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Jennifer J Hayden  
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**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
OF THE RIDGE AT HAYDEN RUN SECTION THREE**

THIS DECLARATION (hereafter "Declaration"), made this 8<sup>th</sup> day of DECEMBER, 2008, by Platinum Properties, LLC, an Indiana limited liability company (hereafter "Declarant");

**WITNESSETH:**

**WHEREAS**, Platinum Properties, LLC is the owner of certain Property, located in Hamilton County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A" (the "Property"), upon which a residential subdivision known as The Ridge at Hayden Run Section Three (the "Development") will be developed;

**WHEREAS**, Platinum Properties, LLC desires to subdivide and develop the Property;  
and

**WHEREAS**, the term "Declarant", as used throughout this Declaration, shall mean and refer to Platinum Properties, LLC and its successors and assigns.

**NOW, THEREFORE**, the Declarant hereby declares that all of the Lots (hereafter defined) 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 the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The covenants, conditions and restrictions shall inure to the benefit of the Declarant and its successors and assigns in title to 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 "Assessment" shall mean, collectively, or individually, one or more of the following: the Annual Assessment, One-Time Assessment, Special Assessment and/or Violation Assessment.

Section 1.2 "Association" shall mean the *The Ridge at Hayden Run Section Three Homeowners Association, Inc.*, a not-for-profit corporation, the membership and power of which are more fully described in Article IX of this Declaration.

Section 1.3 "Board" or "Board of Directors" shall mean the Board of Directors of the *The Ridge at Hayden Run Section Three Homeowners Association, Inc.*

Section 1.4 "Builder" means a person or entity regularly engaged in the business of constructing single family residences for sale and responsible for the original construction of a residence on a Lot.

Section 1.5 "Committee" shall mean the *Development Standards and Architectural Control Committee*, as more fully described in Article VI of this Declaration.

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

Section 1.7 "Declarant" means Platinum Properties, LLC and its successors and assigns.

Section 1.8 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending on the Turnover Date specified in Article IX below.

Section 1.9 "Exempt Builder" shall mean Paul Shoopman Home Building Group, Inc., an Indiana corporation, and affiliated companies under the control of Paul Shoopman.

Section 1.10 "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 1.11 "Lot" shall mean any homesite, for the construction of a Residence, identified on a Plat that is recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 1.12 "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 1.13 "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 1.14 "Plat" shall mean the subdivision plats of the Property which are recorded with the Recorder of Hamilton County, Indiana.

Section 1.15 "Residence" shall mean any structure intended exclusively for occupancy by 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 1.16 "Special Use" shall mean any use defined or identified in any applicable zoning ordinance as a "Special Use".

## ARTICLE II

### CHARACTER OF THE DEVELOPMENT

Section 2.1. In General. Lots may be used only for single family residential purposes. All Property located within a Plat which 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 applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family 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 all governmental zoning authority and regulation affecting the Property, all of which are incorporated herein by reference.

### ARTICLE III

#### EASEMENTS

Section 3.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a plat:

(A) Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer 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, fibre 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 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, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are 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, and/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 signs which either advertise the Property and the availability of Lots or identify the Property and, (ii) installing 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 or maintained in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Association. 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.

(C) Easement Work. Notwithstanding any architectural approval under Article VI 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/or 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 3.1 (A) above.

Section 3.2 General Drainage, Utility, Sewer and other Development Easements. The following rights reserved in this Section 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 3.2 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) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("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 and 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 Drainage, Utility and Sewer Easement shall include all areas of the Property outside any Residence, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. 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, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(B) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Pond 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/or 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 the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(C) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") 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 shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(D) 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 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 to change the description of any Drainage, Utility and Sewer Easement, Pond Easement, and/or Sign and Facilities Easement or 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 by the Association during the Development Period and (ii) any Owner of any Lot shall be subject to the rights and easements reserved herein.

#### ARTICLE IV

##### **ADDITIONAL PROVISIONS RESPECTING OF SANITARY SEWER UTILITY**

Section 4.1 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 4.2 No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or right-of-ways may be removed, damaged, or destroyed by the applicable utilities without an obligation of repair or replacement.

Section 4.3 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 the obligation of repair replacement.

Section 4.4 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 4.5 The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains to the sanitary sewers is prohibited.

Section 4.6 Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

#### ARTICLE V

##### **COVENANTS AND RESTRICTIONS**

Section 5.1 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 zoning ordinance of the municipality having zoning jurisdiction over the Property 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 applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 5.2 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 Committee.

Section 5.3 Lighting. Unless a greater number is approved by the Committee, all homes will have one (1) dusk to dawn light mounted on each side of the garage door of the Residence, or as otherwise approved by the Committee. Street lights may be installed by Declarant in the utility easements on Lots, in the Common Areas, and in public rights-of-way. During the Development Period, and in the Declarant's sole discretion, street lights shall be operated and maintained by the Association. After the Development Period, the Association shall have the right to remove street lights deemed no longer necessary by the Board of Directors.

Section 5.4 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.

Section 5.5 Driveways. All driveways in the Property shall be concrete in material or washed aggregate.

Section 5.6 Water Systems. Each Owner 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 5.7 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 5.8 Signs. Except for such signs as Declarant may in its absolute 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 at any time for the purpose of



advertising the property for sale, or may be displayed by a Builder or the Exempt Builder to advertise the property during construction and sale.

**Section 5.9 Fencing.** This subsection is applicable to all Lots except those Lots which are used for a sales office or model home by a Builder, the Exempt Builder or Declarant. No fence, wall, hedge, or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set back line except where such planting is part of Residence landscaping approved by the Committee and the prime root thereof is within six (6) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". All plans for approval of fencing which are submitted to the Committee shall identify all corners of the subject Lot, as determined by a licensed surveyor, and the Lot Owner shall be responsible for installing the fence in accordance with the approved plans. All fencing on a Lot shall be uniform in height, style, and color and substantially similar in material. No fence or wall shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence or wall. No fence may be erected on a Lot without prior approval of the Committee, which shall approve or disapprove the location of all fences. The Committee may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Pond and design standards for fences. Each Owner shall properly maintain, mow, and trim grass on all portions of such Owner's Lot, including the portions of the Lot located on the other side of a fence installed upon such Lot.

**Section 5.10 Nuisances.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood hereby established. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant, and/or the Association, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance. In the event of successful enforcement by an Owner, the Declarant, or the Association of the provisions thereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

**Section 5.11 Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except for a period of time not more than 24 hours prior to 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.

**Section 5.12 Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than two (2) of the same type (dog, cat, bird) of pet

nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction. 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, etc.) shall be permitted to exist in a Residence or on a Lot without the unanimous consent of the Committee and 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 at any meeting.

**Section 5.13 Outside Burning.** No trash, leaves, or other materials shall be burned upon a Lot unless the smoke therefrom will not blow upon any other Lot. Owners shall use appropriate incinerators and shall at all times be in compliance with all applicable legal requirements for outside burning.

**Section 5.14 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 Committee. The Committee shall 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 and only when fully screened from public view on the Lot, sides or rear of the Residence. It is the intent of this provision that the Committee shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Committee conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

**Section 5.15 Exterior Lights.** Except on Lots on which there is maintained a sales office or model home by the Exempt Builder or Declarant, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

**Section 5.16 Electric Bug Killers.** Electric bug killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

**Section 5.17 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. 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 outstanding maintenance assessments in the manner described in Article X. 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. Declarant and the Association shall have the right to

maintain the appearance of all vacant lots by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances and, in such event, the Owner of such vacant Lot shall be billed, on a monthly basis, and shall be liable for and pay within seven (7) days of receipt of each such bill all corresponding costs and expenses and, in the event such bill is not paid within seven (7) days of receipt thereof by the Owner of the subject Lot, (i) such Owner shall be liable not only for the amount of such bill but also for reasonable attorney's fees and all other costs and expenses of litigation which may be incurred in connection therewith and (ii) the Declarant or the Association, as the case may be, shall have a lien on such Lot for the payment of such expenses, together with reasonable attorneys' fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith, enforceable, in the same manner as the collection of Assessments, per the terms of Article X below.

Section 5.18 Awnings. Except on Lots on which there is maintained a sales office or model home by a Builder, the Exempt Builder or Declarant, or as approved by the Committee, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers are permitted anywhere on the Property.

Section 5.19 Diligence in Construction. Subject to inclement weather, every Residence shall be completed within fifteen (15) months after the beginning of such construction or placement. For cause shown, this fifteen (15) month period may be extended by the 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 5.20 HVAC Units. All heat pumps, air conditioning units or gas meters shall be installed along the side elevations of the Residence or the rear elevation of the Residence and, if installed along the side elevation, shall be (i) set back at least fifteen (15) feet from the front elevation and (ii) screened from view in accordance with a landscape plan approved by the Committee.

Section 5.21 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 the Declaration. A Pond may not be used for swimming, fishing, ice skating, boating, or for any other purpose, except for drainage of the Property, 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 5.22 Mailboxes. All mailboxes and posts must be approved by the Committee and shall be standard as to size, location, 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 5.23 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 in order to maintain a sightly 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, the Owner shall landscape the lot in accordance with the provisions set forth in this Declaration, weather permitting.

Section 5.24 Miscellaneous. No clotheslines may be erected on any Lot.

Section 5.25 Outbuildings and Animal Quarters. Any and all forms of outbuildings, including but not limited to, sheds, storage sheds, animal quarters, and play houses, which are not directly connected to the main house on any Lot are prohibited, unless the same are necessary or incident to the Declarant's, Builder's or Association's business or activities upon the Property, provided, however, that a pool house which (i) is used for changing and/or showering but not as sleeping quarters, (ii) is constructed on a foundation with footers (iii) is architecturally consistent with and uses the same exterior building materials as the Residence and (iv) is approved by the Committee shall be allowed. Animal quarters or kennels which are connected to the Residence must be approved by the Committee.

Section 5.26 Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, swing and slide sets, and trampolines shall not require approval by the Committee, provided that (i) such equipment is not more than eight (8) feet high (to the highest point of the structure) and properly painted and maintained by the Owner in good repair, (ii) such equipment is located in the rear yard of the Lot

between the parallel lines defined by extending the side lines of the residence into the rear yard of the Lot, and (iii) any swing and slide sets are constructed of wood. Metal swing and slide sets are prohibited. Prior approval by the Committee of the design, location, color, material and use of any equipment greater than eight (8) feet in height shall be required, and aluminum or metal play equipment is prohibited.

Section 5.27 Plumbing. All plumbing vent stacks are to be located on the rear of the Residence unless an alternative location is approved by the Committee.

Section 5.28 Subsurface Drains and Sump Pump Discharges. Subsurface drains 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. Subsurface drain laterals have been provided on specific Lots, and the Builder on such Lots 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 limits 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 and/or common subsurface drain laterals shall be responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owner(s) and/or Builder(s) for immediate payment. If immediate payment is not received, the Declarant and/or the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article X of this Declaration.

Section 5.29 Swimming Pools and Hot Tubs. Only permanent, in-ground, professionally constructed pools which are approved by the Committee shall be permitted upon a Lot. All submittals to the Committee shall include landscape plans. All backyard pools shall be oriented to minimize the potential affect on neighboring Lots, shall be enclosed by a fence which obstructs unauthorized access, or have an automatic pool cover, and shall comply with all other applicable laws, statutes, ordinances, and regulations pertaining to safety. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Committee approvals. Hot Tubs must also be approved by the Committee.

Sections 5.30 Tennis Courts, Racquetball Courts, Paddleball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities are not permitted without the prior approval from the Committee. All submittals to the Committee shall include landscape plans. Basketball goals may be installed on a lot adjacent to driveway without Committee approval provided that they have clear fiberglass or glass backboards supported by black posts. Independent basketball courts may not be constructed on a Lot without written Committee approval. No basketball goal or backboard shall be permitted to hang from or be affixed to the Residence or garage. Lighted courts of any kind are prohibited. Temporary or portable basketball courts will not be permitted to be located on streets or in cul-de-sacs, and shall have clear fiberglass or glass backboards and shall be supported by a black post.

Section 5.31 Vents. All metal and PVC roof or range vents shall be painted to blend with roof color.

Section 5.32 Windows-Doors. If storm doors are installed, they must be painted to match exterior of the Residence, and must be approved by the Committee. No unfinished aluminum doors or windows are allowed.

Section 5.33 Street Signs. Decorative street signs that do not conform to applicable municipal standards may be installed by Declarant in the Declarant's sole and absolute 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 rules and regulations of the controlling municipality. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs.

Section 5.34 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 5.35 Garbage and Other Refuse. No Lot Owner in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse, including compost, on his or her Lot.

Section 5.36 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, which satisfies the following requirements, as well as all requirements of the applicable zoning ordinance, may be permitted: any use conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, which use 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 trailers, model homes, and sales offices.

Section 5.37 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales:

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

(B) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches shall be responsible for such action and will be given ten (10) days notice, by registered mail, 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 shall be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article X of this Declaration.

Section 5.38 Roofing Materials. The roofing materials on all Residences shall be similar in color, and shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Committee.

Section 5.39 Solar Panels. Solar panels shall not be permitted on any Residence unless the solar panel is (i) not reasonably visible from the street or another Residence and (ii) is approved by the Committee. The Committee, in reviewing a request for a solar panel, shall consider landscaping, location, size, aesthetics, and the visibility of the solar panel.

Section 5.40 Temporary Structures. 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 5.41 Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat.

Section 5.42 Parking of Larger Vehicles. Trucks one (1) ton or larger in size, campers, trailer, motor homes, RVs, boats, snowmobiles, jet ski or similar vehicles shall not remain on any driveway or Lot, except within a closed garage, for more than twelve (12) consecutive hours within any one hundred twenty (120) hour period.

Section 5.43 Storage. There shall be no outside storage of commercial trucks, trailers,

boats, inoperable vehicles, equipment, or fuel tanks.

Section 5.44 Wells. Water wells, which are approved by the 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 for all clean-up costs. All wells must comply with all applicable laws, statutes, ordinances, and regulations, and 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 5.45 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 has been issued.

Section 5.46 Streets, Sidewalks, and Street Landscaping.

(A) Installation. Owners, at their expense, shall be responsible for installing sidewalks along and within the segment of the Streets adjacent to their Lot.

(B) Street Lights and Decorative Street Signs. All street lights and decorative street signs, if any, located within a Common Area and public rights-of-way shall be maintained by the Association.

Section 5.47 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 Committee. All landscaping specified on the landscaping plan approved by the 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; provided, however, that in no event shall such landscaping be installed later than June 30<sup>th</sup> of any calendar year.

Section 5.48 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system shall be installed or maintained on any Lot.

## ARTICLE VI

### ARCHITECTURAL CONTROLS

Section 6.1 Approvals. Approvals, determination, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Association, by an officer thereof, and with respect to the Committee, by one (1) member thereof. The Committee may, in its discretion, unilaterally promulgate written architectural and design guidelines (the "Guidelines") which (i) may, from time to time, be changed, or amended by the Committee without notice to or consent of Owners and (ii) shall be



binding upon the Owners.

Section 6.2 Committee: Development Standards and Architectural Control Committee. A Development Standards and 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. Such members shall be subject to removal by the Declarant at any time, with or without cause, until the end of the Development Period. Any vacancies from time to time shall be filled by appointment of the Declarant until the end of the Development Period.

Section 6.3 Continuation of Committee. After the end of the Development Period, the Directors of the Association, or their designees, shall continue the actions of the Committee with like powers and duties.

Section 6.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. The 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 applicant in writing within thirty (30) days, then said request shall be considered DENIED.

Section 6.5 Exercise of Discretion. Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the 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 Committee, could only conclude that such determination constituted an abuse of discretion.

Section 6.6 Inspection. The Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Section 6.7 Liability of Committee, Declarant, Developer. Neither the Committee nor any agent thereof, nor the Declarant, or 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 Committee, Association or Declarant 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 Committee, Association and/or Declarant 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 laws and zoning ordinances, or the materials to be used. All parties should seek professional construction advice, engineering, and inspections of each Lot prior to purchasing the Lot and/or commencing on said Lot.

Section 6.8 Common Areas Entrances, Street Signs, and Landscape Easements. None of

the following shall be installed or constructed without prior written approval thereof by the Committee: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, and/or sign landscape easement, (ii) any entrance monument or signage identifying the Development or any section thereof and/or (iii) street signage.

Section 6.9 Lot Improvements. No Residence, dwelling, building structure, fence, deck, driveway, swimming pool, rear yard tennis or basketball courts, or improvement of any type or kind (including significant landscaping or stacking of wood) shall be constructed or placed on any Lot without the prior approval of the Committee. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed construction. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement which plans shall be prepared and certified by a professional engineer. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, set backs, and rights-of-way and (iii) any landscape plans required by the Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $1/4" = 1'$  and all plot plans shall be drawn by a professional to a scale of  $1" = 30'$ , or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to insure that a resident is not encroaching on an adjacent homeowner or in a Common Area. If Owner has encroached on an adjacent Owner's property or in a common area, the encroaching Owner will, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment.

No fence or screen of any kind will be permitted if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties shall be considered by the Committee when reviewing applications for approval.

Section 6.10 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

(A) The plans, specifications, drawings or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of this Declaration; and

(B) The design, color scheme, and square footage of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures.

Section 6.11 Power to Grant Variances. The 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 6.12 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography, and in keeping with the intent of the Declarant.

## ARTICLE VII

### CONTIGUOUS LOTS

Section 7.1 Rules Governing Building on Several 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 a single-dwelling house, such Owner must apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house 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 one single-dwelling house; 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 X below. In addition, the Owner must obtain all requisite and necessary permits and approvals from the municipality having zoning jurisdiction over the Property.

## ARTICLE VIII

### USE AND OWNERSHIP OF COMMON AREA

Section 8.1 Ownership. A license upon such terms, conditions, rules and regulations as the Declarant, and successor, assigns or licensees of the Declarant, shall from time to time grant, for the use and enjoyment of the Common Area, is granted to the persons who are from time to time members of the Association; provided, however, that no residential development shall occur in the Common Area. 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. The Common Areas shall be conveyed by quitclaim deed to the Association. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Area to the

Association.

Section 8.2 Use. Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Association. Any Common Area depicted on the recorded plats of the Development or designated by the Declarant as a Common Area shall remain for the exclusive use of the Owner(s), and their family members, guests, tenants, or contract purchaser who reside on the Lot(s). Neither the Declarant's execution or recording of the plats nor the doing of any other act by the Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area.

## ARTICLE IX

### THE RIDGE AT HAYDEN RUN SECTION THREE HOMEOWNERS ASSOCIATION, INC.

Section 9.1 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 Area including, but not limited to, any and all lighting, landscaping, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments, water features, Ponds, and 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/or any sign landscape easement, (v) the performance of any other obligations and duties of the Association specified herein. The foregoing provisions of this Section 9.1 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 X below.

Section 9.2 Board of Directors. Prior to the Turnover Date, members of the Board of Directors shall be appointed by the Declarant, all 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 Turnover Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 9.3 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 B. The Class B Member shall be the Declarant.

Section 9.4 Voting Interests. The Class A Members of the Association are entitled to one (1) vote for each Lot owned by them. The total number of Class A votes shall not exceed the total number of Lots. The vote of a Lot is not divisible. The right to vote may not be denied because of delinquent assessments. If a Lot is owned by one natural person, his right to vote shall be established by the record title. If a Lot is owned jointly by two or more persons, that Lot's vote may be cast by anyone of the record Owners. If two or more Owners of a Lot do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. Class B membership shall cease to exist at the Turnover Date as specified in Section 9.5 below, whereupon the Declarant shall become a Class A Member as to all Lots owned by it. At all times prior to the termination of Class B Membership, the Class B Member shall have the same number of votes at any meeting in which votes are to be taken as are held by all Class A Members, plus two hundred (200).

Section 9.5 Time of Turnover. Unless turnover of control of the Association ("Turnover") occurs at an earlier time as elected in writing by the Declarant in the Declarant's sole discretion, per the terms of Section 9.7 below, the Turnover of control of the Association shall occur on the last to occur of the following (the "Turnover Date"):

- 9.5.1 When the Declarant no longer owns any part or portion of the Property including, without limitation, any of the Lots or Common Areas; and
- 9.5.2 Fifteen (15) years from the date of the recordation of this Declaration with the Recorder of Hamilton County, Indiana; and
- 9.5.3 When Declarant, in its discretion, shall determine that the development of the Property has been completed.

Prior to the Turnover Date, the Declarant, in its sole discretion, shall appoint all Directors and fill all vacancies on the Board of Directors and may, from time to time, and with or without cause, remove and replace any Directors. At the Turnover meeting, the Class A Members shall elect a Board of Directors and the Directors appointed by the Declarant shall resign.

Section 9.6 Procedure for Calling Turnover Meeting. No more than forty-five (45) days and no less than thirty (30) days prior to the Turnover meeting, the Association shall notify in writing all Class A Members of the date, time and place of the Turnover meeting.

Section 9.7 Early Turnover. The Declarant, in its discretion, may turn over control of the Association to Owners other than the Declarant prior to the Turnover Dates set forth above by declaring, in writing, that the Declarant is turning over control of the Association and by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Owners other than the Declarant to elect Directors and assume control of the Association. The Declarant shall not be liable in any manner in connection with such resignations, even if Owners other than the Declarant refuse or fail to assume control.

Section 9.8 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (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 9.9 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, 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. At all times after the Development Period, the Association shall be managed by a professional management company.

Section 9.10 Limitations on Rights of the Association. As long as there is a Class B Member, the Association may not use its resources, nor take a public position in opposition to future phases of The Ridge at Hayden Run Section Three proposed by the Declarant or changes to current phases of proposed by the Declarant. Nothing in this paragraph shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name, or on the behalf of the Association.

## ARTICLE X

### ASSESSMENTS

Section 10.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant or any 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:

- (A) Annual Assessments (hereafter defined);
- (B) One-Time Assessment (hereafter defined);
- (C) Special Assessments (hereafter defined) for costs of enforcement of the Declaration, capital improvements and operating deficits, copies of Association documents if requested by a member, and such assessments to be established and collected as hereinafter provided or established by the Board; and
- (D) Violation Assessments (hereafter defined) levied for a violation of this Declaration.

Section 10.2 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 and all

Supplemental Declarations can effectively be met.

Section 10.3 Annual Assessment.

(A) Amount. The Annual Assessment provided for herein shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an Owner other than Declarant, a Builder or the Exempt 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 Seven Hundred Fifty Dollars (\$750.00) per Lot per year. The Annual Assessment for the calendar year 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. The initial 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 improvements for the maintenance, repair and replacement of all Common Areas, including, without limitation all improvements within the Common Areas, (iii) to pay insurance premiums for casualty insurance insuring the improvements in the Common Area, and for errors and omissions insurance pertaining to the actions of the Board of Directors and Officers of the Association and (iv) the costs of professional management to manage the officers of the Association.

(C) Method of Assessment. By a vote of a majority of the Board of Directors, the Board of Directors shall, on the basis specified in Section 10.7 below, fix the Annual Assessment for each assessment year at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board during any calendar year shall be entitled to increase and collect from Owners the Annual Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners. The Board of Directors shall establish the date(s) the Annual Assessment shall become due, and the manner in which it shall be paid.

Section 10.4 One-Time Assessment. Upon the closing of the initial conveyance of each Lot by Declarant to an Owner other than a Builder or the Exempt 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 Two Hundred Fifty Dollars (\$250.00) 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 of the Development, 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 10.5 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, 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/or for operating deficits which the Association may from time to time incur.

Section 10.6 Violation Assessment. In addition to all other Assessments as be authorized herein, the Board of Directors may levy a Violation Assessment to an Owner, (i) for a violation against 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 or invitee. 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 10.7 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. Declarant shall not be required to pay any Annual Assessments or Special Assessments.

Section 10.8 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 thereto. The due dates for all Assessments shall be established by the Board of Directors.

Section 10.9 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 upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

Section 10.10 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 or Special



Assessments, or from contributing toward the expenses of administration and/or maintenance and repair of the Common Areas and toward 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. 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 Board of Directors for and on behalf of the Association, as provided by law, in the same manner as mortgages are foreclosed. 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 discretion and regardless of whether litigation is commenced, may:

- (1) impose a uniform monthly 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 such Owner's right to vote as provided in the Indiana Nonprofit Association Act of 1991, as amended.

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 the unpaid Annual Assessments, One-Time Assessments, Special Assessments, and/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, and/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/or Violation Assessments, 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 collections 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 10.11 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 showing the balance due the Association, if any.

Section 10.12 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of Assessments levied under this Article X. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments which became due or are attributable to the period of time 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.

## **ARTICLE XI**

### **REMEDIES**

Section 11.1 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 11.2 In General. The Association or any party to whose benefit this Declaration inures, including 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 XII**

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

Section 12.1 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, Committee, and 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, Committee and the Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

## ARTICLE XIII

### TITLES

Section 13.1 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 or to the neuter.

## ARTICLE XIV

### MISCELLANEOUS

Section 14.1 Invalidation of anyone 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 14.2 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) year 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 14.3 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 XVI below.

## ARTICLE XV

### DECLARANT'S RIGHTS

Section 15.1 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 15.2 Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant 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 may maintain and carry out upon any portion of the Property, including any Common Area, Lot and such facilities and activities as, in the sole opinion of the Declarant, 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 trailers.

## ARTICLE XVI

### AMENDMENT TO THIS DECLARATION

Section 16.1 This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. 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.

Section 16.2. Every Lot within the Subdivision shall be developed by Declarant and sold only to a Builder approved by Declarant.

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

DECLARANT:

PLATINUM PROPERTIES, LLC, an Indiana  
limited liability company

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

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

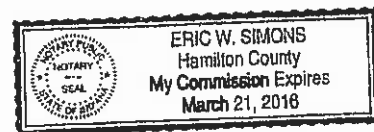
Before me, a Notary Public, in and for said County and State, personally appeared Steven R. Edwards on behalf of Platinum Properties, LLC, an Indiana limited liability company as the Declarant herein, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions of The Ridge at Hayden Run Section Three this 8<sup>th</sup> day of DECEMBER, 2008.

My Commission Expires:

Eric W. Simons  
Notary Public

Resident of \_\_\_\_\_ County, Indiana

Printed: \_\_\_\_\_



This Instrument Prepared by: **Charles D. Frankenberger**, Nelson & Frankenberger, 3105 E. 98th Street, Suite 170, Indianapolis, IN 46280 - (317) 844-0106.

"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."  
(name) Eric W. Simons

## **EXHIBIT "A"**

### **LAND DESCRIPTION**

**Lots numbered Fifty Nine (59) through and including One Hundred Five (105), and Common Areas numbered Eight (8), Nine (9) and Ten (10) in The Ridge at Hayden Run, an addition in Hamilton County, as per plat thereof, recorded July 6, 2006 as Instrument Number 200600038769 in the Office of the Recorder of Hamilton County, Indiana, as amended by a certain Surveyor Correction dated December 6, 2007 and recorded December 13, 2007 as Instrument Number 2007069073 in the Office of the Recorder of Hamilton County, Indiana.**