

2024010763 REST \$25.00  
1/25/2024 2:03:12 PM 28 PGS  
Deborah A Wright  
Kosciusko County Recorder IN  
Recorded as Presented



**AMENDED AND RESTATED  
DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,  
LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO AND  
AS PART OF THE DEDICATION AND PLAT OF COTTAGES AT RACCOON RUN,  
SECTION I, A SUBDIVISION IN WAYNE TOWNSHIP,  
KOSCIUSKO COUNTY, INDIANA (The "Declaration")**

---

RACCOON RUN DEVELOPMENT, LLC, an Indiana limited liability company, declares that it is the owner of certain real estate shown and legally described in the Plat ("Real Estate"), and lays off, plats and subdivides the Real Estate in accordance with the information shown on the certified plat which was recorded in the office of the Recorder of Kosciusko County, Indiana, on January 15, 2020 as Document No. 2020010516. The platted subdivision shall be known and designated as Cottages at Raccoon Run, Section I, a Subdivision in Wayne Township, Kosciusko County, Indiana, with the original Restrictions being recorded on November 29, 2021, as Document Nos. 2021111366 and 2021111368, respectively.

The lots are numbered 1-19, inclusive, and all dimensions are shown in feet and decimals of a foot on the Plat. All streets and easements specifically shown or described are expressly dedicated to public use for their usual and intended purposes.

**PREFACE**

Developer desires to provide for the preservation of the values and amenities in said Subdivision and for the maintenance of said open spaces and other Common Areas and facilities; and, for such purposes, Developer desires to subject the real property described on the Plat, attached hereto and referred to in Section 13, together with such additions as may hereafter be made thereto (as provided in Section 13); to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said real property and each Owner thereof.

In addition to the recordation of the Plat of and this document, there will be recorded Articles of Incorporation of Cottages at Raccoon Run Community Association, Inc., it being Developer's intention that said association be bound by its Articles of Incorporation and Bylaws.

Section I. **DEFINITIONS.** The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 "Articles." The Articles of Incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those Articles.

1.2 "Association." Cottages at Raccoon Run Community Association, Inc. (or a name similar thereto), an Indiana nonprofit corporation, and its successors and assigns.

1.3 "Board of Directors." The duly elected board of directors of the Association.

1.4 "Bylaws." The Bylaws adopted by Cottages at Raccoon Run Community Association, Inc., and all amendments to those Bylaws.

1.5 "Committee." The Architectural Control Committee established under Section 10 of the Covenants.

1.6 "Common Area." All real property owned by the Association for the common use and enjoyment of Owners.

1.7 "Cottage." Home unit.

1.8 "Covenants" or "Declaration." This document and the restrictions, limitations and covenants imposed under it.

1.9 "Developer." Raccoon Run Development, LLC, an Indiana limited liability company, or its assigns and successors in interest in the Real Estate.

1.10 "Lot," and in plural form, "Lots." Any of the platted lots in the Plat, or any tract(s) of Real Estate which may consist of one or more Lots or part(s) of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by an applicable zoning ordinance; provided, however, that no tract of land consisting of part of a Lot, or parts of more than one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 65 feet in width at the established front building line as shown on the Plat. If any Owner owns more than one (1) Lot, each Lot shall be considered a separate Lot for assessment purposes, even if the dwelling sits on two (2) Lots. In the event that a Lot is used solely as green space and no structure is placed on the Lot, a special assessment will be charged as follows:

Owner's first Lot	100% of assessed amount pursuant to Section 4.3
-------------------	---

Owner's additional Lot(s)	66% of assessed amount pursuant to Section 4.3
---------------------------	--

1.11 "Owner," and in the plural form, "Owners." The record owner(s) (whether one or more persons or entities) of fee simple title to the Lots, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

1.12 "Plan Commission." The Kosciusko County, Indiana Plan Commission, or its successor agency.

1.13 "Plat." The recorded primary plat of Cottages at Raccoon Run, Section I.

1.14 "Properties." All such existing properties and additions thereto, as are subject to this Declaration or any Supplemental Declaration prepared and filed of record pursuant to the provisions of Section 13 hereof.

1.15 "Raccoon Run." The multiple-section community concept of Raccoon Run developed by Developer, including all sections added to Raccoon Run by Developer pursuant to Article XIII hereof.

1.16 "Subdivision." The platted subdivision of Raccoon Run.

## Section 2. PROPERTY RIGHTS.

2.1 Owner's Easements of Enjoyment. Each Owner shall have the right and an easement of enjoyment in the Common Area which shall be appurtenant to and pass with the title to every Lot, subject to the following rights which are granted to the Association.

2.1.1 To suspend the voting rights and right to the use of the recreational facilities in the Common Area for any period during which any assessment against an Owner's Lot remains unpaid, or an Owner is in violation of the Covenants, the Articles, the Bylaws, or any published rule of the Association.

2.1.2 To dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association's members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds (2/3) of each class of Association members agreeing to such dedication or transfer is recorded.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area, and recreational facilities in it, to members of the Owner's family, and tenants or contract purchasers who reside on the Owner's Lot.

## Section 3. MEMBERSHIP AND VOTING RIGHTS.

3.1 Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

3.2 The Association shall have the following two classes of voting memberships:

3.2.1 Class A. Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as its Owners among themselves determine; but in no event shall more than one vote be cast with respect to a Lot.

3.2.2 Class B. Class B membership consists of Developer and its successor. The Class B member shall be entitled to 20 votes for each Lot owned. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

3.2.2.1 When fee simple title to all Lots has been conveyed by Developer or its successor; or

3.2.2.2 On December 31, 2033.

#### Section 4. COVENANT FOR MAINTENANCE ASSESSMENTS.

4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner, except Developer, by and immediately upon acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments for capital improvements, such assessments to be established and collected as provided in these Covenants and the Bylaws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The lien is effective from and after recording a Claim of Lien in the Public Records, stating the description of the Lot, name of the Owner, amount due and the due dates. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them. Notwithstanding the foregoing, Lot 2 and Lot 18 in Raccoon Run Cottages shall not be required to pay the annual maintenance assessments as set forth above so long as Lot 2 is owned by Henry Ronald Hultquist and Mary Brooks and Lot 18 is owned by Karen Patton, or they notify the Association in writing that they elect to participate in the maintenance of the Lot by the Association. Once an election is made to participate in the maintenance of Lot 2 and Lot 18, the election shall be irrevocable.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the provision of the Grounds Keeping Services as defined in and required under Subsection 8.2 hereof, and for the care, preservation, supervision, improvement, repair and maintenance of the Common Areas and of the improvements situated thereon, including, but not limited to: (a) the payment of taxes on and insurance in connection with the Common Areas and the repair, replacement and making of additions thereto; (b) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management, supervision, maintenance and repair of, (i) the Common Areas, including, without limitation, the storm water detention basin and control structures and of any existing and future recreational lakes (the "Lakes"), together with any outlet and water level control structures and of the park area and improvements situated thereon, and (ii) Block A and Block E, as more particularly described in Section 15 hereof, (c) carrying out the duties of the Board of Directors of the Association, as set forth herein and as, from time to time, shall be determined by said Board of Directors; (d) to reimburse the Cottages at Raccoon Run Homeowner's Association, Inc. for one-third (1/3) of the entrance maintenance and any repairs and replacements required along Raccoon Run Boulevard

to access the Cottages section; and (e) carrying out the purposes of the Association as stated in its Articles of Incorporation.

**4.3 Amounts of Annual Assessments.** Until January 1 of the year in which the first conveyance by Developer of a Lot, the minimum annual assessment shall be \$1,500.00 per improved Lot. Until January 1 of the year in which the first conveyance by Developer of a Lot, the minimum annual assessment shall be \$400.00 per unimproved Lot. Should any Owner fail to commence construction or cause the commencement of construction of the dwelling Cottage on said Owner's Lot(s) within 12 months of said Owner receiving title to said Lot(s), said Owner shall be responsible for and cause the grading and planting of grass seed on said Lot, subject to the approval of Developer or its representative. Once the Owner has graded and seeded the Lot(s) hereunder and until such time as construction has begun on said Lot(s), the Association shall maintain the grass on the subject Lot(s) and assess the Owner with an amount equal to the annual assessment for unimproved Lots in effect at that time, as established by Developer or the Association under this Subsection 4.3. The amounts contained herein are provided solely for the purpose of determining the initial annual assessment to Lot Owners under Subsection 4.6, and are subject to change from time to time both as to the amounts and as to their relation to the total annual assessment.

**4.3.1** From and after January 1 of the year in which such first conveyance of a Lot occurs pursuant to Subsection 4.3 above, the annual assessment for improved and unimproved Lots may be increased each year by the Board of Directors, or by the Developer in the event no association and/or Board of Directors has been formed, by a percentage of not more than 18% above the annual assessment for the previous year, without a vote of the membership.

**4.3.2** From and after January 1 of the year in which such first conveyance of a Lot occurs pursuant to Subsection 4.3 above, the annual assessment may be increased by a percentage in excess of 18%, only by the vote or written assent of a majority of each class of members of the Association, or by the Developer at its sole discretion if no association has been formed at that time.

#### **4.4 Special Assessments.**

**4.4.1 Capital Improvements.** In addition to the annual assessments authorized in Subsection 4.2, the Association may levy, in any assessment year, a special assessment against all Lots applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction, repair or replacement of any existing capital improvement in the Common Area, including fixtures and related personal property; provided that any such assessment shall require the vote or written assent of 75% of each class of members of the Association; and provided, further, that no special assessment for any such purpose shall be made if the assessment in any way jeopardizes or affects the Association's ability to improve and maintain the Common Area, or pay its pro rata share of the cost of maintaining the Lakes.

**4.4.2 Excessive Grounds Keeping Services Expenses.** In addition to the annual assessments authorized in Subsection 4.2, the Association may levy, in any assessment year, a special assessment applicable to and charged against any Cottage and its Owner for the purpose of

defraying, in whole or in part, the costs and expenses incurred by the Association in providing the Grounds Keeping Services that exceed those expenses covered by a portion of the annual assessments levied under this Section 4 for standard landscaping as described in Subsection 8.2 hereof.

4.5 Notice and Quorum for Any Action Authorized Under Subsections 4.3.2 and 4.4. Any action authorized under Subsections 4.3.2 and 4.4 shall be taken at a meeting of the Association called for that purpose, written notice of which shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. If the proposed action is less than the requisite percentage of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the Association within 30 days of the date of such meeting.

4.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except as provided in Subsection 8.2 and may be collected on a monthly, quarterly or yearly basis. The annual assessment as set forth in Subsection 4.3 shall include an assessment for Common Area Maintenance and for Grounds Keeping Services, the costs of which shall be assessed as set forth herein. The portion of the annual budget allocated for landscaping shall be assessed in accordance with the actual cost as determined by the annual contract with the landscape contractor, which contract when bid out by the Board shall be awarded in two parts as follows: [1] Grounds Keeping Services for the Cottages and; [2] landscape maintenance, repair and replacement for the Common Areas. The charges for each shall be shared equally by all Cottages except as provided in Subsection 8.2.

4.7 Date of Commencement of Annual Assessments. The annual assessment allowed under Subsection 4.3 shall be in force and effect on the first day of the month following the first conveyance of a Lot by Developer or its successor, and each Owner shall be subject to said annual assessment immediately upon acceptance of the deed to said Owner's Lot. The first annual assessment shall be based upon a partial year unless such conveyance is made in the first month of such year. The portion of the annual assessment for Common Area Maintenance shall commence as to individual Lots on the first day of the month following the conveyance of such Lot to Owner, prorated according to the number of months remaining in the calendar year at the time of conveyance (except for the initial year, when the proration shall be based upon the partial year). That portion of the annual assessment for Grounds Keeping Services shall commence as to individual Lots on the first day of the month following the issuance of an Occupancy Permit for such Lot, prorated according to the number of months remaining in the calendar year at the time of issuance (except for the initial year, when proration shall be based upon the partial year). The Board of Directors, or the Developer in the event no association and/or Board of Directors has been formed, shall fix the amount of the annual assessment against each Lot at least 30 days in advance of the date when the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The Association, or the Developer, if appropriate, shall, upon demand and for a reasonable charge, furnish a certificate by an officer of the Association stating whether an assessment on a Lot has been paid.

4.8 Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All Common Areas, as defined herein;
- (c) All areas reserved by Developer on the recorded Plat of the Properties;
- (d) All Lots owned by Developer or its successor; and
- (e) All Lots owned by a residential contractor licensed in Kosciusko County, Indiana, as such and who holds title to a Lot for the purpose of constructing a dwelling Cottage on said Lot but not residing thereon. Should construction not commence on the subject Lot within a 12-month period following the purchase, the contractor shall be subject to the grading and seeding requirements set forth in Subsection 12.19 hereof, and the assessment requirements imposed on Owners of unimproved Lots set forth in this Section 4 until such time as construction shall commence.

#### Section 5. ESTABLISHMENT OF ASSESSMENTS.

5.1 The Board of Directors of the Association, or the Developer in the event no association and/or Board of Directors has been formed, shall approve and establish all sums which shall be payable by the Owners in accordance with the following procedures:

5.1.1 The annual assessments against the Owners of all of the Cottages shall be established after the adoption of an operating budget, and written notice of the amount and date of commencement thereof shall be given to each Owner not less than 30 days in advance of the date thereof. Annual assessments shall be payable at such time or times as the Board of Directors shall direct, which shall be monthly until otherwise directed. Annual assessments shall include an amount for "Reserves for Replacement" so as to enable the Association to establish and maintain an adequate reserve fund for periodic maintenance, repair and replacements of improvements to the Common Areas.

5.1.2 Special assessments against the Owners and all other fees, dues and charges, including assessments for the creation of reasonable reserves, may be established by the Board of Directors at any regular or special meeting thereof, or by the Developer, if appropriate, at any time without a meeting, and shall be payable at such time or times as the Board of Directors, or the Developer, if appropriate, shall direct.

5.1.3 The Board of Directors, or the Developer, if appropriate, may, from time to time, establish a resolution, rule or regulation, or may delegate to an officer or agent the power and authority to establish specific fees, dues or charges to be paid by Owners of Cottages for any special or personal use of facilities, or to reimburse the Association, or the Developer, if appropriate, for the expenses incurred in connection with the enforcement of any of the terms of this Declaration. Such sums shall be payable by the affected member at such time or times as shall be established by the resolution, rule or regulation of the officer or agent.

5.1.4 The Association, or the Developer, if appropriate, shall prepare a roster of the Cottages and assessments applicable thereto which shall be kept in the office of the Association, or the Developer, if appropriate, and shall be open to inspection by any Owner. The Association, or the Developer, if appropriate, shall, upon demand, furnish an Owner liable for said assessment a certificate, in writing signed by an officer of the Association, or the Developer, if appropriate, setting forth whether the assessment has been paid and/or the amount which is due as of any date. As to parties without knowledge of error who rely thereon, such certificates shall be conclusive evidence of payment or partial payment of any assessment therein stated having been paid or partially paid.

Section 6. EFFECT OF NONPAYMENT OF ASSESSMENTS. If any assessment is not paid within 30 days after the due date, a late fee of \$25.00, beginning from the due date, shall be levied by the Board of Directors, or the Developer, if appropriate, for each month the assessment is unpaid.

For example: Owner A is delinquent in payment of his assessment for two (2) months. The computation of late fees is as follows:

1st month's late fees:	\$25.00 for Assessment #1
2nd month's late fees:	\$25.00 for Assessment #2 <u>and</u> another \$25.00 for Assessment #1

Total amount of late charges due after two months: \$75.00  
(\$25.00 for month #1 and \$50.00 for month #2)

The Association, on approval by the Board of Directors, or the Developer if no association and/or Board of Directors has been formed at that time, may, at any time after a delinquency has continued for two (2) months, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property. Any officer of the Association, or the Developer, if appropriate, is authorized to execute any documents required to effect such action. Any such action shall include subsequent unpaid assessments and/or late charges. There shall be added to the assessment all costs and expenses, including attorney fees required to collect same. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of the Cottage.

The Association may assess against a Lot a reasonable charge for providing letters notifying Owners of any violations or breaches of the Restrictions. The Association may incur administrative time and expense in receiving and reviewing complaints of any violations of these Restrictions; onsite inspections, consultations, mailing and other time, costs and expenses. The fee shall be charged for the first notice of violation, however, the Association may charge an Owner for any subsequent letter for the same of substantially the same violation of these Restrictions. The Board of Directors of the Association may adjust the administrative fees from time to time, but such administrative fee shall not be less than \$75.00 per letter. The second and any subsequent letter shall not be sent more often than every twenty (20) days. The administrative fees contained within this Section 6 shall be collected in accordance with Section 5 above.



Section 7. SUBORDINATION OF THE LIEN TO MORTGAGES. As hereinabove provided in Subsection 4.1, the lien of the Association or the Developer for assessments and other charges of the Association or the Developer becomes effective from and after recording of a Claim of Lien in the Public Records and shall automatically secure all unpaid assessments, late fees and other charges, including attorney fees which may become due from and after the recording of the Claim of Lien. The Claim of Lien shall be executed by an officer of the Association and shall comply with the requirements necessary for the recording thereof in Kosciusko County, Indiana. This lien of the Association or the Developer shall be subordinate to a first mortgage on any Cottage, which mortgage is recorded in the Public Records prior to any said Claim of Lien against the same Cottage being recorded in the Public Records. A lien for assessments shall not be affected by any sale or transfer of a Cottage; provided, however, that in the event of a sale or transfer pursuant to a foreclosure of a first mortgage, a foreclosure of a mortgage held by an Institutional Mortgagee, or deed in lieu of foreclosure by a first mortgage or a mortgage held by an Institutional Mortgagee, the acquire of title, his successors and assigns, shall not be liable for assessments pertaining to the Cottage or chargeable to the former Owner of the Cottage which became due prior to such sale or transfer. However, any such unpaid assessments for which such acquire of title is not liable may be reallocated and assessed to all Cottages (including such acquire of title) as an Association or Developer expense. Any such sale or transfer pursuant to a foreclosure or deed in lieu of foreclosure shall not relieve the purchaser or transferee of a Cottage from liability for, or the Cottage from, the lien of any assessments made thereafter. Nothing herein contained shall be construed as releasing the party liable for any delinquent assessments from the payment thereof, or the enforcement of collection by means other than foreclosure.

Section 8. MAINTENANCE OBLIGATION OF ASSOCIATION.

8.1 Common Area. The Association shall at all times maintain, repair and replace at its expense all Common Areas, including all improvements placed thereon, in good condition and repair.

8.2 Grounds Keeping Services. Grounds Keeping Services, as hereinafter defined, shall be provided by the Association for all Cottages. For purposes hereof, "Grounds Keeping Services" shall consist of snow removal and the maintenance of all standard landscaping, vegetation, grass, plants, trees and the like located upon each Cottage; provided, however, that if any of the foregoing standard landscaping requires replacement, it shall be the responsibility of, and at the expense of, the Owner of the applicable Cottage to make such replacement. If a Cottage actually sits on two Lots, the Owner shall be charged one annual assessment and an additional assessment for additional landscaping maintenance required to maintain both Lots. In the event there is a fenced-in area upon a Lot, adequate access to this area shall be provided to enable the Association to perform this maintenance, but if none is so provided or if the access is locked or otherwise made inaccessible, the Association shall not be responsible for providing any maintenance within this area, and the Owner thereof shall have such responsibility and shall not be entitled to claim any abatement of any portion of the annual assessment by the Association due to such situation. If the installation of fencing or additional landscaping by an Owner increases the cost to the Association of performing the landscaping maintenance as part of the Grounds Keeping Services required hereunder, such Owner shall be subject to the payment of such increases as a special assessment, pursuant to Subsection 4.4.2 hereof. Maintenance, repair or replacement of

any portion or part of a Cottage's sprinkler system shall be the responsibility of that Cottage's Owner. If a Cottage Owner fails or refuses to make required repairs or replacements of his sprinkler system after reasonable notice from the Association to do so, the Association may enter upon said Cottage and perform such required work to the sprinkler system; and the cost thereof, plus reasonable overhead costs of the Association, shall be a special assessment upon such Cottage.

8.3 Right of Entry by Association. Whenever it is necessary to enter upon a Lot for the purpose of inspection, including inspection to ascertain an Owner's compliance with the provisions of this Declaration, or for performance of any maintenance, alteration or repair to any portion of the dwelling or improvements upon the Cottage, the Owner thereof shall permit an authorized agent of the Association to enter such Lot, or go into the Cottage, provided that such entry shall be made only at reasonable times. In the case of emergency such as, but not limited to, fire or tornado, entry may be made at any time. Each Owner does hereby appoint the Association as its agent for the purposes herein provided and agrees that the Association shall not be liable for any alleged property damage or theft caused or occurring on account of any entry.

8.4 Others. As deemed appropriate by the Board of Directors, the Association shall maintain the vegetation, if any, landscaping and sprinkler system upon areas which are not within the Properties but abut same or are owned by a utility or governmental authority, so as to enhance the appearance of the Properties.

## Section 9. MAINTENANCE OBLIGATION OF COTTAGE OWNERS.

### 9.1 Owner's Responsibility.

9.1.1 Each Cottage Owner is responsible for the repair, maintenance and/or replacement, at Owner's expense, of all portions of the dwelling, landscaping, and other improvements constructed on Owner's Lot, including, without limitation, all doors, windows, roofs, walls, glass, screens, electric panels, electric wiring, electric outlets and fixtures, drains, plumbing fixtures and connections, and all air-conditioning equipment. Further, each Owner shall maintain at his expense all structural, electrical, mechanical and plumbing elements thereof.

### 9.2 Owner Liability. Should any Owner do any of the following:

9.2.1 Fail to perform the responsibilities as set forth in Subsection 9.1 above; or,

9.2.2 Cause any damage to any improvement which the Association has the responsibility to maintain, repair and/or replace; or

9.2.3 Undertake unauthorized modifications to the Common Area, as set forth herein.

Then the Association shall notify said Owner in writing of the repairs and/or maintenance to be performed or, as the case may be, the unauthorized improvements or modification to be removed. Said notification shall provide said Owner with 30 days within which to complete the required repairs, maintenance or, as the case may be, removal. Should said Owner fail to perform such

repairs, maintenance or removal within said 30-day period, the Association shall have the right to penalize said Owner in an amount equal to \$100.00 per day for every day the required repair, maintenance and/or removal is not completed by the Owner. The Association hereby reserves the right to enforce and pursue the payment of any penalties levied hereunder consistent with the terms and conditions of its enforcement and pursuit of assessments and late fees pursuant to Section 6 hereof.

#### Section 10. ARCHITECTURAL CONTROL.

10.1 Approval Necessary. No Cottage, building, outbuilding, garage, fence, wall, retaining wall, or other structure of any kind shall be erected, constructed, placed or maintained on the Properties, nor shall any dwelling or other improvements on each Cottage, as originally constructed and provided by Developer, be altered, changed, repaired or modified, including, without limitation, the painting of a dwelling or any other maintenance or repair which changes the exterior appearance of a dwelling or other improvements on a Cottage, unless prior to the commencement of any work thereof two complete plans and specifications therefor, including, but not limited to, exterior colors, materials and decorations, and also including, as applicable, front, side and rear elevations, floor plans, landscaping plans, and two (2) plot plans indicating and fixing the exact location of such Cottage, improvements, structures or such altered structure on the Cottage with reference to the street and sidelines thereof, shall have been first submitted in writing for approval and approved in writing by the Architectural Control Committee. Notwithstanding any provision to the contrary, at any time prior to the appointment by Developer of the members of the Architectural Control Committee, as defined below, Developer shall have the exclusive right to waive any architectural restrictions set forth in these Covenants, including, without limitation, the provisions included in Article X, Article XII and Article XIV of these Covenants.

10.2 Members. The Architectural Control Committee shall consist of three (3) members appointed by Developer or, following formation of the Association by Developer, by the Board of Directors (the "Architectural Control Committee"). The members of the Architectural Control Committee shall serve at the pleasure of Developer or the Board of Directors, as the case may be. Notwithstanding the foregoing, the initial Architectural Control Committee shall be appointed by Developer and consist of only three (3) members, as follows: Austin Glenn, Jeffrey Thomas and AJ Thomas. Upon formation of the Association, the Board of Directors shall succeed to the initial Committee's responsibilities under this Section 10 to review subsequent construction, modifications and additions of structures, subject to Developer's rights under Section 10.3 below.

#### 10.3 New Construction; Approval of Builder; Endorsement of Plans.

(a) All plans and specifications for the construction of a new Cottage and/or other building shall be submitted to and approved or disapproved by Developer pursuant to the process and procedures set forth in Subsection 10.1 above. For purposes of all construction not considered the construction of a new Cottage, once Developer has appointed the Architectural Control Committee pursuant to Subsection 10.2 hereof, any plans and specifications for such construction not considered construction of a new Cottage and/or other building, including, without limitation, subsequent construction, modifications and additions to or of structures or

improvements, shall be submitted to and approved or disapproved by the Architectural Control Committee, once formed, pursuant to Subsection 10.1 hereof.

(b) In addition to the foregoing, each Owner shall engage a licensed residential contractor to construct the Cottage on each Owner's Lot. No Owner shall construct, or cause the construction of, a Cottage on any Lot prior to obtaining Developer's written approval of the licensed residential contractor the Owner intends to engage to construct said Cottage.

(c) Approval of plans, specifications and location of improvements by the Architectural Control Committee shall be endorsed on both sets of said plans and specifications, and one set shall forthwith be returned by the Architectural Control Committee to the person submitting the same. The approval of the Architectural Control Committee of plans or specifications submitted for approval, as herein specified, shall not be deemed to be a waiver of the right of the committee to disapprove of any features or elements embodied in such plans or specifications, if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Cottages.

#### 10.4 Construction to be in Conformance with Plans; Damage.

(a) After such plans and specifications and other data submitted have been approved by the Architectural Control Committee, no Cottage, building, outbuilding, garage, fence, wall, retaining wall, or other improvements or structures of any kind shall be erected, constructed, placed, altered or maintained upon the Properties unless the same shall be erected, constructed or altered in conformity with the plans and specifications and plot plans theretofore approved by the Architectural Control Committee.

(b) Each Owner shall be responsible for any damage caused to any Lot, Common Area, or other Properties during or after construction by any contractor and/or subcontractor engaged by said Owner to construct a Cottage or any other improvements on said Owner's Lot. Should any Owner fail to properly repair such damage and/or restore any Lot, Common Area and/or Properties to a condition deemed acceptable by Developer or the Board of Directors, as appropriate, Developer or the Board of Directors, as appropriate, shall have the right to repair any such damage and/or restore any Lot, Common Area or Properties to an acceptable condition, and charge said Owner for all costs and expenses incurred in doing so. All costs and expenses incurred by Developer or the Board of Directors, as appropriate, and charged to the Owner hereunder shall be considered part of and added to the amounts assessed and collected under Section 4 hereof.

10.5 Right of Entry. Any agent or member of the Architectural Control Committee may at any reasonable time enter and inspect any building or property subject to the jurisdiction of the Architectural Control Committee under construction or on or in which the agent or members have reason to believe that a violation of the covenants, restrictions, reservations, servitude or easements is occurring or has occurred.

10.6 Fences. No fence, or other similar improvement or structure, including, without limitation, fencing erected around areas of a Lot designed to temporarily contain pets outside a

dwelling, shall be erected upon a Lot, except for a privacy fence located adjacent to any Cottage's back patio. Such privacy fence shall be approved by the Committee pursuant to this Section 10 prior to construction, and shall in no way interfere with the common sprinkler system upon the Properties, or with the landscape maintenance performed by the Association, thereby increasing the amount of trimming or edging required to be done, or increasing in any other manner the cost of maintenance of the landscaping by the Association, unless otherwise specifically agreed to in writing by the Association. No aluminum fencing or steel chain-link type fencing will be allowed. In addition, all fences must be a picket-type fence. In addition to the foregoing, all fences shall meet all applicable requirements of the Kosciusko County Zoning Ordinance.

## Section 11. INSURANCE.

11.1 Cottages. The Association has no responsibility to purchase or maintain any fire or hazard insurance with respect to the dwellings or other improvements upon Cottages; the Owners thereof shall be solely responsible therefor.

11.2 Flood Insurance. If the Properties become located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association shall obtain and pay the premiums upon a policy of flood insurance on Common Areas and any buildings or other common property covered by the required form of policy (herein "Insurable Property"), in an amount deemed appropriate, but not less than the following:

The lesser of [i] the maximum coverage available under NFIP all buildings and other Insurable Property within any portion of the Common Areas located within a designated flood hazard area; or [ii] 100% of current "replacement cost" of all such buildings and other Insurable Property.

11.3 Liability Insurance. The Association shall maintain comprehensive general liability insurance coverage covering all the Common Areas. The coverage shall be at least for \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, and legal liability arising out of a lawsuit related to employment contracts of the Association. Such policies must provide that they may not be canceled or substantially modified by any party, without at least ten days' prior written notice to the Association.

11.4 Fidelity Bonds. The Association shall maintain a blanket fidelity bond for all officers, directors, trustees and employees of the Association, and all other persons handling or responsible for funds of, or funds administered by, the Association. The amount of the fidelity bond shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than an amount equal to three months' aggregate

assessments on all Cottages, plus reserve funds. The fidelity bonds required herein must meet the following requirements:

11.4.1 Fidelity bonds shall name the Association as an obligee.

11.4.2 The bonds shall contain waivers by the insurers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employee," or similar terms of expressions.

11.4.3 The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent, or its officers, employees and agents) shall be paid by the Association as a common expense.

11.4.4 The bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten days' prior written notice to the Association.

11.5 Purchase of Insurance. All insurance purchased pursuant to this Section 11 shall be purchased by the Association for the benefit of the Association, the Owners and their respective mortgagees, as their interests may appear, and shall provide for the issuance of certificates of insurance and mortgagee endorsements to Owners and any or all of the holders of institutional first mortgages. The policies shall provide that the insurer waives its rights of subrogation as to any claims against Owners and the Association, their respective servants, agents and guests. Each Owner and the Association hereby agree to waive any claim against each other and against other Owners for any loss or damage for which insurance hereunder is carried where the insurer has waived its rights of subrogation as aforesaid.

11.6 Cost and Payment of Premiums. The Association shall pay the cost of obtaining all insurance hereunder, excluding only the insurance as may be purchased by individual Owners and any other fees or expenses incurred which may be necessary or incidental to carry out the provisions hereof.

11.7 Owners' Responsibility. Each Owner may obtain insurance at his own expense affording coverage upon his own personal property and for his own liability and living expenses as he deems advisable. All such insurance shall contain the same waiver of subrogation that is referred to herein and shall waive any right of contribution.

11.8 Association as Agent. The Association is irrevocably appointed agent for each Owner, for each Owner of a mortgage upon a Cottage, and for each Owner of any other interest in a Cottage or the Common Areas to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

11.9 Estimates. In all instances hereunder, immediately after a casualty causing damage to the property for which the Association has the responsibility of maintenance and repair, the Association shall obtain a reliable, detailed estimate of the cost to place damaged property in a condition as good as that before the casualty. Such cost may include professional fees and

premiums for such bonds as the Board may desire or those required by Institutional Mortgagees involved.

## Section 12. PROHIBITED USES.

12.1 Garbage and Trash. All garbage cans, trash containers, bicycles and other personal property shall be kept, stored and placed in an area not visible from outside the dwelling. Each Owner shall be responsible for properly depositing his garbage and trash in garbage cans and trash containers sufficient for pickup by the appropriate authorities. Garbage cans and trash containers shall be placed at the curbside no sooner than the evening before and removed no later than the evening of the scheduled pickup.

### 12.2 Structures.

12.2.1 No temporary or permanent utility or storage shed, building, tent, structure or improvement shall be constructed, erected or maintained on any Lot, except for buildings required to house mechanical equipment servicing in-ground pools under Section 12.2.2 below. Any such building allowed hereunder shall meet applicable requirements of the Kosciusko County Zoning Ordinances. Play sets and/or jungle gyms, basketball goals, and above-ground pools are strictly prohibited on any Lot.

12.2.2 In-ground Pools: No above-ground pools, except spas, hot tubs, and similar structures, shall be commenced, erected or maintained on any Lot. The commencement, erection or maintenance of any in-ground pool on any Lot shall be subject to the provisions of Section 10 governing the Architectural Control Committee and shall be prohibited, on, in, or about any Lot within the community lacking the soil conditions suitable for such commencement, erection or maintenance of an in-ground pool thereon. No in-ground pool shall be located on any Lot nearer than a distance of six (6) feet from the rear or side property line of said Lot. In addition to the foregoing, all in-ground pools shall meet all applicable requirements of the Kosciusko County Zoning Ordinance.

12.3 Pets and Animals. Pets and animals shall be permitted, only as provided for in this Section.

12.3.1 Animals and pets shall be restricted to cats, dogs, fish, domestic birds, hamsters, lizards, gerbils, turtles, guinea pigs and rabbits, provided that they are not kept, bred or maintained for any commercial purpose. The foregoing restriction shall apply to animals/pets which visit the community. No other animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot.

12.3.2 All dogs and cats must be inoculated against rabies by a duly qualified and licensed veterinarian and shall also be inoculated in like manner in such cases of emergency whenever ordered by the Board of Health of the State of Indiana.

12.3.3 When outside the Cottage, all dogs and cats must be accompanied by an attendant who shall have such dog/cat firmly held by collar and leash, which leash shall not exceed eight feet in length. No cats or dogs shall be permitted to run at large outside of the Cottage.

12.3.4 The owner/custodian of each animal and pet and/or the individual walking same shall be required to clean up after the animal/pet.

12.3.5 The owner/custodian of the animal or pet shall remove his or her animal or pet from the Community when such animal or pet emits excessive noise such that the same may be heard outside of the Cottage.

12.3.6 The animal/pet owner and the Owner of the Cottage involved shall be strictly liable for damages caused to the Common Area by the animal/pet.

12.3.7 Any animal/pet owner's right to have an animal/pet reside in or visit the Community shall have such right revoked if the animal/pet shall create a nuisance or shall become a nuisance as may be determined by the Board of Directors of the Association.

12.4 Stables. No stable, livery stable, barn, or kennel shall be erected, constructed, permitted or maintained on any Lot.

12.5 Vehicles and Parking. The following restrictions apply irrespective of whether the Properties in question lie within areas owned by or dedicated by a governmental entity:

12.5.1 Prohibited Vehicles or Items. This Subsection 12.5.1 contains prohibited vehicles or items which are prohibited and shall not be entitled to park anywhere within the Community. The prohibited vehicles and items are as follows: trucks, including pickup trucks, vans, recreation vehicles, mobile homes, motor homes, campers, buses, all terrain vehicles, off-road vehicles, go carts, three-wheel motorized vehicles, commercial vehicles; limousines, mopeds, dirt bikes, and other such motor vehicles, and boats and trailers, unless such vehicles are parked/stored in the garage of the Cottage with the garage door closed, with the exception of being permitted to be parked ungaraged on a Lot for periods not to exceed 48 hours, or for a period of which is in the aggregate in excess of eight (8) days per calendar year. Notwithstanding the foregoing or anything in this Subsection 12.5.1 to the contrary, the foregoing shall not apply to and shall expressly exclude utility vehicles. As used herein, the term "utility vehicle" is intended to include certain vehicles which are used as and have the same characteristics as a passenger vehicle, such as, but not limited to, Chevrolet Blazers, Ford Broncos and Explorers, and Chrysler Jeep Cherokees, and whether or not such vehicle is classified as a "utility vehicle" by the most current edition of the Guide, as hereinafter defined, or its manufacturer. The Board of Directors shall have the sole authority to determine whether any vehicle falls within the definition of "utility vehicle" as used herein. Should the Guide adopt a definition or classification of a "utility vehicle" consistent with the intended meaning of same as used herein, then the Board shall defer to such definition or classification established by the Guide.

12.5.2 Exception to Subsection 12.5.1 Above. The following vehicles shall not be subject to the parking restrictions contained in Subsection 12.5.1 above, and shall be entitled to



park within the designated areas for parking in the Community, subject to the restrictions and provisions contained in Subsections 12.5.2(a) through 12.5.2(e) below.

(a) A moving van, but only for the purpose of loading and unloading and at no time shall same park during the hours of 9:00 p.m. to 6:00 a.m.

(b) Vehicles, regardless of classification, necessary for the maintenance, care or protection of the Properties, and only for the time period during which the maintenance, care or protection is being provided.

(c) Service and Delivery Vehicles, regardless of classification, during regular business hours and only for that period of time to render the service or delivery in question.

(d) Vehicles for the handicapped bearing identification as such by an applicable governmental authority.

(e) Certain vans described as follows: Subject to that provided above, a two-axle van as defined below which does not exceed the manufacturers' standard length, height and width of the particular van in a customized converted condition; used for family or personal transportation and which is not a commercial vehicle as defined below; which contains at least two (2) rows of seating and windows on each side of the vehicle adjacent to at least each of the first two (2) rows of seating; and which is or would be registered in the State of Indiana as a passenger station wagon or equivalent shall be permitted to park on the Properties. The Association is permitted to make a presumption that the foregoing criteria are met without the receipt of specific information or vehicle registration, unless upon visual inspection it is obvious that any of the criteria are not met. The owner or custodian of the vehicle shall submit to the Association reasonable information and documentation (including title and/or registration) concerning the vehicle upon request.

### 12.5.3 Classifications and Definitions.

(a) The most current edition of the N.A.D.A. Official Used Car Guide ("Guide") shall determine the classification of whether a vehicle is in fact a truck or van, or whether it is a passenger automobile. If the Guide does not contain reference to a particular vehicle, then the manufacturer's classification shall control. If publication of the Guide shall be discontinued, an equivalent publication shall be selected by the Board of Directors to be used to determine vehicle classifications hereunder. Except as otherwise provided as to certain vans under Subsection 12.5.2(e) above, a State registration or title classification shall have no bearing on determination of the classifications under this Subsection 12.5.3(a).

(b) A "commercial vehicle" shall mean any motor vehicle which has an outward appearance of being used in connection with business, such as: the vehicle displays work equipment to view and/or is commercially lettered or contains a commercial or business logo.

(c) A "truck" shall mean any motor vehicle which is classified as a truck in accordance with Subsection 12.5.3(a) above.

(d) A "van" shall mean any motor vehicle which is classified as a van in accordance with Subsection 12.5.3(a) above and which is recognized by the manufacturer to be a type of a van, and which has two (2) axles. Notwithstanding the foregoing to the contrary, a pick-up truck shall not be considered to be a van by the addition of a camper top or similar topping.

12.5.4 All motor vehicles must be maintained as to not create an eyesore in the Community.

12.5.5 Parking restrictions may be created and enforced by the Board of Directors by Rule and Regulations.

12.5.6 Except where safety dictates otherwise, horns shall not be used or blown while a vehicle is parked, standing in or driving through parking areas and/or streets. Racing engines and loud exhausts shall be prohibited. No vehicle shall be parked with motor running.

12.5.7 The following restrictions also apply:

(a) No repair (including changing of oil) of a vehicle shall be made within the Community except for minor repairs necessary to permit removal of a vehicle, unless they are made in the garage of a Cottage with the garage door closed. However, washing or waxing of a vehicle is permitted outside the garage.

(b) All personal vehicles which can be appropriately parked within a standard-size parking stall may be parked on the Properties. No vehicles of any nature shall be parked on any portion of the Properties or a Cottage except on the surfaced parking area thereof.

12.5.8 Remedies of Towing. If upon the Association's provision of that notice required by Indiana Statutes, as amended from time to time, an offending vehicle owner does not remove a prohibited or improperly parked vehicle from the Community, the Association shall have the option and right to have the vehicle towed away at the vehicle owner's expense. By this provision, each Owner and vehicle owner consents to such tow. In the event that the vehicle owner fails to pay the towing costs upon demand, the Association shall have the right to levy a charge for the costs against the Cottage and Owner in question, that is, against the Owner for himself/herself as the owner of the vehicle or for his/her family, lessees, guests, employees, visitors, etc. as owner(s) of the vehicle (as such, the Cottage Owner is liable for the vehicle violations of his/her family, lessees, guests, visitors, etc.), and the charge shall be collected as provided in this Section.

12.5.9 Alternative/Concurrent Remedies. Whether or not the Association exercises its right to have the vehicle towed, the Association shall have the right to seek compliance with this Subsection 12.5 by injunctive and other relief through the courts; and/or any other remedy conferred upon the Association by law or the Governing Documents. The Association's right to tow shall in no way be a condition precedent to any other remedies available to the Association incident to the enforcement of this Subsection 12.5.

12.6 Signs. No sign of any kind shall be displayed to the public view on a Lot or Cottage without the prior consent of the Board of Directors, except signs used by a builder to advertise a Lot during the construction and sales periods.

**12.7 No Business Activity.** No business of any kind whatsoever shall be erected, maintained, operated, carried on, permitted or conducted on the Properties, and without limiting the generality of the foregoing, no store, market, shop, mercantile establishment, trading or amusement establishment, quarry, pit, undertaking establishment, crematory, cemetery, radio tower, auto camp, trailer camp or haven, hospital, public baths, school, kindergarten, nursery school, sanitarium, asylum or institution shall be erected, maintained, operated, carried on, permitted or conducted on the Properties. Also prohibited are garage sales, yard sales and the like. Notwithstanding the foregoing, the following shall apply:

**12.7.1 Home Occupations.** No Lot shall be used for any purposes other than as a single-family residence, except that a home occupation, defined as follows, may be permitted. Any use conducted entirely within the dwelling Cottage and participated in solely by a member of the immediate family residing in said dwelling Cottage, which use is clearly incidental and secondary to the use of the dwelling Cottage for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that indicates from the exterior that the dwelling Cottage is being utilized in whole or in part for any purpose other than that of a dwelling Cottage; (b) no commodity is sold upon that Lot; (c) no person is employed in such home occupation other than a member of the immediate family residing in the dwelling Cottage; and (d) no mechanical or electrical equipment is used other than is customarily used in an office-at-home or by home hobbyist, and which is generally unsuitable for commercial applications.

**12.7.2** The practice of leasing Cottages shall not be considered as a business activity under this Subsection 12.7.

**12.7.3** The business of operating the Association shall not be considered as business activity under this Subsection 12.7.

**12.8 Maintenance.** All Cottages shall be kept in a clean and sanitary manner and no rubbish, refuse or garbage allowed to accumulate, or any fire hazard allowed to exist. All Cottages shall be maintained in first class condition with well-kept lawn and well-maintained landscaping consistent with the aesthetic integrity of the other Cottages and yards on other Lots and the Properties.

**12.9 Nuisance.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on a Lot which may be or become an annoyance or nuisance to residents in the Subdivision. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices shall be located, used or placed on a Lot which are audible, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof.

**12.10 Unlawful Uses.** No improper, offensive or unlawful use shall be made of any Cottage and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be strictly observed.

12.11 Antennas. No radio or television antenna shall be attached to the exterior of a Cottage. No free-standing radio or television antenna shall be permitted on a Lot. No solar panels (attached, detached or free-standing) are permitted on a Lot. No satellite receiving disk or dish shall be permitted on any Lot, except such disk or dish with a diameter of 20 inches or smaller. Any disk or dish proposed for use on any Lot shall not be installed without the Owner obtaining the prior approval of the Architectural Control Committee pursuant to Section 10 hereof as to the size, location and installation of said disk or dish.

12.12 Clothes Line. No clothes, linens, or the like, shall be hung in any manner outside of a dwelling. No clothes lines or poles shall be permitted.

12.13 Wells. No individual water supply system shall be permitted on any Lot, except the installation required for a geothermal heating and cooling system.

12.14 Sidewalks. Operation of motorized vehicles is not permitted on the sidewalks or pass thru easements on the Properties. This excludes wheelchairs or other devices employed by the handicapped.

12.15 Garage Doors. Garage doors must be kept closed between the hours of 11:00 p.m. through 5:00 a.m. except when otherwise necessary for ingress and egress.

12.16 Watercraft. No watercraft of any description is permitted on any pond, except as required for maintenance.

12.17 Occupancy of Cottages and Subdivision:

12.17.1 Occupancy of Cottages. Each Cottage shall be occupied by Owners and tenants and their family members, as a residence, as a single-family dwelling, and for no other purpose.

12.17.2 Subdivision. No Cottage may be subdivided into more than one Cottage. Only entire Cottages may be sold, leased or otherwise transferred.

12.18 Use. No person shall use the Cottages, or any part thereof, in any manner contrary to this Declaration.

12.19 Landscaping and Lawn.

(a) All Owners shall landscape, or cause to be landscaped, their Lot, at a minimum, in a manner so as to maintain and remain consistent with the aesthetic integrity of the landscaping contained on the Properties, as defined by Developer. Said landscaping shall be completed, or caused to be completed, by each Owner within one (1) year after the date of said Owner's certificate of occupancy, as issued by the Kosciusko County Building Department, authorizing the Owner's occupancy of the Cottage. The foregoing landscaping requirements shall not apply to Developer nor to any Common Area or Lot owned by Developer.

(b) All Owners, as soon as reasonably possible upon completion of construction of their Cottage, shall properly grass seed or sod their Lot and maintain their yard in a condition consistent with the aesthetic integrity of the yards contained on other Lots and the Properties, as defined by Developer.

**Section 13. PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO.**

13.1 Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration (hereinafter defined as the "Existing Property"), located in Kosciusko County, State of Indiana, is more particularly described on Exhibit "A" and herein as the Real Estate, and is designated Cottages at Raccoon Run, Section 1, and more particularly described on a subdivision plat thereof recorded as Plat Record 202111298, Cabinet 17, Page 31, in the Office of the Recorder of Kosciusko County, Indiana.

13.2 Additions to Existing Property. If Developer is the owner of any property which it desires to add to the concept of Cottages at Raccoon Run, including, without limitation, future sections of Cottages at Raccoon Run, it may do so by filing of record a Supplemental Declaration of Covenants, Conditions and Restrictions, which shall extend the concept of the Covenants, Conditions and Restrictions of this Declaration to such property, PROVIDED, HOWEVER, that (a) such additional property shall be contiguous (as hereafter defined) to the Properties subject to this Declaration at the time, and (b) such Supplemental Declaration may contain complementary additions and modifications of the Covenants, Conditions and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept of this Declaration. In no event, however, shall such Supplemental Declaration modify or add to the Covenants established by this Declaration for the Existing Property. Any additions made pursuant to this Subsection 13.2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties and/or new sections of Cottages at Raccoon Run added by Developer. For the purposes hereof, the term "contiguous" shall mean adjoining; provided, that any tracts or parcels of land which are separated by a street, road, sidewalk, right-of-way, easement, or other thoroughfare shall be deemed to be contiguous.

**Section 14. GENERAL PROVISIONS.**

14.1 Use. Lots may not be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half stories in height. Each residence shall include an attached garage to accommodate not less than two (2) automobiles. Such garage shall be built as part of the residence, shall have a floor area of not less than 400 square feet, and shall have one or more doors with an aggregate width of not less than 16 feet. Subject to approval under Section 10, any residence to be constructed on a Lot shall be situated on and within the building pad ("Building Pad") provided on said Lot by Developer as part of Developer's obligations in connection with the sale of said Lot. The size and location of said Building Pad shall be determined by Developer, at its sole discretion. Developer shall have no responsibility to an Owner to extend a Building Pad for the purpose of the construction by an Owner of any portion of the proposed

residence extending beyond the initial Building Pad, nor shall Developer have an obligation to provide a similar pad for the construction by an Owner of any other building, structure, or improvements made to the subject Lot.

14.2 Dwelling Size. No residence shall be built on a Lot having a ground floor area upon the foundation, exclusive of one-story open porches, breezeways or garages, of less than 1,400 square feet.

14.3 Building Lines. No structure shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat. In any event, no building shall be located nearer than a distance of five (5) feet to an interior Lot line. No dwelling shall be located on an interior Lot nearer than 15 feet to the rear Lot line.

14.4 Minimum Lot Size. No residence shall be erected or placed on a Lot having a width of less than 65 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than 7,500 square feet.

14.5 Utility Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. No Owner shall erect on a Lot, or grant to any entity the right, license, or privilege to erect or use, or permit the use of, overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than three wires and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operation, maintenance and replacement of service connections.

14.6 Surface Drainage Easements. Surface drainage easements and Common Area 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 surface of the Real Estate shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the Kosciusko County Surveyor (or proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conductors unobstructed.

14.7 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained or permitted on a Lot.

14.8 Dumping. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot.

14.9 Workmanship. All structures on a Lot shall be constructed in a substantial, good workmanlike manner and of new materials. No roof siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage on a Lot.

14.10 Driveways. All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width.

14.11 Street Utility Easements. In addition to the utility easements designated in this document, easements in the streets, as shown on the Plat, are reserved and granted to all public utility companies, the owners of the Real Estate and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove every type of gas main, water main and sewer main (sanitary and storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the Subdivision as to maintenance and repair of said streets.

14.12 Storm Water Runoff. As set forth herein, the Association shall be responsible for the maintenance, management and repair of all storm water runoff systems and structures as well as any Lakes within Common Areas. No rain and storm water runoff or such things as roof water, street pavement and surface water caused by natural precipitation, shall at any time be discharged or permitted to flow into the sanitary sewage system serving the Subdivision, which shall be a separate sewer system from the storm water and surface water runoff sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into Subdivision's storm and surface water runoff sewage system. This subsection 14.12 and any other provisions contained herein relating to storm water runoff systems and structures and/or detention systems shall be in continuous effect for an indefinite period, except as amended with prior approval of the Kosciusko County Drainage Board and the Office of the Surveyor of Kosciusko County.

14.13 Pre-Inhabitation. Before any house or building on any Lot in the Plat shall be used and occupied as a Cottage or as otherwise provided in the Declaration, the Developer or any subsequent developing Owner of said Lot shall install all improvements serving the Lot as provided in the development plans and specifications for the Lots filed with the Board of Commissioners of Kosciusko County. Before any Lot may be used or occupied, the Owner of such Lot shall first obtain from the Zoning Administration the improvement location permit and certificate of occupancy required by the Kosciusko County Zoning Ordinance.

14.14 Enforcement. The Association, Developer and any Owner (individually or collectively) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or subsequently imposed by the provisions of these Covenants. Failure by the Association, Developer or an Owner to enforce any provisions in the Covenants shall in no event be deemed a waiver of the right to do so later.

**14.15 Invalidation.** Invalidation of any one of these Covenants by judgment or court order shall not affect the remaining provisions, and such provisions shall remain in full force and effect.

**14.16 Duration of Covenants.** These Covenants shall run with the land and be effective for a period of 20 years from the date the Plat and these Covenants are recorded; after which time the Covenants shall automatically be renewed for successive periods of ten years.

**14.17 Termination and Amendment by Developer.** Any provision of these Covenants may be amended, but such amendment is subject to the following requirements and limitations:

**14.17.1** After primary residences are constructed on all Lots in the Subdivision and certificates of compliance are issued by the Kosciusko County Plan Commission for such residences, in order to amend a provision of these Covenants, an amendatory document must be signed by the Owners of at least 75% of the Lots in the Subdivision of Cottages at Raccoon Run, Section I.

**14.17.2** Until primary residences are constructed on all Lots in the Subdivision and certificates of compliance are issued for those residences, in order to amend the Covenants, Developer, in addition to those persons whose signatures are required under Subsection 14.17.1, also must sign the amendatory document.

**14.17.3** Notwithstanding the provision of Subsection 14.17.1, Developer and its assigns shall have the exclusive right for a period of two years from the date the Plat and these Covenants are recorded to amend any of the Covenant provisions (except Subsection 14.2) without approval of the Owners.

**14.17.4** In order for any amendment of these Covenants to be effective, the approval of the Kosciusko County Plan Commission shall be required.

**14.17.5** There may be incorporated as part of these Covenants, and, where applicable, the Articles and Bylaws of the Association, any and all provisions which now or hereafter may be required under the regulations or guidelines of FNMA, FHLMC, GNMA, VA and FHA so as to make any first mortgage encumbering a Unit eligible for purchase by FNMA, FHLMC, or GNMA, and eligible under VA or FHA, and such provisions shall supersede any conflicting matters contained in these Covenants, the Articles or Bylaws; except to the extent compliance with any regulation or guideline is waived by FNMA, FHLMC, GNMA, VA or FHA. Should FNMA, FHLMC, GNMA, VA or FHA require an amendment of these Covenants, the Articles or Bylaws, then such amendment may be made and filed by the Association without regard to any other provisions herein contained regarding amendments, and without any requirement for securing the consent of any Cottage Owner.

**14.18 Further Subdivision of Lots.** The further dividing of any Lot or combination of Lots after approval by the Kosciusko County Plan Commission is prohibited unless and until the Kosciusko County Plan Commission has reviewed and approved the change. This restriction will not prohibit utilizing a portion or all of an adjoining Lot to change the size of a Lot, so long as no Lot shall have a width of less than sixty (60) feet at the building line.



14.19 Attorney Fees and Related Expenses. In the event the Association, Developer, an Owner, or the Plan Commission is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by the provisions of these Covenants, the successful party shall be entitled to recover from the party against whom the proceeding was brought, the attorney fees and related costs and expenses incurred in such proceeding.

14.20 Sidewalks. Plans and Specifications for the Subdivision approved by and on file with the Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of all Lots as shown on the approved plans. Installation of such sidewalks shall be the obligation of the Owners of those Lots (exclusive of Developer). The sidewalks to be located on a Lot shall be five (5) feet in width and completed in accordance with such Plans and Specifications prior to the issuance of a Certificate of Compliance for such Lot. This Covenant is enforceable by the Plan Commission or its successor agency, by specific performance or other appropriate legal or equitable remedy. Should a Certificate of Compliance be issued to Developer for a Lot on which a sidewalk must be constructed, Developer shall be considered as an Owner subject to enforcement of this Covenant with respect to that Lot.

14.21 Flood Protection Grades. In order to minimize potential damages from surface water, flood protection grades are established as set forth below. All Cottages shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor of any Cottage. The flood protection grades shall be per North American Vertical Datum 1988 and shall be specifically set forth in the secondary plat of Cottages at Raccoon Run, Section I, as approved by the Plan Commission.

The flood protection grades for Cottages at Raccoon Run, Section I, are as follows, inclusive:

<u>Lot</u>	<u>Rear</u>	<u>Front</u>
1-16		881.0

14.22 Mandatory Solid Waste Disposal. The Association shall be obligated to contract for disposal of garbage and other solid waste and may pay for the cost of such disposal through assessments established under Section 4. An Owner who privately arranges for solid waste disposal to service the Owner's Lot shall not be excused from payment of any part of an assessment attributable to the cost of waste disposal for which the Association contracts under this Subsection 14.22.

14.23. Geothermal Systems.

14.23.1 Owners of Lots in the Subdivision shall have the right to install and maintain the following described types of geothermal heating and cooling systems ("Systems") to service residences located on the Owner's Lots, and the right to use the Association property as described below:

(a) A System with a loop heat exchanger designed to use retention or detention ponds located in Common Areas adjacent to such Lots.

(b) A System which uses and discharges well water from the System into retention or detention ponds located in Common Areas adjacent to such Lots.

14.23.2 Any Systems so installed must:

(a) Satisfy regulations of the Indiana Department of Natural Resources, and all applicable federal, state, and local laws, ordinances, and regulations.

(b) Satisfy reasonable requirements of the Kosciusko County Surveyor or other applicable governmental agency regarding surface water drainage and erosion control; and obtain approval from the Association.

(c) Be installed according to approved guidelines of, and by technicians certified by, the International Ground Source Heat Pump Association.

14.23.3 Any Owner using property owned by the Association for the purpose as described in Subsection 14.23.1 agrees to indemnify and hold the Association harmless from and against all claims, losses, damages, and judgments (including reasonable attorney fees and litigation expenses) caused by, or resulting from, the Owner's use of Association property in connection with the Systems.

14.24 Single Owner Contiguous or Multiple Lots. Whenever two (2) or more Lots in Cottages at Raccoon Run, Section I, shall be owned by the same person, contiguously situated or otherwise, such Owner shall be subject to and agree to pay to the Association for each Lot owned by said Owner all assessments and other charges collectible by the Association pursuant to Section 4 of these Covenants. However, in the event a Cottage is constructed on such contiguous Lots so that any portion of said Cottage is located on or across the common Lot line intended to divide said Lots, the subject contiguous Lots shall be subject to the special assessment provisions set forth in Section 1.10 hereof and payable by such Owner pursuant to Section 4 of these Covenants.

In addition to the foregoing, the Owner of any Lot or multiple Lots, including any contiguous Lots referenced above, shall be responsible for providing yard-quality grass seeding and appropriate maintenance thereof for each Lot owned pursuant to Subsection 12.19 hereof. Any proposed use of any Lot or Lots owned by any Owner in addition to the Lot owned by said Owner upon which said Owner's Cottage is constructed shall be consistent with and not violate any provisions contained herein. Any proposed temporary or other use of any additional Lot or Lots inconsistent with or in violation of any provisions contained herein shall be subject to the prior approval by Developer or the Architectural Control Committee, as appropriate, pursuant to Section 10 hereof.

**Section 15. COOPERATION WITH RACCOON RUN HOMEOWNERS ASSOCIATION, INC.** In addition to the maintenance obligations of the Association set forth herein, the Association and Raccoon Run Homeowners Association, Inc. (the "Homeowners Association") shall be responsible for the maintenance and repair of the Common Areas designated as Block "A" and Block "E" in the Plat of Raccoon Run, Section I that lies adjacent to, is shared by, and benefits Cottages at Raccoon Run as well as the single-family development portion of Raccoon Run. The Association and the Homeowners Association shall share equally in the costs incurred to maintain and/or repair Block A and Block E. If possible, the vendor providing services for such maintenance and/or repairs, shall separately invoice the Cottages Association and the Homeowner's Association for their respective percentages.

In the event additional maintenance and repairs beyond common and normal maintenance and repairs for Block E are required at any time to ensure all improvements located in and all drainage systems running throughout Block E is in good repair and working order ("Extraordinary Repairs"), the Association shall obtain the approval of the Homeowners Association prior to incurring the costs and expenses required to complete the Extraordinary Repairs. Should the Homeowners Association fail to respond to the Association's request for approval within fifteen (15) days of the Homeowners Association's receipt thereof, such approval shall be deemed granted and the Homeowners Association shall contribute to all costs and expenses incurred by the Association in connection with the Extraordinary Repairs as required under this Section 9. Should the Homeowners Association, within the aforementioned fifteen (15) day period, reject the Association's request for approval, the Association shall submit its request to Developer, or Developer's successors and/or assigns, for approval. Should Developer (or its successors and/or assigns) approve such Extraordinary Repairs, the Association shall complete such Extraordinary Repairs and the Homeowners Association shall contribute to all costs and expenses incurred by the Association in connection with such Extraordinary Repairs as required under this Section 15.

Should (a) any Extraordinary Repairs involve the drainage system running throughout Block E, (b) Developer no longer hold fee simple title to any Lot, and (c) the Homeowners Association shall have rejected the Association's request for approval to complete such drainage system-related Extraordinary Repairs, the Association shall submit its request for the approval of such Extraordinary Repairs to the Kosciusko County, Indiana Drainage Board for its approval. If the Kosciusko County, Indiana Drainage Board approves such Extraordinary Repairs, the Association shall complete such Extraordinary Repairs and the Homeowners Association shall contribute to all costs and expenses incurred by the Association in connection with such Extraordinary Repairs as required under this Section 15.

IN WITNESS WHEREOF, Raccoon Run Development, LLC, an Indiana limited liability company, by its duly authorized Member, Jeffrey M. Thomas, has executed this document on this 2nd day of January, 2024.

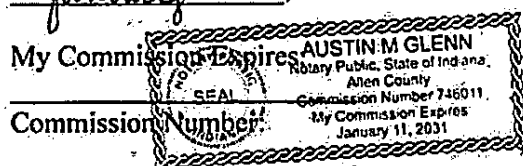
RACCOON RUN DEVELOPMENT, LLC

By: Jeffrey M. Thomas  
Jeffrey M. Thomas, Member

STATE OF INDIANA, COUNTY OF ALLEN) SS:

Before me, the undersigned authority, a Notary Public in and for said County and State, this day personally appeared Jeffrey M. Thomas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Raccoon Run Development, LLC, an Indiana limited liability company, and that he executed the same as the act of such Raccoon Run Development, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2nd day of January, 2024.



Austin M. Glenn  
Austin M. Glenn, Notary Public  
Resident of Allen County

Pursuant to IC 36-2-11-15(d): I/We affirm, under the penalties for perjury, that I/we have taken reasonable care to redact each Social Security number in this document, unless required by law.  
Timothy L. Claxton

This Instrument Prepared by: Timothy L. Claxton, Attorney at Law, 200 E. Main St., Ste. 1000, Fort Wayne, IN 46802. Attorney Identification No. 14523-02

Return to: Burt Blee Box