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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
LANCASTER**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LANCASTER** is made this 19<sup>th</sup> day of October, 2020 by Lancaster Developer, LLC an Indiana limited liability company (the "Declarant");

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property, located in City of Westfield, Hamilton County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A" (the "Real Estate"); and

**WHEREAS**, the real estate located in Hamilton County and particularly described in what is attached hereto and incorporated herein by reference as Exhibit "B", along with all real estate contiguous therewith, shall hereafter be referred to throughout this Declaration as the "Additional Real Estate";

**WHEREAS**, the word "Property" as used throughout this Declaration shall mean the Real Estate together with such portions of the Additional Real Estate as may be made subject to this Declaration per the terms of Article III below;

**WHEREAS**, Declarant desires to subdivide and develop the Property and in connection therewith, to impose certain covenants, conditions and restrictions on the Property.

**NOW, THEREFORE**, the Declarant hereby declares that all of the Lots (defined below) 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 covenants, conditions, and restrictions, all of which are declared to be in furtherance of a plan of 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 value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. This Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and upon the parties having or acquiring any interest in the Property or any part or parts thereof.

## ARTICLE I

### DEFINITIONS

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

Section 1.1 "Applicable Laws" means all federal, state and local laws, statutes, regulations and ordinances that are applicable to the Property.

Section 1.2 "Architectural Control Committee or ACC" shall mean the Architectural Control Committee, as more fully described in Article VII of this Declaration.

Section 1.3 "Association" shall mean *Lancaster Homeowners Association, Inc.*, a not-for-profit corporation, the membership and power of which are more fully described in Article X of this Declaration.

Section 1.4 "Board" or "Board of Directors" shall mean the Board of Directors of Lancaster Homeowners Association, Inc. and "Director" shall mean any member of the Board of Directors.

Section 1.5 "Builder" means a person or entity (i) regularly engaged in the business of constructing single-family residences for sale and responsible for the original construction of a residence on a Lot and (ii) deemed by the Declarant, in its sole discretion, to be a Builder.

Section 1.6 "Common Area" shall mean those areas (i) designated on current or future Plats as a "Block", "Commons", "Common Area", "C.A" and (ii) any other areas designated by the Declarant for the common use and enjoyment of the residents of the Property.

Section 1.7 "Declarant" shall mean Lancaster Developer, LLC, and any successors and assigns of it that it designates in one or more written recorded instruments to have the rights of Declarant under the Declaration.

Section 1.8 "Declaration" shall mean this Declaration, as from time to time amended.

Section 1.9 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending on the termination of the Class B Membership in the manner set forth in Section 10.3(B) below.

Section 1.10 "Guidelines" shall mean any standards or restrictions pertaining to various Lot Improvements that have been established by the Architectural Control Committee.

Section 1.11 "Landscape or Landscaping" shall mean, any design element (whether structural, flora, or earthen) that modifies the visible features of the Lot, and which may or may not be physically connected to a Residence.

Section 1.12 "Lot" shall mean any home site, for the construction of a Residence, identified on a Plat that is recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.13 "Lot Improvement" shall mean any addition to or modification of any part of the Lot and any improvements located thereon, including without limitation the exterior of the Residence.

Section 1.14 "Official Zoning Ordinance" shall mean "Ordinance Number 19-02, an Ordinance of the City Of Westfield and Washington Township, Hamilton County, Indiana Concerning Amendment to the Unified Development Ordinance" recorded March 20, 2019 as Instrument Number 2019009718 in the Office of the Recorder of Hamilton County, Indiana, as amended from time to time.

Section 1.15 "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 1.16 "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 1.17 "Plat" shall mean the subdivision plats of the Property which are recorded with the Recorder of Hamilton County, Indiana.

Section 1.18 "Pond Area" means any Common Area, or portion thereof, on which a Pond now exists or is later constructed by Declarant and "Pond" means a body of water which now exists or is later constructed by Declarant in a Pond Area.

Section 1.19 "Residence" shall mean any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single-family residential lot.

Section 1.20 "Special Use" shall mean any use defined or identified in any applicable zoning ordinance as a "Special Use".

Section 1.21 "Zoning Commitments" shall mean that certain Commitments Concerning Use And Development Of Real Estate, a copy of which is attached hereto and incorporated herein by reference as Exhibit "C".

## ARTICLE II

### CHARACTER OF THE DEVELOPMENT

Section 2.1. In General. Lots may be used only for residential purposes. All Property located within a Plat that has not been designated by numbering shall be used in a manner determined by the Declarant. Lots may be used only for single-family residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Property than the number of Lots depicted on the Plat. Notwithstanding any provision in the Official Zoning Ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 2.2. Other Restrictions. All Property shall be subject to the easements, restrictions, and limitations of record and rights-of-way, and also to the Official Zoning Ordinance, Zoning Commitments and all Applicable Laws.

## ARTICLE III

### ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY

Section 3.1 Additions. As of the date of the execution of this Declaration, the Property consists solely of the Real Estate. Declarant shall have the right, and hereby reserves on to itself the unilateral right, at any time, and from time to time, at any time prior to the end of the Development Period, to add to the Property and subject all or any part of the Additional Real Estate to this Declaration; provided, however, that the addition of any parts of the Additional Real Estate not owned by the Declarant at the time the same are subjected to this Declaration shall require the written consent of such Owner. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Declarant places of record in Hamilton County, Indiana, a written instrument or written statement so declaring the same to be part of the Property, which written instrument or written statement may be contained in a Plat, or an amendment or supplement to this Declaration. Any such written instrument or written instrument may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate.

Upon recording of any such instrument on or before the end of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to

time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the end of the Development Period. Such expansion of the Property shall not require the consent of any Person other than the Owner(s) of the property to be added, if not the Declarant and is entirely at the sole discretion of the Declarant, and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate, which Declarant may voluntarily in its sole discretion from time to time subject to this Declaration.

Section 3.2 Withdrawals. So long as it has a right to annex or subject to this Declaration the Additional Real Estate pursuant to Section 3.1, Declarant reserves the unilateral right in its sole discretion to amend this Declaration for the purpose of removing any portion of the Property, which has not yet been improved with Residences, from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant.

## ARTICLE IV

### EASEMENTS AND RESTRICTED AREAS

Section 4.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a Plat:

(A) Designated Regulated Drainage, Drainage, Utility, Sewer, Sanitary Sewer, Storm Sewer, and Best Management Practice Easements. There are strips of ground designated on the Plat as regulated drainage easements, drainage easements, utility easements, sewer easements, sanitary sewer easements, storm sewer easements, best management practice easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, electric lines, gas lines, telephone lines, fiber optic cable, high speed internet lines, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved by any entity to which the easement is dedicated, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such drainage easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance

and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, and their engineers and agents from all liability as to damage caused by storm waters or storm drainage. Further, there are hereby created easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

(B) Designated Mounding, Landscaping, and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, or landscape maintenance access easements are hereby reserved unto Declarant, during the Development Period, and, thereafter, unto the Association, for the purposes of (i) providing and maintaining signs which either advertise the Property and the availability of Lots or identify the Property and (ii) installing and maintaining landscaping, mounding, fencing, masonry walls, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Association or as approved by the Architectural Control Committee. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association or as approved by the Architectural Control Committee.

(C) Tree Preservation Easements and Tree Conservation Easements. Any strips of ground shown or designated on the Plat as tree preservation easements or tree conservation easements are hereby reserved unto Declarant, during the Development Period, and, thereafter, unto the Association, for the purposes of preserving existing trees and underbrush. No trees or underbrush shall be removed from the tree preservation easement or tree conservation easement areas except (i) where drainage, utilities, streets, paths and other infrastructure is required to be installed as approved by all applicable government agencies or utility service providers, (ii) where for trees that are dead or dying due to storm damage, disease or other natural causes, and (iii) where approved by the municipality. The Association shall maintain a sign every one hundred feet (100') identifying the area of a

tree preservation easement and/or a tree conservation easement ("Tree Preservation Area"). No grass clippings, trash or debris shall be placed, deposited or dumped in a Tree Preservation Area.

(D) Pedestrian Access Easements. Any strips of ground shown or designated on a Plat as pedestrian access easements are created for the use and enjoyment of the Owners and their family members and their guests.

(E) Easement Work. Notwithstanding any architectural approval under Article VII below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and any governmental entity shall have the right and the authority, without any obligation, liability or obligation of replacement, whatsoever to any Owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 4.1 (A) above.

Section 4.2 General Drainage, Utility, Sewer and other Development Easements. The following rights reserved in this Section 4.2 shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Residence or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 4.2 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association upon the expiration of any Development Period.

(A) General Easement. Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("General Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit the installation and allow to be maintained all electrical, telephone, water, gas, sanitary sewer, storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Residence. Any General Drainage, Utility and Sewer Easement include all areas of the Property outside any Residence. By virtue hereof, Declarant reserves the right to install a Pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement identified upon a Plat as a drainage, sanitary sewer, storm sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(B) Pond Easement. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement and right-of-way in and to any Pond Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Pond" or any other Common Area within the Property used as a water retention or detention area, or on which a Pond now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and establishing and

maintaining proper surface water drainage throughout the Property, including dewatering or aquatic maintenance, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or Ponds in accordance with all Applicable Laws (“Pond Easement”).

(C) Sign and Facility Easement. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, a general sign and facilities easement ("Sign and Facilities Easement") giving it the right to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising and/or identifying the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs and other improvements shall comply with any Applicable Laws and all such signs and other improvements shall be maintained by the Association as a part of its Common Area maintenance obligations.

(D) Additional Authority. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Utility and Sewer Easement, Pond Easement, and/or Sign and Facilities Easement, or any facility or infrastructure at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or change the description of any Drainage, Utility and Sewer Easement, Pond Easement, Sign and Facilities Easement and any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hamilton County, Indiana.

(E) The title of (i) the Declarant or the Association to the Common Area owned during the Development Period and (ii) any Owner of any Lot, shall be subject to the rights and easements reserved herein.

Section 4.3 Wetland Conservancy Area. A “Wetland Conservancy Area” designated on a Plat is an area that meets the definition of a wetland by the U.S. Army Corps of Engineers and is under the jurisdiction of the U.S. Army Corps of Engineers. All Wetland Conservancy Areas shall

be left in its natural state and shall not be filled, drained, maintained with any chemicals, or otherwise altered. The use of a Wetland Conservation Area by the Association and any Owner and the Owner's family members and guests shall be in such a manner as is consistent with maintaining the Wetland Conservancy Area's wetland function and status. In connection with any Wetland Conservancy Area constructed on the Property, there may be recorded in the Office of the Recorder of Hamilton County, Indiana a separate Declaration of Restrictive Covenants for Conservation describing specific restrictive covenants regarding the Wetland Conservation Area.

## ARTICLE V

### ADDITIONAL PROVISIONS RESPECTING SANITARY SEWER UTILITY

Section 5.1 Easements. Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and also give utility companies, whether public or private, as well as any governmental authorities, the right of ingress/egress.

Section 5.2 Trees. No trees shall be planted directly over sanitary sewer mains or lateral connections to any buildings. Any landscaping placed within easements or right-of-ways may be removed, damaged, or destroyed by the applicable utilities without any obligation of repair or replacement.

Section 5.3 Other Obstructions. No mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, or other improvements shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of these which are placed within easements or right-of-ways may be removed by the applicable utilities without any obligation of repair or replacement.

Section 5.4 Owner's Responsibility. All Owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the Residence to its connection to the sanitary sewer main.

Section 5.5 Discharge. The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains into the sanitary sewers is prohibited.

Section 5.6 Grade Changes. Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities, and must comply with Applicable Laws.

## ARTICLE VI

### COVENANTS AND RESTRICTIONS

Section 6.1 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 Applicable Laws, may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences, located in any particular platted area, than the number of Lots depicted on the Plat of such area. Notwithstanding any provision in the Official Zoning Ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 6.2 Lot Improvements. No Lot Improvement of any type or kind shall be constructed or placed on any Lot without the prior approval of the Architectural Control Committee. Exemptions include portable fire pits, portable storage totes/boxes (no greater than four feet tall and located so as not to be visible from the street), replacement or substitutionary plantings, and new additional plantings (not exceeding twelve shrubs and/or three trees). In addition, all improvements including exempted improvements must comply with all municipal codes and easement restrictions. The Architectural Control Committee's determination may be obtained only after the Owner of the Lot requesting authorization from the Architectural Control Committee has made written application to the Architectural Control Committee. Such written application shall include (i) a completed Lot Improvement Approval Request Form (ii) a copy of the Plot Plan or Surveyor Location Report prepared for the Lot by a professional Engineer or Land Surveyor (iii) any combination of representative pictures, digital renderings, architectural drawings, or scaled sketches sufficient enough to articulate the intent of the proposed improvement(s) and (iv) any other clarifying document that may be required by the Architectural Control Committee. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the Architectural Control Committee in the Architectural Control Committee's sole and absolute discretion, the Architectural Control Committee may pre-approve a Builder's plans and specifications for the original construction of a Residence and, in the event of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots without further approvals from the Architectural Control Committee. While not strictly required, it is the Architectural Review Committee's preference that all approval requests be submitted digitally and in PDF format. An approval shall neither be considered obtained nor binding without a signature of one of the Architectural Control Committee members. Prior to installation of approved improvements, it will be each Owner's responsibility to verify the boundaries of their Lot by obtaining a staked survey. It will also be each Owner's responsibility to verify where easements may encumber their Lot (while identified on the Plot Plan, a governing agency will often physically locate their easement on a Lot if requested) and obtain any necessary permissions or permits to encroach upon such easements regardless of the Association approving improvements that may be located there. Furthermore, the Association will not be responsible for any encroachments that may be committed by an Owner or Person acting on behalf of an Owner.

Section 6.3 Address Identification. The numbers representing the address of each Residence will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Architectural Control Committee.

Section 6.4 Lighting. All homes shall have exterior dusk to dawn lights as approved by the Architectural Control Committee, and such exterior lights shall be maintained by the Owner and operational nightly in perpetuity. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no permanent 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.

Section 6.5 Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling or Residence, temporary or permanent, nor may any structure of a temporary character be used as a dwelling or Residence. No temporary structure, trailer, or other outbuilding shall be placed or erected on any Lot, except by Declarant or a Builder. Any such temporary structure, trailer, garage, or other outbuilding shall be removed immediately upon completion of the primary Residence.

Section 6.6 Driveways. All driveways in the Property shall be concrete in material, unless otherwise approved by the Architectural Control Committee.

Section 6.7 Water Systems. Each Owner or Builder shall connect to the water main maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, or other charges lawfully established with respect to connections thereto.

Section 6.8 Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream 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 municipality or local governmental board having jurisdiction, "Drainage Easements" shall exist in drainage swales and 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 along such swale. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection 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.

Section 6.9 Signs. Except for such signs as Declarant or Builder may in its sole discretion display in connection with the identification of development of the Property and the sale of Lots therein, no sign of any kind shall be displayed to the public view of any Lot except that one (1) sign of not more than four (4) square feet may be displayed by an Owner at any time for the purpose of advertising a Lot or Residence thereon for sale.

Section 6.10 Fencing. This Section 6.10 is applicable to all Lots except those Lots which are used for a sales office or model home by the Declarant or a Builder. No fence, wall, hedge, or shrub planting shall be permitted between the front property line and the front building set back line except where such planting is part of the Residence landscaping approved by the Architectural Control Committee. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". In addition to the aforementioned, the fencing standards shall be:

(A) No fence may be erected on a Lot without prior written approval of the Architectural Control Committee.

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

(C) Where no common fence is shared, each Owner shall be responsible for maintaining their portion of the Lot outside of the fence, and such Owner has the right to enter the adjoining Owner's property in order to perform such maintenance. If, however, a common fence is shared, then each Owner shall only be responsible for maintaining the portion of property on their side of the fence.

(D) Fences shall not be placed closer to the front one-half of the depth of the side of the Residence and the public right-of-way, except on a Lot containing a Builder's model home, and then removed once the model has been sold to a resident.

(E) No fence shall be allowed within a Tree Preservation Easement. For proposals that include fence locations within Drainage and Utility Easements the Committee may issue a "conditional approval" which requires the Owner to obtain written permission to encroach from the Grantee of the easement. If permission is not obtained or alternate restrictions are imposed by the Grantee, the Owner needs to adjust the location of the fence to avoid the easement altogether or to accommodate such alternate restrictions imposed by the Grantee (provided that the fence be located a minimum of thirty-six inches away from the property line).

(F) Owners shall be responsible for obtaining any and all required building permits.

(G) Prior to fence construction Owners shall be responsible for determining the location of their property lines by having their property corners staked by a Professional Engineer or Land Surveyor or by physically locating previously installed lot corner

monuments. Neither the Committee nor the Board shall be responsible for mediating property disputes between residents.

(H) All fence construction shall be comprised of black wrought iron or other similar appearing material such as extruded aluminum or composite material.

(I) No fence shall exceed sixty inches in height. However, fences constructed on a Lot "adjacent" to a pond (i.e. if side yard Lot lines were to intersect any part of a pond when extended) shall be restricted to a maximum height of forty-eight inches in the rear yard portion of the Lot commencing at the rear corner of the home.

(J) All fences shall be of professional quality construction and kept in good repair.

(K) Proposals for food garden enclosures and privacy screens shall be reviewed independently from the aforementioned standards, and reviewed subjectively according to site-specific conditions.

(L) Invisible fences that are installed to contain the Owner's pets within his or her yard are permitted and do not require approval of the Architectural Control Committee.

Section 6.11 Garbage and Refuse Disposal. Trash collection services, at the time of the recording of this Declaration for the Development, may be provided for by the City of Westfield and billed to each Resident. If at a future date trash service is no longer provided by the City of Westfield, then trash collection services shall be provided only by an entity selected and designated by the Association. Any abnormal trash collection services needed by an Owner of a Lot shall be the responsibility of such Owner. 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 from the street (either within the garage or behind a Committee-approved screen as may be further defined in the Guidelines), except for a period of time not more than 24 hours prior to, and 12 hours after the removal thereof, when it may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary. No Owner shall accumulate or permit the accumulation out-of-doors of such refuse, including compost, on such Owner's Lot.

Section 6.12 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 maximum number of household pets that may be kept in a Residence or on a Lot in the aggregate is four household pets, regardless of the type or combination of types of household pets. The owners of such permitted pets shall keep them in accordance with all municipal codes and ordinances. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, and so on) shall be permitted to exist in a Residence or on a Lot without the unanimous consent of the Board of Directors; provided, however, that the decision of the Board of Directors to permit such animal or animals may be overturned by a majority vote of the members of the Association at any meeting. No pet shall be allowed to spend the night outside the dwelling unit on a Lot.

Section 6.13 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot unless it is in compliance with all Applicable Laws for outside burning.

Section 6.14 Antennae Systems. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Control Committee. The Architectural Control Committee may adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible from public view from the street. It is the intent of this provision that the Architectural Control Committee shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Control Committee conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 6.15 Common Areas Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the Architectural Control Committee: (i) any landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, landscape easement or sign easement, (ii) any entrance monument or signage identifying the Property or any section thereof and (iii) street signage.

Section 6.16 Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The corresponding costs incurred by the Association shall be assessed to the Owner and shall constitute a lien on such Owner's Lot. The Owner of such Lot shall reimburse the Association within thirty (30) days of the date on which the Owner is invoiced by the Association. The Association shall have the right to collect any amounts due and owing under this Section in the same manner as assessments are collected per the terms of Article XI below, together with reasonable attorney's fees and costs of collection. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

Section 6.17 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, or as approved by the Architectural Control Committee, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers are permitted anywhere on the Property.

Section 6.18 Diligence in Construction. Subject to inclement weather, every Residence shall be completed within fifteen (15) months after the commencement of the construction thereof. For cause shown, this fifteen (15) month period may be extended by the Architectural Control Committee. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months after the time of such

destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming.

Section 6.19 HVAC Units. No heat pumps, air conditioning units or gas meters shall be installed in the front of the Residence. Window units are prohibited.

Section 6.20 Pond and Pond Area(s). Except as otherwise provided, no individual using a Pond, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Pond, diversion of water, elevation of any Pond level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Pond management, except as provided in this Declaration. A Pond may not be used for swimming, ice skating, boating, or for any other purpose, except for (i) drainage of the Property and (ii) fishing from the shoreline of the Pond by Owners and their family members and guests, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Ponds and Pond Areas may or may not exist on the Property, and the reference throughout this Declaration to Ponds and Pond Areas is made in order to address Ponds and Pond Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Pond or Pond Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Pond or Pond Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area including, without limitation, Common Areas on which a Pond exists.

Section 6.21 Mailboxes. All mailboxes and posts must be approved by the Architectural Control Committee and shall be standard as to size, post, design, height, material, composition and colors. The Builder shall install the initial mailbox for each Lot, meeting the above criteria, at the Lot Owner's expense. The Owner shall, at the Owner's expense, maintain, repair, replace and paint said mailbox and post in conformance with all other mailboxes.

Section 6.22 Maintenance of Lots and Improvements. Each Owner shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Additionally, all Lots shall be free of weeds and properly irrigated in order to maintain a good and healthy appearance;
- (B) Remove all debris or rubbish from the Lot;
- (C) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;
- (D) Cut down and remove dead trees from the Lot; and,

(E) Within sixty (60) days following completion of a Residence, or an alternative date approved by the Architectural Control Committee in writing, or unless delayed by adverse weather conditions, the Owner shall landscape the Lot in accordance with the provisions set forth in this Declaration and the Owner's lot development plan approved by the Architectural Control Committee.

Section 6.23 Clothes Lines. No clotheslines may be erected on any Lot.

Section 6.24 Outbuildings and Dog Houses. All house additions must be approved by the Architectural Control Committee. On all Lots, (i) any outbuilding must be approved by the Architectural Control Committee; and (ii) under no circumstances will a storage shed or dog house that is not incorporated into the side or rear elevation of the house be permitted. On all Lots, prefabricated storage units no greater than three feet in height and designed to store items such as patio furniture cushions shall not require Committee approval provided that the prefabricated storage unit be located in the rear yard of the Lot and placed within two inches of and plumb to the rear elevation of the house.

Section 6.25 Play Equipment. On all Lots, (i) children's portable play equipment such as sandboxes, temporary swimming pools having a depth no greater than eighteen (18) inches, playhouses no greater than four (4) feet in height, and plastic or wooden play/swing sets no greater than eight (8) feet in height shall not require Architectural Control Committee approval provided that such equipment is located in the rear yard of the Lot between the back corners of the house or behind a Committee approved screen; and (ii) play structures exceeding eight (8) feet in height and metal play equipment of any size shall require Architectural Control Committee approval. On all Lots, trampolines are prohibited.

Section 6.26 Plumbing. All plumbing vent stacks are to be located on the rear of the Residence unless an alternative location is approved by the Architectural Control Committee.

Section 6.27 Subsurface Drains and Sump Pump Discharges. Subsurface drains may have been provided in certain areas within drainage easements as additional storm and ground water drainage sources and are part of the public storm drainage system. If one or more subsurface drain laterals have been provided on a Lot, the Builder on such Lot shall connect all sump pump discharge lines to such laterals. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Lot Owner in accordance with the following:

(A) The areas of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the home and the connection with the publicly maintained storm sewer or subsurface drain within the drainage easement.

(B) In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered.

(C) Any Owner or Builder damaging, changing, or altering these subsurface drains or common subsurface drain laterals shall be responsible for such action and will be given ten (10) days' notice, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association may cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owner(s) and/or Builder(s) for immediate payment. If immediate payment is not received, the amount owed shall be a lien on the subject Lot and Residence and the Declarant and/or the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XI of this Declaration.

Section 6.28 Swimming Pools and Hot Tubs. Only permanent, in-ground, professionally constructed pools, which are approved by the Architectural Control Committee, shall be permitted upon a Lot. All submittals to the Architectural Control Committee shall include landscape plans. All backyard pools shall be oriented to minimize the potential effect on neighboring Lots, shall be enclosed by a fence which obstructs unauthorized access or shall have an automatic pool cover, and shall comply with all other Applicable Laws. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Architectural Control Committee approvals. Hot Tubs must also be approved by the Architectural Control Committee.

Section 6.29 Tennis Courts, Racquetball Courts, Paddleball Courts and so on. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities are not permitted; provided, however, that basketball goals may be installed on a Lot adjacent to driveway without Architectural Control Committee approval so long as they are permanent and have clear fiberglass or glass backboards supported by black posts. No basketball goal or backboard shall be permitted to hang from or be affixed to the Residence or garage. Temporary or portable basketball goals and courts are not permitted.

Section 6.30 Vents. All metal and PVC roof or range vents shall be painted to blend with roof color.

Section 6.31 Windows and Doors. If storm doors are installed, they must be painted to match or compliment the exterior of the Residence, and must be approved by the Architectural Control Committee. No unfinished aluminum doors or windows are allowed. All interior window coverings shall be specifically designed as window treatments, including but not limited to: blinds, shutters, or drapes. No sheets, towels, paper or other similar items, not expressly designed as window treatments, shall be used to cover a window.

Section 6.32 Street Signs. Decorative street signs that do not conform to applicable municipal standards may be installed by Declarant in the Declarant's sole discretion. Such decorative street signs, if any, shall be maintained by the Association, and shall be repaired or replaced by the Association, if damaged, in accordance with Applicable Laws.

Section 6.33 Fuel 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, are prohibited.

Section 6.34 Home Occupations. No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, for any purpose other than as a single-family residence, except that a home occupation, that satisfies all requirements of all Applicable Laws, may be permitted provided that, in addition to the requirements of Applicable Laws, any such Owner's use is conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, and is clearly incidental and secondary to the use of the Residence for dwelling purposes and does not change the character thereof and in connection with which there is (i) no sign or display that will indicate from the exterior that the Residence is being utilized in whole or in part for any purpose other than that of a dwelling; (ii) no commodity sold upon the premises; (iii) no person is employed other than a member of the immediate family residing in the Residence; and (iv) no manufacture or assembly operations are conducted. Provided, however, that in no event shall a child day care, barber shop, styling salon, animal hospital, any form of animal care or treatment such as dog trimming, or any other similar activities be permitted as a home occupation. The foregoing notwithstanding, the Declarant and Builders shall be permitted to operate sales and construction trailers, model homes, and sales offices.

Section 6.35 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales (ditches) along dedicated roadways or within rights of way or established drainage easements:

(A) Drainage swales (ditches) along dedicated roadways or within rights-of-way or established drainage easements, shall not be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Association. Owners must maintain these swales as grass ways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Owner causing such damages.

(B) Any Owner or Builder altering, changing, or damaging such drainage swales or ditches shall be responsible for such action. The appropriate jurisdictional agency, the Declarant or the Association may cause said repairs to be accomplished and the invoice for such repairs shall be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the amount owed, together with reasonable attorney's fees, shall be a lien on the subject Lot and the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XI of this Declaration.

Section 6.36 Roofing Materials. The roofing materials on all Residences shall be of a quality, style and composition acceptable to the Architectural Control Committee. Replacement shingles shall not require Committee approval provided that such shingles match existing material, color (within half shade), size, and tab type (upgrading from 3-tab to architectural/dimensional tab type also acceptable).

Section 6.37 Solar Panels. Solar panels shall not be permitted on any Residence unless the solar panel is approved by the Architectural Control Committee. The Architectural Control

Committee, in reviewing a request for a solar panel, shall consider landscaping, location, size, aesthetics, and the visibility of the solar panel.

Section 6.38 Parking of Vehicles. Commercial vehicles and trucks are prohibited, unless such commercial vehicles or trucks are kept in the garage and completely out of view. No trucks one (1) ton or larger in size, campers, trailers, motor homes, boats, snowmobiles, wave runners, junk or inoperable cars, fuel tanks or similar vehicles shall be parked or stored on any Lot in the Property except within a closed garage. No vehicle shall be regularly parked upon unpaved areas. At no time shall any vehicle be parked in such a way as to block pedestrian access along the public sidewalk adjacent to the street, or prevent mail delivery, or prevent access to any driveway. Each Owner shall be responsible for his or her own vehicles as well as those vehicles belonging to the Owner's guests. Any vehicle of any kind parked in the public right-of-way shall comply with all ordinances, rules and regulations of City of Westfield.

Section 6.39 Wells. Water wells, which are approved by the Architectural Control Committee and may be used only for irrigating lawns and landscaping, may be drilled on Lots and Common Areas so long as the water from such wells will not discolor sidewalks or concrete and, in the event of such discoloration, the responsible Owner shall be liable and responsible for all clean-up costs. All wells must comply with all Applicable Laws. All well equipment, tanks, pumps and other related infrastructure shall be underground. Well heads shall not be located in front yards or side yards, and shall be properly screened and landscaped.

Section 6.40 Occupancy or Residential Use of Partially Completed Residence Prohibited. No Residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy therefore has been issued.

Section 6.41 Sidewalks. Each Builder or Owner, at their expense, shall be responsible for installing sidewalks along and within the segment of the Street adjacent to their Lot.

Section 6.42 Construction and Landscaping; Time Requirements; Divestiture; Penalties. All construction upon, landscaping of, and other improvements to a Lot shall be completed strictly in accordance with a Lot development plan approved by the Architectural Control Committee. All landscaping specified on the landscaping plan approved by the Architectural Control Committee shall be installed on the Lot strictly in accordance with such approved plan within sixty (60) days following substantial completion of the Residence, unless delayed due to adverse weather conditions.

Section 6.43 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system shall be installed or maintained on any Lot.

Section 6.44 Electric Bug Killers. Electric Bug Killers, "zappers", and other similar devices shall be prohibited.

Section 6.45 Garage and Yard Sales; Holiday Lights. There shall be no more than two (2) garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period. Holiday lights and other holiday or occasion-themed decorations may be erected no sooner than five (5) weeks prior to, and removed not later than four (4) weeks after, such holiday or

occasion.

Section 6.46 Gardens. Vegetable, wildflower, and other gardens may be located only in the rear yard of a Lot and may not exceed one hundred (100) square feet in size. Vegetation within the garden area may not exceed three feet (3') in height.

Section 6.47 Street Trees. Street trees placed in the right-of-way between the curb and public sidewalk are the responsibility of the Owner of the Lot that is bordering the right-of-way. In the event a street tree dies, the Owner must replace the street tree with the same specie of the existing tree, or if not available, one from the City of Westfield's published list of recommended trees. The tree must be replaced within 30 days of notification from the Association. If a dead tree does not get replaced within the 30 days, then the Association reserves the right to replace the tree and charge the Owner for the cost of such tree replacement.

## ARTICLE VII

### ARCHITECTURAL CONTROL COMMITTEE

Section 7.1 Approvals. Approvals, determinations, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, by an authorized member of the Declarant with respect to approvals to be obtained from the Declarant, by an officer of the Association with respect to approvals to be obtained from the Association and by a member of the Architectural Control Committee with respect to approvals to be obtained from the Architectural Control Committee. The Architectural Control Committee may, in its discretion, unilaterally promulgate written architectural and design standards or guidelines (the "Guidelines") which shall be binding upon the Owners.

Section 7.2 Architectural Control Committee. An Architectural Control Committee, composed of at least three (3) members, shall exist and shall be appointed by the Declarant until the end of the Development Period, and appointed by the Board of Directors thereafter. Such members shall be subject to removal by the Declarant at any time, with or without cause, until the end of the Development Period, and subject to removal by the Board of Directors at any time, with or without cause, thereafter. Any vacancies from time to time shall be filled by appointment by the Declarant until the end of the Development Period, and by appointment by the Board of Directors thereafter.

Section 7.3 Duties of Architectural Control Committee. The Architectural Control Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information has been submitted to the Architectural Control Committee. The Architectural Control Committee, for its permanent files, shall retain one copy of submitted material. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If, however, approval has not been received by the applicant in writing within thirty (30) days, then said request shall be deemed denied.

Section 7.4 Exercise of Discretion. Declarant intends that the members of the Architectural Control Committee shall exercise discretion in the performance of their duties consistent with the provisions of this Declaration, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members of the Architectural Control Committee. In any judicial proceeding challenging a determination by the Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Control Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Control Committee, could only conclude that such determination constituted an abuse of discretion.

Section 7.5 Inspection. The Architectural Control Committee may inspect work being performed without the Owner's permission to verify compliance with the Declaration.

Section 7.6 Liability of Architectural Control Committee, Declarant and Association. Neither the Architectural Control Committee nor any agent thereof, nor the Declarant, or the Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Control Committee, Declarant or Association be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Architectural Control Committee, Declarant and Association make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, whether the improvements result in any encroachments, the compliance of proposed plans with Applicable Laws, or the materials to be used. All parties should seek professional construction advice, engineering, and inspections of each Lot prior to purchasing the Lot, commencing original construction on said Lot or installing any fences, landscaping, additions, remodeling or other improvements on said Lot.

Section 7.7 Power of Disapproval. The Architectural Control Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. By way of example only, common grounds for denial include, but are not limited to, a deficiency in or absence of the following:

- (A) The plans, and specifications, required to be submitted; and
- (B) The consistency of the design, color scheme, and square footage of a proposed improvement with the general surroundings of the Lot or with adjacent buildings or structures.

Section 7.8 Power to Grant Variances. The Architectural Control Committee may allow reasonable variances or adjustments of this Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Declaration, no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots, and any such variance granted shall not be considered as precedent setting.

Section 7.9 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the Architectural Control Committee shall regulate the external design, appearance, location and maintenance of lands and improvements thereon in such a manner as to maintain a harmonious relationship among structures and the natural vegetation and topography.

## ARTICLE VIII

### CONTIGUOUS LOTS

Section 8.1 Rules Governing Building on Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for one, single Residence, such Owner must apply in writing to the Architectural Control Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such one, single Residence shall be treated as a single Lot for the purpose of applying this Declaration to said Lots, so long as the Lots remain improved with only one, single Residence; provided, however, that with respect to the combined Lots, the Owner of the combined Lots shall be obligated to pay Annual Assessments, One-Time Assessments, and Special Assessments for each originally platted Lot constituting the combined Lots, and such Annual Assessments, One-Time Assessments, and Special Assessments shall be a lien on the combined Lots, all per the terms and conditions of Article XI below. In addition, the Owner must obtain all requisite and necessary permits and approvals required pursuant to Applicable Laws.

## ARTICLE IX

### USE AND OWNERSHIP OF COMMON AREA; OTHER RIGHTS AND OBLIGATIONS

Section 9.1 Ownership. A license, upon such terms, conditions, rules and regulations as the Board of Directors, shall from time to time promulgate, for the use and enjoyment of the Common Areas, is hereby granted to the Owners and their family, guests, tenants or contract purchasers. Every Owner shall have a nonexclusive right and easement of enjoyment in common with all other Owners, in and to the Common Areas, which nonexclusive right and easement of enjoyment shall be appurtenant to and pass with the title to every Lot.

Section 9.2 Use. All Common Areas shall be used for such purposes deemed appropriate by the Declarant until the end of the Development Period and following the end of the Development Period, all Common Areas shall be used for such purposes as deemed appropriate by the Association.

Section 9.3 Non-dedication. Neither the Declarant's execution nor recording of the Plats nor the doing of any other act by the Declarant is, or is intended to become, or shall be construed as, a dedication to the public of any Common Area.

Section 9.4 Use of Lancaster Amenity Center by Pool-Related Communities Owners. Declarant intends to construct an amenity center on the Property to include a swimming pool, pool building, pool deck, pool gates, pool security system, basketball court, playground, sidewalks, parking lot and other ancillary improvements (the "Lancaster Amenity Center"), which shall be owned and operated by the Association. Pursuant to that certain City of Westfield Ordinance #11-19 for the Springmill Trails PUD (the "Springmill Trails PUD"), and the Official Zoning Ordinance, the Lancaster Amenity Center shall be available for use not only to the Owners, but also to all the owners of residences located within Residential District #1 of the Springmill Trails PUD, as defined in the Springmill Trails PUD, which includes (a) all residences in the Lancaster Villas subdivision located and to be developed in Lancaster, Sections 5 and 6, (b) all residences in the Lancaster Towns subdivision located and to be developed in Lancaster, Sections 7, 8, 9 and 10, (c) all residences in the Emory Trace subdivision, and (d) all residences in any other residential subdivision located or to be developed within Residential District #1 of the Springmill Trails PUD, including such owners' family members, guests, tenants, and contract purchasers (Lancaster, Lancaster Villas, Lancaster Towns, Emory Trace and any other subdivision located or to be developed within Residential District #1 of the Springmill Trails PUD are each referred to individually as a "Pool-Related Community", and collectively as "Pool-Related Communities"; and each owner of a residence in a Pool-Related Community, excluding the developer of such Pool-Related Community and the homebuilders constructing homes in such Pool-Related Community, are each referred to individually as a "Pool-Related Communities Owner" and collectively as "Pool-Related Communities Owners"). The terms and conditions for the use of the Lancaster Amenity Center by the Pool-Related Communities Owners are as follows:

(A) The Declarant is also the developer of the Lancaster Villas and Lancaster Towns subdivisions, and the Declarant plans to initially fund the entire cost of the Lancaster Amenity Center for the benefit of the Owners, and the owners in the Lancaster Villas and Lancaster Towns subdivisions. Prior to the use of the Lancaster Amenity Center by the owners in a Pool-Related Community, other than Lancaster, Lancaster Villas and Lancaster Towns, the developer of such Pool-Related Community shall pay \$1,000 for each platted lot in such Pool-Related Community to the Association as a capital contribution towards the cost of constructing the Lancaster Amenity Center including the land acquisition and all construction-related costs (the "Lancaster Amenity Center Capital Contribution"). The Lancaster Amenity Center Capital Contribution shall be used to reimburse Declarant for the amount funded by Declarant towards the cost of the Lancaster Amenity Center in excess of \$1,000 times the aggregate number of platted lots in the Lancaster, Lancaster Villas and Lancaster Towns subdivisions, and after Declarant has been fully reimbursed for such excess funding of the Lancaster Amenity Center, if applicable, any remaining portion of the Lancaster Amenity Center Capital Contribution shall be maintained by the Association to be used for future repairs and replacements of the Lancaster Amenity Center.

(B) After construction of the Lancaster Amenity Center is completed and the swimming pool within the Lancaster Amenity Center is available for use, the Board shall determine in good faith by April 1 of each calendar year the estimated annual operating costs of the Lancaster Amenity Center for that calendar year, plus the estimated costs for the repair and replacement reserve for the pool, pool building, parking lot, and all other

facilities that in the sole determination of the Board are necessary to support the operation of the Lancaster Amenity Center (the “Annual Amenity Center Cost”).

(C) No later than April 30 of each calendar year, the Board shall in good faith allocate the Annual Amenity Center Cost among the Pool-Related Communities on a pro-rata basis based on the number of Pool-Related Communities Owners as of April 1 of that calendar year. Each homeowners association of a Pool-Related Community, or the individual Pool-Related Communities Owners if such Pool-Related Communities Owners are not part of a homeowners association, shall pay to the Association by May 15 of each calendar year its allocated portion of the Annual Amenity Center Cost. The Annual Amenity Center Cost charged to the Pool-Related Communities shall not be subsequently revised for that calendar year due to any changes in the number of Pool-Related Communities Owners in a Pool-Related Community, and any new Pool-Related Community Owners who first move into a Pool-Related Community after April 1 of a calendar year shall be allowed to use the Legacy Amenity Center for such calendar year.

(D) Related to the use and enjoyment of the Lancaster Amenity Center, all Pool-Related Communities Owners shall be subject to the same rules and regulations to which the members of the Association are subject, and all Pool-Related Communities Owners shall have the same rights and privileges with respect to the use of the Lancaster Amenity Center as the members of the Association.

(E) The terms and conditions related to the use of the Lancaster Amenity Center that are contained in the Declaration may not be amended, modified or eliminated without the consents of the boards of directors of all of the homeowner associations of the Pool-Related Communities.

(F) In addition, in connection with the Official Zoning Ordinance, the owner of the property located adjacent to the west side of the Lancaster Villas subdivision currently owned by Hertha Markusfeld and identified as tax parcel 08-05-27-00-00-011.000 (the “Markusfeld Property”) shall have the option to use the Lancaster Amenity Center by paying an annual fee by such Markusfeld Property owner to the Association by May 15 of such year in the amount equal to the Annual Amenity Center Cost divided by the number of Pool-Related Communities Owners for such year, which option shall automatically terminate at such time as when the Markusfeld Property is developed for occupancy of more than one residence, as determined through the issuance of certificates of occupancy by City of Westfield, Indiana.

## ARTICLE X

### LANCASTER HOMEOWNERS ASSOCIATION, INC.

Section 10.1 Association Duties. The duties of the Association shall include the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the Property, (ii) the maintenance and repair of the Common Areas including, but not limited to, the Lancaster

Amenity Center, walking trails, any other amenities, and all lighting, landscaping, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments, water features, Ponds, signage, and the landscaping surrounding such entrances monuments and signage, (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and any sign landscape easement, and (v) the performance of any other obligations and duties of the Association specified in this Declaration. The foregoing provisions of this Section notwithstanding, an Owner shall be responsible and liable for any damage to any Common Areas or improvements thereon caused by such Owner or such Owner's agent, contractor, or guest, and the costs of repair or replacement necessitated by such damage shall be immediately paid by the Owner to the Association and may be assessed as a Violation Assessment and enforced per the terms of Article XI below.

Section 10.2 Board of Directors. Prior to the end of the Development Period, members of the Board of Directors shall be appointed by the Declarant, vacancies in the Board of Directors shall be filled by the Declarant, and members of the Board of Directors may be removed and replaced by the Declarant, at any time and for any reason. After the end of the Development Period, the Owners shall elect a Board of Directors as prescribed by the Association's Articles of Incorporation, and the Association's Bylaws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 10.3 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

(A) Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such 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.

(B) Class B. The Class B member shall be the Declarant. At all times prior to expiration of the Class B Membership, as provided below in this Section, the Class B member shall have the same number of votes at any meeting in which votes are to be taken as is held collectively by all Class A members, plus one hundred (100) additional votes. The Class B Membership shall terminate and be converted to Class A Membership and the Development Period shall expire upon the happening of the earlier of the following:

(i) When the Class B member no longer owns any portion of the Real Estate or the Additional Real Estate; or

(ii) December 31, 2050

(iii) When, in its sole discretion, the Declarant expressly and specifically terminates and waives in writing its right to Class B Membership. The Declarant reserves the right to assign some of its rights and obligations under this Declaration

without terminating the Development Period and without terminating or waiving its right to Class B Membership.

Section 10.4 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) of the Association (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot shall be a member of the Association. Apart from the Initial member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 10.5 Professional Management. No contract or agreement for professional management of the Association, nor any other contract to which the Association is a party, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less. After the end of the Development Period, the Association shall use a professional management company to manage the Association.

## ARTICLE XI

### ASSESSMENTS

Section 11.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant or a Builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following (collectively the "Assessments"):

- (A) Annual Assessments (hereafter defined);
- (B) One-Time Assessment (hereafter defined);
- (C) Special Assessments (hereafter defined); and
- (D) Violation Assessments (hereafter defined) levied for a violation of this Declaration.

Section 11.2 Annual Budget. By majority vote of the Board of Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration (the "Annual Budget").

#### Section 11.3 Annual Assessment.

(A) Amount and Due Dates. The Annual Assessment provided for herein shall be per calendar year, shall commence for each Lot on the date of closing of the sale of such Lot to an Owner other than the Declarant or a Builder. The Annual Assessment, commencing during the calendar year in which the first Lot is conveyed to an Owner other than the Declarant or a Builder, shall be Eight Hundred and 00/100 Dollars (\$800.00), or

the then prevailing amount of the Annual Assessment, per Lot, per year and shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the Annual Assessment at least thirty (30) days in advance of the effective date of such increase. Unless pro-rated as set forth above for the first Annual Assessment due with respect to the sale of a Lot to an Owner other than the Declarant or a Builder, the due date for Annual Assessments shall be January 1<sup>st</sup> of each calendar year, and such Assessment shall be subject to collection and late charges beginning on January 31<sup>st</sup> of each calendar year.

(B) Purpose of Assessments. The Annual Assessment levied by the Association shall be used in the reasonable discretion of the Board of Directors to fulfill the duties and obligations of the Association specified in this Declaration including, without limitation, (i) the obligation to maintain and repair all Common Areas and all improvements located therein, (ii) the establishment of a reserve for replacement, to be separately maintained in an FDIC insured account with a financial institution, to fund significant capital expenditures, maintenance, repair and replacement of all Common Areas, including, without limitation, the Lancaster Amenity Center, walking trails, other amenities, water features, landscaping, signs, lighting and other improvements within the Common Areas, (iii) to pay insurance premiums for liability insurance, property insurance insuring the improvements in the Common Areas, and for any other insurance applicable to the Association deemed necessary by the Board of Directors and (iv) the costs of professional management to manage the Association, if engaged.

(C) Method of Assessment. Prior to the end of the Development Period, the Board shall, by a vote of a majority of the Board without notice to or approval or a vote by the members of the Association, and on the basis specified above, fix the Annual Assessment for each assessment year of the Association at an amount sufficient to meet the Annual Budget. The Board shall establish the date(s) and frequencies the Annual Assessment shall become due, and the manner in which it shall be paid. The Annual Assessment may increase or decrease each year in order to satisfy the Annual Budget as determined by the Board of Directors in its sole discretion.

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

(i) After the end of the Development Period, and subject to subparagraph (ii) below, the Annual Budget must be approved at a meeting of the members of the Association by a majority of the members of the Association in attendance at a meeting called and conducted in accordance with the requirements

of this Declaration, the Association's Articles of Incorporation and the Association's Bylaws. For purposes of this meeting, a member of the Association is considered to be in attendance at the meeting if such member attends: (1) in person; (2) by proxy; or (3) by any other means allowed under Indiana law or under this Declaration, the Association's Articles of Incorporation or the Association's Bylaws.

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

Section 11.4 One-Time Assessment. Upon the closing of the initial conveyance of each Lot to an Owner other than Declarant or a Builder, the purchaser of such Lot and/or Residence shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of Four Hundred Fifty Dollars (\$450.00) against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

Section 11.5 Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, for the costs of undertaking other activity that is the responsibility of an Owner hereunder but which such Owner has not undertaken as required hereunder, for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain and for operating deficits which the Association may from time to time incur.

Section 11.6 Violation Assessment. In addition to all other Assessments authorized herein, the Board of Directors may levy a Violation Assessment to an Owner, (i) for a violation of this Declaration or (ii) for damages if any portion of the Common Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest, invitee, tenant or contract purchaser. In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair or replacement is in the sole discretion of the Board.

Section 11.7 Basis for Assessment.

(A) Lots Generally. Each Lot owned by a Person other than Declarant or a Builder shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(B) Lots Owned by Declarant or a Builder. Neither the Declarant nor any Builder shall be required to pay any Annual Assessments, One-Time Assessments or Special Assessments so long as any Residence constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Residence as a residence or leased to an individual or an entity for use as a Residence.

Section 11.8 Notice and Due Date. Written notice of Special Assessments and such other Assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject to such Assessment. The due dates for all Assessments shall be established by the Board of Directors.

Section 11.9 Assessment Liens. All Assessments, together with interest thereon, attorney's fees, and other costs of collection permitted by this Declaration to be collected, shall be a charge on the land and shall be a continuing lien, until paid in full, upon the Lot against which each Assessment is made. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due.

Section 11.10 Failure of Owner to Pay Assessments. No Owner, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Residence belonging to such Owner, may exempt himself or herself from paying Annual Assessments, One-Time Assessments, Special Assessments, or Violation Assessments, or from contributing toward the expenses of administration or maintenance and repair of the Common Areas, or from any other expense lawfully agreed upon. Each Owner shall be personally liable for the payment of all Annual Assessments, One-Time Assessments, Special Assessments, Violation Assessments and all other charges applicable to such Owner and such Owner's Lot. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Annual Assessments, One-Time Assessments, Special Assessments, or Violation Assessments when due, the lien for such Assessment on the Owner's Residence may be foreclosed by the Association in the same manner as mortgages are foreclosed in the State of Indiana or as otherwise specified under the Applicable Laws. Upon the failure of an Owner to make payments of any Annual Assessments, One-Time Assessments, Special Assessments, or Violation Assessments within ten (10) days after such are due, the Board of Directors, in its sole discretion and regardless of whether litigation is commenced, may:

- (1) impose a uniform late charge, which will be considered an addition to the Assessment, in an amount to be determined by the Board of Directors of up to twenty-five percent (25%) of the amount of the Assessment;
- (2) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;

- (3) require that, in addition to the delinquent Assessment and any applicable late charge, the Owner of the respective Residence also pay (i) any attorney's fees incurred incident to the collection of the delinquent Assessment and (ii) collection costs incurred by the Association to the managing agent for processing delinquent Owners' accounts;
- (4) suspend such Owner's right to use the Common Areas as provided in the Indiana Nonprofit Association Act of 1991, as amended; and
- (5) suspend an Owner's right to vote if such Owner is more than six (6) months delinquent.

In any action to foreclose the lien for any Assessments, the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to any unpaid Annual Assessments, One-Time Assessments, Special Assessments, or Violation Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Annual Assessments, One-Time Assessments, Special Assessments, or Violation Assessments without foreclosing or waiving the lien securing the same. In any action to recover an Annual Assessment, One-Time Assessment, Special Assessment, and Violation Assessment, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to collection costs incurred by the Association to the managing agent for processing delinquent Owners' accounts and reasonable attorney's fees, from the Owner of the respective Residence.

Section 11.11 Certificates. The Association shall, upon reasonable request by an Owner, at any time, furnish a letter in writing signed by an officer of the Association, indicating the accounting status of Assessments on a Lot, and showing the balance due the Association, if any.

Section 11.12 Subordination of the Lien to Mortgages. The sale or transfer of any Lot shall not affect the lien of Assessments levied under this Article XI; provided, however, (i) that 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 (ii) that the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding or deed in lieu thereof, while not relieving the Owner at the time the Assessment was due of personal liability therefore, shall extinguish the lien of such Assessments which became due or are attributable to the period of time prior to such sale or transfer. No such sale or transfer, however, shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

## **ARTICLE XII**

### **REMEDIES**

Section 12.1 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of covenants,

conditions, and restrictions in this Declaration shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration.

Section 12.2 In General. The Association, the Declarant and/or any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to compel compliance with these restrictions and covenants, and shall be entitled to recover costs of collection and reasonable attorney's fees; however, neither the Declarant, nor the Association, shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any terms, conditions, or restrictions contained in this Declaration.

### **ARTICLE XIII**

#### **EFFECT ON BECOMING AN OWNER**

Section 13.1 The Owner(s) of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restriction contained in this Declaration. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of the Declarant, the Architectural Control Committee, and the Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, the Architectural Control Committee, and the Association to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

### **ARTICLE XIV**

#### **TITLES**

Section 14.1 The titles preceding the various Sections and paragraphs of this Declaration are for convenience of reference only and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine.

### **ARTICLE XV**

#### **MISCELLANEOUS**

Section 15.1 Severability. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. 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 as 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.

Section 15.2 Statute of Frauds. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Herbert Walker Bush, former President of the United States of America.

Section 15.3 Duration. This Declaration and its covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2070, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless changed per the terms of Article XVII below.

## ARTICLE XVI

### DECLARANT'S RIGHTS

Section 16.1 Any and all of the rights and obligations of the Declarant set forth in this Declaration may be transferred, in whole or in part, to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded with the Recorder of Hamilton County, Indiana.

Section 16.2 Nothing in this Declaration shall be construed or applied in a manner that limits or restricts the Declarant or the Builder in the development of the Property or the construction of Residences within the Property. Therefore, notwithstanding anything in this Declaration to the contrary, the Declarant and Builder may maintain and carry out upon any portion of the Property, including any Common Area, Lot, and/or such facilities and activities as, in the opinion of the Declarant or Builder, may be reasonably required, convenient, or incidental to the development of the Property and the construction or sale of Residences including, without limitation, business offices, signs, model units, sales offices, and sales and construction trailers.

## ARTICLE XVII

### AMENDMENT TO THIS DECLARATION

Section 17.1 Except as expressly prohibited in this Declaration, this Declaration may be amended or modified from time to time and at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, approved and signed by at least seventy-five percent

(75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Until the end of the Development Period, this Declaration may also be amended unilaterally, from time to time and at any time, without notice or vote, by Declarant in the Declarant's sole discretion.

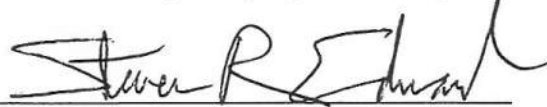
(signature page follows)

IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Declaration as of the date first above written.

**DECLARANT:**

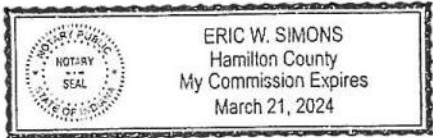
**LANCASTER DEVELOPER, LLC**, an Indiana limited liability company

By: Platinum Properties Management Company, LLC, an Indiana limited liability company, its Manager

By:   
Steven R. Edwards,  
Vice President – Chief Financial Officer

STATE OF INDIANA        )  
                                          ) SS:  
COUNTY OF HAMILTON )

BEFORE ME, a Notary Public in and for said County and State, personally appeared Steven R. Edwards, the Vice President – Chief Financial Officer of Platinum Properties Management Company, LLC, an Indiana limited liability company, the Manager of Lancaster Developer, LLC, an Indiana limited liability company, who executed the foregoing Declaration for and on behalf of said this 19<sup>th</sup> day of October, 2020.



  
Notary Public

Pursuant to IC 36-2-11-15(b)(2), I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law – Steven R. Edwards.

This Instrument Prepared by: Steven R. Edwards, Platinum Properties Management Company, LLC, 9757 Westpoint Drive, Suite 600, Indianapolis, Indiana, 46256.

**CERTIFICATE OF PROOF**

WITNESS to the signature(s) executed and delivered in my presence on the foregoing instrument to which this Proof is attached:



Witness Signature

Edward E. Fleming

Witness Name (must be typed/ printed)

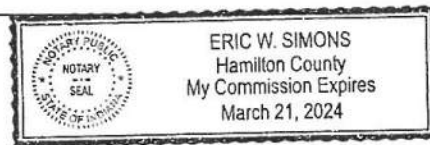
STATE OF INDIANA        )  
                                          )  
COUNTY OF HAMILTON    )

Before me, a Notary Public in and for said County and State, on October 19, 2020, personally appeared the above named WITNESS to the foregoing instrument, who, being by me duly sworn, did depose and say that he/she knows Steven R. Edwards to be the individual described in and who executed the foregoing instrument; that said WITNESS was present and saw said Steven R. Edwards execute the same; and that said WITNESS at the same time subscribed his/her name as a witness thereto.

Witness my hand and Notarial Seal this 19<sup>th</sup> day of October, 2020.

Signature: , Notary Public

Printed:



My Commission Expires:

My County of Residence is:

## EXHIBIT "A"

### The Real Estate – Legal Description

#### Lancaster, Section 1

A part of the Southeast Quarter of Section 27, Township 19 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 27; thence South 00 degrees 09 minutes 59 seconds West, along the East line of said land, a distance of 565.41 feet to the Southeast corner of the land described in Instrument Number 2015-039273 in the Office of the Hamilton County Recorder, said point also being the POINT OF BEGINNING of this description; thence continuing South 00 degrees 09 minutes 59 seconds West, along said land, a distance of 908.45 feet to the Northeast corner of the land described in Instrument Number 2013-020452 in said Recorder's Office; thence South 89 degrees 28 minutes 22 seconds West, along the North line of said land, a distance of 275.48 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 223.92 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 379.00 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 59.18 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 319.00 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 100.00 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 536.16 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 130.00 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 124.86 feet to a point on a curve concave northerly, the radius point of which bears North 00 degrees 00 minutes 23 seconds East a distance of 1,429.50 feet from said point; thence westerly along said curve an arc length of 175.77 feet to a point on said curve, said point being South 07 degrees 03 minutes 05 seconds West a distance of 1,429.50 feet from the radius point of said curve; thence North 07 degrees 03 minutes 05 seconds East a distance of 59.00 feet; thence South 83 degrees 13 minutes 10 seconds East a distance of 12.96 feet; thence North 06 degrees 30 minutes 35 seconds East a distance of 130.00 feet; thence South 86 degrees 37 minutes 22 seconds East a distance of 135.58 feet; thence South 89 degrees 59 minutes 00 seconds East a distance of 60.02 feet; thence South 89 degrees 59 minutes 37 seconds East a distance of 965.16 feet; thence North 15 degrees 59 minutes 17 seconds East a distance of 148.12 feet; thence North 00 degrees 09 minutes 59 seconds East a distance of 68.13 feet; thence South 89 degrees 50 minutes 01 second East a distance of 51.05 feet to the Southwest corner of the land described in the aforementioned Instrument Number 2015-039273; thence South 89 degrees 50 minutes 01 second East, along the South line of said land a distance of 524.99 feet to the Point of Beginning, Containing 19.663 acres, more or less.

## EXHIBIT "B"

### The Additional Real Estate – Legal Description

#### Lancaster, Section 2

A part of the Southeast Quarter of Section 27, Township 19 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 27; thence South 00 degrees 09 minutes 59 seconds West, along the East line of said land, a distance of 565.41 feet to the Southeast corner of the land described in Instrument Number 2015-039273 in the Office of the Hamilton County Recorder; thence continuing South 00 degrees 09 minutes 59 seconds West, along said land, a distance of 908.45 feet to the Northeast corner of the land described in Instrument Number 2013-020452 in said Recorder's Office; thence South 89 degrees 28 minutes 22 seconds West, along the North line of said land, a distance of 275.48 feet to the POINT OF BEGINNING of this description; thence continuing South 89 degrees 28 minutes 22 seconds West a distance of 358.09 feet; thence North 00 degrees 09 minutes 59 seconds East a distance of 35.26 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 131.00 feet to a point on a curve concave southeasterly, the radius point of which bears South 00 degrees 00 minutes 23 seconds West a distance of 20.00 feet from said point; thence southwesterly along said curve an arc length of 31.42 feet to a point on said curve, said point being North 89 degrees 59 minutes 37 seconds West a distance of 20.00 feet from the radius point of said curve; thence South 00 degrees 00 minutes 23 seconds West a distance of 107.00 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 247.12 feet; thence North 70 degrees 08 minutes 16 seconds West a distance of 227.79 feet; thence North 74 degrees 52 minutes 05 seconds West a distance of 135.58 feet; thence North 81 degrees 08 minutes 00 seconds West a distance of 135.58 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 247.62 feet; thence South 81 degrees 08 minutes 46 seconds West a distance of 135.58 feet; thence South 74 degrees 52 minutes 51 seconds West a distance of 135.58 feet; thence South 70 degrees 09 minutes 58 seconds West a distance of 227.96 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 246.94 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 110.00 feet to a point on a curve concave southwesterly, the radius point of which bears North 89 degrees 59 minutes 37 seconds West a distance of 20.00 feet from said point; thence northwesterly along said curve an arc length of 31.42 feet to a point on said curve, said point being North 00 degrees 00 minutes 23 seconds East a distance of 20.00 feet from the radius point of said curve; thence North 89 degrees 59 minutes 37 seconds West a distance of 142.23 feet to the West line of the aforementioned Quarter Section at a point which is North 00 degrees 09 minutes 41 seconds East, along said line, a distance of 1225.85 feet from the Southwest corner of said Quarter Section; thence North 00 degrees 09 minutes 41 seconds East, along said West line, a distance of 149.00 feet; thence South 89 degrees 59 minutes 37 seconds East a distance of 350.83 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 39.32 feet; thence North 70 degrees 00 minutes 23 seconds East a distance of 339.55 feet; thence North 84 degrees 53 minutes 30 seconds East a distance of 128.35 feet; thence North 28 degrees 09 minutes 21 seconds East a distance of 47.92 feet; thence South 85 degrees 42 minutes 57 seconds East a distance of 75.38 feet; thence North 04 degrees 17 minutes 03 seconds East a distance of 130.00 feet to a point on a non-tangent curve concave

northerly, the radius point of which bears North 04 degrees 17 minutes 03 seconds East a distance of 1,429.50 feet from said point; thence easterly along said curve an arc length of 106.73 feet to a point on said curve, said point being South 00 degrees 00 minutes 23 seconds West a distance of 1,429.50 feet from the radius point of said curve; thence South 89 degrees 59 minutes 37 seconds East a distance of 124.86 feet; thence South 00 degrees 00 minutes 23 seconds West a distance of 130.00 feet; thence South 89 degrees 59 minutes 37 seconds East a distance of 536.16 feet; thence South 00 degrees 00 minutes 23 seconds West a distance of 100.00 feet; thence South 89 degrees 59 minutes 37 seconds East a distance of 319.00 feet; thence South 00 degrees 00 minutes 23 seconds West a distance of 59.18 feet; thence South 89 degrees 59 minutes 37 seconds East a distance of 379.00 feet; thence South 00 degrees 00 minutes 23 seconds West a distance of 223.92 feet to the Point of Beginning, Containing 18.008 acres, more or less.

**Also, the following:**

### **Lancaster, Section 3**

A part of the Southeast Quarter of Section 27, Township 19 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 27; thence South 89 degrees 35 minutes 28 seconds West, along the North line of said land, a distance of 1,494.41 feet to the Northwest corner of the land described in Instrument Number 2015-039273 in the Office of the Hamilton County Recorder, said point also being the POINT OF BEGINNING of this description; thence South 00 degrees 10 minutes 00 seconds West, along a West line of said land, a distance of 261.53 feet to a corner of said land; thence North 89 degrees 35 minutes 27 seconds East, along a South line of said land a distance of 969.40 feet to a corner of said land; thence South 00 degrees 09 minutes 59 seconds West, along a West line of said land, a distance of 298.61 feet to a Southwest corner of said land; thence North 89 degrees 50 minutes 01 seconds West a distance of 51.05 feet; thence South 00 degrees 09 minutes 59 seconds West a distance of 68.13 feet; thence South 15 degrees 59 minutes 17 seconds West a distance of 148.12 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 965.16 feet; thence North 89 degrees 59 minutes 00 seconds West a distance of 60.02 feet; thence North 86 degrees 37 minutes 22 seconds West a distance of 135.58 feet; thence North 34 degrees 03 minutes 24 seconds West a distance of 377.97 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 308.81 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 140.00 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 189.00 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 55.00 feet to a point on a curve concave southwesterly, the radius point of which bears North 89 degrees 59 minutes 37 seconds West a distance of 20.00 feet from said point; thence northwesterly along said curve an arc length of 31.42 feet to a point on said curve, said point being North 00 degrees 00 minutes 23 seconds East a distance of 20.00 feet from the radius point of said curve; thence North 89 degrees 59 minutes 37 seconds West a distance of 1.00 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 220.03 feet to the North line of the aforementioned Southeast Quarter Section; thence North 89 degrees 35 minutes 28 seconds East, along said North line, a distance of 1,015.27 feet to the Point of Beginning, Containing 23.280 acres, more or less.

**Also, the following:**

**Lancaster, Section 4**

A part of the Southeast, Southwest and Northwest Quarters, all in Section 27, Township 19 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the Southeast Quarter of said Section 27; thence South 89 degrees 35 minutes 28 seconds West, along the North line of said land, a distance of 2,509.68 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 00 minutes 23 seconds West a distance of 220.03 feet; thence South 89 degrees 59 minutes 37 seconds East a distance of 1.00 feet to a point on a curve concave southwesterly, the radius point of which bears South 00 degrees 00 minutes 23 seconds West a distance of 20.00 feet from said point; thence southeasterly along said curve an arc length of 31.42 feet to a point on said curve, said point being South 89 degrees 59 minutes 37 seconds East a distance of 20.00 feet from the radius point of said curve; thence South 00 degrees 00 minutes 23 seconds West a distance of 55.00 feet; thence South 89 degrees 59 minutes 37 seconds East a distance of 189.00 feet; thence South 00 degrees 00 minutes 23 seconds West a distance of 140.00 feet; thence South 89 degrees 59 minutes 37 seconds East a distance of 308.81 feet; thence South 34 degrees 03 minutes 24 seconds East a distance of 377.97 feet; thence South 06 degrees 30 minutes 35 seconds West a distance of 130.00 feet; thence North 83 degrees 13 minutes 10 seconds West a distance of 12.96 feet; thence South 07 degrees 03 minutes 05 seconds West a distance of 59.00 feet to a point on a non-tangent curve concave northerly, the radius point of which bears North 07 degrees 03 minutes 05 seconds East a distance of 1,429.50 feet from said point; thence easterly along said curve an arc length of 69.04 feet to a point on said curve, said point being South 04 degrees 17 minutes 03 seconds West a distance of 1,429.50 feet from the radius point of said curve; thence South 04 degrees 17 minutes 03 seconds West a distance of 130.00 feet; thence North 85 degrees 42 minutes 57 seconds West a distance of 75.38 feet; thence South 28 degrees 09 minutes 21 seconds West a distance of 47.92 feet; thence South 84 degrees 53 minutes 30 seconds West a distance of 128.35 feet; thence South 70 degrees 00 minutes 23 seconds West a distance of 339.55 feet; thence South 00 degrees 00 minutes 23 seconds West a distance of 39.32 feet; thence North 89 degrees 59 minutes 37 seconds West a distance of 350.83 feet to the West line of the aforementioned Southeast Quarter Section; thence North 00 degrees 09 minutes 41 seconds East, along said East line, a distance of 675.22 feet to the Northeast corner of the land described in Instrument Number 2008-009361 in said Recorder's Office; thence South 89 degrees 31 minutes 51 seconds West, along the North line of said land, a distance of 1,156.56 feet to a point in Little Eagle Creek; thence along said Creek the following 5 courses and distances: 1) North 44 degrees 04 minutes 36 seconds East a distance of 553.83 feet; 2) thence North 40 degrees 01 minute 23 seconds East a distance of 231.50 feet; 3) thence North 60 degrees 35 minutes 20 seconds East a distance of 57.66 feet; 4) thence North 68 degrees 30 minutes 12 seconds East a distance of 356.05 feet; 5) thence North 60 degrees 07 minutes 38 seconds East a distance of 280.60 feet to the East line of the aforementioned Northwest Quarter of said Section 27; thence South 00 degrees 09 minutes 41 seconds West, along said East line, a distance of 266.14 feet to the Southeast corner of said Northwest Quarter Section; thence North 89 degrees 35 minutes 28 seconds East, along the North line of the aforementioned Southeast Quarter of said Section 27, a distance of 137.39 feet to the Point of Beginning, Containing 30.114 acres,

more or less.

**Also, the following:**

**Lancaster, Section 5 Common Area #5-1**

Common Area 5-1 in proposed Lancaster, Section 5, being part of the Southeast Quarter of Section 27, Township 19 North, Range 3 East of the Second Principal Meridian, Washington Township, Hamilton County, Indiana, described as follows:

COMMENCING at the Southwest Corner of said quarter section, said corner marked by a Harrison Monument per Hamilton County Surveyor's Office Corner Record; thence North 89 degrees 28 minutes 22 seconds East (assumed bearing per survey recorded as Instrument Number 2019010792 in the Office of the Recorder of Hamilton County, Indiana) along the south line of said quarter section a distance of 794.88 feet; thence North 00 degrees 31 minutes 38 seconds West a distance of 60.00 feet to the proposed north right-of-way line of 186th Street and the POINT OF BEGINNING; thence South 89 degrees 28 minutes 22 seconds West along said right-of-way line a distance of 410.24 feet; thence North 45 degrees 15 minutes 38 seconds West a distance of 28.15 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 3.45 feet to the point of curvature of a curve to the right having a radius of 34.00 feet; thence northeasterly along said curve an arc distance of 53.41 feet, said curve being subtended by a chord bearing North 45 degrees 00 minutes 23 seconds East, a chord distance of 48.08 feet; thence South 89 degrees 59 minutes 37 seconds East a distance of 547.00 feet to the point of curvature of a curve to the right having a radius of 20.00 feet; thence southeasterly along said curve an arc distance of 31.42 feet, said curve being subtended by a chord bearing South 44 degrees 59 minutes 36 seconds East, a chord distance of 28.28 feet; thence South 00 degrees 00 minutes 25 seconds West a distance of 11.85 feet; thence South 44 degrees 44 minutes 22 seconds West a distance of 28.42 feet to said right-of-way line; thence South 89 degrees 28 minutes 22 seconds West along said right-of-way line a distance of 150.78 feet to the POINT OF BEGINNING, containing 0.737 acres, more or less.

**Also, the following:**

**Lancaster, Section 5 Common Area #5-2**

Common Area 5-2 in proposed Lancaster, Section 5, being part of the Southeast Quarter of Section 27, Township 19 North, Range 3 East of the Second Principal Meridian, Washington Township, Hamilton County, Indiana, described as follows:

COMMENCING at the Southwest Corner of said quarter section, said corner marked by a Harrison Monument per Hamilton County Surveyor's Office Corner Record; thence North 00 degrees 09 minutes 41 seconds East (assumed bearing per survey recorded as Instrument Number 2019010792 in the Office of the Recorder of Hamilton County, Indiana) along the west line of said quarter section a distance of 60.00 feet to the proposed north right-of-way line of 186th Street and the POINT OF BEGINNING and the following four (4) courses are along said north right-of-way line and along the proposed westerly right-of-way line of Weldon Way; (1) thence North 89 degrees 28 minutes 22 seconds a distance of 296.91 feet; (2) thence North 44 degrees 44 minutes 22 seconds East a distance of 28.42 feet; (3) thence North 00 degrees 00 minutes 23 seconds East a distance of 3.89 feet to the point of curvature of a curve to the right having a radius of 81.00 feet

and being subtended by a long chord having a bearing of North 14 degrees 25 minutes 07 seconds East and a chord length of 40.32 feet; thence northerly along said curve an arc distance of 40.75 feet to a southerly corner of proposed Lot 206; thence North 61 degrees 10 minutes 09 seconds West along a southerly line of said proposed Lot 206 a distance of 10.00 feet to a point on a non-tangent curve to the left having a radius of 91.00 feet and being subtended by a long chord having a bearing of South 14 degrees 29 minutes 22 seconds West and a chord length of 45.08 feet; thence southerly along said curve an arc distance of 45.56 feet; thence South 44 degrees 44 minutes 22 seconds West a distance of 20.19 feet; thence South 89 degrees 28 minutes 22 seconds West a distance of 292.68 feet to the west line of said quarter section; thence South 00 degrees 09 minutes 41 seconds West along said west line a distance of 10.00 feet to the POINT OF BEGINNING, containing 3,642 square feet.

**Also, the following:**

**Lancaster, Section 7 Common Area #7-1**


Common Area 7-1 in proposed Lancaster, Section 7, being part of the Southeast Quarter of Section 27, Township 19 North, Range 3 East of the Second Principal Meridian, Washington Township, Hamilton County, Indiana, described as follows:

COMMENCING at the Southwest Corner of said quarter section, said corner marked by a Harrison Monument per Hamilton County Surveyor's Office Corner Record; thence North 89 degrees 28 minutes 22 seconds East (assumed bearing per survey recorded as Instrument Number 2019010792 in the Office of the Recorder of Hamilton County, Indiana) along the south line of said quarter section a distance of 794.88 feet to the southwest corner of proposed Lancaster, Section 7; thence continuing North 89 degrees 28 minutes 22 seconds East along said south line a distance of 1211.52 feet to the southeast corner of said proposed Lancaster, Section 7; thence North 00 degrees 09 minutes 41 seconds East along the east line of said proposed Lancaster, Section 7 a distance of 60.00 feet to the proposed north right-of-way line of 186th Street and the POINT OF BEGINNING; thence South 89 degrees 28 minutes 22 seconds West along said proposed right-of-way line a distance of 931.46 feet; thence North 45 degrees 15 minutes 38 seconds West a distance of 42.23 feet; thence North 00 degrees 00 minutes 23 seconds East a distance of 51.78 feet; thence South 65 degrees 00 minutes 00 seconds East a distance of 145.67 feet; thence North 89 degrees 28 minutes 22 seconds East a distance of 395.41 feet; thence North 00 degrees 31 minutes 38 seconds West a distance of 86.00 feet; thence North 89 degrees 28 minutes 22 seconds East a distance of 20.00 feet; thence South 00 degrees 31 minutes 38 seconds East a distance of 86.00 feet; thence North 89 degrees 28 minutes 22 seconds East a distance of 234.74 feet; thence North 00 degrees 52 minutes 24 seconds West a distance of 93.87 feet; thence South 89 degrees 54 minutes 34 seconds East a distance of 180.75 feet to said east line of said proposed Lancaster, Section 7; thence South 00 degrees 09 minutes 41 seconds West along said east line a distance of 110.93 feet to the POINT OF BEGINNING, containing 0.927 acres, more or less.

**EXHIBIT "C"**

**Zoning Commitments**

See attached.

2019011179 MISC \$25.00  
03/28/2019 12:23:43P 6 PGS  
Jennifer Hayden  
HAMILTON County Recorder IN  
Recorded as Presented  


**COMMITMENTS CONCERNING USE AND DEVELOPMENT OF REAL ESTATE**

Document Cross Reference Instrument Nos. 2016009622 and 2011069204.

WHEREAS, the City of Westfield, Indiana ("City") and Township of Washington, both of Hamilton County, Indiana are subject to the Westfield-Washington Township Unified Development Ordinance ("UDO");

WHEREAS, the Developer filed a petition under Docket Number 1902-PUD-03 (Ordinance 19-02) with the Plan Commission and City Council to rezone parcels as the same are more particularly described in Exhibit A which is attached hereto and incorporated herein by reference (collectively the "Real Estate") from Springmill Trails PUD Zoning District and AG-SF1: Agriculture / Single-Family Rural District to the Lancaster Planned Unit Development Ordinance (the "Lancaster PUD");

WHEREAS, the Developer is requesting the City Council to consider approval of the Lancaster PUD subject to the following commitments ("Commitments");

NOW THEREFORE, the Developer makes the following Commitments to the City Council regarding the use and development of the Real Estate:

**Section 1. Commitments.** The Real Estate is subject to the following Commitments:

- A. Renting and Leasing: The following text shall be included in Commitments Covenants and Restrictions (CCR'S) applicable to the duplexes and townhomes of Area B of the Lancaster PUD:

Renting and Leasing. Notwithstanding anything to the contrary herein, at least eighty-five percent (85%) of the Residential Units shall be Owner occupied. Owner occupancy includes ownership by an immediate family member of at least one person residing in the Residential Unit or a trust of which the occupant is settlor, grantor, trustee or beneficiary. As long as one Residential Unit satisfies the definition of Owner occupancy, the adjacent Residential Unit may be used to support independent living arrangements for the residents in the other Residential Unit. No renting or leasing of the Residential Units to a third party for income shall be permitted except in the case of (i) hardship as defined in this paragraph and (ii) acquisition of a Residential Unit by a lender through foreclosure, deed in lieu of foreclosure or similar proceedings, which in both cases the Owner shall be entitled to lease the Residential Unit for residential purposes. Hardship is defined as a personal or financial situation that without allowing renting or leasing of a Residential Unit significant financial

harm shall occur to the Owner. The Owner must inform the Association of the specific circumstances of the hardship, and provide the Association with a copy of the lease. All lease or rental agreements must be in writing, and they shall be immediately provided to the Association. Residential Units shall not be leased for an initial term of less than one year, nor for less than thirty (30) days for any term thereafter.

- B. Overnight On-Street Parking: The following text shall be included in Commitments Covenants and Restrictions (CCR'S) applicable to the townhomes in Area B of the PUD:

Parking of motor vehicles shall be prohibited between the hours of 2:00am and 5:00am within the public right-of-way of all public streets in applicable to the townhomes of Area B of the Lancaster PUD. This prohibition shall be subject to all applicable local ordinances regulating on-street parking.

**Section 2. Definitions.**

1. Developer. Lancaster Developer, LLC, and its successors and assigns.
2. Department. The Economic and Community Development Department of the City of Westfield.

**Section 3. Modification of Commitments.** These Commitments shall continue in effect until modified or terminated. These Commitments shall only be modified or terminated by the Council in accordance with the Section 10.6 (F) of the UDO.

**Section 4. Effective Date.** These Commitments shall be effective upon the Council's approval of the Lancaster PUD.

**Section 5. Recording.** These Commitments shall be recorded with the Office of the Recorder of Hamilton County, Indiana by the Developer within thirty (30) days of the City Council's approval of the Lancaster PUD. Within fifteen (15) days after the recording of these Commitments, the Developer shall provide to the Department a recorded copy of these Commitments.

**Section 6. Enforcement.** These Commitments may be enforced by the Department and/or the Council.

**Section 7. Binding on Successors.** These Commitments are binding upon (i) each owner of the Real Estate and (ii) upon each owner's successors, assigns and grantees with respect to the portion of the Real Estate owned by such successor, assign and grantee and during such successor's, assign's and grantee's ownership, unless modified or terminated by the City Council pursuant to the requirements herein. Notwithstanding the provisions of this Section 7, these Commitments shall terminate as to any part or parts of the Real Estate for which the zoning district or classification is later changed after the Effective Date.

IN WITNESS WHEREOF, Lancaster Developer, LLC; Wheeler Farms, LLC; and HRKK, LLC have caused these Commitments to be executed as of the dates identified below.

“Developer”

Lancaster Developer, LLC

By: Platinum Properties Management Company, LLC, its Manager

Paul F. Rioux, Jr.  
Paul F. Rioux, Jr.  
President

Date: March 8, 2019

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Paul F. Rioux Jr., President of Platinum Properties Management Company, LLC, the Manager of Lancaster Developer, LLC who acknowledged the execution and the foregoing Commitments Concerning Use and Development of Real Estate this 8<sup>th</sup> day of MARCH, 2019 for and on behalf of said entity.

My Commission Expires:

\_\_\_\_\_

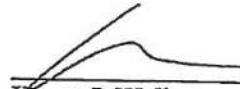
[Signature]  
Notary Public

Residing in \_\_\_\_\_  
County of \_\_\_\_\_



"Owner"

By: HRKK, LLC

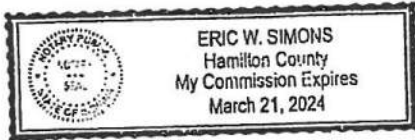
  
Henry J. Walker  
Managing Partner  
*Managing Partner HRKK, LLC*

Date: March 8, 2019

STATE OF INDIANA )  
 ) SS.:  
COUNTY OF HAMILTON )

Before me the undersigned, a Notary Public, in and for said County and State, personally appeared Henry J. Walker, Managing Partner of HRKK, LLC, as Owner, who acknowledged the execution and the foregoing Commitments Concerning Use and Development of Real Estate this 8<sup>th</sup> day of MARCH, 2019 for and on behalf of said entity.

WITNESS my hand and Notarial Seal this 8<sup>th</sup> day of MARCH, 2019.





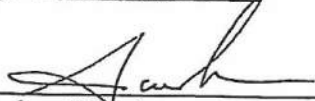
This instrument prepared by James E. Shinaver, Nelson & Frankenberger, 550 Congressional Blvd., Suite 210, Carmel, IN 46032.

Return to: James E. Shinaver, Nelson & Frankenberger, 550 Congressional Blvd., Suite 210, Carmel, IN 46032.

I affirm under the penalties of perjury that I have taken reasonable care to redact each social security number in this document, unless required by law. James E. Shinaver.

"Owner"

By: Wheeler Farms, LLC

  
\_\_\_\_\_  
Andrew Wheeler  
Manager

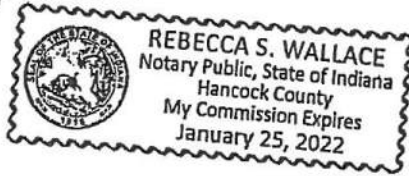
Date: 3/11, 2019

STATE OF INDIANA                    )  
                                                  ) SS.:  
COUNTY OF Hancock            )

Before me the undersigned, a Notary Public, in and for said County and State, personally appeared Andrew Wheeler, Manager of Wheeler Farm, LLC, as Owner, who acknowledged the execution and the foregoing Commitments Concerning Use and Development of Real Estate this 11<sup>th</sup> day of March, 2019 for and on behalf of said entity.

WITNESS my hand and Notarial Seal this 11<sup>th</sup> day of March, 2019.





**EXHIBIT A**  
**REAL ESTATE**

A part of the Northwest Quarter of Section 29, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana being more specifically described as follows:

Beginning at the Northwest corner of the Northwest Quarter of said Section 29; thence South 89 degrees 24 minutes 45 seconds East (assumed bearing) 1,325.85 feet along the North line of said Northwest Quarter to the Northeast corner of the Northwest Quarter of the Northwest Quarter of said Section 29; thence South 00 degrees 05 minutes 23 seconds West 1,266.53 feet along the East line of said Quarter-Quarter Section to the Northwest corner of the 42.50 acre parcel owned by Thomas E. Goings as recorded in Instrument No. 85-014694 in the Office of the Recorder of Hamilton County, Indiana; thence the next two (2) courses are along the North and East lines of said 42.50 acre parcel: (1) South 89 degrees 32 minutes 57 seconds East 1,323.26 feet; (2) South 00 degrees 06 minutes 33 seconds West 1,163.50 feet along the East line of said Northeast Quarter to the Northeast corner of Parcel II owned by Thomas E. Goings et ux as recorded in Instrument No. 9302300, in the Office of the Recorder of Hamilton County, Indiana; thence along the boundary of said Parcel II for the next two (2) courses: (1) North 89 degrees 32 minutes 57 seconds West 182.00 feet; (2) South 00 degrees 06 minutes 33 seconds West 239.00 feet to the South line of said Northwest Quarter; thence North 89 degrees 32 minutes 57 seconds West 1,140.78 feet along the South line of said Northwest Quarter to the Southwest corner of the Southwest Quarter of said Northwest Quarter; thence North 89 degrees 36 minutes 46 seconds West 647.49 feet along the South line of the Southwest Quarter of said Northwest Quarter to the Southeast corner of the 11.62 acre parcel owned by Crossroads Church at Westfield, Inc. as recorded in Instrument No. 2006-058047 in said Recorder's Office; thence North 00 degrees 01 minutes 04 seconds East 1,018.22 feet along the East line of said 11.62 acre parcel and the prolonged East line to the Northeast corner of 4.18 acre parcel owned by Mark T. Nigh et ux as recorded in Instrument No. 85-012054 in said Recorder's Office; thence North 89 degrees 21 minutes 16 seconds West 675.00 feet along the North line of said 4.18 acre parcel to the West line of said Northwest Quarter; thence North 00 degrees 01 minutes 04 seconds East 1,652.42 feet along said West line to the place of beginning, containing 107.000 acres, more or less.

**EXCEPTING THEREFROM:**

A part of the Northwest Quarter of Section 29, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana being more specifically described as follows:

Commencing at the Southeast corner of the Northwest Quarter of said Section 29; thence North 89 degrees 32 minutes 57 seconds West (assumed bearing) 182.00 feet along the South line of said Northwest Quarter to the POINT OF BEGINNING of this description; thence North 89 degrees 32 minutes 57 seconds West along said South line, 75.05 feet; thence North 00 degrees 06 minutes 33 seconds East 239.00 feet; thence South 89 degrees 32 minutes 57 seconds East 75.05 feet to the Northwest corner of Parcel II owned by Thomas E. Goings et ux as recorded in Instrument No. 9302300 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 06 minutes 33 seconds West 239.00 feet along the West line of said Parcel II to the place of beginning, containing 0.412 acres, more or less.