

PINE BLUFF OVERLOOK

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION, made this 31st day of October, 1994, by Pine Bluff Overlook Corporation, and Indiana corporation, (hereinafter referred to as the "Developer"),

WITNESSETH:

— WHEREAS, the Developer is the owner of all the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided and known as PINE BLUFF OVERLOOK—SECTION TWO (hereinafter referred to as the "Development"), and will be more particularly described on the plat thereof which will be recorded in the office of the Recorder of Hamilton County; and

— WHEREAS, the Developer has developed adjoining real estate into a subdivision known as PINE BLUFF OVERLOOK—SECTION ONE and said real estate is subject to a Declaration of Covenants and Restrictions recorded on August 17, 1994 as Instrument Number 9339443 in the Office of the Recorder of Hamilton County, Indiana; and

— WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted areas of the Development and, before doing so, desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the lots and lands in the Development and the future owners thereof which restrictions are similar to the Declaration of Covenants and Restrictions referred to in the preceding paragraph which apply to Section One of Pine Bluff Overlook;

NOW, THEREFORE, the Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held, and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having an interest in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development. The Developer specifically reserves unto itself the right and privilege to exclude any real estate so shown as described in Exhibit "A" from the Development, or to include additional real estate.

**CROSS REFERENCE: 9339443, 9339444, 9445744, 9445745
AMENDED AND RESTATED PINE BLUFF OVERLOOK DECLARATION OF
COVENANTS AND RESTRICTIONS**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND

RESTRICTIONS is made on this

day of

, 2022, and is made by the

members and residents of Pine Bluff Overlook (hereinafter referred to as the “Owners”),

WITNESSETH:

WHEREAS, the original developer and declarant of Pine Bluff Overlook was Pines Bluff Overlook Corporation (the “Developer”);

WHEREAS, the term “Development” shall hereafter mean and refer to the real estate set forth in Exhibits “A” and “B” attached hereto;

WHEREAS, the Developer developed the real estate set forth in Exhibit “A” into a subdivision known as PINE BLUFF OVERLOOK – SECTION ONE, with said real estate subject to a Declaration of Covenants and Restrictions recorded on August 17, 1993, as Instrument Number 9339443 in the Office of the Recorder of Hamilton County, Indiana (the “Section One Declaration”);

WHEREAS, the Developer developed the real estate set for in Exhibit “B” into a subdivision known as PINE BLUFF OVERLOOK – SECTION TWO, with said real estate subject to a Declaration of Covenants and Restrictions recorded on November 2, 1994, as Instrument Number 9445744 in the Office of the Recorder of Hamilton County, Indiana (the “Section Two Declaration”) (collectively the “Section One Declaration” and the “Section Two Declaration” shall be known as the “Declaration”);

WHEREAS, Developer established Pine Bluff Overlook Property Owners Association, Inc. to which Developer delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the restrictions set forth herein (“Restrictions”), collecting and disbursing the assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots within the Development;

WHEREAS, the Owners, as hereinafter defined, wish to make a variety of changes and amendments to the Declaration;

WHEREAS, for the sake of simplicity and efficiency, the Owners of Pine Bluff Overlook wish to record a single document and to restate the Declaration, and the amendments thereto, and to replace and supersede the Declaration;

WHEREAS, Section 20 of the Section One Declaration permits the amendment of the Section One Declaration upon the approval of not less than seventy-five (75%) of the then Lot Owners of all Lots subject to the Section One Declaration;

WHEREAS, not less than seventy-five (75%) of the current Lot Owners subject to the Section One Declaration voted to adopt this Amended and Restated Declaration of Covenants and Restrictions;

WHEREAS, Section 20 of the Section Two Declaration permits the amendment of the Section Two Declaration upon the approval of not less than seventy-five (75%) of the then Lot Owners of all Lots subject to the Section Two Declaration;

WHEREAS, not less than seventy-five (75%) of the current Lot Owners subject to the Section Two Declaration voted to adopt this Amended and Restated Declaration of Covenants and Restrictions;

NOW, THEREFORE, the Owners hereby declares that all of the platted Lots and lands located within the Development as they become platted are held, and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having an interest in and to the real property or any part or parts thereof subject to such Restrictions and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real estate in the Development.

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

- A. "Committee" shall mean the Pine Bluff Overlook Architectural Review Committee, composed of three (3) members appointed by the Developer, who shall be subject to removal by the Developer at any time, with or without cause. Any vacancies, from time to time, shall be filled by appointment of the Developer. The Developer may, at its sole option, at any time hereafter, relinquish to the Association the power to appoint and remove one or more members of the Committee.

"Committee" shall mean the Pine Bluff Overlook Architectural Review Committee, composed of three (3) members appointed by the Board of Directors of the Association, who shall be subject to removal by the Board of Directors at any time, with or without cause. Any vacancies, from time to time, shall be filled by appointment of the Board of Directors.

- B. "Association" shall mean the Pine Bluff Overlook Property Owner's Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in paragraph 13 of this Declaration.

"Association" shall mean the Pine Bluff Overlook Property Owners Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Section 14 of this Declaration.

- C. "Lot" shall mean any parcel of residential real estate described by the plat of the Development which is recorded in the office of the Recorder of Hamilton County, Indiana.
- D. "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.
 "Owner" shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.
- E. ~~"Town" shall mean the Town of Fishers, Hamilton County, Indiana.~~
 "City" shall mean the City of Fishers, Hamilton County, Indiana.
- F. "Plat" shall mean the subdivision plat of the property, as the same may be hereinafter amended or supplemented pursuant to this Declaration.

2. CHARACTER OF THE DEVELOPMENT

- A. In General. Every numbered lot platted as a part of the Development shall be for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plat shall be used in a manner consistent with the zoning and use designated in the plan filed by the Developer with the Department of Community Development in the ~~Town of Fishers.~~ **City of Fishers.** However, the Developer reserves unto itself the right to change the character of such designated use, at any time in the future, by applying to the Fishers Plan Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Developer's planned use.
- B. No Storage Sheds. Notwithstanding anything contained herein or in the Articles or By-Laws to the contrary, and in addition to all restrictions set forth in the plat of the Development, any and all forms of sheds, storage sheds, large animal quarters, etc., which are intended to not be directly connected to the main house on any Lot are hereby strictly prohibited unless, on a case-by-case basis, the Owners shall approve of such additional building by a seventy-five percent (75%) majority of all Owners at a meeting of the Owners called for the purpose of approving such building or at the annual meeting.

Storage Sheds. Notwithstanding anything contained herein or in the Articles or By-Laws to the contrary, and in addition to all restrictions set forth in the

plat of the Development, any and all forms of sheds, storage sheds, large animal quarters, etc., which are intended to not be directly connected to the main dwelling on any Lot are hereby strictly prohibited unless the Owners shall approve of such additional building by a fifty-one percent (51%) majority of all Lot Owners at a meeting of the Owners called for the purpose of approving such building or at the annual meeting. Outbuildings must also be approved by the Committee pursuant to Section 12 as to placement, design, form, construction, materials, and color. Outbuildings, not more than one (1) per Lot, shall be no larger than 12 feet by 10 feet by 9 feet (Length, width and height) and shall be constructed of wood materials and painted or otherwise covered with material the same color, or as near as possible to, the primary color of the dwelling located on the Lot. The structure shall be covered with a shingled roof, with or as near as possible to the same color as the roofing on the dwelling. There will be no roll-up or sliding metal doors permitted. The walls may not be of metal construction. No metal sheds, metal barns or lean-to structures will be permitted. Any optional electrical service to the structure must meet the requirements of all national, state and local codes or ordinances governing such. The Association, through any Lot improvements approvals granted by the Committee, does not convey any approvals, permits or inspection of said electrical services, nor does it convey any approvals or permits as may be required by state or local codes or ordinances governing such.

- C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it has been substantially completed.
- D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-way, and also to all governmental zoning authorities and regulations affecting the Development, all of which are incorporated herein by reference.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

- A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports or similar facilities shall be a minimum of 1,600 square feet for one-story dwellings or 1,800 square feet for multi-level dwellings. Basements shall not be included in the computation of the minimum living area, except for that portion of a walkout basement which is to be finished as a living area.

- B. Residential Set-Back Requirement.

- (i) Front Set-Backs. Unless otherwise provided in these Restrictions or on the recorded plat, all dwelling houses and above-grade

structures shall be constructed or placed on residential lots in the Development so as to comply with the set-back lines, as established on the plat of the Development.

- (ii) **Side Yards.** The side yard set-back lines shall not be less than seven and one-half (7.5) feet from the side line of the lot unless approved by the Committee and the Fisher Board of Zoning Appeals, or unless there is a change in the ~~Town of Fishers~~ development standards.
 - (iii) **Rear Yards.** The rear set-back line shall be at least twenty-five (25) feet from the rear lot line, unless approved by the Committee and the Fishers Board of Zoning Appeals.
 - (iv) **Lot coverage of any home shall not exceed thirty five percent (35%) of the total lot square footage.**
- C. **Fences, Mailboxes and Trees.** In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, all fences must be approved by the Committee as to size, location, height and composition before they may be installed. A uniform mailbox and post design will be selected by the Developer for all lots within the Development. All mailboxes will be installed by the builder of each single family home on each individual lot. A lot must have at least two (2) trees growing upon it in the front yard by the time the house is completed, weather permitting.
- D. **Exterior Construction.** The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding or any other similar material. All exterior siding shall be either wood siding or a wood by-product siding such as Louisiana Pacific's Inner Seal siding or its equal. No aluminum, vinyl or masonite siding shall be permitted. All driveways must be paved with concrete.
- E. **Sodded Front Yards.** Each lot must have the front yard sodded, and in the case of a corner lot, the front yard and any side yard with street frontage must be sodded, by the time the house is completed, weather permitting.
- F. **Outside Lighting.** Every house in the development must have at least two (2) coach lights on the exterior of each garage area with such lighting facing the street frontage. These coach lights will be controlled by a photocell to provide dusk-to-dawn lighting.
- G. **Sidewalks.** The builder of each building constructed on any lot will be responsible for the construction of all public walks along the street frontage and for any private sidewalks for each house.
- H. **Garages Required.** All residential dwellings in the Development shall include at least a two-car enclosed garage. Detached garages are not permitted.
- I. **Heating Plants.** Every house in the Development must contain a heating plant, installed in compliance with the required codes, and capable of providing adequate heat for year-round human habitation of the house.

- J. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. 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 from the time of such destruction or damage.
- K. Sales of Lots by Developer. Every lot within the Development shall be sold to a builder approved by the Developer or developed by the Developer.
- L. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such lot.
- M. Shingles. All houses within the Development shall have shingles which are of the same color, such color being weathered wood or its equal and shall be approved by the Committee.
- N. Colors. The Committee will approve all colors of brick, stone, siding and trim to be used by the Builder of any house within the Development, and the Committee must approve any color changes any owner wishes to make at the time of remodeling or repainting.
- O. Maintenance of Lots and Improvements. The Owner of any lot in the Development 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:
- (i) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
 - (ii) Remove all debris and rubbish.
 - (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
 - (iv) Cut down and remove dead trees.
 - (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
 - (vi) Within sixty (60) days following completion of a house on a lot, the Owner shall landscape the lot, weather permitting.
- P. Association's Right to Perform Certain Maintenance. In the event that the Owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, 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 cost therefore to the Association shall be added to and become a part of the annual assessment to which said lot is subject and may be collected in any manner in which such annual assessment may be collected. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

Q. Owner's Responsibility for Tree and Shrub Maintenance. The ~~Town of Fishers~~ **City of Fishers** shall require all owners to adhere to the following regulations with regard to the maintenance of tree and shrubs:

- (i) The owner of the dominant real estate adjacent to the area between the street and the sidewalk and/or right-of-way easement line on which any tree or shrub is planted shall be responsible for the maintenance and removal of the tree or shrub if such removal is necessary.
- (ii) If, after notice from the ~~Town~~, the said owner fails to maintain or remove a dead tree or shrub or any dead or dangerous limbs or branches thereon, the ~~Town~~ may remove said shrub or limbs and collect the costs thereof from the owner.
- (iii) The ~~Town of Fishers~~ and all public utilities retain their ownership and right to access to the area between the street and the right-of-way easement line of the dominant owner and retains the right to reasonably remove any tree or shrub impeding necessary work to be performed by the ~~Town~~ of Fisher and/or all public utilities, or other properly authorized users.
- (iv) Neither the ~~Town of Fishers~~ nor any public utility or other properly authorized user of the ~~Town's~~ property located between the street and the sidewalk and/or right-of-way easement line shall be liable to the owner of the dominant real estate for any damages done to trees or shrubs located upon ~~Town~~ property between the street and the sidewalk and/or right-of-way easement line as a result of actions of the ~~Town of Fishers~~ or any public utility or other authorized user or their agents or employees in the performance of their duties.

4. PROVISION RESPECTING STREET SIGNAGE.

A. Street Signs. Each street shall have a street sign indicating the name of each street. If such signs are of a decorative nature and different from the standard street signs used by the ~~Town of Fishers~~, Indiana, then it shall be the responsibility of the Association to maintain and keep in good repair such decorative street signs.

- B. Stop Signs. All stop signs must be of the type as required and specified by the ~~Town~~ of Fishers, Indiana.

5. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

- A. Outside Toilets. No outside toilets shall be permitted on any lot in the Development (except during a period of construction).
- B. Construction of Sewage Lines. All sanitary sewer lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of Hamilton Southeastern Utilities, Inc. No storm water (subsurface or surface) shall be discharged into sanitary sewers.
- C. Location of Sanitary Sewer Manholes. Sanitary sewer manholes shall not be placed under or within one (1) foot horizontal distance of pavement or concrete, including driveways or sidewalks.
- D. Gravity Sanitary Sewer Service. All homeowners not serviced by gravity sanitary sewer service are responsible for all maintenance and repair of grinder pumps and force mains from the residence to its connection to the gravity sewer.

6. PROVISION RESPECTING RENTALS.

Two-Year Waiting Period. For a period of at least two (2) years after an Owner's acquisition of a Lot, said Owner cannot lease the Lot. After such time, said Lot will be eligible to be leased if all other conditions of this Section 6 are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association, or is otherwise in violation of any other provision of this Declaration.

A. "Rental" and "Lease" defined. The leasing restrictions set forth in this Section 6 are intended to apply to all forms of non-Owner occupancies, except as specifically provided herein. For the purposes of this Section 6, "rented" or "leased" as used interchangeably herein, shall mean leased or rented or occupied, whether or not for compensation of any kind, by anyone other than an Owner of the Lot together with members of his or her household or temporary guest. The term "temporary guest" shall mean any guest not utilizing the Lot as a primary residence and whose occupancy of the Lot shall not exceed 90 days in a single calendar year. However, the "waiting period" provided in this Section 6 will not apply to any situation where a Lot is occupied by members of the Owner's immediate family. For purposes of this Section 6, "immediate family" shall only include the Owner's parent, children, spouse, or significant other/life partner. This kind of "family" occupancy will not be considered to be a "lease" or "rental" in the context of the "Rental Cap", even though the Owner and occupants will still be subject to the remaining provisions and requirements of this Section 6. Sole occupancy of a Lot by anyone other than an Owner or members of the owner's immediate family shall be deemed a "rental" for the purposes of this Section 6. Any Home or Lot owned by a Trustee or by a Fiduciary shall not be deemed to be a rental provided that the resident is the Trustee, the Fiduciary of an Estate, or a beneficiary of the Trust or Estate. Any Lot owned by a business or corporate entity (including, but not limited to, a corporation, LLC, partnership, etc.) shall submit a certificate of designated representative to the Association. This certificate will indicate both who is authorized to vote on behalf of the business entity as well as who is authorized to reside

on the Lot. The resident and the designated representative for voting purposes must be the same individual. If they are not the same, the Lot will be deemed a rental under the terms of this Section 6.

B. **Effective Date of Lease Conditions.** The leasing restrictions set forth in this Section 6 shall not apply to any Owner of a Lot who, at the time of recording this provision, is renting or leasing said Lot for exclusive occupancy by one or more non-owner tenants, so long as such Lot continues to be owned by the same Owner and continues to be leased to and exclusively occupied by non-owner tenant(s). In order for this exception to apply, said Owner must deliver a copy of the executed lease, which is in effect at the time to the Board within thirty (30) days after the recording of this document and shall furnish a copy of any subsequent lease within thirty (30) days after its execution. Such copy may have the rental amount deleted. Failure of such an Owner to timely deliver a copy of any such lease to the Board shall result in said Owner's Lot being subject to these restrictions. However, in this latter circumstance, these restrictions shall not apply to any lease executed prior to the effective date of these restrictions or to any renewals thereof provided in such lease so long as the occupants remain the same.

C. **Hardship Exception.** Notwithstanding Section 6(A), if an Owner wishes to lease a Lot prior to the end of the two (2) year waiting period, the Owner may apply to the Board of Directors for a waiver if the Owner establishes to the Board's satisfaction that the waiting period or rental restriction will cause undue hardship. If a majority of the entire Board approves in writing of the Owner's request, the Board shall permit the Owner to rent or lease said Lot, subject to any further conditions or limitations imposed by the Board in the Board's discretion, but only if the Owner satisfies all other requirements of Section 6 and the Declaration. Such decision shall be at the sole discretion of the Board. The duration of a given hardship exception will be decided by the Board and will not be longer than one year. At the conclusion of any hardship exception, an Owner may apply to the Board to renew the waiver for up to an additional year, which decision shall be at the sole discretion of the Board. An undue hardship is defined as:

- i. temporary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of the Development made necessary due to a change of employment of at least one (1) of such Owners, which must be documented by written confirmation from the Owner's employer;
- ii. necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
- iii. death, dissolution or liquidation of an Owner;
- iv. divorce of an Owner.

If an Owner desires to request an exception based upon hardship circumstances other than those specifically defined as an "undue hardship" in this Section 6(C), the Owner must submit a written request describing, with reasonable particularity, the nature of the alleged hardship and the alleged need to rent or lease the Lot. The Board may approve or deny such requests as it deems appropriate, and such decisions shall be final and binding.

7. GENERAL PROHIBITIONS.

- A. In General. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot in the Development.
- B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs, without the approval of the ~~Developer~~.
- C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.
- D. Vehicle Parking. No trucks one (1) ton or larger in size, campers, trailers, boats, boat trailers or similar vehicles shall be parked on any street in the Development. Any motor or recreational vehicle, trailer, camper, boat or boat trailer which is not used for normal transportation shall not be permitted to remain on any lot except within a closed garage and shall not be regularly parked upon unpaved areas.
- E. Garbage and Other Refuse. No Owner of a lot 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 on his lot except as may be permitted in subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.
- F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.
- G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home without permission to do so from the ~~Developer~~. **Board of Directors**
- H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot without the approval of the Developer.
- I. Open Drainage, Ditches and Swales.
 - (i) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to

be altered, dug out, filled in, tiled or otherwise changed, without the written permission of the ~~Town~~ Engineer. Property owners must maintain these swales as sodden grassways or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate-sized culverts or other approved structures have been permitted by the ~~Town~~ City Engineer.

Culverts must be protected, especially at the ends, by head walls or metal end sections, and, if damaged enough to retard the water flow, must be replaced.

- (ii) Any property owner altering, changing or damaging these drainage swales or ditches will be held 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 ~~Town~~ will cause said repairs to be accomplished and the bill for such repairs will be sent to the affected property owners for immediate payment.

- J. Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.
- K. Wells and Septic Tanks. No water wells shall be drilled on any of the lots (other than for heating or cooling purposes) nor shall any septic tanks be installed on any of the lots in the Development, unless public tap-in to a sanitary sewer system is unavailable.
- L. Obtrusive Objects. No high intensity lighting, no television, radio or other antennae, no large satellite dishes, nor any visually obtrusive object may be erected by any lot Owner on the exterior of a dwelling or anywhere on a lot unless approved by the Committee. It is the intent not to allow any exterior antennae. It is also the intent to permit small (18" or less in diameter) satellite dishes to be installed with such installation and location of installation on the house to be approved by the Committee. The Committee reserves the right to review what mechanisms and equipment are permitted based upon the changes in technology.
- M. Motor Vehicles. The repair or storage of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on a lot unless entirely within a garage permitted to be constructed by these covenants and restrictions.
- N. Boats and Recreational Vehicles. No boat, trailer or camper of any kind shall be kept or parked upon a lot except within the garage.
- O. Above Ground Pools. No above ground pools, except for small kiddie pools, shall be allowed in the Development.

- P. Obstructions. No fence, wall, hedge, tree, shrub planting or other construction shall be placed in a triangular space at the street corner of a corner lot which would obstruct vision between the heights of three (3) and twelve (12) feet above established street grade, determined by a diagonal line connecting two points measured 25 feet equidistance from the street corner along each property line.
- Q. Building Height. All lots in the Development shall be designated as residential lots, and no home shall exceed two and one-half (2 ½) stories or thirty-five (35) feet in height.

8. EASEMENTS.

- A. Lots are subject to drainage easements, sewer easements, utility easements, landscape maintenance easements and non-access easements, either separately or in combination of the five, as shown on the plat of the Development which are reserved for the use of the lot owners, public utility companies and governmental agencies as follows:
- (i) Drainage easements (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Development and adjoining ground and/or public drainage system. Under no circumstances shall said easements be blocked, in any manner, by the construction or reconstruction of any improvement, nor shall any grading restrict the water flow in any manner. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the Developer.
 - (ii) Storm sewer easements (S.E.) and sanitary sewer easements (S.S.E.) are created for the use of the local governmental agency having jurisdiction over the storm and/or sanitary waste disposal system of said city and/or county designated to serve the addition for the purposes of installation and maintenance of sewers that are a part of said system. All S.S.E.'s shall include the right of ingress and egress for Hamilton Southeastern Utilities and/or their assigns for the maintenance of sanitary sewer. Each owner of a lot must connect with public sanitary sewer.
 - (iii) Utility easements (U.E.) are created for the use of public utility and cable television companies, not including transportation companies, for the installation of pipes, mains, ducts and cables, as well as for the uses specified in the case of sewer easements.
 - (iv) Landscape maintenance easements (L.M.E.) and sign landscape easements (S.L.E.) are created for the use of the Association, subject to the rights of the Owners as set forth in this

Declaration, and the Association shall be responsible for the management, control and maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair. There is shown on the plat a L.M.E. (Landscape Maintenance Easement) designation on the south side of lot 86 and between lots 83-86 and 87-90. This L.M.E. is created for the use of the Association in the control and maintenance of the “keystone block” retaining wall in a clean, attractive, safe condition, order and repair.

- (v) Non-access easements are created to prohibit direct access to public rights-of-way of 106th Street and or Cumberland Road.
- (vi) The Owners of all lots in the Development shall take title subject to the rights of public utilities, governmental agencies and the rights of the other lot owners in the Development to said easements herein granted for ingress and egress in, along and through the strips of ground for the purposes herein stated.
- (vii) There is shown on the plat a 25’ x 50’ Planting Easement on Lot 73. This Planting Easement has been created for the benefit of the adjoining Walnut Ridge subdivision. This Planting Easement is to be used for the landscape planting of the entry to the subdivision to be known as Walnut Ridge. It shall be the responsibility of the developer of the Walnut Ridge subdivision to plant and maintain this Planting Easement until such time when the Walnut Ridge Property Owners’ Association, Inc. has been formed at which time it shall become the responsibility of the Walnut Ridge Property Owners Association, Inc. to maintain this Planting Easement.

9. LAKE COMMON AREAS NO. 1 AND NO. 2, VARIABLE D.E. AND H.O.A. LANDSCAPE EASEMENT IN PINE BLUFF OVERLOOK, SECTION I.

- A. There was identified on the plat of Pine Bluff Overlook, Section I, areas to be owned by the Association and designated as Lake Common Area No. 1 and Lake Common Area No. 2 which comprise retention ponds designed to accommodate storm water drainage runoff from the development and adjoining real estate. The areas identified as Lake Common Area No. 1 and No. 2 of Pine Bluff Overlook, Section I shall be conveyed by the Developer to the Association.
- B. Certain Obligations and Access Rights to the Lake Common Areas No. 1 and No. 2.
 - (i) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management, control and maintenance, for the exclusive benefit of the Owners as

provided herein, of the Lake Common Areas No. 1 and No. 2 in a safe, neat and orderly condition at all times.

- (ii) The Association shall have and is hereby granted a general right of access and easement to all of the Lake Common Areas No. 1 and No. 2 across the lots adjoining said lakes, at reasonable times and at any time in the case of an emergency, as reasonably required by its officers, directors, employees, and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of the Developer so long as the Developer owns any portion of the development and for so long as the Developer may be responsible for any warranty work.
- (iii) An easement is hereby dedicated and granted for the use, in the case of an emergency, of emergency vehicles, including, but not limited to, fire trucks, police cars and ambulances and of emergency personnel, public and private, over and upon the Lake Common Areas No. 1 and No. 2 owned by the Association and the adjoining lots.

C. Use of Lake Common Areas No. 1 and No. 2.

- (i) Except as otherwise provided herein, the enjoyment of the Lake Common Area No. 1 shall be limited to the owners of the lots adjoining the Lake Common Area No. 1 as shown on the plat and the enjoyment of the Lake Common Area No. 2 shall be limited to the owners of the lots adjoining the Lake Common Area No. 2.
- (ii) Except for the rights of the Developer, the Association, and their employees, heirs, successors and assigns, as set forth in this Declaration, no individual shall have the right to cross a lot other than his own for access to the Lake Common Areas No.1 and No. 2.
- (iii) No one shall commit or permit any action or activity which could result in pollution of the lakes, diversion of water, elevation of lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management except as provided in this Declaration. The lake may not be used for swimming, fishing, boating or for any other purpose, except for drainage of the Development, unless allowed by law and expressly and specifically approved by the Association and so stated, in writing, by the Board of Directors.

10. LANDSCAPE MAINTENANCE EASEMENTS (L.M.E.) AND LAKE COMMON AREAS NO. 1 AND NO. 2.

- A. The Association, as part of its duties and as part of the Association's expenses, shall provide for:
- (i) Maintenance of the L.M.E.'s and Lake Common Areas No. 1 and No. 2. Maintenance shall include, but shall not be limited to, fertilizing, mowing and replanting, when necessary, of the grass and trees, and maintenance of any other improvement within these areas.
 - (ii) Maintenance of the entry signs and walls, the perimeter landscaping and the perimeter fencing installed by the Developer.
 - (iii) Maintenance of the "keystone block" retaining wall on the south side of lot 66 and between lots 83-86 and 87-90.
 - (iv) All manner of erosion control, bank stabilization and chemical treatments with respect to the two lakes.
- B. The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the L.M.E.'s and Lake Common Areas No. 1 and No. 2 as it deems necessary.

11. EXPANSION.

- ~~A. Property Subject to Expansion by the Developer. The Developer reserves the right to expand the amount of property subject to this Declaration, as amended from time to time, without the consent of the Owners, or any other party.~~

12. ARCHITECTURAL REVIEW COMMITTEE.

- A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements subject to these Restrictions in such a manner to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.
- (i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. 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. Such plans shall include plot plans showing the location of all 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. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials 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 $\frac{1}{4}'' = 1'$, and all plot plans shall be drawn to a scale of $1'' = 30'$ or to such other scale as the Committee shall require.

- (ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:
 - (a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;
 - (b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;
 - (c) The proposed improvement, or any part hereof, would, in the sole opinion and absolute discretion of the Committee, be contrary to the interests, welfare or rights of all or any portion of owners.
- (iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions 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 these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

B. 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. One copy of submitted material shall be retained by the 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.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, shall be liable in any way for the approval or disapproval of any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

- D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.
- E. Continuation of Committee. At such time that the Developer notifies the Association in writing that it is relinquishing its memberships on the Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

13. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous lots in the Development 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, he shall 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 these Restrictions to said lots, so long as the lots remain improved with one single-family house.

14. PINE BLUFF OVERLOOK PROPERTY OWNERS ASSOCIATION, INC.

A. In General.

- (i) There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the Pine Bluff Overlook Property Owners Association, Inc.”, which is herein referred to as the “Association”. Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual assessment.

~~B. Classes of Membership. The Association shall have two classes of voting membership:~~

~~Class A. Class A members shall be all owners, with the exception of the Developer, and 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 among themselves determine, but in no event shall more than one vote be cast with respect to any lot.~~

~~Class B. The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:~~

- ~~(a) On the date the Developer sells seventy five percent (75%) of the lots in the Development; or~~

~~(b) On January 1, 1999.~~

B. **Membership.** Each Owner shall automatically be a member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person holding a mortgage on a Lot realizes upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments. Each Owner 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 among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

- C. **Board of Directors.** The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.
- D. **Professional Management.** No contract or agreement for professional management of 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 any termination fee, by written notice of ninety (90) days or less.

E. **Responsibilities of the Association.**

- (i) The Association shall maintain the landscaping in and along 106th Street and Cumberland Road and within the landscape easements as shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.
- (ii) The Association shall govern the use of and maintain the common areas as defined herein.
- (iii) The Association may procure and maintain casualty insurance, liability insurance (including Directors' and officers' liability insurance) and such other insurance as it deems necessary or advisable.
- (iv) The Association may contract for such service as management, snow removal, security control, trash removal and such other services as the Association deems necessary or advisable.

15. **COVENANT FOR MAINTENANCE ASSESSMENT.**

A. **Creation of Lien and Personal Obligation of Assessments.**

Each owner of a lot in the Development, except the Developer, 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: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the Lot and

shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. No charge or assessment shall ever be levied by the Association against the Developer.

- B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Development and for the improvement and maintenance of improvements, owned, operated or maintained by the Association that may, from time to time, be construed by the Developers, and the landscape easements within the Development and other purposes as specifically provided herein.
- C. Special Assessments for Capital Improvement and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of 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 or for operating deficits which the Association may, from time to time, incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- D. Notice and Quorum for Any Action Authorized Under Section C. Written notice of any meeting called for the purpose of taking any action authorized under Section C shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- E. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence for each lot on the date of conveyance to the Owner, exclusive of the original builder, by deed or on the date the Owner signs a land contract to purchase a lot. The initial annual assessment shall be One Hundred Twenty-Five and 00/100 Dollars (\$125.00). 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. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association

regarding the status of assessments for any lot shall be binding upon the Association as of the date of its issuance.

- F. Effect of Non-Payment of Assessments: Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the Owner or Owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The Owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expenses or costs, including attorneys' fees, incurred by the Association in collecting the same. Every interest in such lot, whether as an Owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an Owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.
- G. Subordination of the Lien to Mortgage. A lien for 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 lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, provided, however, that the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.
- H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the property and the facilities of the Association, of any member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or rules and regulations of the Association.

16. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence of continuation of any violation of these Restrictions, or to force compliance with these Restrictions and Covenants, together with right to collect costs and reasonable attorneys' fees, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any of these Restrictions.

(i) Definitions.

(a) "claim" refers to any of the following: a claim arising out of or relating to the interpretation, application, or enforcement of the Articles, the Declaration, the By-Laws, or any rule or regulation promulgated by the Board; a claim relating to the rights or duties of the Association, the Committee, the Declarant, or the Board under the Articles, the Declaration, the By-Laws, or any rule or regulation promulgated by the Board; a claim relating to the maintenance of the Common Areas; or any other claim, grievance, or dispute among the parties (as hereinafter defined) involving the Common Areas or the Association. The term "claim" shall not include any Exempt claim (as hereinafter defined).

(b) "Claimant" refers to a party who has a claim against another party.

(c) "Exempt claim" refers to: any claim or action by the Association to collect assessments or any charge incurred in connection with the collection of assessments or other amounts due under the terms of this Declaration; any action by a party to obtain a temporary restraining order or equivalent emergency equitable relief:

i. to maintain the status quo and preserve the party's ability to enforce the Articles, the Declaration, the By-Laws, or a rule or regulated promulgated by the Board of Directors; or

ii. when an emergency condition exists that jeopardizes the health or safety of any of the residents within the Development; a suit to which an applicable statute of limitations would expire within the notice period, unless the party against which the claim is made agrees to toll the statute of limitations as to the claim for the period reasonably necessary to comply with this subsection; a dispute that is subject to mediation, arbitration, or other alternate dispute resolution under applicable law, contract, warranty agreement, or other instrument; or a claim that is substantively identical to a claim that either was previously addressed by the parties or that was resolved by a judicial determination in favor of one (1) of the parties.

(d) "legal proceedings" refers to an action maintained in a court or an administrative proceeding initiated under an applicable law.

(e) "party" refers to the Association, an Owner, or the Board of Directors.

(f) "respondent" refers to the party against whom a claimant has a claim.

(ii) Prerequisites to Initiating a Legal Proceeding. A claimant may not initiate a legal proceeding seeking redress or resolution of a claim until the claimant has complied with the procedures described in this Paragraph.

(iii) Notice of Claim; Required Information. A claimant must provide notice of the claim to the respondent, stating plainly and concisely the following information:

(a) The nature of the claim, including the date, time, location, persons involved, and the respondent's role in the claim.

(b) The basis of the claim, including the provision of the Articles, the Declaration, the By-Laws, the rule or regulation promulgated by the Board, and/or other authority out of which the claim arises.

(c) What the claimant wants the respondent to do not to do to resolve the claim.

(d) The name and address of the person from whom the respondent must request a meeting, as set forth below.

(iv) Negotiation Meeting; Access to Subject Property. This subsection applies if a respondent has requested a meeting under subsection (iii) above not later than ten (10) business days after the date of the notice of the claim. The claimant and the respondent shall meet in person to resolve the claim by good faith negotiation, at the time and place agreed to by the claimant and the respondent. During the meeting, the parties must have full access to the Lot that is the subject of the claim to inspect the Lot, if appropriate or necessary. If the respondent agrees to take corrective action, the claimant must provide the respondent and the respondent's agents with full access to the Lot to take and complete corrective action.

(v) Impasse; Submission of Claim to Mediation or Binding Arbitration; Costs of Mediator or Arbitrator. The parties are considered to be at an impasse if: the respondent does not timely request a meeting under subsection (iii), above; either party fails to attend a meeting agreed upon under subsection (iv), above; or the parties are unable to settle the claim at a meeting held under subsection (iv), above. Either party may, not later than ten (10) days after an impasse is reached, request in writing to the other party that the other party submit the claim to mediation or binding arbitration. The party making the request shall be responsible for the costs of the mediator or arbitrator.

(vi) Impasse; Beginning Legal Proceedings. If impasse is reached and neither party timely requests mediation or arbitration, or mediation or arbitration does not result in a settlement of the claim, then the claimant may begin legal proceedings.

(vii) Settlement of Claim through Negotiation, Mediation, or Arbitration. This subsection applies if a claim is settled through negotiation, mediation, or arbitration. The settlement of the claim must be documented in a written agreement signed by all parties to the claim. If a party fails to abide by the executed settlement agreement, the non-breaching party may begin legal proceedings without again complying with this Section. If the non-breaching party begins legal proceedings and prevails in those legal proceedings, the non-breaching party is entitled to recover from the breaching party court costs, attorneys' fees, and all other reasonable costs incurred in enforcing the settlement agreement.

(viii) Effect of Release or Discharge. A release or discharge of a respondent from liability to the claimant with respect to the claim does not release or discharge the respondent with respect to any other person who is not a party to the claim.

(ix) Powers of the Board of Directors. The Board, on behalf of the Association, and without the consent of the Owners, may negotiate settlements of claims or legal proceedings under this Section, or execute settlement agreements, waivers, releases of claims, or any other documents resulting from application of this Section.

(x) Costs of Each Party. Except as otherwise provided in this Section, each party shall bear its own costs for application of this Section, including, but not limited to, attorney's fees.

(xi) Conflict with Ind. Code § 32-25.5-5-1 et seq., as amended from time to time ("Grievance Resolution Statute"). Should a conflict arise between the language or interpretation of any portion of this Declaration and any provision of the Grievance Resolution Statute, the Grievance Resolution Statute shall prevail.

B. Delay of 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 these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) of any right available to him upon the occurrence, reoccurrence or continuation of such violations of these Restrictions.

C. Enforcement by ~~Town of Fishers~~, City of Fishers Municipal Plan Commission. These Restrictions may be enforced by the Plan Commission of the ~~Town~~ of Fishers, Indiana, or its successors or assigns, pursuant to whatever powers or procedures are statutorily available to it for such purposes.

17. EFFECT OF BECOMING AN OWNER. The Owners of any lot subject to these Restrictions by acceptance of a deed conveying title hereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer, the Committee and the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with the Developer, the Committee and the Association and to and with the Owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and covenants.

18. TITLES. The titles preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only and none of them shall be used as an aid to the construction of any provision of these Restrictions. 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.

19. DURATION. The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2013, at which time said Covenants and Restrictions shall be automatically extended for successive period of ten (10) years, unless changed, in whole or in part, by vote of those persons who are then the owners of ~~seventy five percent (75%) of the numbered lots in the Development of~~ 49 eligible votes of the membership.

20. SEVERABILITY. Every one of the Restrictions is hereby declared to be independent of and severable from the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions.

Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or “running” quality of any other one of the Restrictions.

21. AMENDMENT. ~~These Restrictions may be amended by a vote of seventy-five percent (75%) of the then lot owners of all lots in the Development.~~ **These Restrictions may be amended by a vote of fifty-one percent (51%) of the then Lot owners of all Lots in the Development.**