

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS OF**

HERON PRESERVE

SECTIONS I, II, III and IV

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS**

FOR

**HERON PRESERVE
SECTIONS I, II, III AND IV**

This Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Sections I, II, III and IV of Heron Preserve ("Declaration") is made as of December ___, 2011, by and between Heron Developers II, LLC, an Indiana limited liability company ("Declarant"), The Heron Preserve Homeowners' Association, Inc., an Indiana non-profit corporation (the "Association"), and at least seventy-five percent (75%) of the Owners in Sections I, II, III, and IV of Heron Preserve, a platted subdivision in Allen County, Indiana. The Declarant, the Association and the Owners are sometimes referred to individually herein as a "party" and collectively as the "parties."

**ARTICLE I
RECITALS**

WHEREAS, on April 15, 2003, the secondary plat for Heron Preserve, Section I, which plat contained Lot Numbers 1 through 11, 16 through 42, 46 through 49 and 55 through 57 ("Section I Plat"), and the Declaration of Covenants, Conditions, Easements and Restrictions for Heron Preserve, Section I ("Section I Covenants") were recorded in the Allen County Recorder's Office as Document No. 2030307572 in Plat Cabinet E, at pages 153-155; and

WHEREAS, on December 22, 2004, the Section I Covenants were amended by that First Supplemental Declaration of Covenants, Conditions, Easements and Restrictions of Heron Developers, LLC, recorded in the Allen County Recorder's Office as Document No. 204091121; and

WHEREAS, on December 22, 2003, the secondary plat for Heron Preserve, Section II, which plat contained Lot Numbers 12 through 15, 43 through 45 and 50 through 54 ("Section II Plat"), the Declaration of Covenants, Conditions, Easements and Restrictions for Heron Preserve, Section II ("Section II Covenants") were recorded in the Allen County Recorder's Office as Document No. 203127429 in Plat Cabinet E, page 190; and

WHEREAS, on December 9, 2004, the secondary plat of Heron Preserve, Section III, which plat contained Lots Numbered 58 through 77 ("Section III Plat") and the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals appended to and as part of the Dedication and Plat of Heron Preserve, Section III, a subdivision in Aboite Township, Allen County, Indiana ("Section III Covenants") were recorded in the Allen County Recorder's Office as Document No. 204088130 in Plat Book F, page 40; and

WHEREAS, on May 22, 2007, the secondary plat for Heron Preserve, Section IV, which contained Lots Numbered 78 through 102 ("Section IV Plat") and the Declaration of Covenants,

Conditions, Easements and Restrictions for Heron Preserve, Section IV (“Section IV Covenants”) were recorded in the Allen County Recorder’s Office as Document No. 207028641 in Plat Cabinet F, page 165; and

WHEREAS, on December 6, 2004, Articles of Incorporation for The Heron Preserve Homeowners’ Association, Inc., an Indiana non-profit corporation, were filed in the Office of the Indiana Secretary of State; and

WHEREAS, Declarant, the Association, and at least seventy-five percent (75%) of the Owners desire to make this Declaration applicable to certain real estate owned by Declarant and more particularly described on attached **Exhibit B**, which is incorporated herein by reference (“Metes and Bounds Outlots”) so that these Metes and Bounds Outlots shall be governed by the provisions of this Declaration; and

WHEREAS, the Section I Covenants, Section II Covenants, Section III Covenants and Section IV Covenants each provide that these restrictive covenants may be altered or amended by a vote of not less than seventy-five percent (75%) of the Voting Membership; and

WHEREAS, Heron Developers II, LLC acquired all of the interests of Heron Developers, LLC in any of the remaining lots in the Section I Plat, Section II Plat, Section III Plat, and Section IV Plat and is the successor in interest to Heron Developers, LLC, which was the original declarant in the Section I Covenants, Section II Covenants, Section III Covenants and Section IV Covenants; and

WHEREAS, at least seventy-five percent (75%) of the Owners in the Section I Plat, Section II Plat, Section III Plat and Section IV Plat, the Declarant and the Association desire to replace, restate, amend, consolidate and supersede the Section I Covenants, Section II Covenants, Section III Covenants and Section IV Covenants by adopting this Declaration; and

WHEREAS, notice of the amendments proposed by this Declaration were included in a notice of meeting; a resolution to adopt this Declaration was proposed by the Board; the resolution concerning the amendments proposed by this Declaration was approved by the Board; and the proposed amendments proposed by this Declaration was approved by a vote of not less than seventy-five percent (75%) of the Voting Membership as shown by attached **Exhibit A**, which is a true and accurate copy of the minutes of the meeting where this Declaration was approved by the Owners; and

WHEREAS, the Declarant, the Association, and the Owners desire to provide for the preservation, enhancement of the values and amenities in Heron Preserve and, to this end, the Declarant, the Association and the Owners desire to subject the Section I Plat, Section II Plat, Section III Plat, and Section IV Plat to the certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, and all to the extent provided in this Declaration, for the benefit of the subdivision and each Lot and the Owners, and their successors and assigns, of all or part thereof.

NOW, THEREFORE, at least seventy-five percent (75 %) of the Owners in the Section I Plat, Section II Plat, Section III Plat, and Section IV Plat of Heron Preserve hereby declare that all of the Lots and Common Areas conveyed in these Plats and in the Metes and Bounds Outlots are and shall be owned, held, transferred, sold, mortgaged, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to run with the land and to be in furtherance of the plan for preservation and enhancement of the subdivision and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the subdivision as a whole and of each of the Lots and the Metes and Bounds Outlots situated therein.

ARTICLE II DEFINITIONS

Section 2.1 "Act" shall mean and refer to the Indiana Nonprofit Corporation Act, IND. CODE § 23-17, *et al.*, as amended.

Section 2.2 "Applicable Lot Date" shall mean and refer to the date determined pursuant to Article V, Section 5.2(b) and the "Applicable Villa Lot Date" shall mean and refer to the date determined pursuant to Article VII, Section 7.2(b) of this Declaration. If this Declaration is referring to obligations, restrictions, or other provisions of this Declaration that apply to both the Lots and the Villa Lots (e.g., assessments or ARB restrictions), then "Applicable Lot Date" shall mean, when appropriate, the "Applicable Villa Lot Date" if the obligations, restrictions or other provisions of this Declaration are applicable to the Villa Lots.

Section 2.3 Intentionally deleted.

Section 2.4 "Architectural Review Board" or "ARB" shall refer to that committee as established by the Board of Directors and described in Article XVI hereof.

Section 2.5 "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of the Association, which were filed on December 6, 2004, and as may be amended from time to time.

Section 2.6 "Assessment" or "Assessments" shall mean and refer to those charges, fees and/or obligations set forth in Article XII hereof.

Section 2.7 "Association" shall mean and refer to The Heron Preserve Homeowners' Association, Inc., an Indiana not-for-profit corporation, its successors or assigns.

Section 2.8 "Board of Directors" or "Board" shall mean and refer to the governing body of the Association elected, selected or appointed as provided for in the Articles, By-Laws and this Declaration.

Section 2.9 "By-Laws" shall mean and refer to the By-Laws of the Association, as may be amended from time to time.

Section 2.10 "Common Area" or "Common Property" shall mean and refer to (a) all portions of the real estate as shown on any recorded Plat which are not dedicated to the public and which are not identified as Lots on any such Plat, whether such Plat is heretofore or hereafter recorded; (b) to the extent hereinafter established, such portions of the real estate as are herein declared to be Common Areas even though located on or constituting part of one or more such Lots shown on any such Plat; (c) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the real estate as are herein declared to be Common Areas whether located, installed or established entirely or partially on Lots (as herein defined) or portions of the real estate which are not Lots, or both; provided, however, that the Streets shown, or to be shown, on a Plat of the real estate, and all of the several parts thereof, and noted, or to be noted, on such Plat as such Streets, shall, for all purposes, be considered a part of the Common Areas. Any area designed on a Plat as Limited Common Area shall be considered a Common Area or Common Property.

Section 2.11 "Common Expenses" shall mean and refer to expenses of administration of the Association, including but not limited to the hiring of employees, contractors, and other agents, and expenses for the security, upkeep, maintenance, repair and replacement of the Common Areas, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.12 "Declarant" shall mean and refer to Heron Developers II, LLC, its successors and assigns.

Section 2.13 "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Heron Preserve or any supplemental declaration that incorporates by reference this Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for Heron Preserve Sections I, II, III and IV and/or which amends or supplements this Declaration from time to time.

Section 2.14 "Development Plan" shall mean and refer to the primary and secondary plan for the entire Heron Preserve development, as finally approved by the Allen County Plan Commission, or any other governmental agencies having jurisdiction thereof, as amended from time to time.

Section 2.15 "Governing Documents" shall mean this Declaration, the Articles and By-laws of the Association and the Villa Association (as applicable), the Rules and Regulations promulgated by the Association, the Villa Association, and the Architectural Design Guidelines, all as amended from time to time.

Section 2.16 "Heron Preserve" shall mean and refer to the residential development on the real estate, as shown by the Section I Plat, the Section II Plat, the Section III Plat and the Section IV Plat and the Metes and Bounds Outlots, which are incorporated herein by reference.

Section 2.17 "Lot" shall mean and refer to any and each portion of the real estate (excluding any part of the Common Areas) designed and intended for use as a building site for, or developed and improved for use as, a Residence (which shall be deemed to include any other buildings or improvements appurtenant to such Residence) as designated by Declarant by its deed of the same to another Person. A Lot will not necessarily be the same as any individually numbered parcel of land shown upon, and identified as a Lot on, any recorded Plat of the real estate or any part thereof. For purposes of this Declaration, a Lot may be (a) any individually numbered parcel of land identified as a Lot on such Plat; (b) part of such a numbered parcel of land; (c) such a numbered parcel of land combined with part or all of another such numbered parcel of land or combined with any private or public easements appurtenant to such numbered parcel of land; or (d) parts or all of two (2) or more of such numbered parcels of land combined. The determination of what portion of the real estate constitutes a Lot for purposes of this Declaration shall be made by reference to, and shall mean, each tract of land conveyed by Declarant to another Person for use as a building site for, or developed and improved for use as, a Residence (which shall be deemed to include any other buildings or improvements appurtenant thereto). Notwithstanding the foregoing, if after the initial conveyance of a portion of the real estate by Declarant to another Person it is agreed between the Declarant and such Person to enlarge or reduce or otherwise change the portion of the real estate so originally conveyed to such Person as a Lot, then the determination of what portion of the real estate constitutes such a Lot for purposes of this Declaration shall be made by reference to, and shall mean, such Lot initially so conveyed by Declarant, as the same has been adjusted or changed at any time by conveyances by and between Declarant and such Person. Any deed or other instrument of conveyance so adjusting or changing the description of a Lot shall state on its face that it is made for such purpose. Any part of a Lot reconveyed to Declarant shall, upon such re-conveyance, lose its character as part of a Lot and may thereafter be conveyed by Declarant as part of another Lot. The foregoing procedures may be used to correct errors in descriptions, to adjust boundary lines of "Lots" or for any other reason. The term "Lot" includes a Villa Lot. For purposes of this Declaration, the Metes and Bounds Outlots shall be defined as and shall be referred to herein as a "Lot" or "Lots".

Section 2.18 "Metes and Bounds Outlots" shall mean and refer to the real estate described on attached Exhibit B, which is incorporated herein by reference.

Section 2.19 "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Residence.

Section 2.20 "Notice" shall mean delivery of any document by mail with postage prepaid to the last known address according to the records of the Association or the Villa Association of the person or entity who appears as Owner in the records of the Association or the Villa Association. Notice to one of two or more Co-Owners shall constitute notice to all Owners.

Section 2.21 "Owner" shall mean and refer to the record title holder, whether one (1) or more persons or entities, of the fee simple title to any Lot within a Plat or in the Metes and Bounds Outlots. Owners shall not include any mortgagee unless and until such mortgagee has acquired title to a Lot pursuant to an action for foreclosure or any proceeding in lieu of foreclosure.

Section 2.22 "Person" means an individual, firm, corporation, company, partnership, association, trust or any other legal entity or any combination thereof.

Section 2.23 "Plat" or "Plats" shall mean the Section I Plat, Section II Plat, Section III Plat, and/or Section IV Plat.

Section 2.24 "Residence" shall mean a residence for a single family constructed on a Lot, including a Villa.

Section 2.25 "Rules and Regulations" shall mean the Rules and Regulations adopted by the Board of the Association, as amended from time to time.

Section 2.26 "Supplemental Declaration" or "Supplement" shall mean any incorporation by reference, amendment or supplement to this Declaration properly executed and recorded in the Public Records of Allen County, Indiana.

Section 2.27 "Surface Water Management System" shall mean that portion of the real estate in the Plats consisting of swales, inlets, culverts, lakes, outfalls, storm drains and the like, and all connecting pipes and easements, used in connection with the retention, drainage and control of surface water.

Section 2.28 "Villa Articles" or "Villa Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Villa Association, as filed with the Secretary of State of Indiana, and as may be amended from time to time.

Section 2.29 "Villa Assessment" or "Villa Assessments" shall mean and refer to those charges, fees and/or obligations set forth in Article VII hereof for the upkeep, maintenance, repair and replacement associated with the Villa Lots and all sums lawfully assessed against the Owners of the Villas by the Villas Association, and all sums, costs and expenses declared by this Declaration to be Villa Assessment(s).

Section 2.30 "Villa Association" shall mean or refer to the Heron Preserve Villa Association, Inc., and Indiana not-for-profit corporation, and its successors and assigns.

Section 2.31 "Villa Board of Directors" or "Villa Board" shall mean and refer to the governing body of the Villa Association elected, selected or appointed as provided for in the Articles, By-Laws and this Declaration.

Section 2.32 "Villa By-laws" shall mean the by-laws initially adopted by the Villa Association, and all amendments and additions thereto.

Section 2.33 "Villa" shall mean and refer to any Residence located on a Villa Lot.

Section 2.34 "Villa Lot" shall mean any of the platted Lots numbered 1 through 15 on the Plat of Heron Preserve, Section I or Section II, and any Lot specifically designated as a Villa

Lot in any Supplemental Declaration recorded with any Plat. The term "Villa Lot" shall not mean and shall specifically exclude any Lot not designated as a Villa Lot.

Section 2.35 "Villa Rules and Regulations" shall mean the Rules and Regulations adopted by the Board of the Villa Association, as amended from time to time.

Section 2.36 Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

ARTICLE III DECLARATION, COMMON AREAS AND RIGHTS THEREIN

Section 3.1 Declaration. Declarant, the Association, and the Owners hereby expressly declare that the real estate in the Section I Plat, Section II Plat, Section III Plat, and Section IV Plat shall be held, transferred and occupied subject to this Declaration. The Owners of any Lot subject to this Declaration, and all other Persons: (a) by acceptance of a deed from Declarant conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot; or (b) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each restriction and agreement contained herein. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the ARB, and the Association, and of the Villa Association (but only with respect to Villa Lots) with respect to this Declaration and also, for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarant, the ARB, the Association, the Villa Association (but only with respect to Villa Lots), and the Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such restrictions and agreement.

Section 3.2 Easement to Owner. Declarant, the Association and the Owners hereby grant a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas (except for such portions of the Common Areas as to which, in accordance with other provisions hereof, the use, enjoyment and benefit is limited to the Owners of certain designated Lots to the exclusion of other Lots), subject to all of the restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot; provided, however, that no antennas, aerials, satellite dishes, docks, piers or any other structure may be erected upon any Common Area without the approval of the Association, which approval may be withheld in the Association's sole and absolute discretion. Furthermore, there shall be no encroachments over or upon any legal, statutory, or recorded easements located on the real estate. Every Owner shall have a right and easement of ingress and egress in and to the Common Areas. The easements granted to each Owner with regard to the Common Areas shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) For any Common Areas located between a Lot line and the waters edge of a lake or pond, as shown on the Plat, any ingress and egress to such Common Areas shall be restricted solely to the Lot Owner, the Association, or any public or quasi-public

agencies. All such Commons Areas located between a Lot line and the waters edge of a lake or pond shall be for the sole use, enjoyment, and benefit of the respective Lot Owner to the exclusion of all other Lot Owners.

- (b) Ingress and egress to Common Area "H", as shown on the Section I Plat, shall be restricted solely to the Owners of Lots 33, 34, and 35 and to Allen County Surveyor for purposes of inspection and, if necessary, maintenance of any inlet pipes, swales, lakes or ponds located within Common Area "H". Commons Area "H" shall be for the sole use, enjoyment, and benefit of the Lot Owners of 33, 34 and 35 to the exclusion of all other Lot Owners.
- (c) The right of the Association to charge reasonable admission and other fees for the use of any Common Area and to impose reasonable limits on the number of guests who may use such facilities;
- (d) The right of the Association to suspend or terminate an Owner's voting rights in accordance with law, the Articles, and the Bylaws;
- (e) The right to suspend use of any such facilities (excluding the Streets) for any period during which any assessment for Common Expenses against that Owner's Lot remains unpaid, and for any violation by an Owner of the Association's Rules and Regulations, for the duration of the violation, and for an additional period thereafter not to exceed thirty (30) days;
- (f) The Declarant's reserved easements as described herein, an ingress and egress easement to the Common Areas to the Allen County Surveyor for purposes of inspection and, if necessary, maintenance of any inlet pipes, swales, lakes or ponds located within the Common Areas, and the right of the Declarant to grant additional easements in and to the Common Area to any public agency, authority, or utility for such purposes as benefit the Plats, or portions thereof, and Owners or Lots contained therein;
- (g) The right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided two-thirds (2/3) of the Voting Membership (as defined hereafter) shall approve; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner or the holder of any mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or any other property located within the Plats; and

- (h) The right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the members of the Association. No such dedication or transfer shall be effective, unless an instrument agreeing to such dedication or transfer has been approved by the Declarant during any time that the Declarant controls the Association and otherwise by at least two-thirds (2/3) of the Voting Membership.

This Section 3.2 may not be amended without the written consent of Declarant during the time that Declarant owns any real estate in the Plats subject to this Declaration.

Section 3.3 Private Street Easement. Each Owner, his invitees and guests shall have, and are hereby granted, a non-exclusive easement and right of ingress to, egress from and access between his Lot and Aboite Center Road for pedestrian and vehicular traffic, upon, over and across the private streets shown on the Plats (herein referred to as a "Street", or collectively the "Streets"). It is intended that the Streets shall be private streets and not for public use. The following provisions shall apply to the Streets within the Plats:

- (a) The Board of Commissioners of Allen County shall not be obligated to accept a public dedication, deed, or any other conveyance of any Street in Heron Preserve.
- (b) The Allen County Highway Department shall not be obligated to maintain or repair any private street within Heron Preserve and the Allen County Highway Department shall not be required to accept any Street in Heron Preserve into the Allen County Highway Maintenance Program.
- (c) The Association, as well as each Owner, shall be jointly and severally obligated to maintain and repair each Street in Heron Preserve.
- (d) The Association shall indemnify and hold harmless Allen County, Indiana, the Board of Commissioners of Allen County, and the Allen County Plan Commission, against any loss, damage, or liability arising from claims or suits for personal injury or property damage involving the design, construction, use or maintenance of any private street in Heron Preserve.
- (e) While the use of a Street in Heron Preserve may be restricted to Owners, or their guests, invitees and licensees, an express easement is hereby granted to public and quasi-public agencies, including but not limited to, police, fire and other emergency vehicles, trash and garbage collection vehicles, school vehicles, post office vehicles, and privately owned delivery vehicles, for use of the Streets for ingress to, egress from and access to Heron Preserve and the Lots in the performance of their duties and services, and for any other purpose the Association from time to time reasonably believes is necessary or appropriate.
- (f) All builders and contractors who are involved in the construction of a Residence in Heron Preserve shall maintain the construction and job site in a neat and orderly

condition throughout the construction (“Builders”). All Builders shall remove all refuse and debris on a daily in all areas that are open to public view and shall place all such refuse and debris in trash receptacles and/or dumpsters. All Builders and subcontractors of Builders shall utilize such techniques as may be necessary to prevent or eliminate mud and debris from leaving the construction site and from cluttering the Streets in Heron Preserve.

Section 3.4 Limited Use Common Area. Any area designated as “Limited Use Common Area” on the face of any Plat may not be used as an outdoor area set aside for recreation or play of children, including but not limited to seesaws, swings, or other children playground equipment. This Section 3.4 may not be amended or revoked, unless such amendment or revocation receives unanimous approval of the voting membership.

**ARTICLE IV
OBLIGATIONS OF DECLARANT AS TO COMMON AREAS**

Section 4.1 Construction and Conveyance of Streets and Sidewalks.

- (a) Each Lot Owner, at its expense, shall construct concrete sidewalks in front of the following numbered Lots:

<u>Lot#</u>	<u>Sidewalk</u>
Lots 1-4	Front
Lots 78-94	Front

Sidewalks shall be constructed within the Common Areas reserved for the construction of Streets in accordance with Section 4.2 below. Sidewalks shall be four (4) feet in width and shall be located five (5) feet from the backside of the curb of the Street located in the Common Area.

(b) Declarant has constructed, or will construct, the Streets at the locations shown on the Plat and, prior to the conveyance of any particular Lot, Declarant covenants that it will cause the Streets or necessary portion(s) thereof to be improved from the dedicated public street known as Aboite Center Road to a point at least as far as the furthest intersecting lot line of such particular Lot, and that it will convey (if not heretofore so conveyed) such portion(s) of the Streets to the Association by a special limited warranty deed free and clear of all liens and encumbrances except the lien of current real estate taxes and assessments, legal highways and rights-of-way, all easements, covenants, conditions, restrictions and other matters of record, and any rights, interests and easements therein referred to herein or in any Plat. Declarant shall, in any and all events, so construct all of the Streets, and convey all of the Streets to the Association, not later than the Applicable Lot Date.

Section 4.2 Agreement to Construct and Convey Common Areas and Other Areas. Declarant has constructed or provided for, or will prior to the Applicable Lot Date construct or provide for, Common Areas (in addition to the Streets) consisting of the following items.

- (a) a Surface Water Management System for the Plats, which may include inlet pipes, open ditches, swales, the lakes or ponds shown on the Development Plan or Plat, pipes and other structures and drainage courses or easements. Surface drainage easements and Common Areas used for drainage purposes, as shown on the Plat, are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the land surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the Allen County Surveyor or other proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed. In order to minimize potential damages from surface water, all Residence shall be constructed so that the lowest sill opening is located above the following flood protection grades, which are hereby established and set forth in the Plat, as follows:

<u>Lot#</u>	<u>Minimum Flood Protection Grades</u>
1 through 11	827.0 Mean Sea Level (MSL)
12 through 13	807.0 MSL
14	806.2 MSL
15	805.6 MSL
16 through 18	827.0 MSL
19 through 31	837.8 MSL
32 and 33	820.5 MSL
34	823.8 MSL
35	841.0 MSL
40	844.5 MSL
41	827.0 MSL
43	819.3 MSL
44 through 45	816.0 MSL
50	813.4 MSL
51	813.2 MSL
52	810.0 MSL
53	808.5 MSL
54	808.1 MSL
55 through 57	827.0 MSL
58 through 65	844.5 MSL
78 through 81	819.9 MSL
79 and 80	819.9, 829 MSL (as shown on the Section IV Plat)
82	835.3, 832.0, 829.0, 826.0, 823.0 MSL (as shown on the Section IV Plat)
83 and 87	835.3 MSL
88	837.1, 835.3 (as shown on the Section IV Plat)
89 and 91	837.1
92 and 94	840.2

95	840.2, 841.5, 842, 842.9 (as shown on the Section IV Plat)
96 and 98	842.9
99 through 102	839.4

- (b) the installation, in the areas shown or designated on the Plat as Common Areas (along the west and south boundaries of the real estate, or other areas), and in any islands, esplanades, cul-de-sac or cul-de-loop areas within areas reserved for Street or sidewalks, of mounds, landscaping and other screening material (including, without limitation, fences, walls and street signs and directories).

Upon final construction or provision of the Common Areas described in this Section 4.2, Declarant covenants to convey all of its right, title and interest in and to said Common Areas to the Association and all such right, title and interest in and to said items (whether owned in fee, by leasehold, by contract or in the nature of an easement or license) shall then be the property of the Association, whether or not the same may be located entirely or partially on any one or more of the Lots. As to any of such items of and constituting the Common Areas encroaching upon any Lot, if any, the Owners of such Lot(s) shall take and hold title thereto subject to an easement for the maintenance of such improvements as Common Areas and an easement in favor of Declarant, the Association, or any duly authorized governmental officer or agency for access thereto and thereon for purposes of maintaining and inspecting such Common Areas. For any Lot that has a Lot line within twenty feet (20') of the waters edge of a lake or pond, the Owner of said Lot shall be solely responsible for the landscaping and lawn maintenance. In addition, each Lot Owner shall be responsible for landscaping and lawn maintenance of any Common Area, if any, lying between the front lot line and the edge of the pavement of any Street, sidewalk, and/or lake or pond.

Section 4.3 Disclaimer of Declarant. Except for Declarant's warranty of title by its special limited warranty deed, the Association shall accept "AS IS" the above conveyances of Common Areas (including Streets) without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements thereon or thereto, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion or the future economic performance or operations of, or the materials which have been or will be used in such property or repairs. By acceptance of an interest in any such property or the deed to any Lot, the Association and all Owners release Declarant from any claims and agree that no claim shall be made by the Association or any Owner relating to the condition, or completeness of such property or repairs or for any actual, direct, indirect, incidental or consequential damages arising therefrom.

Section 4.4 Release of Declarant. The Association and all Owners, by the acceptance of title to any property or the deed to any Lot, release Declarant from any further obligations with respect to repairs to Common Area or related improvements.

ARTICLE V
ASSOCIATION, MEMBERSHIP, VOTING, FUNCTIONS

Section 5.1 Membership in Association. Declarant and each Owner of a Lot (including a Villa Lot) shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member until such time as the ownership of a Lot ceases. Membership shall terminate when such Owner ceases to be an Owner, and membership will be transferred to the new Owner of the Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 5.2 Voting Rights. The Association shall have the following classes of membership, with the following voting rights ("Voting Membership"):

- (a) Class A. Class A members shall be all Owners, except Class B members. Each Class A member shall be entitled to one (1) vote with respect to each matter submitted to a vote of the members upon which the Class A members are entitled to vote; provided, however, that if the Owner is paying one and an half (1½) assessments under Section 12.3(a), then the Owner shall be entitled to one and an half (1½) votes. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one Lot. Each vote cast with respect to a Lot shall be presumptively valid, but if such vote is questioned by any member holding any interest in such Lot and if all such members holding an interest in the Lot are not in agreement as to the validity of the vote for such Lot which is questioned, then such vote shall not be counted. In addition, the Association may reject a vote, consent, waiver or proxy appointment if there is a reasonable basis to doubt the validity of a signature or the signatory's authority. If two or more contiguous Lots are combined for the construction of a single Residence on said Lots (with ARB approval under Article X), then the Owner of the combined contiguous Lots shall be entitled to one (1) vote for each Lot. Provided however, that Owners may only vote if the Owner is in good standing with the Association. "[G]ood standing with the Association" shall mean that the Owner is not more than sixty (60) days delinquent in the payment of all assessments due and owing under Article XII.
- (b) Class B. Class B members shall be the Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled to five (5) votes for each Lot of which it is the Owner and five (5) votes for each individually numbered parcel of land shown upon, and identified as a Lot on, any recorded Plat of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this Declaration, on all matters requiring a vote of the members of the Association. The Class B membership for Sections I, II, and III shall cease and terminate upon the following, whichever occurs first: (i) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Association; (ii) the date

Declarant no longer owns any Lots nor any portion of any individually numbered parcel of land shown upon and identified as a Lot on any recorded Plat; or (iii) December 31, 2012 (the first to occur of such dates being herein referred to as the "Applicable Lot Date"). The Applicable Lot Date, when the Class B Membership for Section IV and the Metes and Bounds Outlots shall cease and terminate, shall be December 31, 2021. After the Applicable Lot Date, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) Class A membership for each Lot then owned and for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded Plat of which it is then the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

Section 5.3 Functions. The Association has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas, and to perform such other functions as may be designated for it to perform under this Declaration or under any recorded Plat, whether heretofore or hereafter. The Association, through its Board of Directors, may make and enforce reasonable Rules and Regulations governing the use of the real estate in the Plats and the Common Areas, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for noncompliance, breach or default may include reasonable monetary fines which may constitute a lien upon the Owner's Lot or Lots. The Board shall, in addition, have the power to seek relief in any court for violations or to abate unreasonable disturbances. Fines shall constitute a special assessment subject to the lien rights provided in this Declaration. The Association, through the Board, shall have the right to enforce all applicable federal, state and local laws, ordinances and regulations and to permit Allen County, or any other governmental agency having jurisdiction, to enforce such parties' rules and ordinances on the real estate in the Plats. The Association may exercise any other right or privilege given to it expressly by the Governing Documents, or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE VI BOARD OF DIRECTORS

Section 6.1 Management. The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless the person is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 6.2 of this Article VI.

Section 6.2 Board of Directors. The Board of Directors at the time this Declaration was adopted are: Michael W. Thomas, Tim Rooney, Jeff Blade, Ann Gallagher, and Chris Morgan (herein referred to as the "Board").

Section 6.3 Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner, officer, manager, or trustee, shall be eligible to serve on the Board

of Directors, except that no single Lot or Residence may be represented on the Board of Directors by more than one Person at a time.

Section 6.4 Term of Office and Vacancy. Subject to the provisions of Section 6.2 of this Article VI, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be automatically elected and re-elected as the Board of Directors at each annual meeting until the first meeting of the members occurring on or after the Applicable Lot Date. After the Applicable Lot Date, each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 6.2 of this Article VI as to the Initial Board, any vacancy or vacancies occurring on the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 6.5 of this Article VI. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

Section 6.5 Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, the successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until the successor is duly elected and qualified.

Section 6.6 Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to, providing for the administration of the real estate in the Plats, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall determine, in its judgment and discretion, to be reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) security, protection, surveillance and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots;
- (b) procuring of utilities used in connection with the Common Areas and snow removal from the Streets;
- (c) landscaping, painting, decorating, furnishing, and maintenance and upkeep of, the Common Areas;
- (d) surfacing, paving and maintaining the Streets;
- (e) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;

- (f) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;
- (g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (h) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Association specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time upon prior reasonable notice during normal business hours;
- (i) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (j) paying taxes and assessments levied and assessed against, and payable with respect to, the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas; and
- (k) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the By-Laws, the Act, or any recorded Plat, whether heretofore or hereafter recorded.

Section 6.7 Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties, however, no such contract or agreement for employing a Managing Agent shall be for a term in excess of three (3) years;
- (b) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants, security guards, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and

replacement of the Common Areas and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;

- (e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Association;
- (g) to promulgate, adopt, revise, amend and alter from time to time such additional Rules and Regulations with respect to use, occupancy, operation and enjoyment of the real estate in the Plats and the Common Areas (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional Rules and Regulations so adopted by the Board shall be promptly delivered to all Owners; and
- (h) to grant to such public or private companies, entities or bodies as the Board shall approve, such easements as may be necessary to provide the Lots, Residences and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service; provided that such easements are located within or are co-extensive with any one or more easements, or Common Areas shown upon, and identified as such on, or provided for in, any Plat, whether such Plat is heretofore or hereafter recorded.

Section 6.8 Limitation on Board Action. After the Applicable Lot Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$10,000.00 without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

- (a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;
- (b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- (c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

Section 6.9 Compensation. No Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 6.10 Non-Liability of Directors and Officers. The Directors and officers of the Association shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors and officers, except for their own individual willful or wanton misconduct, bad faith or gross negligence; nor shall any such Directors and officers have any liability for any negligent performance of their duties from which they are granted immunity under IND. CODE § 34-30-4-2. The Association shall indemnify and hold harmless and defend each of the Directors and officers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Association.

Section 6.11 Additional Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or officer of the Association, against the reasonable expenses, including reasonable attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or officer is liable for willful or wanton misconduct or gross negligence in the performance of his duties. The Association shall also reimburse to any such Director or officer the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the disinterested Directors or found by a majority of Owners that such Director or officer was not guilty of willful or wanton misconduct or gross negligence. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director or officer relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any other officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 6.12 Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and any other officers or employees as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

**ARTICLE VII
VILLA ASSOCIATION**

Section 7.1 Membership and Voting Rights. Every Owner of a Villa Lot shall be a member of the Villa Association. Membership shall be appurtenant to and may not be separated from ownership of any Villa Lot. Every Owner of a Villa Lot shall also be a member of the Association.

Section 7.2 Voting Rights. The Villa Association shall have two classes of voting membership:

- (a) Class A. Class A members shall be all Owners of a Villa Lot, except Class B members. Each Class A member shall be entitled to one (1) vote for each Villa Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Villa Lot, all such Persons shall be members of the Villa Association, but all of such Persons shall have only one (1) vote for such Villa Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Villa Lot. Provided however, that Villa Lot Owners may only vote if the Villa Lot Owner is in good standing with the Villa Association. "[G]ood standing with the Villa Association" shall mean that the Villa Lot Owner is not more than sixty (60) days delinquent in the payment of all assessments due and owing under Section 7.6.

- (b) Class B. Class B members shall be the Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Villa Association. Each Class B member shall be entitled to five (5) votes for each Villa Lot of which it is the Owner identified as a Villa Lot on any recorded Plat of the Real Estate of which it is the Owner (either as to the entire numbered parcel or any part thereof) on all matters requiring a vote of the members of the Villa Association. The Class B membership shall cease and terminate upon the following, whichever occurs first: (i) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Villa Association; (ii) the date Declarant or its successor in interest no longer owns any Villa Lots nor any portion of any individually numbered parcel of land shown upon, and identified as a lot on, any recorded Plat of the Real Estate; or (iii) December 31, 2012 (the first to occur of such dates being herein referred to as the "Applicable Villa Lot Date"). After the Applicable Villa Lot Date, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) Class A membership for each Villa Lot then owned and for each individually numbered parcel of land shown upon, and identified as a Villa Lot on, any recorded Plat of the Real Estate of which it is then the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Villa Lot" as defined herein.

Section 7.3 Purpose of Villa Assessments. The Villa Assessments levied by the Villa Association shall be used exclusively for the purpose of paying for the services which are to be provided to each Villa Lot in the Villa Association.

Section 7.4 Management. The authority, powers, duties, limitations, nonliability, indemnity, management, terms of office, and removal of directors of the Board for the Villa Association shall be the same as the Association Board, as provided in Sections 6.4, 6.5, 6.9, 6.10, 6.11, 6.12, and 6.13 which sections are incorporated herein by reference as though such sections were restated herein verbatim, but were only applicable to Villa Lots, the Villa Board and the Villa Association.

Section 7.5 Villa Assessment. Prior to January 1 each year, the Villa Board shall adopt a budget which shall be used to establish the amount of the Villa Assessments for each Villa Lot based on those expenses for the next fiscal year which are for the Villa Association services provided to each Villa Lot in Heron Preserve. The annual Villa budget shall contain the proposed Villa Assessment on each Villa Lot. A Villa Assessment may be assessed whether or not the Villa Lot has a Villa located on it or is otherwise improved.

The annual Villa budget and the Villa Assessment shall be established using generally accepted accounting principles applied on a consistent basis. The Villa Association may provide for a reserve for painting expense and other reasonably anticipated expenses if the Villa Board and the Villa Lot Owners deem the same as appropriate and necessary. Any delay or failure by the Villa Board to prepare a proposed annual Villa budget and to provide the same to the Villa Lot Owners shall not constitute a waiver or release in any manner of the obligations of each Villa Lot Owner to pay the Villa Assessments as herein provided.

The annual Villa budget shall be submitted at the annual meeting of Villa Lot Owners and shall be approved in whole or in part or may be amended in whole or in part by the majority of the votes cast by Villa Lot Owners, provided, however, in no event shall the annual meeting be adjourned without or until the annual budget is approved at such meeting.

Immediately following the adoption of the annual Villa budget, each Villa Lot Owner shall be given written notice of the Villa Assessment to be assessed against the Owner's Villa Lot. The Villa Assessment to be assessed against the Owner's Villa Lot shall be paid by the Owner of that Villa Lot in advance in equal monthly or quarterly installments (as determined by the Villa Board) commencing on the first day of January of such calendar year and on the first day of each calendar month or the first day of each quarterly period (as applicable) thereafter, through and including the following December 1. Payment of the monthly or quarterly installments of the Villa Assessment shall be made to the Villa Association at the address provided by the Villa Association to each Villa Lot Owner. The Villa Assessment for the year shall become a lien on Villa Lot as of January 1 of each calendar year. The above dates of assessment and payment may be changed by the Villa Board through the Villa Rules and Regulations or provisions in the Villa By-laws without amending this Declaration, and the Villa Assessment may be made payable in one or any other number of installments rather than in monthly installments. Villa Assessments may be collected in the same manner as other Assessments as set forth in Article XII.

To the extent not inconsistent herewith, the provisions of Article XII (Sections 12.1 through 12.7) regarding assessments for or by the Association (and the enforcement thereof) shall be the same and shall apply to the Villa Lots, the Villa Association and the Villa Board as though such provisions were restated herein verbatim but were only applicable to the Villa Lots, the Villa Association, and the Villa Board.

Section 7.6 Villa Association Services.

(a) Landscaping and Planting. The Villa Association shall maintain the lawn of each Villa Lot on a scheduled basis as determined by the Villa Association. In its sole and absolute discretion, the Villa Association may also elect to maintain the landscaping of each Villa Lot. Owners may plant, install or maintain any flowers, trees, shrubbery or other plant materials on a Villa Lot only in accordance with the landscaping plan approved by the Architectural Review Board (the "Landscaping Plan") or in the area designated as the "Personal Patio Garden" for that Villa Lot on the Landscaping Plan. Any landscaping installed by Owner shall be replaced by Owner and at Owner's sole cost and expense if the landscaping or any portion of the landscaping dies or becomes unsightly. The Villa Association may elect to exclusively operate and maintain the irrigation system on each Villa Lot, and shall determine the interval of irrigation. All water utilized in the irrigation system for each Villa Lot shall be provided by the Owner of that Villa Lot regardless of whether water from such irrigation system partly irrigates an adjacent Villa Lot. Each Owner shall be responsible for maintaining at the Owner's expense any trees and shrubs located on the Owners' Villa Lot, which maintenance shall include but not be limited to pruning and removing any such trees or shrubs which are dead or unsightly or any unsightly, dead or dangerous portions of such trees or shrubs. In the event the Villa Association advises an Owner in writing that replacement or removal of a portion or all of a tree or trees which Owner is responsible to maintain is necessary, and the Owner fails to maintain or remove such tree or trees after sixty (60) days prior written notice (except that notice is waived in cases of emergency), the Villa Association may in its discretion have the tree or trees maintained or removed and charge the Owner for such services, which charges, if not paid when due, may become a lien against the subject Villa Lot, and may be collected, with interest, and foreclosed as set forth in Article XII herein.

The Villa Association may at its option by appropriate resolution, transfer to each Villa Lot Owner the maintenance responsibility for that portion of the lawn and/or landscaping, if any, on each Villa Lot which was not initially installed or planted by the Builder/Developer.

(b) Maintenance of Exterior of Villa Dwelling Units. An Owner may not paint, decorate or make any changes in the appearance of any portion of the exterior of any Villa, including sidewalks and driveways, which would vary it from the plans which were approved by the Architectural Review Board for the Villa without the prior written approval of the Board of Directors of the Association and the Architectural Review Board.

The Villa Association may provide maintenance services for portions of the exterior of each Villa at such times and in such amounts as the Villa Association determines from time to time is required. If the Villa Association elects to provide maintenance services for portions of the exterior of a Villa, then the Association shall provide such maintenance services to all Villa Lots

in the Villa Association. Maintenance by the Villa Association to a Villa may be limited to the painting of any exterior surface which was originally painted when the Villa was constructed, the cleaning of eaves troughs, gutters and window wells, if any, minor repairs approved by the Villa Association, and the removal of ice and snow from sidewalks and driveways according to guidelines for ice and snow removal adopted by the Villa Association. The Villa Association shall not be responsible for the maintenance or repair of the plumbing, electrical, air conditioning or heating system, the windows (except painting as required), screens, privacy fences where permitted, or any breaking or cracking of any concrete or asphalt surfaces or the interior of any Villa. The Owner of the Villa Lot shall replace and/or repair any portion of the exterior of his Villa which is damaged or in need of repair or replacement and shall maintain those portions of the Villa which the Villa Association is not required to maintain, which maintenance by the Owner of the Villa Lot shall include but is not limited to replacement and major repair of siding, roofs, plumbing fixtures, heating and air conditioning systems, driveways, sidewalks, exterior lighting fixtures, other mechanical and electrical systems, the interior of the Villa and all structural portions thereof. The Villa Association may at its option notify any Villa Lot Owner of a repair or replacement or any item of maintenance other than those the Villa Association must provide which is needed on the exterior of the Villa or on the Villa Lot and in the event the Owner does not maintain, repair or replace that item within thirty (30) days after such notice is given by the Villa Association, the Villa Association may maintain, repair or replace that item at its expense and charge the cost thereof to the Owner, which cost may, if not paid when due, become a lien against the subject Villa Lot, and may be collected, with interest, and foreclosed as set forth in Article XII herein.

Section 7.7 Villa Lot Owner's Obligations. Each Villa Lot Owner grants a blanket easement in favor of the Villa Association for the Villa Association to carry out and perform its duties and services under this Article VII. Each Villa Lot Owner shall, at said Owners expense, promptly furnish, perform and be responsible for the repair, maintenance, replacement and decoration of the interior of his Villa, all structural portions thereof and its contents together with such items which are not maintained by the Villa Association. The Villa Association will not provide or pay for any insurance coverage for any Villa Lot, Villa or the contents thereof, such insurance being said Owner's sole responsibility.

ARTICLE VIII REAL ESTATE TAXES, UTILITIES

Section 8.1 Real Estate Taxes. Real estate taxes on each Lot, and on any Residence or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Areas shall be paid by the Association and treated as a Common Expense.

Section 8.2 Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Residence. Utilities which are not separately metered to an Owner's Lot or Residence shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

**ARTICLE IX
MAINTENANCE, REPAIRS AND REPLACEMENTS**

Section 9.1 By Owners. Each Owner shall, at his own expense, be responsible for, and shall promptly perform, as the need therefor arises (or upon reasonable request from the Board), all maintenance, repairs, decoration and replacement of his own Residence, both interior and exterior (except as expressly otherwise provided in Article VII for Villa Lots and Villas). In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only, or as otherwise provided in Article VII. All fixtures and equipment installed within or as part of a Residence, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Residence is located, shall be maintained and kept in repair by the Owner thereof, except as otherwise provided in this Declaration. Each Owner shall promptly perform all maintenance and repair of his Lot and Residence which, if neglected, might adversely affect any other Lot or Residence or any part of the Common Areas. Such maintenance and repairs include, but are not limited to, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Residence or Lot. Each Lot Owner shall maintain his or her Lot (including unimproved Lots) and all structures, parking areas and other improvements thereon in good and sightly condition and repair and in compliance with all laws. Owners of Lots abutting lakes or ponds shall cooperate with the Association in the maintenance of the property outside of, or within, the Lot that abuts such lake or pond. Owners of Lots which are adjacent to any portion of the real estate on which walls or fences may be constructed shall maintain and irrigate that portion of the area which lies between the wall or fence and the Lot boundary. Owners shall have no right to clear or grade lots, or remove trees, shrubs or similar vegetation from Lots without prior ARB and/or Board approval as provided herein.

Section 9.2 By the Association. Maintenance, repairs, replacements and upkeep of the Common Areas (including, but not limited to, the Surface Water Management System for the Plats shall (except to the extent provided herein as the obligation of Owners) be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Areas, the Association, as part of its duties, and as a part of the Common Expenses, shall provide for maintenance for the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

- (a) the guardhouse and gates, and the operation thereof, located at the entrance to Heron Preserve; provided however, that if the Declarant or Association wants to change or modify the operation of the guardhouse and gates as approved by the Allen County Plan Commission, the Declarant or Association shall first obtain any required approval from the Allen County Plan Commission for any such change or modification;

- (b) those portions of the real estate, whether or not said portions are part of any of the Lots, which are located outside any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the real estate, but only to the extent that the same are not maintained by or the responsibility of a public authority; provided, however, that the Association shall have no obligation to maintain any public street, road or highway located within any public right-of-way on or abutting the real estate. For purposes of this subparagraph (b), "outside any perimeter fencing" means the areas between such fencing and the nearest property line or public right of way abutting the real estate;
- (c) any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the real estate;
- (d) landscaping and other items installed by Declarant as part of its initial development of the real estate or by the Association in or adjacent to the Streets and in the Common Areas adjacent to the County Line Road and Aboite Center Road public rights of way which abut the west and south boundaries of the real estate, respectively, or other areas, as shown on the Plat; and
- (e) the lakes or ponds shown on the Plat, including any equipment (such as water wells, fountains or other aeration equipment) installed by Declarant as an appurtenance to or to aid in the functioning of such lakes or ponds, whether or not located on Lots.

The Board of Directors may adopt such other Rules and Regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

In addition, the Association or its Managing Agent may elect to assume partial or complete responsibility for the maintenance of the lawn, trees, shrubs and other landscaping (hereinafter referred to as "landscape maintenance") on Lots, in accordance with such Rules and Regulations concerning such maintenance of the Lots, as may be adopted by the Board from time to time and for such additional fees and charges which may be imposed by the Board for such services in addition to the Common Expenses. Fees and charges for such landscape maintenance on individual Lots (if any) shall be separately assessed against each such Lot for such services. Such assessment shall be separate and apart from, and in addition to, the Regular Assessment for Common Expenses and any Special Assessments, but shall be assessed, collected and enforced in the same manner as all other assessments. The fees and charges assessed against an individual Lot for such landscape maintenance services may constitute a lien against that Lot if not paid when due in the same manner as all other assessments. Such landscape maintenance services may in the sole discretion of the Association include lawn mowing, seeding and fertilizing, raking and removal of leaves and debris, pruning, trimming and spraying of trees and shrubs and snow removal from driveways, sidewalks and other paved areas; however, such landscape maintenance shall not include any replacement of lawns, trees, shrubs or other landscaping or of any driveways, sidewalks or other paved areas, nor shall it include the planting of any flowers, trees or shrubs or the removal of any trash or garbage. All lawns and landscaped areas on an individual Lot for such

landscape maintenance shall be deemed Common Areas for purposes of allowing authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) reasonable access to such Lot for the performance of such services, but not for the purpose of including the cost of any such services within the Common Expenses. Notwithstanding anything to the contrary contained herein, the Board may in its sole discretion decide that all such landscape maintenance is to be performed by the Association or its Managing Agent on all improved Lots, in which event, all landscaped areas on each Lot shall be deemed Common Areas solely for the purpose of landscape maintenance and the cost thereof shall be included in the assessment for Common Expenses.

Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Areas (or items deemed Common Areas for purposes of maintenance), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to a Lot or the Common Areas (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items deemed as Common Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any Plat of any portion of the real estate for such purposes.

ARTICLE X NO PARTITION

Except as is permitted in this Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Plats or any part thereof seek any judicial partition, nor shall any Lot be resubdivided (except by Declarant); provided that two or more contiguous Lots may be combined for a single Residence with the prior approval of the ARB, subject to all provisions hereof.

ARTICLE XI CONDEMNATION

Whenever all or any part of the Common Area shall be taken by condemnation, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless the Voting Membership representing at least seventy-five (75%) of the total votes shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors. If such improvements are to be repaired or restored, the provisions regarding the disbursement of funds in respect to casualty, damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are funds remaining after any such restoration or replacement is completed, then such award or funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine, in its sole discretion.

ARTICLE XII ASSESSMENTS

Section 12.1 Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 12.2. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Association at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the designated meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Voting Membership; provided, however, that in no event shall such meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Allen County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall

not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the meeting of the Association at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 12.3 Regular Assessments. The annual budget, as adopted by the Owners, shall be based on the estimated cash expenses for the Common Expenses in the applicable fiscal year and the aggregate amount of Regular Assessment collectible against each Lot, as set forth herein. From January 1, 2003, to December 31, 2006, the maximum Regular Assessment shall be \$2,500 per Lot per year, regardless of the actual or estimated cash expenses for the Common Expenses in the applicable fiscal year. Beginning January 1, 2007, and each year thereafter, the maximum Regular Assessment may be increased not more than 7% per year, as calculated from the Regular Assessment in effect on January 1, 2006. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the Regular Assessment against the Owner's respective Lot (herein called the "Regular Assessment"). As set forth in Section 12.6, prior to the Applicable Lot Date, no Regular Assessment shall be due from or owed on any Lot or other portion of real estate owned by Declarant.

For purposes of assessment, the Owner of two or more contiguous Lots shall be assessed as follows:

- (a) the Owner of two contiguous Lots shall be assessed and pay a full Regular Assessment and Special Assessment on one Lot and one-half of a Regular Assessment and Special Assessment for the vacant, contiguous Lot; and
- (b) if the Owner of two contiguous lots builds any structure or Residence on any portion of both contiguous Lots, then the Owner shall be assessed, and shall only pay, one Regular Assessment and one Special Assessment for both such Lots.

The assessments in paragraphs (a) and (b) above shall take effect upon the first determination of Regular Assessments following the adoption and recording of this Declaration.

In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following the adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners; provided however that the Regular Assessment shall in no event exceed the maximum Regular Assessment set forth herein. The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether

in one payment or in quarterly installments, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year; or
- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) or (b) shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 13.1 of Article XIII hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board of the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

Section 12.4 Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the By-Laws

or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, may become a lien on each Lot if not paid when due, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

Section 12.5 Failure of Owner to Pay Assessments; Lien: Prior First Mortgage Priority.

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Common Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of 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 Regular Assessments or Special Assessments against his Lot when due, the lien for such Assessment on the Owner's Lot and Residence may be filed by the Board for and on behalf of the Association in the manner provided by law for a common law lien and foreclosed by the Board for and on behalf of the Association in the same manner as a mortgage on real property or as otherwise provided or permitted by law. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Residence which are the subject of such action shall be jointly and severally liable for the payment to the Association, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Residence for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or any other debts, dues or charges owed the Association, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Residence all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to twelve percent (12%) per annum. Notwithstanding anything to the contrary in this Declaration, the lien of the Association or the Villa Association for any assessments shall always be subject and subordinate to any prior recorded first lien or mortgage.

(b) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, the lien of any unpaid installment of Regular Assessment or Special Assessment or other charges as to such installments, which became due prior to any sale or transfer of a Lot and Residence to a Mortgagee pursuant to a foreclosure on its mortgage or

conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall be subject to any priority first lien or mortgage on the Lot; provided, however, that such foreclosure sale or other such conveyance shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Residence or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments or other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Residence from which it arose).

Section 12.6.

Further, until the Applicable Lot Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Plat owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Plat owned by Declarant. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Declarant to an Owner other than Declarant, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Association against each Lot so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

Section 12.7 Certificates. The Association shall, upon reasonable notice, furnish a certificate in writing signed by an officer of the Association that:

- (a) The assessments on a Lot have been paid, or that certain assessments remain unpaid (as the case may be); and
- (b) The amounts of any unpaid assessments, the dates when such assessments were due and/or any late fees or penalties related thereto.

No Owner may request more than one (1) such certificate during any calendar year, except where good cause exists for such Owner to request multiple certificates (in which case the request for additional certificates must be reasonable under the circumstances).

**ARTICLE XIII
MORTGAGES**

Section 13.1 Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessment or Special Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid

assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 12.3 of Article XII hereof.

ARTICLE XIV INSURANCE

Section 14.1 Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Association as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth may be paid to it or to the Board of Directors. In the event the casualty loss exceeds \$100,000.00 and such casualty loss is directly payable to the Association and the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors, or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the casualty loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Association or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer: (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, Owners, their respective agents and guests; and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms: (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners; and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

Section 14.2 Public Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Association, the Board of Directors, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Heron Preserve, all Owners of Lots and all other persons entitled to occupy any Lot or Residence. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 14.3 Other Insurance. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

Section 14.4 General Provisions. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner whose interest may be materially and adversely affected thereby, which notice (accompanied by copies of such policies of any changes thereto, or certificates indicating the coverages included therein) shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds of condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

Section 14.5 Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Residence, the contents of his Residence, his personal property stored anywhere on the real estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

ARTICLE XV CASUALTY AND RESTORATION

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and may constitute a lien if not paid when due from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas to as near as possible the same condition as they existed immediately prior to the damage or destruction.

Promptly after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

ARTICLE XVI ARCHITECTURAL REVIEW

Section 16.1 Establishment of Architectural Review Board. There is hereby established an Architectural Review Board ("ARB") with respect to Heron Preserve. The ARB shall consist of the Declarant, until the Declarant no longer owns any Lots in Heron Preserve. The Declarant

may, in writing, appoint another entity or individual or group of individuals as its representative to act for the Declarant in all matters regarding the ARB's rights, duties and responsibilities under this Declaration. After the Declarant no longer owns any Lots in the Plats, as set forth herein, the member(s) of ARB shall be appointed by the Board. The member(s) of the ARB shall serve at the pleasure of the Board, and may be dismissed with or without cause.

Section 16.2 Duties of ARB. The duties, powers and responsibilities of the ARB shall be as follows:

(a) The ARB shall have the right of specific approval or veto of all architectural, engineering, exterior color, exterior materials (including roofs and exterior siding), planting and landscaping aspects of any improvements as well as the site plan for any Residence on any Lot in any Phase.

(b) No building, sign, outside lighting, fence, antennae, satellite dish, hedge, wall, walk or other structure or planting shall be constructed, erected, removed, planted or maintained on any Lot nor shall any cleaning or grading on any Lot take place nor any addition to or any change or alteration to any improvement be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and the location of the same shall have been submitted to and approved in writing by the ARB. Any change in the exterior appearance of any improvement including, but not limited to, any change in landscaping, repainting in a different color, adding decorative sculptures, outdoor iron grills, or the like, shall also require approval in writing by the ARB before any work is commenced.

(c) As part of the application process, three (3) complete sets of plans and specifications prepared by an architect, designer or other person found to be qualified by the ARB shall be submitted for approval by written application on such form as may be provided or required by the ARB. All plans must show: (1) the location of the improvements on the Lot; (2) the location of the driveway; (3) front, rear, and side elevations; (4) a grading and drainage plan, which shall be consistent with the Surface Water Management System; and (5) a landscaping plan. In the event the information submitted to the ARB is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information.

(d) The ARB shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole and absolute discretion, for aesthetic or any other reasons, provided such approval is based on valid considerations. In approving or disapproving such plans and applications, the ARB shall consider the suitability of the proposed building, improvements, structure or landscaping and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. The ARB's disapproval shall be in writing. In the event the ARB fails to act to approve, modify, or disapprove such plans within 60 days after receipt, such plans shall be deemed approved.

(e) Unless specifically excepted by the ARB, all improvements for which approval of the ARB is required under this Declaration shall be completed within a reasonable time from the date

of commencement of said improvements or within the time set by the ARB at the time that the approval is granted.

(f) Subject to applicable zoning laws, the ARB shall in all cases have the right to determine and designate building set back lines for which the ARB's judgment and determination shall be final and binding.

(g) No building or other structure shall be erected or shall be allowed to remain which violates any of the covenants, conditions or restrictions contained in this Declaration, or which violates the this Declaration, the Plat, or any zoning or building ordinance or regulation, or violate the terms of ARB approval. No Residence may be occupied until a "ARB Final Inspection Approval" has been issued by the ARB, as hereinafter set forth.

(h) There is specifically reserved unto the ARB the right of entry and inspection upon each Lot for the purpose of determination by the ARB whether there exists any construction of any improvement which violates the terms of any approval by the ARB or the terms of this Declaration or of any other covenants, conditions and restrictions to which the deed or other instrument of conveyance makes reference. The ARB is specifically empowered to enforce the provisions of Article XVI and Article XVII (as applicable) of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation with respect to any constructed improvement, or to remove any unapproved improvements, the ARB, if the prevailing party, shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees in connection therewith. The Association shall indemnify and hold harmless the ARB and its members from all costs, expenses and liabilities including attorney's fees incurred by virtue of any member of the ARB's service as a member of the ARB.

(i) The ARB may take any action and may, from time to time, designate a representative to act for it in its place. In the event of death, disability or resignation of any member of the ARB, the Board (of the Declarant, as applicable) shall designate a successor.

(j) The ARB may adopt such further rules and regulations, policies, procedures, guidelines as it deems necessary to carry out its functions and purposes hereunder.

(k) The ARB may impose reasonable fees and charges upon Lot Owners to enable it to carry out its functions, including fees and charges for its review of any plans and specifications.

(l) In each instance where a structure has been erected, or the construction thereof is substantially advanced, in such a manner that the same violates the restrictions contained in this Declaration or any other covenants which the ARB has the power to enforce, or in such a manner that the same encroaches on any easement area or setback line, the ARB reserves the right, in its sole and absolute discretion, to grant an exception to permit the violation, so long as the ARB, in the exercise of its sole and absolute discretion, determines that the release or exception will not materially and adversely affect the health, safety and appearance of Heron Preserve.

(m) The ARB may require pre-wiring for CATV and/or security in such a manner as the ARB shall specify.

(n) Intentionally deleted.

Section 16.3. Disclaimer as to ARB Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ARB, the members thereof, nor the Declarant, the Board of Directors, nor the Association nor the Villa Association assumes liability or responsibility therefor, nor for any defect in any improvement or structure constructed from such plans and specifications nor for any actions or omissions of any Approved Builder in connection therewith. Neither Declarant, the Association, the ARB, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of any such plans or specifications. Every Lot Owner, for himself and for all parties claimed by or through him agrees that he will not bring any action or suit against Declarant, the Association, the ARB, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, quit-claims, all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 16.4 Design Standards.

(a) The ARB may from time to time adopt, promulgate, amend, revoke and enforce guidelines (the "Design Guidelines") for the purposes of:

- (i) governing the form and content of plans and specifications to be submitted to the ARB for approval pursuant to the provisions of this Declaration;
- (ii) governing the procedure for such submission of plans and specifications;
- (iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of structures, landscaping and all other matters that require approval by the ARB pursuant to this Declaration;
- (iv) assuring the conformity and harmony of external design and general quality of the construction; and
- (v) exempting from ARB review certain classes of minor changes, deviations or alterations from prior ARB approvals.

(b) The ARB shall make a published copy of its current Design Guidelines readily available to all Lot Owners and to all applicants seeking the approval of the ARB.

Section 16.5 ARB Final Inspection Approval.

(a) Upon completion of the installation, construction or alteration of any improvement or structure in accordance with plans and specifications approved by the ARB, the ARB shall issue a ARB Final Inspection Approval, identifying such improvements and the Lot upon which such improvement is placed, and stating that the plans and specifications have been approved and that such improvement complies with such plans and specifications. A copy of said Approval shall be filed for permanent record with the plans and specifications on file with the ARB.

(b) Any ARB Final Inspection Approval issued in accordance with the provisions of this Section 16.5 shall be prima facie evidence of the facts therein stated and shall be conclusive evidence that such improvements comply with all the requirements of this Article XVI; provided, however, that the Approval shall in no way be construed to certify the acceptability, sufficiency or approval by the ARB of the actual construction, or the quality of the workmanship, or to represent or warrant to anyone the value, quality, function or operation of the improvements or of any construction, workmanship, engineering, materials or equipment.

(c) The issuance of the Approval shall in no way be construed to certify to any party that the subject improvements have been built in accordance with any applicable laws, rule or regulation. Each Lot Owner shall still required to obtain all permits required by the applicable zoning and government authority (including but not limited to, an Improvement Location Permit and Certificate of Occupancy).

Section 16.6 Site Work, Landscaping. No clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with the plans therefor that have been submitted to, and approved by, the ARB.

Section 16.7 No Waiver of Future Approvals. The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matter whatever subsequently or additionally submitted for approval or consent.

Section 16.8 Modification of Guidelines and Procedures. The ARB may authorize modifications from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such modifications may be granted when unique circumstances dictate and no modifications shall: (a) be effective unless in writing, (b) be contrary to the restrictions set forth in this Declaration, or (c) estop the ARB from denying a modification to other Lot Owners.

**ARTICLE XVII
USE RESTRICTIONS**

The Lots shall be used for single-family residential purposes only, subject to the use restrictions hereinafter set forth. Any Supplemental Declaration or additional covenants imposed on the Plats may impose stricter standards than those contained in this Article XVII. The Association, acting through its Board of Directors, shall have standing and the power to enforce standards imposed by this Declaration and standards contained in any such Supplemental Declaration.

Section 17.1 Parking and Vehicular Restrictions. Parking within the Plats shall be restricted to private automobiles and non-commercial type passenger-type vans, jeeps and pick up trucks having a capacity of no more than two (2) tons, and only within the parking areas therein designed and/or designated for such purpose. No Owner shall conduct repairs (except in an emergency) or restorations of any motor vehicle, or other vehicle, upon any portion of the Plat, except in an enclosed area with the doors thereto closed at all times.

No commercial vehicles, or campers, manufactured homes, modular homes, mobile homes, motor homes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers or house trailer shall be permitted to be parked or stored or placed at any place within the Plat, except in spaces for some or all of the above specifically designated by the Declarant or the Association, if any. No Owner shall keep any vehicle on the Common Areas. For purposes of this Section, "commercial vehicles" shall mean those vehicles which are not designed and used for customary, personal/ family purposes.

No parking on lawns shall be permitted. No overnight on-street parking shall be permitted. Overnight parking of all trucks permitted hereunder shall only be allowed in an Owner's garage.

All boats, jet-skis, waverunners, and other vehicles used for similar types of recreational purposes must be parked in a garage at all times when not in use. Parking of these vehicles in driveways or in the streets is not permitted.

Section 17.2 Occupants Bound. All provisions of the Governing Documents shall also apply to all occupants, guests, invitees and lessees of any Owner. Every Owner shall cause his or her occupants to comply with the Governing Documents, and shall be responsible for all violations and losses caused by such occupants, notwithstanding the fact the such occupants are fully liable and may be sanctioned for any violation.

Section 17.3 Minimum Square Footage. No Residence shall be constructed or built on any Lot that has a finished living area (excluding open porches, breezeways, basements or garages) less than 2,000 square feet for a one-story Residence and less than 2,600 feet for a two-story Residence.

Section 17.4 Setbacks. No Residence or any other structures or improvements shall be located on any Lot nearer than the following setbacks: (a) seven feet (7') from all side Lot lines (except on Villa Lots 1 to 15, where the side yard setback shall be five feet (5')); and (b) twenty-

five feet (25') from the rear Lot line (except on Villa Lots 1 to 15, where the rear yard setback shall be zero feet (0')). In addition, no Residence or any other structure or improvements shall be located on any Lot nearer than front Lot line, as shown on the recorded Plat. All residences shall require an Improvement Location Permit and Certificate of Occupancy from the duly authorized governmental zoning authority. There shall be no encroachment upon any public or utility easement, right-of-way, or Common Area, unless express consent is obtained from the duly authorized entity having control or jurisdiction over the easement or right-of-way, or, in the case of Common Area, from the ARB.

Section 17.5 Animals and Pets. No animals, wildlife, livestock, reptiles, or poultry of any kind shall be raised, bred, or kept on any portion of the Plats, except for dogs, cats or other usual and common household pets in accordance with the provisions hereof. All pets shall be controlled by their Owner at all times. Those pets which, in the sole and absolute discretion of the Association, endanger the health, make objectionable noise or constitute a nuisance, threat or inconvenience, shall be removed within three (3) days of written request from the Board. No pets shall be kept, bred, or maintained on any Lots for commercial purposes. Household pets shall at all times whenever they are outside a Lot be confined on a leash held by a responsible person, contained within an "invisible fence" or located in a completely fenced in area (including in an invisible fence) of sufficient size to prevent escape (but only if the fence is approved by the ARB, in its sole and absolute discretion). Pets shall only be permitted on those portions of the Common Areas as so designated by the Association. All persons bringing a pet onto the Common Areas shall be responsible for removing any solid waste of the pet. Each Owner, by acquiring title to a Lot, agrees to indemnify Declarant and the Association and hold them harmless against all loss or liability of any kind whatsoever arising from any pet or animal of the Owner or any resident of the Owner's Lot.

All "Pit Bulldog" breeds, including, but not limited to, Staffordshire Bull Terriers, Bull Terriers, Pit Terriers and American Pit Bull Terriers (as such list may be modified by the Board from time to time) are prohibited.

Section 17.6 Nuisances. No portion of the Plats shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be unsightly; nor shall any substance, thing, or material be kept upon any portion of the Plats that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal or offensive activity shall be carried on upon any portion of the Plats, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Plats. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Heron Preserve. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Plats. No unlawful activity of any kind shall be permitted within the Plats.

Section 17.7 Hazardous Materials. Hazardous materials shall only be stored on the Lots if reasonably necessary to the maintenance thereof. All hazardous materials shall be stored,

utilized and accounted for in accordance with all governmental requirements. Owners shall be responsible for the maintenance, clean-up, storage, handling and disposal of any hazardous materials on their Lots and any contamination therefrom.

Section 17.8 Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted within the Plat except in containers located in appropriate areas, if any, and in all events such containers shall not be visible from any of Lot in the Plats except for the minimum time necessary for its collection. Owners shall not leave trash out for pick-up prior to 7:00 p.m. on the night prior to pick-up and shall remove trash receptacles as soon as practicable after pick-up. No clothing or household fabrics shall be hung, dried or aired in a manner which is visible from any roadway, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Plats, except within an enclosed structure appropriately screened from view and erected for that purpose, with ARB approval. Temporary construction dumpsters may be allowed on the Lot during the construction of any Residence or Villa.

Section 17.9 Unightly or Unkempt Conditions. It shall be the responsibility of each Owner of a Lot to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on any Lot.

Section 17.10 Outside Installations. Except as approved by the ARB on a case by case basis, no antennas, aerials, satellite dishes, cable dishes, or other apparatus for the reception or transmission of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any Residence or Lot; provided, however, the ARB and this restriction shall be subject to applicable federal, state, and local regulations. To the extent the installation of antennas, aerials, or dishes (if any) are merely duplicative and not necessary for the reception of video programming, the ARB may limit or prohibit antennas, aerials, or dishes an Owner may install. All such items shall be subject to the prior written approval of the ARB as to aesthetics, safety, and location. An automatic dusk-to-dawn outdoor light (by photoelectric cell or other appropriate timing device) of a type and at a location approved by the ARB shall be installed and maintained by the builder or Owner on each Lot in front of the front building line, unless waived by the ARB.

Section 17.11 Subdivision of Lot. No Lot may be subdivided or its boundary lines changed except with the prior written approval of the ARB. The ARB may permit a combination in ownership of any contiguous Lots intended for one single family detached Residence, but solely for the purpose of increasing the size of the homesite. In addition, any further subdivision of any Lot must also comply with the applicable Subdivision Control Ordinance governing the Plats and receive approval from all appropriate governing agencies, including but not limited to the Allen County Plan Commission or its duly authorized successor agency.

Section 17.12 Firearms. The discharge of firearms within the Plats is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the other Governing Documents, the Association shall not be obligated to take any action to enforce this Section 17.13,

and shall have no liability whatsoever in connection therewith. Nothing contained herein shall prohibit the discharge of firearms by law enforcement authorities or in self-defense.

Section 17.13 Garages, Carports, and Outbuildings. No free-standing garages, car ports or tool sheds shall be permitted on any Lot. The ARB may approve gazebos, pool houses or similar structures, as long as such structures comply with the ARB's Design Guidelines. No garage may be converted to another use, other than the storage of a personal vehicle or other personal storage expressly allowed by this Declaration, without prior approval of ARB. All Residences must have at least a three-car attached garage of at least 450 square feet. All garages must be attached and must be designed to be rear or side-loaded garages, except for Villa Lots which may have front-loaded garages.

Section 17.14 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 17.15 Utility Lines. No overhead utility lines, including without limitation lines for electric, telephone and cable television, shall be permitted within the Plats except for temporary construction lines.

Section 17.16 Lakes and Water Bodies. No Lot Owner shall draw or use water from any lake or pond for any purpose. Any Owner who is drawing or using water from any lake or pond as of January 1, 2012, may continue to do so, but the Board may assess a Special Assessment against any such Owner for such water use. If an Owner fails to pay such Special Assessment, the Board shall have all rights provided in Article XII, Article XXI, and Article XXII including enjoining such Owner from such water use. Boating, swimming, fishing and ice skating on any lake or pond within the Plats is allowed; provided however, that neither the Declarant nor the Association shall be responsible for any loss, damages or injury to any person or property arising out of any such use of the lakes or pond within the Plats by any Owner, or such Owner's guests, licensees, or invitees. Neither the Declarant nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes or ponds within the Plats.

Section 17.17 Business Use. No trade or business may be conducted in or from any Lot, except that, with approval by the ARB in its sole and absolute discretion, an Owner or occupant residing in a Residence may conduct "home business" activities or "home occupation" within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable from outside the Residence; (b) the business activity conforms to all governmental requirements; (c) the business activity does not involve additional traffic or any other impact on the Owners in the Plats; and (d) the business activity is consistent with the character of Heron Preserve. Barber shops, styling salons, beauty parlors, tea rooms, fortune-telling parlors, child care centers or licensed baby-sitting services, any type of auto repair services, animal hospitals or any form of animal care or treatment (such as dog trimming or kennel) shall be prohibited from the Plats.

This Section shall not apply to any activity conducted by the Declarant or an Owner with respect to its development and sale, or resale of the Lots in the Plats or its use of any Lots which it owns.

Section 17.18 Landscaping. The Lots shall be landscaped in accordance with the plans approved by the ARB. All shrubs, trees, grass and plantings of every kind shall be kept well-maintained, properly cultivated and free of trash and other unsightly material. Landscaping approved by the ARB shall be installed no later than 180 days following occupancy of or completion of the Residence, which ever occurs first.

Section 17.19 Sculptures and Artwork. Any sculptures, statues or artwork of any type whatsoever which are visible from outside the Lot are subject to the prior approval of the ARB.

Section 17.20 Septic Tanks and Private Wells. Septic tanks and private wells are not permitted on any Lot. Private or public water or wastewater systems shall not be constructed on the Lot without the prior written approval of Aquasource, Inc. or its successors and assigns ("Utility"). Each Lot Owner shall assume ownership of the sewer and water service lines located on their Lot from the tap into the Residence, shall at all times adequately maintain, repair and replace such sewer and water service lines for such Lot, and shall indemnify, defend, and hold the Utility harmless from any claims, damages, actions, suits or proceedings of any kind or nature (including reasonable attorneys' fees) arising out of or relating to any failure to adequately maintain, repair or replace such sewer and water service lines for such Lot. This paragraph shall not apply to the Association.

Section 17.21 Signs. No sign, billboard or advertisement of any kind, including, without limitation, "for sale" signs and those of realtors, contractors and subcontractors, shall be erected within the Plats without the written consent of the ARB, except as may be required by legal proceedings or Indiana law, and except signs, regardless of size, used by Declarant, its successor and assigns, and replacement of such signs (similar or otherwise). Under no circumstances shall flags, banners or similar items be permitted on any Lot. No sign shall be nailed or otherwise attached to trees.

Section 17.22 Driveways, Walkways and Mailboxes. All driveways, sidewalks and mailboxes shall be constructed maintained in the style originally approved by the ARB.

Section 17.23 Drainage. No Lot Owner may obstruct or rechannel the drainage flows after installation of the Surface Water Management System.

Section 17.24 Air Conditioning Units. No window air conditioning units may be installed on any Lot.

Section 17.25 Lighting. Except for seasonal Christmas or holiday decorative lights, which may be displayed between Thanksgiving and January 10 only, all exterior lights must be approved by the ARB.

Section 17.26 Utilities: Energy Conservation Equipment. All utilities, including all electric power lines, shall be located underground. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless approved by the ARB.

Section 17.27 Fences. No dog runs or animal pens shall be permitted on any Lot. No fences or walls shall be permitted except with the approval of the ARB in its sole and absolute discretion. In addition, all fences must comply with the requirements of the applicable zoning ordinance governing the Plats.

Section 17.28 On-Site Fuel Storage. No on-site storage of gasoline or other fuels shall be permitted on any Lot except that up to six (6) gallons of fuel may be stored on each Lot for emergency purposes and operation of gas grills, lawn mowers and similar tools or equipment. Storage of more than six (6) gallons of gas shall not be permitted within the Plats.

Section 17.29 Play Equipment, Pools, Etc. All bicycles, tricycles, scooters, skateboards and other play equipment, wading pools, baby strollers and similar items shall be stored so as not to be visible from streets or property adjacent to a Lot. No such items shall be allowed to remain on the Common Area or on Lots so as to be visible from adjacent property when not in use. Swing sets, basketball hoops and backboards and similar sporting or playground equipment may only be erected on Lots provided if the same are approved by the ARB, in its sole and absolute discretion, and installed and maintained in accordance with the ARB's approval. No above ground pools which requires a filtration system or other above ground pool or hot tub that is more than six (6) feet in diameter and 18 inches deep shall be placed or maintained on any Lot without the approval of the ARB, which approval may be withheld in its sole and absolute discretion. At the time of installation of any type of pool or hot tub, fencing made of natural materials or wrought iron, or landscaping must also be installed as approved by the ARB and must also comply with the requirements of the applicable zoning ordinance governing the Plats.

Section 17.30 Model Homes. No Owner of any Lot, other than Declarant or persons having written permission of Declarant shall build or use, or permit the building or use upon any such lot of any dwelling that is being used as a model home or exhibit house.

Section 17.31 Temporary Structures. No temporary house, trailer, tent, garage, mini barn, or other outbuilding shall be placed or erected on any Lot, nor shall any regular overnight camping be permitted on any Lot; provided, however, that Declarant or any person specifically authorized by Declarant may maintain a temporary construction or sales trailer on any Lot or Lots.

Section 17.32 Occupancy or Residential Use of Partially Completed Residences Prohibited. No Residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the plans approved by the ARB. The determination of whether the Residence shall have been substantially completed for occupancy shall be made by the building inspector of the governmental entity having jurisdiction over the Plats and such decision shall be binding on all parties.

Section 17.33 Damaged Structures. 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.

Section 17.34 Construction of Residences and Villas. Unless otherwise agreed in writing with Declarant, each Owner shall commence construction of a Residence or Villa that meets the requirements of this Declaration, the Plat, the ARB's approval, and all other applicable zoning and building ordinances and regulations no later than one (1) year from the date of Declarant transfers fee simple title to the initial Owner of the Lot ("Closing Date"), and a Certificate of Occupancy for the Residence or Villa shall be issued no later than (2) years from said Closing Date ("Building Period"). There shall be no lapse of substantial construction activity greater than sixty (60) consecutive days (excluding any days where construction is delayed or not possible due to adverse weather conditions) during the Building Period. If the Residence or Villa is not commenced, completed, or continuously constructed in accordance with this Section 17.35, Declarant may then elect to exercise an option within thirty (30) days from the applicable event to repurchase the Lot from the then current Owner of the Lot, free and clear of all liens and encumbrances (except current real estate taxes which shall be prorated to the date of Declarant's repurchase). Declarant's repurchase of any Lot under this Section 17.35 shall be at its sole and absolute discretion and at the following price: (a) ninety-five percent (95%) of the purchase price paid by the initial Owner of the Lot if the Lot is unimproved; or (b) the purchase price paid by the initial Owner, plus the actual value of any improvements constructed on the Lot, less six percent (6%), if construction has been commenced on the Lot in accordance with the Building Period. For purposes of this Section 17.35, "actual value of any improvements" shall be the highest of three (3) bids obtained by Declarant from three (3) disinterested builders that have constructed, or are in the process of constructing, Residences or Villas within the Plats. Declarant may exercise its option by sending written notice upon the then current Owner of the Lot of Declarant's intention to exercise its option to repurchase the Lot. Declarant's option shall not be affected by any subsequent transfer of title or possession of the Lot by the initial Owner to any subsequent Owner of the Lot. Each Owner of a Lot takes its ownership, rights, and title to the Lot subject to Declarant's option to repurchase the Lot in the event the Residence or Villa is not constructed in accordance with the Building Period stated herein. If the option is exercised, the closing of Declarant's repurchase of any Lot shall occur no later than thirty (30) days after Declarant provides its notice hereunder to the then current Owner of the Lot. The then current Owner of the Lot shall take all such actions and shall execute all such documents, including a warranty deed reconveying the Lot to Declarant, as Declarant deems reasonably necessary to reconvey marketable title to Declarant, free and clear of all liens and encumbrances.

Section 17.35 Non-Applicability to Association. Notwithstanding anything to the contrary contained herein, the Covenants and Restrictions set forth in this Article XVII shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement, and upkeep of the Common Areas to the extent that the application thereof could or might hinder, delay, or otherwise adversely affect the Association in the performance of its duties, obligations, and responsibilities as to the Common Areas.

**ARTICLE XVIII
AMENDMENT OF DECLARATION**

Section 18.1 Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board, or a majority of the Villa Board, or the Owners having in the aggregate at least a majority of the votes of the Voting Membership.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) of the Voting Membership. Prior to being effective, all material amendments to this Declaration shall be reviewed and approved by the Allen County Plan Commission.
- (e) Special Amendments. No amendment to this Declaration shall be adopted which changes: (i) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same; or (ii) the provisions of Article XIV of this Declaration with respect to casualty insurance to be maintained by the Association; or (iii) the provisions of Article XV of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster; or (iv) the limitation on Limited Use Common Area in Section 3.4; or (v) the provisions of this Declaration establishing the ARB and providing for its functions, without, in each and any of such circumstances, the unanimous approval of the Voting Membership.
- (f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Allen County, Indiana, and such amendment shall not become effective as to bona fide purchasers without actual notice thereof until so recorded.

**ARTICLE XIX
ACCEPTANCE AND RATIFICATION**

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Residences, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the Rules and Regulations as adopted by the Board of Directors and (to the extent of its jurisdiction) the Design Guidelines adopted by the ARB, as each may be amended or supplemented from time to time. The

acceptance of a deed of conveyance or the act of occupancy of any Lot or Residence shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws, Rules and Regulations and Design Guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Residence or the Plats, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Residence or any part of the Plats in any manner shall be subject to this Declaration, the Articles, the By-Laws, the Rules and Regulations and Design Guidelines applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XX NEGLIGENCE

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, contractors, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the restrictions in this Declaration or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

ARTICLE XXI BENEFIT AND ENFORCEMENT

Section 21.1 Benefit. This Declaration shall run with and bind the Plats for a term commencing on the date this Declaration is recorded in the office of the Recorder of Allen County, Indiana, and expiring December 31, 2026, after which time they shall be automatically extended for successive periods of ten (10) years each, unless by vote of seventy-five percent (75 %) of the then Voting Membership it is agreed to change this Declaration in whole or in part, or to terminate the same. The failure or delay at any time of Declarant, the Association, the Owners, the ARB, or any other Person entitled to enforce this Declaration, to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

It is anticipated that monetary damages may be difficult to determine and may not adequately compensate for a violation of the restrictions contained in this Declaration. Therefore, any Person who is aggrieved by a violation or threatened violation of any of this Declaration or who is otherwise entitled to enforce them also shall be entitled to injunctive relief to enforce the restrictions against any Person whose acts or omissions, or threatened acts or omissions, are or would be a violation of this Declaration. Any such aggrieved Person also shall be entitled to recover his costs and reasonable attorneys' fees incurred in the enforcement of this Declaration against any Person who violates or threatens to violate them.

Section 21.2 Right of Action and Enforcement. The Declarant and the Association (or as applicable, the Villa Association) shall have a right of action against any Owner for failure to comply with any provision of this Declaration, the Bylaws, the Articles, the Rules and Regulations, or decisions of the Association (or, as applicable, the Villa Association) or its Board of Directors or any committee acting under the authority of the Association (or, as applicable, the Villa Association) or its Board of Directors, including, without limitation, the ARB and its Design Guidelines. The Governing Documents, as each may be amended from time to time, may be enforced by the Declarant and/or the Association (or, as applicable, the Villa Association) through court proceedings for injunctive relief, for damages, or for both, including, without limitation, such relief as is set forth under Section 21.3 of this Article XXI.

Section 21.3 Equitable Remedies. The rights and obligations set forth in this Declaration constitute unique and distinctive property rights and obligations which are not generally available or replaceable, and for which the payment of monetary damages may not be adequate compensation in the event of a violation of the Governing Documents. Any violation of this Declaration, including, without limitation, any of the Governing Documents by an Owner or any Person acting through or on behalf of an Owner may cause irreparable damage or harm to the Declarant and the Association (or, as applicable, the Villa Association) which will be extremely difficult to measure; therefore, the Declarant and the Association (or, as applicable, the Villa Association) shall have the right to temporary or permanent injunctive relief issued by any court of competent jurisdiction to (a) enjoin or restrain any Owner from a violation of this Declaration or any of the Governing Documents, and/or (b) instructing any Owner to act in accordance with the terms and provisions of this Declaration or any of the Governing Documents.

Section 21.4 Action by Association. Notwithstanding any provision in this Declaration to the contrary, any action to enforce this Declaration by the Association (or, as applicable, the Villa Association), including, without limitation, action taken in accordance with Section 21.2 or Section 21.3 of this Article XXI shall only be taken by the Association (or, as applicable, the Villa Association) if a majority of the members of the full Board of Directors of the Association (or, as applicable, the Villa Association) vote in favor of such action; provided, however, that after the Applicable Lot Date, that any such vote by the Board shall be null and void in the event the Board is comprised of fewer than five (5) members. It is the intention of this provision that any action by the Association (or, as applicable, the Villa Association) after the Applicable Lot Date be taken or commenced only after receiving the affirmative vote of the greater of (a) three (3) members of a full Board of five (5) directors, or (b) a majority of the members of a Board of Directors in excess of five (5) members.

Section 21.5 No Duty to Enforce. Neither Declarant nor Association shall be liable for any damages of any kind to any person for failing either to abide by, enforce, or carry out any provisions of this Declaration.

Section 21.6 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 the provisions of this Declaration shall be held to be a waiver by that party (or an estoppel of that

party to assert) any right available to him upon the occurrence, reoccurrence, or continuation of such violation or violations of this Declaration.

Section 21.7 Attorneys' Fees. Any such aggrieved person, including the Declarant and the Association, shall be entitled to recover his costs and reasonable attorneys' fees incurred in the enforcement against any person who violates or threatens to violate this Declaration.

ARTICLE XXII MISCELLANEOUS

Section 22.1 Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, the Rules and Regulations or Design Guidelines adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 22.2 Waiver. No Owner may exempt himself from liability for any assessment or for any contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Lot or Residence.

Section 22.3 Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, the By-Laws, the Rules and Regulations or the Design Guidelines, and each shall be enforceable to the greatest extent permitted by law.

Section 22.4 Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 22.5 Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

Section 22.6 ARB Discretion. Whenever this Declaration refers to an act, omission, consent, approval, denial, or any other action taken by the ARB in its discretion, all such acts, omissions, consents, approvals, denials, and any other actions taken by the ARB shall be construed to mean in the ARB's sole and absolute discretion.

**ARTICLE XXIII
DECLARANT'S RIGHTS FOR THE LOTS IN SECTION IV PLAT
AND THE METES AND BOUNDS OUTLOTS**

Section 23.1 Declarant. For the Lots in the Section IV Plat and the Metes and Bounds Outlots, the Declarant and its successors or assigns will undertake the work of constructing infrastructure and improvements related thereto. Before any Residence on any Lot in the Section IV Plat and the Metes and Bounds Outlots shall be used and occupied as a dwelling or as otherwise provided herein, Declarant and its successors and assigns shall install all improvements serving the Lot in the Section IV Plat and the Metes and Bounds Outlots as provided in the Development Plan. The completion of that work and the sale, resale, rental and other disposal of Lots in the Section IV Plat and the Metes and Bounds Outlots is essential to the establishment and welfare of Heron Preserve as a community. As used in this Section 23.1 and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of completed Lots in the Section IV Plat and the Metes and Bounds Outlots. In order that said work may be completed and Heron Preserve established as a fully occupied community as rapidly as possible, neither any Owner nor the Association nor the Villa Association shall do anything to interfere with the Declarant's activities. Without limiting the generality of the foregoing, nothing in this Declaration or the other Governing Documents shall be understood or construed to prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors or their representatives from:

(a) doing on any portion of the Section IV Plat and the Metes and Bounds Outlots owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including, but not limited to, the right to tie into any portion of the Section IV Plat and the Metes and Bounds Outlots with driveways, streets, and the Surface Water Management System; or

(b) erecting, constructing and maintaining on any portion of the Section IV Plat and the Metes and Bounds Outlots owned or controlled by the Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing Heron Preserve as a community and disposing of the same by sale, lease or otherwise, including, but not limited to, the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, sales offices, construction offices, and business offices, as in the sole opinion of Declarant may be required, convenient or incidental to the construction and sale by Declarant of Lots in the Section IV Plat and the Metes and Bounds Outlots in all or any portion of the Section IV Plat and the Metes and Bounds Outlots and the right to maintain a sales and marketing office for Heron Preserve without cost to Declarant until Declarant no longer owns any Lots in the Section IV Plat and the Metes and Bounds Outlots; or

(c) conducting on any portion of the Section IV Plat and the Metes and Bounds Outlots owned or controlled by the Declarant or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements within the Section IV Plat and the Metes and Bounds Outlots and of disposing of Lots in the Section IV Plat and the Metes and Bounds Outlots therein by sale, resale, lease or otherwise; or

(d) determining in its sole and absolute discretion the nature of any type of improvements to be constructed as part of Heron Preserve; or

(e) agreeing, in its sole and absolute discretion, to waive in writing the two-year Building Period in Section 17.34.

Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Records of the Allen County Recorder.

The Declarant expressly reserves the right to grant easements and rights-of-way over, under and through the Common Areas in the Section IV Plat and the Metes and Bounds Outlots so long as the Declarant owns any portion of the Section IV Plat and the Metes and Bounds Outlots primarily for development and/or resale; provided, no such easement shall materially interfere with the use of the Common Area in the Section IV Plat and the Metes and Bounds Outlots by the Owners.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction of Residences and initial sale of Lots in the Section IV Plat and the Metes and Bounds Outlots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area and Lots in the Section IV Plat and the Metes and Bounds Outlots owned by Declarant such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction, initial sale, resale of Lots in the Section IV Plat and the Metes and Bounds Outlots, including, but not limited to, business offices, signs, model lots, and sales offices, and the Declarant, its successors and assigns and their designees shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use any Lot in the Section IV Plat and the Metes and Bounds Outlots owned by the Declarant and Common Area in the Section IV Plat and the Metes and Bounds Outlots owned by the Association, as models, or information or sales offices.

Section 23.2 Future Easements and Modifications. Declarant reserves the right to grant, modify or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants and rights of way, to modify the boundary lines and to plat or replat portions of the Plats in the Section IV Plat and the Metes and Bounds Outlots for development of Heron Preserve. The Association, the Villa Association and each Owner agree to execute and deliver any and all easements, deeds, agreements, documents, plats and instruments which are necessary or desirable to accomplish the same. Each Owner, the Association and the Villa Association hereby unconditionally and irrevocably appoint the Declarant as its true and lawful attorney-in-fact, coupled with an interest, for the purpose of: (a) granting, modifying, or entering into easements, dedications, agreements, licenses, restrictions, reservations, covenants and rights-of-way, which Declarant determines to be necessary or desirable for the development of Heron Preserve, (b) complying with any of the platting or zoning requirements affecting the Section IV Plat and the

Metes and Bounds Outlots, and (c) taking such other action as Declarant may deem necessary and appropriate to develop Heron Preserve in accordance with the Development Plan; said power to be effective as of the date hereof, giving and granting unto Declarant full power and authority to do and perform all and every act and thing whatsoever requisite and necessary in furtherance of the foregoing as fully, to all intents and purposes, as such Owner, the Association or the Villa Association might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that Declarant or its substitute shall lawfully do or cause to be done by virtue hereof.

Section 23.3 No Merger. No rights, privileges, or easements granted or reserved herein shall be merged into the title of any portion of the Section IV Plat and the Metes and Bounds Outlots but shall be held by Declarant independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit claim deed from Declarant releasing such right, privilege, or easement by express reverence thereto with respect to all or any portion of the real estate.

Section 23.4 Amendment. This Article XXIII may not be amended without the express written consent of the Declarant as long as Declarant either owns any Lot in the Section IV Plat and the Metes and Bounds Outlots, or operates an office of real estate sales and/ or resales within the Section IV Plat and the Metes and Bounds Outlots.

IN WITNESS WHEREOF, Heron Developers II, LLC and the Association have executed this Declaration on the day and year first hereinabove set forth.

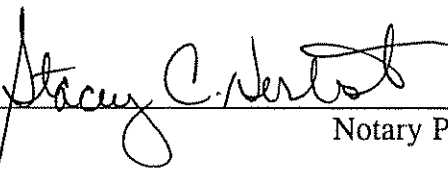
HERON DEVELOPERS II, LLC

BY: 
Michael W. Thomas, Member

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael W. Thomas, being the sole member of Heron Developers II, LLC, and acknowledged the execution of the foregoing to be his voluntary act and deed this 30th day of October, 2012.

My Commission Expires:
1/8/2017
Resident of Allen County


Notary Public

THE HERON PRESERVE HOMEOWNERS' ASSOCIATION, INC.

BY: [Signature]
Tim Rooney, President

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared Tim Rooney, being the duly authorized President of the Heron Preserve Homeowners' Association, Inc., and acknowledged the execution of the foregoing to be his voluntary act and deed this 31st day of October, 2012

My Commission Expires:
Jan 25, 2018
Resident of Indiana

[Signature]
Notary Public

JENNIFER E. DEVOSS-FOURMAN
NOTARY PUBLIC
ALLEN COUNTY
STATE OF INDIANA
MY COMMISSION EXPIRES JANUARY 25, 2018

THE HERON PRESERVE HOMEOWNERS' ASSOCIATION, INC.

BY: [Signature]
Michael W. Thomas, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael W. Thomas, being the duly authorized Secretary of the Heron Preserve Homeowners' Association, Inc., and acknowledged the execution of the foregoing to be his voluntary act and deed this 30th day of October, 2012

My Commission Expires:
1/8/2017
Resident of Allen County

[Signature]
Notary Public

This instrument prepared by Robert W. Eherenman, Attorney at Law, Haller & Colvin, P.C., 444 East Main Street, Fort Wayne, Indiana 46802, Telephone: (260) 426-0444. 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. /s/ Robert W. Eherenman