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JULIE L. VOORHIES  
MARION COUNTY IN RECORDER  
FEE: \$ 77.50  
PAGES: 21  
By: TK

Cross-References:

The Record Plat of Red Fox Woods, recorded as Instrument Number 2006-0148682;  
The Record Plat of Red Fox Commons, recorded as Instrument Number 2006-1070687; and  
Declaration of Conditions and Restrictions, recorded as Instrument Number 2006-0148681.

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR RED FOX WOODS AND RED FOX COMMONS

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Red Fox Woods and Red Fox Commons ("Declaration"), is made this 27th day of September, 2013, by KCS Properties, L.L.C., an Indiana limited liability company ("Declarant").

WITNESSETH THAT:

Whereas, Declarant has previously executed that certain "Declaration of Covenants, Conditions, and Restrictions for Red Fox Woods and Red Fox Commons" on September 21, 2006 and recorded it September 27, 2006 as Instrument No. 2006-0148681 in the Office of the Recorder of Marion County, Indiana (the "Original Declaration"); and

Whereas, under Article XV of the Original Declaration, Declarant reserved the right to amend the Original Declaration at any time so long as Declarant owns at least ten (10) Lots within Red Fox Woods and Red Fox Commons, and Declarant is the Owner of 86 Lots on the effective date of this Declaration; and

Whereas, Declarant wishes to exercise its power and authority to so amend the Original Declaration, but has decided that such amendments would be easier to follow if Declarant were to amend and restate the Original Declaration; and

Whereas, two plats for the Real Estate to be developed by Declarant as Red Fox Woods and Red Fox Commons have been recorded in the Office of the Recorder of Marion County, Indiana;

Whereas, Declarant intends to sell and convey the Lots within Red Fox Woods and Red Fox Commons and desires to subject the Real Estate to certain covenants, conditions, and restrictions ("Covenants") in order to ensure that the development and use of the various Lots on the Real Estate are harmonious and do not adversely affect the value of surrounding Lots on the Real Estate; and



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Whereas, Declarant desires to provide for maintenance of the lakes, Landscape Easements and other improvements located on the Real Estate which are of common benefit to the Owners of the various Lots within said subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of Red Fox Woods and Red Fox Commons.

Now therefore, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated, or encumbered, lease, rented, used, occupied and improved, is subject to the following Covenants. All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part of parts thereof.

## ARTICLE I.

### GENERAL PURPOSE OF THIS DECLARATION

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive structures and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may not be harmonious with other improvements on the Real Estate, to preserve and maintain proper setbacks from Streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate and so as to meet the requirements of certain governmental agencies, all for the purpose of preserving the values of all Lots within Red Fox Woods and Red Fox Commons and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within Red Fox Woods and Red Fox Commons.

## ARTICLE II.

### DEFINITIONS FOR ALL PURPOSES OF THIS DECLARATION

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article II;

SECTION 1. ARCHITECTURAL CONTROL COMMITTEE. The Architectural Control Committee means the Architectural Control Committee for Red Fox Woods and Red Fox Commons to be appointed in accordance with Article VI of this Declaration.

SECTION 2. ASSESSMENT. "Assessment" means the share of the Common Expenses imposed upon each Lot as determined and levied pursuant to the provisions of this Declaration.

SECTION 3. ASSOCIATION. "Association" means Red Fox Woods/Commons Homeowners Association Inc., an Indiana corporation, formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

SECTION 4. COMMON AREAS. "Common Areas" means certain areas not amenable to development which may be designated as Landscape Easements or Common Area on the Plat and which is intended for the common benefit of all Lots.

SECTION 5. COMMON EXPENSES. "Common Expenses" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Areas, Landscape Easements, Drainage System, and other cost or expense incurred by the Association for the benefit of the same.

SECTION 6. DECLARANT. "Declarant" means KCS Properties, L.L.C., or any other person, firm, corporation, limited liability company, or partnership (i) that acquires ten (10) or more Lots from KCS Properties, L.L.C. in a single transaction, and (ii) to which KCS Properties, L.L.C. assigns the rights to serve as "Declarant" under a recorded instrument. More than one such legal entity may qualify to serve as Declarant (each, a "Co-Declarant"), all as more particularly set forth in Section IX(13), below, and each reference to "Declarant" in this Declaration shall automatically refer to all Co-Declarants.

SECTION 7. DRAINAGE SYSTEM. "Drainage System" means the lake, storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across Red Fox Woods and Red Fox Commons.

SECTION 8. EASEMENTS. "Easements" refer to those areas reserved as easements, on the Plat of Red Fox Woods and Red Fox Commons, and may also include Landscape Easements.

SECTION 9. HOA ACT. "HOA Act" means Article 32-25.5 *et. seq.* of the Indiana Code, as the same may be amended.

SECTION 10. LANDSCAPE EASEMENTS. "Landscape Easements" refer to those areas reserved as Landscape Easements on the Plat of Red Fox Woods and Red Fox Commons.

SECTION 11. LOT. "Lot" means any of the separate parcels numbered and identified on the Plat of Red Fox Woods and Red Fox Commons.

SECTION 12. MORTGAGEE. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

SECTION 13. OWNER. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or part of any Lot, so long as such hold does not hold both legal and equitable title thereto.

SECTION 14. PLAT. "Plat" means the final plat, recorded for Red Fox Woods and Red Fox Commons.

SECTION 15. REAL ESTATE. "Real Estate" means the real property more particularly described on the attached Exhibit A.

SECTION 16. RED FOX WOODS AND RED FOX COMMONS. "Red Fox Woods and Red Fox Commons" means the Real Estate as it is platted and recorded by Declarant in accordance with the provisions of this Declaration.

SECTION 17. STREETS. "Streets" means all of public and private roadways to the respective right-of-way lines thereof, as shown on the Plat of Red Fox Woods and Red Fox Commons, which, have been or hereafter are constructed for the purpose of providing commons access for Owners, occupants and their guests and invitees, to any or all Lots.

### ARTICLE III.

#### GENERAL RESTRICTIONS

SECTION 1. MAINTENANCE OF PREMISES. In order to maintain the standards of Red Fox Woods and Red Fox Commons, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. All Owners shall maintain their Lots and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, and specifically, each 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. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.
- (b): Cut down and remove dead trees.
- (c): Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly.
- (d): Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the Lot and/or Red Fox Woods and Red Fox Commons.

Failure to comply shall warrant the Declarant, authorized agents of Marion County or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner. The Association shall place and record a lien against said Lot in an amount equal to the expenses therefore and costs which costs may include reasonable attorneys fees for the placement of said lien should such be deemed necessary by the Association. Said liens shall be subject and subordinate only to taxes, municipal liens, and the lien of any bona fide mortgage upon any Lot. At the option of the Association, said liens may be foreclosed upon in any court of competent

jurisdiction by the Association as plaintiff for the amount of lien with interest, attorney's fees and costs. Any judgment obtained shall be without relief from valuation or appraisal laws.

SECTION 2. RESIDENTIAL PURPOSE. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted on any Lot other than a dwelling not to exceed two (2) stories in height. A dwelling shall have an attached garage of a size to accommodate at least two (2) cars.

SECTION 3. SETBACKS. No building shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded Plat. The minimum side yard setback shall be seven and one-half feet (7.5') and minimum aggregate of the side yards on any Lot shall be fifteen feet (15'). The minimum rear yard setback shall be twenty (20') from the rear lot line.

SECTION 4. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat.

SECTION 5. LANDSCAPE EASEMENTS. The landscaping within the Landscape Easements shall initially be determined by the Architectural Control Committee and developed by Declarant in accordance with the landscape plan for Red Fox Woods and Red Fox Commons. The Declarant, prior to the incorporation of the Association, and the Association thereafter, shall maintain the Landscape Easements. The Landscape Easements located within the dedicated county road right-of-way shall be subject to termination by the county if, in its discretion, the county determines that the Landscape Easements are not being properly maintained and/or constitute a hazard to the motoring public.

SECTION 6. INOPERABLE VEHICLES. At no time shall any unlicensed and/or inoperable vehicle be permitted on any Lot, Common Area, Street or Easement unless kept entirely within a garage.

SECTION 7. TRUCKS, BOATS, RECREATIONAL VEHICLES. Except as provided in Section IX(12), below, no semi-truck, trailer, boat or trailer, mobile home, or recreational vehicle, or any similar equipment shall be permitted to be kept on any Lot unless kept entirely within a garage.

SECTION 8. NUISANCES. No noxious, obnoxious, or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become any annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

SECTION 9. OUTDOOR STORAGE. No large machinery or equipment shall be permitted to be kept or stored on any Lot except within the dwelling.

SECTION 10. DRAINAGE DITCHES. Drainage swales (ditches) along dedicated roadways and within the right-of-way or on dedicated Easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of authorized agents of Marion County. Any Owner altering, changing, damaging, or failing to maintain these drainage

swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage, after which time, if no action is taken, authorized agents of Marion County may cause said repairs to be accomplished and the bill for cost of said repairs will be sent to the affected Owner for the immediate payment.

SECTION 11. SIGNS. No sign of any kind shall be displayed to the public view on any Lot except that (i) one (1) professionally manufactured sign of not more than five (5) square feet advertising the property for sale or rent may be installed by any Owner on its Lot, and (ii) Declarant may install professionally prepared signs within the Common Areas and on Lots owned by Declarant in order to advertise the property prior to the Applicable Date, as defined in Section VIII(2), below.

SECTION 12. CHILDCARE SERVICES. No pre-school, babysitting business or such childcare services for more than six (6) children shall be allowed to operate upon any Lot.

SECTION 13. MINING OPERATION. No oil drilling, oil development operation, oil refining quarrying, or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

SECTION 14. ANIMALS. 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 bred, kept or maintained for any commercial use and are housed within the dwelling.

SECTION 15. RUBBISH, TRASH, AND GARBAGE. Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any Lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day.

SECTION 16. CORNER LOT. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 9 feet above roadways shall be placed or permitted on any corner Lot within the triangular area formed by the Street property line and a line connecting them at points 25 feet from the intersection of the Street lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a Street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

SECTION 17. FIELD TILES. Any field tile or underground drain which is on any Lot must be allowed to perpetuate and all Owners of the Lots in this subdivision and their successors shall comply with the Indiana Drainage Code of 1965.

SECTION 18. MINIMUM LIVING SPACE. The minimum square footage of living space of dwellings within Red Fox Woods and Red Fox Commons, exclusive of porches, garages or basements shall be no less than:

- (a) 1,400 square feet for a single story dwelling in Red Fox Commons; and  
1,800 square feet for a single story dwelling in Red Fox Woods.
- (b) 2,200 square feet for a two story dwelling in Red Fox Woods, with a minimum of  
1,400 square feet of living area on ground floor for a two story dwelling in Red Fox Woods.

SECTION 19. OUTBUILDINGS. No outbuildings of any kind, detached garages, sheds, barns, storage buildings, shacks or tents shall be maintained on any Lot.

SECTION 20. DRIVEWAYS AND CARPORTS. All driveways must be paved with concrete. No carports are permitted.

SECTION 21. COMMUNICATION DEVICES. Only external T.V. antenna or satellite dish shall be placed behind the residence.

SECTION 22. MAILBOXES. All mailboxes in Red Fox Woods and Red Fox Commons shall be uniform in appearance, the style, type and location shall be determined by the Architectural Control Committee. Owners shall be prohibited from removing, altering, or substituting the mailboxes approved by the Architectural Control Committee. Owners shall be responsible to keep the mailboxes in a good state of repair and to replace them with a substantially identical one if necessary.

SECTION 23. YARD LIGHTS. All Lots shall upon their initial development and thereafter have yard lights of uniform appearance, if installed. The style, type and location shall be determined by the Architectural Control Committee pursuant to Article VI. Owners shall be responsible to maintain the yard lights in the form in which they were originally installed, kept functional at all times and in a state of good repair.

SECTION 24. WELLS AND SEPTIC TANKS. No water wells shall be drilled on any Lot. Septic tanks shall be prohibited.

SECTION 25. SWIMMING POOLS. Above-ground swimming pools are prohibited.

SECTION 26. CONSTRUCTION, EARTH-MOVING, EXCAVATION. No construction, significant earth-moving, or excavating work of any nature may be conducted on any Lot without first having any development plans approved by the Architectural Control Committee pursuant to Article VI.

SECTION 27. FENCES, WALLS, BARRIERS. All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee pursuant to Article VI prior to construction. No such structures shall exceed eight feet (8') in height. No such structure shall be placed closer to the front lot line than the front building setback line. Any farm fence existing along the perimeter of Red Fox Woods and Red Fox Commons shall be maintained at all times by the Lot's Owner unless located in Common Areas.

SECTION 28. DECORATIVE STRUCTURES. No decorative structure, statue, or other structure may be placed on the Lot closer to the front lot line than the front building setback line.

#### ARTICLE IV.

##### DRAINAGE PONDS COVENANTS AND RESTRICTIONS

SECTION 1. The area to be known as the "Drainage Ponds" and which is shown as a drainage ponds, storm detention or variable drainage easements on the Plat (hereinafter "Drainage Ponds") shall be maintained and controlled by the Association.

SECTION 2. The Association shall be responsible for formulating rules and regulations pertaining to the Drainage Ponds as well as creating an annual budget to assure adequate maintenance, upkeep and repair of the Drainage Ponds property, said budget shall be included as part of the annual Assessment.

SECTION 3. The Drainage Ponds may be used only in the manner authorized by the Association or this Declaration.

SECTION 4. No privately owned personal property of any kind shall be allowed to remain within the Drainage Ponds areas except when the Owner of such property is present.

SECTION 5. No docks or piers will be allowed.

SECTION 6. No Owner or third party shall do or permit another to do any act which could result in pollution of the Drainage Ponds, diversion of any water, raise the elevation of the water, significantly disturb the earth or the embankment of the lake areas, or any other conduct which could result in adverse effect upon the water quality, embankment and adjacent property, drainage, or any other general condition of the Drainage Ponds.

SECTION 7. The Association, on behalf of the Owners, or authorized agents of Marion County, shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for correction of any damage caused to the Drainage Ponds or interference with the Drainage System, together with any damages incurred, and upon recovery of judgment shall be entitled to cost, together with reasonable attorney's fees.

#### ARTICLE V.

##### DECLARANT'S / ASSOCIATION'S RIGHT TO GUARANTEE COMPLIANCE

SECTION 1. In the event the Owner of any Lot in Red Fox Woods and Red Fox Commons shall fail to maintain that Lot or any of its improvements situated thereon in accordance with the provisions of these Covenants, the Association, or prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot improvements thereon, if any, conform to the requirements of these Covenants. The cost



thereof to the Association or Declarant shall be collected in any reasonable manner from the Owner. The Association/Declarant shall not be liable for any damage which may result from any maintenance work performed hereunder at the time dwellings are constructed upon.

## ARTICLE VI.

### RED FOX WOODS AND RED FOX COMMONS ARCHITECTURAL CONTROL COMMITTEE

#### SECTION 1. APPOINTMENT OF ARCHITECTURAL CONTROL COMMITTEE.

Declarant shall appoint the members of the Architectural Control Committee from the date of this Declaration until the Applicable Date. Initially, the Architectural Control Committee shall consist of Randall D. McNutt, Kenneth E. Windler and Mark Thune, and individual members of the Architectural Control Committee may be replaced from time to time by Declarant up to the Applicable Date. From and after the Applicable Date, the Architectural Control Committee shall consist of three members who shall be appointed by the Association. The term of any Association appointed member of the Architectural Control Committee shall be one (1) year in length.

SECTION 2. CONSTRUCTION APPROVALS. No construction of any building or structure of any kind, including additions, alterations, swimming pools, fences, screens and walls shall begin within Red Fox Woods and Red Fox Commons until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee the plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. The plans and specification submitted to the Architectural Control Committee shall contain a plot plan drawn to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Architectural Control Committee. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications. A refusal of approval of plans and specifications, location and plot plan by the Architectural Control Committee may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. The Architectural Control Committee shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

SECTION 3. DUTIES OF COMMITTEE. The Architectural Control Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Architectural Control Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefore.

SECTION 4. LIABILITY OF COMMITTEE. Neither the Architectural Control Committee nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

SECTION 5. EXEMPTION FOR DECLARANT. Notwithstanding anything in this Declaration to the contrary, Declarant shall have no obligation to submit plans, specifications, locations, or plot plans to the Architectural Control Committee for any homes it may build on any Lot, and Declarant may build single-family homes and related improvements on the Lots without the prior consent of the Architectural Control Committee. After Declarant conveys an individual Lot with a completed residence constructed on that Lot to a customer of Declarant, such Lot shall automatically be subject to the Architectural Control Committee and the approvals and procedures set forth in Article VI of this Declaration for all improvements made to such Lot after the date of that conveyance (provided, however, that installations of landscaping by Declarant after the date of such conveyance shall remain exempt from the review and approval of the Architectural Control Committee and the approvals and procedures set for in the balance of Article VI of this Declaration).

## ARTICLE VII.

### COVENANTS FOR MAINTENANCE ASSESSMENTS

SECTION 1. PURPOSE OF THE ASSESSMENTS. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the value of the Lots within Red Fox Woods and Red Fox Commons and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvement, fencing, operating, and maintenance of the Common Areas and Landscape Easements and Drainage System, including, but not limited to, the payment of taxes and insurance thereon and for the costs of labor, equipment, material, and management furnished with respect to the Common Areas and Landscape Easements; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Area which is or hereafter may be dedicated to the public. Each Owner hereby Covenants and agrees to pay the Association:

- (a) \$300.00 per Lot in Red Fox Woods and \$225.00 per Lot in Red Fox Commons.
  - (a.1) To be paid annually or in quarterly installments.
- (b) A pro-rata share (as hereinafter defined) of any special Assessments fixed,  
established, and determined from time to time, as hereinafter provided.

SECTION 2. LIABILITY FOR ASSESSMENTS. All Assessments shall be a prior lien on the Lots with respect to which said Assessments are in favor of the Association, subject and subordinate only to taxes, municipal liens, and to the lien of any bona fide mortgage upon any Lot, and at the option of the Association, Assessments may be foreclosed upon in any court of competent jurisdiction by the Association as plaintiff for the amount of the Assessment with interest, attorney's fees and costs, any judgment obtained shall be without relief from valuation or appraisal laws. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment's lien.

However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien or such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

SECTION 3. PRO-RATA SHARE. The pro-rata share of each Owner for purposes of this article shall be the percentage obtained by dividing one by the total number of Lots within Red Fox Woods and Red Fox Commons ("pro-rata share").

SECTION 4. BASIS OF ANNUAL ASSESSMENT. The board of directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days to the beginning of each fiscal year of the Association.

SECTION 5. BASIS OF SPECIAL ASSESSMENT. Should the board of directors of the Association at the time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the board of directors of the Association may, at any time, and from time to time, levy special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the board of directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part any unanticipated Common Expense not provided for by the annual Assessment.

SECTION 6. NOTICE OF MEETINGS. Written notice of any meeting called for the purpose of taking action to authorize Assessments shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting and shall be issued in compliance with the requirements of the HOA Act.

SECTION 7. FISCAL YEAR; DATE OF COMMENCEMENT OF ASSESSMENTS; DUE DATES. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to the purchaser. Declarant shall be responsible for all Common Expenses prior to this conveyance. The first annual Assessment for each Lot shall be pro-rated for the balance of the fiscal year of the Association in which such Assessment is made. The annual Assessment for each year after the first Assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

SECTION 8. DUTIES OF THE ASSOCIATION.

(a) The board of directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto. The board of directors of the Association shall cause

written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in the event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

(b) The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessment have been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certification shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

(c) The Association shall, upon notification of conveyance of a Lot or interest therein, provide a copy of this Declaration to the persons or entities receiving said interest.

SECTION 9. ADJUSTMENTS. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year, such deficit may be recouped either by inclusion the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a pro-rata share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

## ARTICLE VIII.

### ORGANIZATION AND DUTIES OF THE ASSOCIATION

SECTION 1. ORGANIZATION OF ASSOCIATION. The Association shall be organized as a not-for-profit corporation under the laws of the state of Indiana, to be operated in accordance with its articles of incorporation, code of by-laws, and this Declaration, as the same may be amended.

SECTION 2. MEMBERSHIP. The members of the Association shall consist of the Declarant and the Owners of Lots in Red Fox Woods and Red Fox Commons provided that, in the event that any one Lot shall be owned by, more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting purposes.

The Association shall have two classes of voting membership:

CLASS A. Class A membership shall consist of all Owners with the exception of the Declarant. After the Applicable Date, Class A members shall be entitled to one 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 they amongst themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

CLASS B. The Class B member shall be the Declarant. Prior to the Applicable Date, the Class B member shall exercise all voting rights with respect to any matter submitted to a vote of the members of the Association and shall have one (1) vote for each Lot of which Declarant is the Owner.

As used herein "Applicable Date" shall mean the earlier of (1) the date on which the Declarant delivers its written resignation as a Class B member to the secretary of the Association, or (2) the date on which Declarant is no longer the Owner of any Lot within Red Fox Woods or Red Fox Commons.

SECTION 3. BOARD OF DIRECTORS. The members shall elect a board of directors of the Association as prescribed by the by-laws. The board of directors shall manage the affairs of the Association.

SECTION 4. BOARD MEMBERS. Initially, the board of directors of the Association shall consist of three members, those persons being Randall D. McNutt, Kenneth E. Windler and Mark Thune (hereinafter referred to as "Initial Board"). The Initial Board shall serve as the board members of the Association until the Applicable Date, and individual members of the Initial Board may be replaced from time to time by Declarant up to the Applicable Date. From and after the Applicable Date, the board of directors of the Association shall consist of six members who shall be Association members and to be elected by the Association membership. Each board member shall serve a two year term. However, the first board members elected by the Association shall serve terms as follows:

- (a) 2 newly elected board members shall serve one year terms
- (b) 2 newly elected board members shall serve two year terms
- (c) 2 newly elected board members shall serve three year terms (all subsequent board members shall serve two year terms).

SECTION 5. GENERAL DUTIES OF THE ASSOCIATION. The Association is hereby authorized to act and shall act on behalf of, and in the name of, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair and replacement, of the Common Areas, the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, Covenants, conditions and restrictions contained in this Declaration.

SECTION 6. LIABILITY OF ASSOCIATION. Neither the Association nor its directors, officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of willful or reckless disregard of the rights of the Owners or in the nature of the willful, intentional, fraudulent, or reckless misconduct.

SECTION 7. AMENDMENT OF DECLARATION. The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its board of directors and the subsequent approval of such amendment by Owners of at least two-thirds of the Lots; provided, however, that any such amendment of this Declaration shall require prior written approval of the Declarant so long as Declarant owns at least ten Lots within Red Fox Woods and Red Fox Commons. Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth the facts sufficient to indicate compliance with the copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendments shall not be effective until recorded in the Office of the Recorder of Marion County.

SECTION 8. INSURANCE. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than one million dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with any Common Areas and Landscape Easements. The Association shall also maintain in force adequate insurance, insuring all common property against windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount sufficient to cover any foreseeable maintenance, removal or replacement costs in the event of damage attributable to such hazards. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the board of directors and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' Assessments on all Lots in Red Fox Woods and Red Fox Commons, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal National Mortgage Association Lending Guide chapter 3, part 5, as established on January 3, 1983, as amended on June 30, 1983, or as such guidelines may be amended thereafter.

SECTION 9. CONDEMNATION; DESTRUCTION. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Area or turned over to the Owners in proportion to their pro-rata shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

SECTION 10. MORTGAGEES' RIGHTS. The Mortgagee shall have the right, at their option, jointly and severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and Mortgagees making such payment shall be owed immediate reimbursement therefore from the Association.

SECTION 11. PROFESSIONAL MANAGEMENT. Declarant shall have the exclusive right to manage or designate a managing agent for the property and to perform all or any of the functions of the Association until the Applicable Date. Declarant may, at its option, engage the services of a managing agent, including a managing agent affiliated with the Declarant, to perform such functions, and in either case, Declarant or such managing agent shall be entitled to reasonable compensation for its services. No contract or agreement for professional management of the Association shall be for a term in excess of three 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.

SECTION 12. HOA ACT. The Association shall be run with due regard and in compliance with the HOA Act. As a part of this obligation, the Association shall (i) maintain the roster and other information regarding the Owners and make such information available to the Owners as required under Section 32-25.5-3-1 of the HOA Act, (ii) shall prepare and adopt an annual budget consistent with the requirements and procedures of Section 32-25.5-3-3 of the HOA Act, (iii) not enter into any contract or borrow funds in violation of Section 32-25.5-3-4 and Section 32-25.5-3-5 of the HOA Act, and (iv) maintain a grievance resolution procedures required under Section of Section 32-25.5-3-6 of the HOA Act, which procedures shall be set forth in the bylaws of the Association.

## ARTICLE IX.

### GENERAL PROVISIONS

SECTION 1. COVENANTS RUN WITH THE LAND. This Declaration and the Covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

SECTION 2. SCOPE OF COVENANTS. Declarant and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the various terms, the Covenants, and conditions, contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, Covenants, and conditions, contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner has such interest.

SECTION 3. ATTORNEYS' FEES. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the court in such proceedings.

SECTION 4. FAILURE TO ENFORCE NOT A WAIVER OF RIGHTS. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, covenant or condition.

SECTION 5. RIGHTS OF MORTGAGEES. Except to the extent otherwise provided in Article VII no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration.

The provisions of article VIII hereinabove notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

SECTION 6. EFFECT OF INVALIDATION. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.



SECTION 7. SECTION HEADINGS. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

SECTION 8. NOTICES. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owners' names and addresses referred to in Article VII; or (b) seventy-two (72) hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

SECTION 9. LIMITATIONS AND DECLARANT'S RIGHTS. Any notice to or, approval by Declarant under any provision of this Declaration shall not be necessary after such time as Declarant owns fewer than ten (10) Lots within Red Fox Woods and Red Fox Commons.

SECTION 10. DEED CLAUSE TO IMPLEMENT DECLARATION. Each Owner Covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the grantee herein covenants and agrees to be bound by the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Red Fox Woods and Red Fox Commons pertaining to the Real Estate hereby granted, as the same may be amended, which is recorded in the Office of the Recorder of Marion County, Indiana",

And properly identifying the recording instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against an Owner of any interest in any portion of the Real Estate.

SECTION 11. PROVISIONS AGAINST MERGER. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

SECTION 12. RESERVATIONS OF DECLARANT. The provisions of Article VII hereof notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least ten (10) Lots within Red Fox Woods and Red Fox Commons, without the approval or consent of the Owners or Mortgagees of the Lots; provided that Declarant shall not be entitled to make any amendment which has materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner. In addition, during the course of construction of single-family homes on the Lots, Declarant may maintain one or more construction trailers on the Lots, which shall be properly maintained during the course of such construction and promptly removed thereafter.

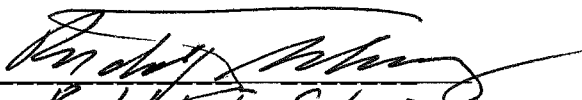
SECTION 13. IDENTITY OF DECLARANT. As referenced in Section II(6), above, the Declarant shall initially be KCS Properties, L.L.C. but that "Declarant" shall also mean any other person, firm, corporation, limited liability company, or partnership (i) that acquires ten (10) or more Lots from KCS Properties, L.L.C. in a single transaction, and (ii) to which KCS Properties, L.L.C. assigns the rights to serve as "Declarant" under a recorded instrument. If more than one such legal entity so qualifies, each shall serve as Co-Declarant until the earlier of (a) a particular Co-Declarant resigns in its capacity as a Co-Declarant and records a copy of such resignation with the Office of the Recorder of Marion County, Indiana, or (b) a particular Co-Declarant is no longer the Owner of any Lots. In either such event, the remaining Co-Declarant shall automatically become the sole Declarant.

Each Co-Declarant shall enjoy all of the rights and privileges reserved for Declarant as more particularly set forth in this Declaration, and may exercise them separately or together. To the extent that the provisions of this Declaration require that Declarant make an election or otherwise make a decision during a time when there are Co-Declarants, all such elections or decisions shall require the unanimous consent of all Co-Declarants.

In witness whereof, the Declarant has caused this Declaration to be executed on the date first above written.

"Declarant"

KCS Properties, L.L.C.

By:   
Name: Rudolph V. Schwane  
Title: Member

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF HAMILTON)

Before me, a Notary Public, in and for said County and State, personally appeared \_\_\_\_\_  
Rudolph J. Schwarz the Member of KCS Properties, L.L.C., an Indiana  
limited liability company, who acknowledged the execution of the foregoing instrument in such  
capacity and who, having been duly sworn, stated that any representations therein contained are  
true and correct.

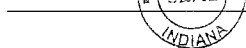
WITNESS my hand and Notarial Seal, this 27<sup>th</sup> day of September, 2013.

My Commission Expires:

\_\_\_\_\_

  
\_\_\_\_\_  
Notary Public

County of Residence:



Jennifer J. Dunlap  
Res. of Tipton Co.  
Comm. Exp. 04/29/2016

\_\_\_\_\_  
Printed

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. W. Russell Wilson

This instrument was prepared by W. Russell Wilson, Frost Brown Todd LLC, 3300 Great American Tower, 301 E. Fourth Street, Cincinnati, OH 45202.

## **EXHIBIT "A"**

Part of the Southeast quarter of Section 15, Township 14 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, described as follows:

Beginning at the Northeast corner of said quarter section; thence along the East line thereof South 00 degrees 01 minute 53 seconds West (assumed bearing) 1006.06 feet; thence South 88 degrees 19 minutes 22 seconds West 70.03 feet; thence parallel with last said East line North 00 degrees 01 minute 53 seconds East 397.66 feet to a curve concave Southwesterly the radius of said curve bears North 89 degrees 58 minutes 07 seconds west 20.00 feet; thence Northwesterly along said curve through a central angle of 90 degrees 00 minutes 00 seconds 31.42 feet; thence North 89 degrees 58 minutes 07 seconds West 225.00 feet; thence North 00 degrees 01 minute 53 seconds east 21.41 feet; thence north 89 degrees 58 minutes 07 seconds West 200.62 feet; thence South 69 degrees 19 minutes 03 seconds West 240.48 feet; thence South 83 degrees 29 minutes 34 seconds West 95.53 feet; thence, North 82 degrees 08 minutes 44 seconds West 91.00 feet; thence North 70 degrees 37 minutes 08 seconds West 49.53 feet; thence North 66 degrees 33 minutes 43 seconds West 215.24 feet; thence South 23 degrees 6 minutes 17 seconds West 28.74 feet; thence North 66 degrees 33 minutes 43 seconds West 150.00 feet; thence North 72 degrees 43 minutes 53 seconds West 294.46 feet; thence South 73 degrees 52 minutes 27 seconds West 388.59 feet; thence South 86 degrees 15 minutes 28 seconds West 688.41 feet to the West line of said quarter section; thence along said West line thereof North 00 degrees 20 minutes 16 seconds East 501.23 feet to the Northwest corner of said quarter section; thence along the North line of thereof North 88 degrees 15 minutes 16 seconds East 2658.93 feet to the point of beginning containing 32.301 acres, more or less, subject to all rights-of-way, easements and restrictions.

Also,

Part of the Southeast quarter of Section 15, Township 14 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, described as follows:

Commencing at the Northeast corner of said quarter section  
Thence along the East line thereof South 00 degrees 01 minute 53 seconds West (assumed bearing) 1006.06 feet; thence South 88 degrees 19 minutes 22 seconds West 70.03 feet to the point of beginning of this described tract; thence continuing South 88 degrees 19 minutes 22 seconds West 2594.17 feet to the West line of said quarter section; thence along last said West line thereof North 00 degrees 20 minutes 16 seconds East 501.82 feet; thence North 86 degrees 15 minutes 28 seconds East 688.41 feet; thence North 73 degrees 52 minutes 27 seconds East 388.59 feet; thence South 72 degrees 43 minutes 53 seconds East 294.46 feet; thence South 66 degrees 33 minutes 43 seconds East 150.00 feet; thence North 23 degrees 26 minutes 17 seconds East 28.74 feet;

Thence South 66 degrees 33 minutes 43 seconds East 215.24 feet; thence South 70 degrees 37 minutes 08 seconds East 49.53 feet; thence South 82 degrees 08 minutes 44 seconds East 91.00 feet; thence North 83 degrees 29 minutes 34 seconds East 95.53 feet; thence North 69 degrees 19 minutes 03 seconds East 240.48 feet; thence South 89 degrees 58 minutes 07 seconds East 200.62 feet; thence South 00 degrees 01 minute 53 seconds West 21.41 feet; thence South 89 degrees 58 minutes 07 seconds East 225.00 feet to a curve concave southwesterly the radius of said curve bears South 00 degrees 01 minute 53 seconds West 20.00 feet; thence Southeasterly along said curve through a central angle of 90 degrees 00 minutes 00 seconds 31.42 feet; thence parallel with last East line South 00 degrees 01 minute 53 seconds West 397.66 feet to the point of beginning containing 29.044 acres, more or less, subject to all rights-of-way, easements and restrictions.