED THIS 1<sup>st</sup>  
DAY OF MARCH 18 2002  
ASSESSOR OF WARREN TOWNSHIP  
Christine Stewart DRAFTSMAN