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**NICOLE KEESLING  
ALLEN COUNTY RECORDER  
FORT WAYNE, IN**

**DECLARATION OF PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS,  
EASEMENTS, AND APPROVALS APPENDED TO AND AS PART OF THE  
DEDICATION AND PLAT OF ARNEO PLACE, A SUBDIVISION IN ST. JOSEPH  
TOWNSHIP, ALLEN COUNTY, INDIANA  
(the "Declaration")**

**INTRODUCTION**

B1 Enterprises, LLC, an Indiana limited liability company ("Developer"), hereby declares it is the owner and developer of real estate described in Exhibit "A", which is attached and does hereby layoff, plat and subdivide said real estate in accordance with the information shown on the final plat, being the certified plat appended hereto and incorporated herein ("Plat"). The real estate included in and depicted on the Plat shall be known and designated as Arneo Place, a Subdivision in St. Joseph Township, in Allen County, Indiana (the "Subdivision").

The Lots shall be subject to the covenants, agreements, restrictions, easements, and limitations set forth herein, and they shall be considered a part of every conveyance of land in said Subdivision. These provisions of this Declaration are for the mutual benefit and protection of present and future Owners of any and all Lots in the Subdivision, and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the Owners, their legal representatives, successors, grantees and assigns of lots included herein.

The lots are numbered from T1-T27, E1-E25, and H1-H39, inclusive ("Lots"), and all dimensions are shown in feet and decimals of a foot on the Plat.

**ARTICLE I**

**Definitions**

Section 1. "Architectural Control Committee" shall mean the body designated herein to review plans and to grant or withhold certain approvals in connection with improvements and developments. The Committee shall be composed of three (3) members appointed by the Developer and who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time shall be filled by appointment of the Developer. Prior to the appointment of the members of the Committee by the Developer, the Developer shall possess the authority of the Committee as set forth herein.

Section 2. "Arneo Place" shall mean and refer collectively to each section of Arneo Place development, as it may be changed from time to time.

Section 3. "Association" shall mean and refer to Arneo Place Community Association, Inc.,

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its successors and assigns.

Section 4. "Bylaws" shall mean the Bylaws initially adopted by the Association and all amendments and additions thereto.

Section 5. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners in the Subdivision, as shown on the respective Plat of said Subdivision, and as may be added in accordance with Article II, Section 3 of this Declaration.

Section 6. "Developer" shall mean B1 Enterprises, LLC, its assigns, successors, or successors in interest, and any person, firm, or corporation, designated by it or its said successor or successor in interest.

Section 7. "Dwelling Unit" shall mean and refer to the structure used as a residential living unit located upon a Lot, including the garage and any appurtenances.

Section 8. "Lot" shall mean any of said Lots in Arneo Place, as platted or any tract of land as conveyed originally or by subsequent Owners, which may consist of one or more Lots or parts of one or more Lots, upon which a dwelling may be erected in accordance with this Declaration as hereinafter set forth.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Plat, including contract sellers, excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Plan Commission" shall mean the City of Fort Wayne Plan Commission or any successor agency thereto with zoning jurisdiction over the Real Estate.

Section 11. "Plat" shall mean the recorded secondary plat of Arneo Place.

Section 12. "Property" or "Properties" shall mean and refer collectively to each section of Arneo Place development as it may be changed from time to time.

Section 13. "Real Estate" shall mean the property described on the face of the Plat of the Arneo Place, as recorded.

Section 14. "Restrictions" shall mean and refer to the Dedication, Protective Restrictions, Covenants, Limitations, Easements, and Approvals appended to as part of the Dedication and Plat of Arneo Place, as amended from time to time.

Section 15. "Subdivision" shall mean Arneo Place and all its various sections, a Subdivision located in St. Joseph Township, Allen County, Indiana.

## ARTICLE II

### Property Rights

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Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any Assessment against said Owner's Lot remains unpaid; and for a period not to exceed ninety (90) days for any infraction by said Owner, or the Owner's family, tenants, contract purchasers for invitees of its published rules and regulations after a hearing by the Board of Directors of the Association;
- (c) the right of the Association 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 members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members of the Association agreeing to such dedication or transfer has been recorded.
- (d) the right of the Association to charge a fine, said set amount to be determined by the Board of Directors of the Association, for any violation of these protective restrictions and covenants and/or any violation of the published rules and regulations.

Section 2. Effect of Nonpayment of Fines: Remedies of the Association. If any Owner shall fail, refuse, or neglect to make any payment of any fine when due, the Board of Directors of the Association may in its discretion declare the entire balance of unpaid fines to be due and payable, with interest as aforesaid, and file a Written Notice of Lien against the Lot in the office of the Recorder of Allen County, Indiana, which Notice of Lien shall perfect the lien of the Association and have the same force and effect as, and be enforced in the same manner as, a mortgage lien under Indiana law, and shall include attorney's fees, title expenses, interest, and any costs of collection. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, or may do both. In any successful action, the Association shall be entitled to recover all of its costs and expenses. No Owner may waive or otherwise escape liability for the fines provided for herein by non-use of the Common Area, facilities, or abandonment of the Owner's Lot.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, said Owner's right of enjoyment to the Common Area and facilities to the members of his family, or contract purchasers who reside on the property.

Section 4. Additions to Common Area. The Developer reserves the right so long as Class B members of the Association exist, to convey and transfer to the Association such additional



real and/or personal property as the Developer within its sole discretion deems appropriate, and the Association shall accept such transfer and shall hold such property as a part of the Common Area of the Subdivision.

Section 5. Use of Common Area Ponds. No watercraft of any kind or description shall be permitted upon any of the ponds contained in the Common Areas, except the Developer or the Association for the purpose of maintenance, upkeep and/or repair of said ponds. Use of the ponds contained in the Common Areas shall otherwise be subject to such rules and regulations as may be adopted from time to time by the Developer and / or the Association.

Section 6. Designation of Lake Lot. The marketing, sale or designation of any Lot as a "Lake Lot," or similar phrase, shall confer no right of use, or right of vision or accessibility to, any Common Area beyond the boundary line of said Lot except as otherwise provided in Section 5 above.

Section 7. Signage. No signage shall be allowed within any Common Area or street right of way, including signage advertising the sale of a Lot, except for such signage required by a governmental entity, allowed by the Board of Directors of the Association and except for signage and advertising utilized exclusively for the Developer.

### ARTICLE III

#### Architectural Control

No building, improvement, construction, excavation, fence, wall, drain tile, swimming pool or spa, pool house, tennis court, auxiliary building, basketball hoop, exterior lighting, swing set, play equipment, statues, lawn ornaments, landscaping, or other structure, intended either for ornamentation, leisure, recreation, or fitness shall be commenced, erected, altered, or maintained upon any Lot, nor shall any exterior addition to or change or alteration of any Dwelling Unit be made until two (2) sets of plot plans, and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to (1) harmony of external design and location in relation to surrounding structures and topography, and (2) the standards and guidelines established by the Architectural Control Committee from time to time. No trees, shrubs or undergrowth that are existing at the time of lot purchase may be cleared from any lot without the prior written approval of the Architectural Control Committee. The Architectural Control Committee may specifically stipulate certain trees and undergrowth that cannot be cleared at anytime whatsoever, now or in the future, so as to act as a privacy or visual buffer or landscape feature. Landscaping must comply with size, type, quantity, location, and any other standards established by the Association. All approvals shall be requested by submission to the Architectural Control Committee of plans and specifications in duplicate, showing the following:

- (a) The Dwelling Unit, and other improvements, access drives, and other improved areas, and the locations thereof on the site;
- (b) Plans for all floors and elevations, including projections and wing walls;

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- (c) Exterior lighting plans, specifically including proposed locations of all exterior light fixtures and spot lights;
- (d) Walls, fencing, and screening;
- (e) Patios, decks, pools, spas, pool houses, auxiliary buildings, and porches;
- (f) Landscape plan showing size and species of proposed plantings;
- (g) All other improvements on said Lot;
- (h) Existing and proposed land contours and grades; and
- (i) All proposed materials and colors.

Neither the Developer, the Architectural Control Committee, the Association, nor any member, officer or director thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to the Architectural Control Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee, the Association, or the Developer to recover any damages or to require the Committee or the Developer to take or refrain from taking, any action whatsoever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to the Developer's office for review by the Architectural Control Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and or approval of any such plans or the buildings or structures described therein.

A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. In the event said Board, or the Architectural Control Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed satisfied.

Every Dwelling Unit on any Lot shall be completed within twelve (12) months after the beginning of such construction. 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. Notwithstanding anything contained herein to the contrary, an Owner may request a variance of such completion requirements from the Committee, which may grant or deny such variance based on the complexity of construction, the size of the Dwelling Unit,

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and such additional criteria as the Committee may determine in its sole discretion.

#### ARTICLE IV

##### Arneo Place Community Association, Inc.

Section 1. Organization. There has been organized in connection with the development of Arneo Place, and its various sections, an incorporated not-for-profit association known as Arneo Place Community Association, Inc., ("Association").

Section 2. Membership and Voting Rights. Every Owner of a Lot located in Arneo Place, shall be a member of the Association, together with all other Lot Owners in the Subdivision. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 3. Classes of Membership. The Association will have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, together with all other lot owners in the Subdivision exclusive of the Developer. Owners shall be entitled to one (1) vote for each Lot owned.

Class B. Class B member(s) shall be the Developer and its successors. The Class B member shall be entitled to 183 votes less that number of votes which Class A members are entitled to exercise. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when title to all lots in all sections of the Subdivision has been conveyed or
- (b) on December 31, 2034.

Section 4. Membership Transfer. Membership in the Association will transfer from the Developer or its successor in interest to the Owner upon delivery of the Deed to Owner's Lot.

Section 5. Continuing Memberships. The Owner of any Lot shall continue to be a member of the Association so long as such Owner continues to be the Owner of a Lot for the purpose herein mentioned. Membership shall pass with the transfer of title to the Lot.

Section 6. Transfer of Membership Rights and Privileges in the Association. Each Owner of a Lot shall be a member of the Association and have the right to the Owner's vote and privileges. No assignment of membership shall relieve an Owner of the Lot from the obligation to pay any Assessment authorized by this Declaration.

Section 7. Creation of the Lien and Personal Obligation of Assessments. Each Owner



of any Lot, excepting Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual Assessments; (2) special Assessments; and (3) tax recoupment Assessment. Such Assessments shall be established and collected as hereinafter provided. The annual, special, and tax recoupment Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 8. Purpose of Annual Assessments. The annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, and welfare of the owners in all sections of Arneo Place, including, but not limited to, the improvement and maintenance of the Common Area, maintenance of street lighting, maintenance of the sprinkling system situated in the Common Area, storm water detention basins, outlet pipes and water level control structures, removal of snow from the streets, maintenance of streets, including curbs and public sidewalks (excluding maintenance of sidewalks located on a Lot), purchase of irrigation water for Common Areas, mailbox maintenance, taxes, accounting and professional fees, garbage removal (as applicable), and any additional maintenance of any and all Properties owned by the Association.

Section 9. Maximum Annual Assessment. Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the maximum annual assessment shall be One Thousand Five Hundred and No/100 Dollars (\$1,500.00) per Lot. Should any Owner fail to commence construction or cause the commencement of construction of the Dwelling Unit 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 maximum annual assessment for unimproved Lots, as established by Developer or the Association under this Subsection 9. The amounts contained herein are provided solely for the purpose of determining the initial annual assessment to Lot Owners under Section 12 and are subject to change from time to time both as to the amount and as to their relation to the total annual assessment.

- (a) From and after the first day of the Association's fiscal year in the year immediately following the recording date of this Declaration, the maximum annual Assessment may not be increased each year more than twenty percent (20%) above the maximum annual Assessment for the prior year, without the vote or written assent of fifty-one percent (51%) of each class of members of the Association.
- (b) The Board of Directors of the Association may fix the annual Assessment at an amount not in excess of the maximum without the vote or written assent of fifty-one percent (51%) of each class of members of the

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Association.

Section 10. Special Assessments. In addition to the annual Assessment authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, (1) the cost of any construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; (2) any budget shortfall; or (3) emergency need of the Association, provided that any such Assessment shall have the vote or written assent of fifty-one percent (51%) of the members of the Association.

Section 11. Notice and Quorum for Any Action Authorized Under Section 9 and 10. Any action authorized under Sections 9 and 10 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of the members, members who were not present in person or by proxy may give their assent in writing, providing the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

Section 12. Uniform Rate of Assessment. Both annual and special Assessments for the Association must be fixed at a uniform rate for all Lots and may be collected on a monthly or yearly basis as the Board of Directors may determine from time to time.

Section 13. Date of Commencement of Annual Assessments: Due Date. The annual Assessment provided for herein shall commence as to all Lots (excepting Lots owned by the Developer) on the first day of the applicable fiscal year. The Board of Directors of the Association shall fix the amount of the annual Assessment against each Lot for each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate or other written confirmation provided on behalf of the Association setting forth whether the Assessments on a specified Lot have been paid.

Section 14. Tax Recoupment Assessments. In addition to all other Assessments provided for in this Article, the Association may levy in any Assessment year, an Assessment ("Tax Recoupment Assessment") applicable to that year only for the purpose of defraying, in whole or in part, any cost or expense incurred by the Association in the form of a tax, and/or penalty, and/or interest on a tax imposed upon, assumed by, or assessed against the Association or its properties, and arising out of or in any way related to the acceptance of title to, the ownership of, and/or operation or maintenance of any plant or equipment (including utility lines, lift stations and other property) for the transmission, delivery or furnishing of water, or for the collection, transmission and disposal of liquid and solid waste and sewage, and/or the ownership of any real estate or easements or other rights with respect to real estate owned and/or possessed in connection with such plant or equipment.

Section 15. Effect of Nonpayment of Assessments: Remedies of the Association. If any



assessment is not paid within 30 days after the due date, a late fee of \$50.00 beginning from the due date, shall be levied by the Board of Directors 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: \$50.00 for Assessment #1  
2nd month's late fees: \$50.00 for Assessment #2 and  
another \$50.00 for Assessment #1

Total amount of late charges due after two months: \$150.00  
(\$50.00 for month #1 and \$100.00 for month #2)

The Association, on approval by the Board of Directors, or 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 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 Unit.

Section 16. 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 any successor Developer appointed in the manner prescribed in this Declaration; and
- (e) All Lots owned by a residential contractor licensed in Allen County, Indiana, as such and who holds title to a Lot for the purpose of constructing a Dwelling Unit on said Lot but not residing thereon. The exemption afforded contractors under this Subsection 16(e) shall be limited to 12 months following said contractor taking title to a Lot; provided, however, that a contractor acquiring title to all of the Lots owned by Developer shall be considered a successor Developer and be exempt pursuant to Section 16(d). Should construction not commence on the subject Lot within said 12-month period, the contractor shall be subject to the grading, seeding and assessment requirements imposed on Owners of unimproved Lots set forth in Subsection 9 hereof until such time as construction shall commence.





## ARTICLE V

### General Provisions

Section 1. Residential Purposes. No Lot shall be used except for residential purposes. No dwelling shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) detached Single-family dwelling unit not to exceed three (3) stories in height. Each dwelling shall include an attached two-car garage and basements may be constructed as a part of the dwelling.

Section 2. Home Occupations. No Lot shall be used for any purpose 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 Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit 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 Unit is being utilized in whole or in part for any purpose other than that of a Dwelling Unit; (b) no commodity is sold upon the Lot unless such commodity is shipped via a national courier and without any on-site pick up or delivery; (c) no person is employed in such home occupation other than a member of the immediate family residing in the Dwelling Unit; and (d) no mechanical or electrical equipment is used; provided in no event shall a licensed child care center or other licensed or regulated baby-sitting service, animal hospital, or any form of animal care or treatment such as dog trimming be construed as a home occupation.

Section 3. Building Sizes. No Dwelling Unit shall be built on any Lot having a living area of the main structure, exclusive of one-story open porches, breezeways, basements, or garages of less square footage than indicated below:

- (a) All one-story structures shall have a minimum of 2,400 square feet; and
- (b) All two story (and taller) structures shall have a minimum of 1,900 square feet on the first floor, with a minimum finished square footage of 2,800 square feet

Section 4. Garages. All Dwelling Units shall have no less than a two-car attached garage of at least 440 square feet. In addition, the following standards shall apply:

- (a) Rear or side load garages shall be required on Lots T14-16, E1, E25, and E9-E18.
- (b) Rear load garages shall be required on Lots T1-14, T17-27, E2-8, and E19-24.
- (c) With respect to Dwelling Units constructed on Lots H1-H39, the garage door shall include a minimum amount of windows and architectural features as approved by the Architectural Control Committee in its sole and absolute discretion.
- (d) Each garage must have one or more overhead doors with an aggregate width not less than sixteen (16) feet at its narrowest point.



Section 5. Building Setback. No Dwelling Unit or any improvements or structures shall be located on any Lot nearer to the front Lot line or nearer to the side street line or the rear property line than the minimum building setback lines shown on the recorded plat.

Section 6. Minimum Lot Size. No Dwelling Unit shall be erected or placed on any Lot having (a) a width less than seventy-five (75) feet at the minimum building setback line; or (b) an area of less than 10,000 square feet. Notwithstanding the foregoing, Lots H10 and H11 shall be exempt from the minimum lot width requirements set forth in Section 6(a) as a result of their unique configuration.

Section 7. Utility and Drainage Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. No Owner of any Lot shall erect or grant to any person, firm or corporation, 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 herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. All easements for public and municipal utilities and sewers as dedicated on the face of the Plat shall be kept free of all permanent structures and any structure, shrubbery, trees, or other installation thereon, whether temporary or permanent, shall be subject to the paramount right of the entities for which such easements are intended to benefit, to install, repair, maintain or replace their utility or sewage facilities. The removal of any such obstructions by utilities or sewage treatment works shall in no way obligate them in damages or to restore the obstruction to its original form. Electrical service entrance facilities installed for any house or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Lots and shall carry not less than three (3) wires and have a capacity of not less than 200 amperes.

Section 8. Surface Drainage. 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 easement shall be maintained in an unobstructed condition and the County Surveyor or a 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.

Section 9. Maintenance of Lots and Dwelling Units. No Lot or Dwelling Unit shall be permitted to become overgrown, unsightly, or to fall into disrepair.

- (a) Maintenance: Dwelling Units shall at all times be kept in good condition and repair, in like-new condition (normal wear and tear excepted) and adequately painted or otherwise finished in accordance with specifications established by the Association. Exterior trim, doors, windows, lintels, and any other exterior materials on the Dwelling Unit shall not have faded, peeling, cracking, or blistering paint, stain, or any other type of finish. Any

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rust on the Dwelling Unit's exterior must be promptly and properly repaired.

- (b) Landscaping: All landscaping, including, but not limited to, shrubs, flowers, trees, and grass, must be properly fertilized and maintained. All shrubs, trees, grass, and plantings of every kind shall be kept well maintained, properly cultivated, and free of trash, weeds, and any other unsightly material. Lawns must be mowed at least once per week from April 1 through October 31 ("Growing Season"), or as the Association stipulates. Lawns shall be fertilized a minimum of twice per year and weed killer shall be applied a minimum of once per year during said Growing Season. As part of the aforementioned regimen, public walks, private driveways, patios, shrub beds, and trees on Owner's Lot must be edge trimmed at least once per month during said Growing Season. Shrub beds must be mulched annually or have sufficient ground cover planted and growing so as to eliminate the need for mulch. Throughout the year, all shrubs, trees, grass, and plantings of every kind must be watered as necessary in order to maintain the proper color, shape, and size of said landscaping. Grass shall be adequately watered so as not to appear brown at any time during the time period May 1 through September 30. Trees on Owner's lot must be properly pruned so as to maintain the health of the tree, eliminate dead wood, and stimulate proper growth. Landscaping which complies with the minimum standards set forth by the Association shall be installed no later than ninety (90) days after the issuance of a Certificate of Occupancy with respect to such Dwelling Unit. A Dwelling Unit finished near the end or after the Growing Season, between October 1 and April 30, shall have until June 30 to complete the installation of landscaping. All landscaping plans (including size and type of plantings) must be approved by the Architectural Control Committee, as stipulated in Article III, including any additions to existing landscaping the Owner may wish to perform.
- (c) Irrigation: All Lots in the Subdivision must have, at a minimum, an in-ground automatic sprinkler system designed to provide irrigation water to the front lawn (including shrub beds) and all areas common to or visible from the roadway. The irrigation design must be approved by the Architectural Control Committee. No Lot may utilize, tap, or drain the water located in any Common Area for the purpose of supplying irrigation to said Lot with the exception of Lots H1-H10, E14-E24, H24-H30, and H32-H39 which shall pay an annual fee of Three Hundred Fifty and NO/100 Dollars (\$350.00) per year, which shall be in addition to the regular annual Assessment and which amount may be increased from time to time in accordance with the requirements of Article IV, Section 9.
- (c) Common Area Maintenance and Repair. Each Owner covenants and agrees not to (i) cause any damage to any improvement which the Association has the responsibility to maintain, repair, and/or replace; or (ii) undertake unauthorized improvements or modifications to the Common Areas.



Section 10. Effect of Improper Maintenance: Remedies of Association. Each Owner, for himself and his successors and assigns, hereby grants to the Association, jointly and severally, the right to make any necessary alteration, repairs, or maintenance approved by the Architectural Control Committee to carry out the intent of this provision and further agrees to reimburse the Association for any expenses actually incurred in carrying out the foregoing (including without limitation any costs or expenses incurred in connection with a violation of Section 9(e) hereof). The Association may assess and collect such reimbursement in the same manner as it assesses and collects yearly Assessments pursuant to Article IV, above, and such amounts shall become a lien upon the Lot and be subject to the same collection rights and remedies granted to the Association in Article IV.

Section 11. Nuisances. No noxious or offensive activity (in the sole opinion of the Board of Directors of the Association) shall be carried out upon any Lot or Common Area within the Subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to 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 from the street or any other Lot, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof.

Section 12. Temporary Structures and Storage. No structure of a temporary character, trailer, box truck, semi-truck, commercial vehicle, recreational vehicle (RV), camper shell, all terrain vehicle (ATV), camper or camper trailer, detached basement, tent, or shack shall be used or located on any Lot, or adjacent to any Lot, public street or right-of-way with the Subdivision at any time, or used as a residence either temporarily or permanently.

Section 13. Signs. No sign of any kind shall be displayed to the public view on any Lot, except one (1) sign of not more than five (5) square feet advertising such Lot for sale by the Builder or Developer during the construction and sales period. No sign of any nature is allowed after the completion and initial sale of the Dwelling Unit, and no signs shall be permitted to be located in the Common Areas of the Subdivision. If the Owner wishes to sell the Dwelling Unit and Lot at a later date, no realtor signs advertising said property are allowed, with the exception of an attractive, well-maintained "Open House" sign, not more than five (5) square feet in size, which may be installed and maintained during the day of such open house.

Section 14. Radio and Television Antennae; Solar Panels.

- (a) No radio or television antennae shall be attached to the exterior of any Dwelling Unit. No free-standing radio or television antennae shall be permitted on any Lot. No television receiving dish or any other type of dish that exceeds two (2) feet in diameter shall be permitted on any Lot or on any Dwelling Unit. Any dish complying with aforementioned dimensions





must not be visible from the street or neighboring Dwelling Unit and must be discreetly installed in the rear of the Dwelling Unit. If necessary, landscaping and/or other means of hiding the dish from view may be required. Any application must receive approval from the Architectural Control Committee prior to installation, per the stipulations and guidelines set forth in Article III of this Declaration.

- (b) Solar panels which are installed and maintained on the roof of a Dwelling Unit for non-commercial purposes and used solely for the purpose of collecting and storing sunlight as a source of energy for any single-family residential dwelling within the Subdivision shall be permitted; provided, however, that the location, design of solar panel array, height and buffering of solar panels and related equipment, and modifications to same, shall require Architectural Control Committee approval pursuant to Article III.

Section 15. Drilling, Refining, Quarrying, and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

Section 16. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats or other common household pets (which, for purposes of this Section 16 excludes any exotic animal, chickens, pigs, and any outdoor birds or rodents) may be kept, provided that they are not kept, bred or maintained for any commercial purpose. In case of a dispute or disagreement, the Architectural Control Committee is herewith granted the authority to conclusively determine whether an animal is or is not a permitted household pet. Any permitted household pet shall be leashed or otherwise similarly constrained at all times when it is taken off of the respective Owner's Lot, or when is outside of any fenced in (including, underground invisible fences designed for pets) portion of such Lot. Further, no household pet shall reside predominantly outside of the dwelling constructed on a Lot (which, for purposes of this Section 16 shall mean spending an average in excess of eight (8) hours (consecutive or non-consecutive) within any given twenty-four (24) hour period, or otherwise as may be reasonably determined by the Board of Directors). No Owner may keep any household pet outside of their dwelling constructed on the Lot if such pet would cause a violation of Section 11 above by way of the noise generated or caused by such pet (e.g., no barking dogs may be continuously left outside on any Lot). No hunting, trapping, gaming or similar activity which utilizes any type of firearm, bow and arrow or similar type of weapon, hunting or trapping device, of any kind, shall occur upon any Lot or within the Properties of the Subdivision, except: (a) to the extent necessary in the event of immediate and likely harm to individual health and safety to an Owner, its guests or invitees upon said Owner's Lot or within said Owner's Dwelling Unit; or (b) to the extent necessary to provide periodic pest control within a Dwelling Unit or upon a Lot which is deemed to be usual and customary for residential living within northeast Indiana.

Section 17. Building Materials. All Dwelling Units and other permitted structures shall



be constructed in a substantial and good workmanlike manner and of new materials.

Section 18. Driveways. All driveways from the street to the garage shall be poured concrete or masonry and not less than twelve (12) feet in width.

Section 19. Individual Water and Sewage Systems. No individual water supply system or individual sewage disposal system shall be installed, maintained, or used in any Lots in this Subdivision, with the exception of a water well dedicated to an automatic sprinkler system, or as required for the operation of a geothermal heating and cooling system described in detail in following Section 20. All other water and sewage applications are prohibited.

Section 20. Geothermal Systems.

(a) An Owner whose Lot is immediately adjacent to Common Area containing a retention or detention pond shall have the right to install and maintain the following described types of geothermal heating and cooling systems ("Systems") to service the Dwelling Unit located on the Lot, and the right to use the Association's property described below:

1. A System with a closed loop heat exchanger designed to use retention or detention ponds located in Common Areas adjacent to such Lot.
2. A System which uses and discharges well water from the System into retention or detention ponds located in Common Areas adjacent to such Lot.
3. A system with a closed loop heat exchanger and buried on the Owner's Lot.

(b) Any Systems so installed must:

1. Satisfy regulations of the Indiana Department of Natural Resources, and all applicable federal, state, and local laws, ordinances, and regulations.
2. Satisfy reasonable requirements of the Allen County Surveyor or other applicable governmental agency regarding surface water drainage and erosion control and obtain written approval from the Association.
3. Be installed according to approved guidelines and by technicians certified by the International Ground Source Heat Pump Association (IGSHPA).



4. Be approved by the Architectural Control Committee.
- (c) Any Owner using Common Area owned by the Association for the purpose described in Section 20 agrees to be responsible for and shall indemnify and hold the Association and its agents and vendors harmless from and against all claims, losses, damages, and judgments (including reasonable attorney's fees and litigation expenses) caused by, or resulting from, the Owner's use of Association Property in connection with the Systems.

Section 21. Use of Public Easements. In addition to the utility easements herein described, the easements in the streets, as shown on the Plat, are hereby reserved and granted to the Developer, the Association, and any public or quasi-public utility company engaged in supplying one or more of the utility services contemplated in Sections 7 and 8 or this Section 21 of Article V, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain, and remove all and every type of gas main, water main, and sewer main (sanitary and/or storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction thereof as to maintenance and repair of said streets.

Section 22. Sanitary Sewer Restrictions. 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 into or permitted to flow into the Sanitary Sewage System, 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 the above-mentioned Storm Water and Surface Water Runoff Sewer System.

Section 23. Improvements. Before any Dwelling Unit on any Lot in this Subdivision shall be used and occupied as a dwelling or otherwise, the Developer or any subsequent Owner of such Lot shall install improvements serving such Lot as provided in the plans and specifications for such improvements filed with the appropriate governmental authorities, together with any amendments or additions thereto which said governmental authorities may authorize or require. This covenant shall run with the land and be enforceable by any governmental authority having jurisdiction over the Subdivision, by the Association, or by any aggrieved Lot Owner in this Subdivision.

Section 24. Permits and Certificates. Before any Dwelling Unit located on any Lot may be used or occupied, such user or occupier shall first obtain from the City of Fort Wayne Zoning Administrator an Improvement Location Permit and a Certificate of Occupancy as required by the City of Fort Wayne Zoning Ordinance.

Section 25. Pools and Hot Tubs. No above ground pool, regardless of size, shall be placed or maintained on any Lot. No swimming pool, hot tub, or spa may be placed or maintained on any Lot unless it meets requirements of City of Fort Wayne Zoning Ordinance and without the prior written approval of the Architectural Control Committee in accordance with Article III. Pools and spas must meet the requirements of the City of Fort Wayne Zoning Ordinance as to required fencing.



Section 26. Tennis, Basketball, and other Recreational or Leisure Facilities/Courts. No tennis court, basketball court, or any other leisure or recreation facility shall be placed or maintained on any Lot without the prior written approval of the Architectural Control Committee in accordance with Article III.

Section 27. Swing Sets and Play Equipment. Neither swing sets nor play equipment will be permitted on any Lot without prior written approval from the Architectural Control Committee in accordance with Article III. Only high-quality, durable, and attractive units as defined by the Association will be considered for approval. Units must be maintained in like-new condition and cannot be placed until the location has been approved the Architectural Control Committee. Location chosen should reasonably attempt to minimize any detrimental effect to a neighbor's view of pond, ravines, wooded or landscaped areas.

Section 28. Fencing. All proposed fencing must be submitted to and approved by the Architectural Control Committee in accordance with Article III herein and such proposed fencing must be in compliance with all City of Fort Wayne Zoning Ordinances. The fence shall be constructed of durable and attractive materials as defined by the Association. No fences are allowed in the front yard except for special decorative purposes. Absolutely no chain link or wire fences will be allowed.

Section 29. Storage Areas. Garbage and refuse shall be placed in containers, which shall be concealed and contained within the Dwelling Unit. Firewood must be placed adjacent to the Dwelling Unit behind a visual barrier screening this area so that it is not visible from neighboring streets or homes. Both the visual barrier and the area to be used must receive approval from the Architectural Control Committee.

Section 30. Mailboxes and Newspaper boxes. The Developer will determine the location, type, and installation of mailboxes. Newspaper boxes are not allowed, unless Developer decides to incorporate them into group mailboxes. Individual mail boxes (if allowed by the U.S. Post Office) must be of specific design and materials specified by the Developer and installed at the Owner's expense. Group mailboxes, if utilized, will be supplied by the Developer and maintained by the Association.

Section 31. Time for Building Completion and Restoration. Every Dwelling Unit on any Lot shall be completed within twelve (12) months after the beginning of such construction. 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 32. Single Owner Contiguous Lots. Whenever two (2) or more contiguous Lots shall be owned by the same person, and such Owner shall desire to use two (2) or more of said Lots as a site for a single Dwelling Unit, said Owner shall apply in writing to the Architectural Control Committee or Board of Directors of the Association for permission to so use said Lots. If permission for such use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a Single Lot for the purpose of applying this Declaration to said Lots, so long as the Lots remain improved with one single Dwelling Unit. Notwithstanding the foregoing,

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each of the Lots constituting the site for such single Dwelling Unit shall remain as individual Lots for purposes of all Assessments permitted by the terms of this Declaration. As such, the Owner will be assessed for each Lot used as a site for a single Dwelling Unit.

Section 33. Enforceability. The Association, any Owner, and the Developer shall each have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or the Developer to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not operate to deprive an Owner from enforcing said covenant or restriction.

Section 34. Right of Entry. The Developer, the Architectural Control Committee, and the Association, acting through their respective representatives, shall have the right, during reasonable hours, to enter upon and inspect the Lot and Dwelling Unit, whether prior to, during, or after the completion of, any construction, for purpose of determining whether or not the provisions of this Declaration are being complied with and exercising all rights and powers conferred upon the Developer, the Architectural Control Committee, and the Association with respect to the enforcement or correction or remedy of any failure of the Owner to observe this Declaration, and the Developer, the Architectural Control Committee, and the Association and such representatives shall not be deemed to have committed a trespass as a result thereof. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered hereunder unless written notice of such proposed entry shall have been given to the Owner at least five (5) days prior to such entry.

Section 35. Partial Invalidity. Invalidity of anyone of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 36. Covenants, Restrictions, and Extensions. The covenants and Restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date this Declaration are recorded, after which time they shall automatically be extended for successive periods of ten (10) years. These Restrictions may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners.

Section 37. Subdivision of Lots. No Lot or combination of Lots may be further subdivided unless seventy-five percent (75%) of the Lot Owners have approved by signing an instrument of approval and until said approval has been obtained from the City of Fort Wayne Plan Commission.

Section 38. Exterior Building Surfaces. All exterior building surfaces, materials, and colors shall be harmonious and compatible with colors of the natural surroundings and other Dwelling Units. The Architectural Control Committee shall have the right to approve or disapprove said building surfaces, materials, and colors at the time of construction and any time thereafter, including, but not limited to, house trim, gutters, brick and/or stone, siding, shingles, windows and window trim, lawns, shrubbery, and all other forms of landscaping and exterior trim.



Section 39. Dwelling Unit Exterior. All windows, porches, balconies, and exteriors of all Dwelling Units shall at all times be maintained in a neat and orderly manner. No clotheslines or other outside drying or airing facilities shall be permitted.

Section 40. Yard lights. A dusk-to-dawn light (or gas light) of type and location approved by the Architectural Control Committee shall be installed by the builder or Lot Owner on each Lot in front of the front building line and shall at all times be maintained and operational. Said yard light or illuminating device shall be illuminated at all times other than daylight hours.

Section 41. Fires. No outdoor fires for the purpose of burning leaves, grass, or other forms of trash shall be permitted to burn upon any street, roadway, or Lot in this Subdivision. No outside incinerators shall be kept or allowed on any Lot. Notwithstanding the foregoing, exterior fireplaces shall be permitted with the prior approval of the Architectural Control Committee and wood burning or propane firepits shall be permitted subject to compliance with applicable local laws.

Section 42. Cost and Attorney's Fees. In the event the Association or Developer are successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, Assessment, or charge now or subsequently imposed by the provisions of these Covenants, they shall be entitled to recover from the party against whom the proceeding was brought, the attorney's fees, and related costs and expenses incurred in such proceeding.

Section 43. Annexation. Additional properties may be annexed by Developer and made subject to this Declaration. Said additional properties may be developed for condominiums, villas, and single family residences. Said annexation may be perfected without consent of the Owners.

Section 44. Flood Protection Grade. No Dwelling Unit or other structure or improvement shall be constructed or maintained in violation of the flood protection grades established on the recorded plat for each Lot so that the minimum elevation of the first floor, and the minimum sill elevation for any opening into the dwelling equals or exceeds the minimum flood grade protection elevation. The flood grade protection levels have been approved by the Allen County Surveyor's office and are to minimize potential damage from flooding, surface water and rain events.

Section 45. Sidewalks. A five feet (5'0") in width sidewalk within the street right-of-way is required in front of all Lots within the Subdivision. Any installation of a sidewalk in a designated Common Area shall be the responsibility of the Developer. Installation of said sidewalks shall be the obligation of the Owner of any such Lot, exclusive of the Developer, and shall be completed in accordance with said plans and specifications and prior to the issuance of a Certificate of Occupancy for any such Lot. The cost of said installation shall be a lien against any such Lot enforceable by the Plan Commission. Should such Certificates of Occupancy be issued to the Developer, said individual or corporation shall be considered an Owner for the purposes of the enforcement of this covenant. Operation of motorized vehicles is not permitted on the sidewalks or pass-through easements in the Subdivision. This excludes wheelchairs or other devices employed by the handicapped. Each Owner shall be solely responsible for the snow and/or



ice removal of the sidewalks on or crossing such Owner's Lot(s).

Section 46. Vehicles and Parking. The following Restrictions apply irrespective of whether the Properties in question lie within areas owned by or dedicated to a governmental entity:

- (a) Prohibited Vehicles or Items. The following vehicles or items are prohibited from the Subdivision and shall not be entitled to park anywhere within the Subdivision. The prohibited vehicles and items, subject to Subsection (b) below, are as follows: recreational vehicles, mobile homes, motor homes, campers, buses, all terrain vehicles CATV), off-road vehicles, commercial vehicles, limousines, mopeds, dirt bikes, motorcycles, and other such motor vehicles, and boats and trailers.
- (b) Exception to (a) above. The following vehicles shall not be subject to the parking restrictions contained in Subsection (a) above, and shall be entitled to park within the designated areas for parking in the Subdivision, subject to the restrictions and provisions contained in Subsection (c) through (j) below:
  - 1 All vehicles mentioned in Subsection (a) next above if parked/stored in the garage of the unit with the garage door closed. Also, a moving van shall be permitted to park outside of the garage, but only for the purpose of loading and unloading and at no time shall same park as such during the hours 9:00 P.M. to 6:00 A.M.
  - 2 Vehicles, regardless of classification, necessary for the maintenance, care, or protection of the Subdivision, during regular business hours, and only for the time period during which the maintenance, care, or protection is being provided.
  - 3 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.
  - 4 Vehicles for the handicapped bearing identification as such by an applicable governmental authority.
  - 5 Certain vans are permitted. Subject to the above restrictions, a two (2) 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 primarily for family and 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

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the first two (2) rows of seating; and which is or would be registered in the State of Indiana as a passenger vehicle 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 the vehicle registration unless upon visual inspection of the vehicle, 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.

- 6 Campers, recreational vehicles, and motorhomes for a maximum of one 24-hour period per week to load and unload, maximum of fifteen (15) such periods per year.

(c) Classifications and Definitions.

- 1 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 source 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 (b) 6 above, a State registration or title classification shall have no bearing on determination of the classifications under this Section.

- 2 A "Commercial Vehicle" shall mean any motor vehicle which has an outward appearance of being used in connection with business, such as the display of work equipment to view and/or is commercially lettered or contains a commercial or business logo.

- 3 "Truck" shall mean any motor vehicle classified as a truck in accordance with Subsection (c) 1 above.

- 4 A "Van" shall mean any motor vehicle classified as a van in accordance with Subsection (c) 1 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 pickup truck shall not be considered to be a van by the addition of a camper top or





similar covering.

- (d) All motor vehicles must be (i) maintained so as to not create an eyesore in the community; (ii) be operable; and (iii) licensed unless stored within the Dwelling Unit continuously.
- (e) The Board of Directors may make parking restrictions by Rule and Regulation.
- (f) 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 (as defined by the Board of Directors) are explicitly prohibited. No vehicle shall be parked while running and left unattended.
- (g) The following restrictions also apply:
  - 1 No repair (including changing of oil) of a vehicle shall be made within the Subdivision except for minor repairs necessary to permit removal of a vehicle, unless they are made in the garage of the Unit with the garage door closed. However, washing or waxing of a vehicle is permitted outside the garage.
  - 2 No unregistered motor vehicle shall be driven or operated on any of the Properties at any time for any reason.
  - 3 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 Subdivision or a Dwelling Unit except on the surfaced parking area thereof. No parking will be permitted on sidewalks at any time or on the streets between 2:00 A.M and 6:00 A.M.

- (h) Remedy of Towing. If upon the Association's provision of notice an offending vehicle owner does not remove a prohibited or improperly parked vehicle from the Subdivision, 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 provides the Association with the necessary consent to effect the tow. In the event the vehicle owner fails to pay such costs upon demand, the Association shall have the right to levy a charge for the costs against the Dwelling Unit and Owner in question, that is, against the Owner as the owner of the vehicle or for the Owner's family, lessees, guests, employees, or visitors as owner(s) of the vehicle (as such, the Dwelling Unit Owner is liable for the vehicle violations of the Owner's family, lessees, guests, visitors, etc.), and the charge shall be collected as is

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provided for in this Declaration.

- (i) Alternative/Concurrent Remedies. Whether or not the Association exercises its right to have the vehicle so towed, the Association shall nonetheless have the right to seek compliance with this Section by injunctive and other relief through the courts; and/or any other remedy conferred upon 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 (i).

Section 47. Chimneys. All exterior wood-burning fireplace chimneys are to be of masonry construction. All material and color choices must be approved by the Architectural Control Committee, as set forth in Article III of this Declaration. Metal flues which are 8" or smaller are allowed for non wood-burning gas fireplaces, but must be on the rear roof and are subject to approval by the Architectural Control Committee. Flues slightly larger than 8" or flues on side roofs may be allowed if they are well hidden, but must be carefully reviewed and approved by the Architectural Control Committee. Direct vents through the wall are allowed for gas burning fireplaces except in the case of front facing or side walls; all such metal flues must be screened sufficiently by landscaping so as not to be visible from the street or other lots.

Section 48. Garbage Removal. Garbage can only be placed at the curb for collection in containers approved by the Association (normally large bins supplied by the waste removal contractor) and only on the day of collection, or after 7:00 P.M. on the evening prior to collection.

Section 49. Unlawful Uses. No improper, offensive, or unlawful use shall be made of any Lot and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be strictly observed.

Section 50. Transformers and Utility Boxes. Any electrical transformer or other type of utility box located on an Owner's Lot must be screened from the street or neighboring Dwelling Unit with landscaping approved by the Architectural Control Committee, per Article III of this Declaration.

Section 51. No Rentals. No Owner shall permit any Lot or real estate within the Subdivision, including any building, dwelling, garage, shed, camper, RV, or similar form of structure or housing ("**Housing**") thereon to be Non-Owner Occupied. "**Non-Owner Occupied**" shall mean any Housing that is rented or leased by the Owner to any third-party during the lease or rental period as defined by the arrangement between the Owner and third-party; however, the term "Non-Owner Occupied" shall not include arrangements where the Housing is rented or leased to the Owner, the Owner's spouse, the Owner's parents, the Owner's children, the beneficiary of a trust as the occupant where the Owner is the trust, or the person who owns sixty-five percent (65%) or more a corporation, limited liability company, or similar entity as the occupant of the Housing where the Owner is such corporation, limited liability company, or similar entity. Additionally, "Non-Owner Occupied" shall mean any Housing that is being sold on a Disguised Lease Land Contract. A "Disguised Lease Land Contract" shall mean a land contract where (a) the Owner has not received at least twenty-five percent (25%) in cash of the price at which the Housing

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has been contracted for sale at the time the land contract is entered into with the land contract buyer; or (b) the land contract was not recorded within one hundred eighty (180) days after the date the land contract was entered into between the Owner and the land contract buyer.

Section 52. No Temporary Vacation Rentals. No Owner shall permit any Lot or real estate within the Subdivision, including any building, dwelling, garage, shed, camper, RV, or similar form of structure or housing thereon to be used as a Temporary Vacation Rental. *“Temporary Vacation Rental”* shall include the transient commercial use of any of the foregoing in connection with or as a(n) Airbnb, VRBO, bed and breakfast, hostel, hotel, inn, lodge, motel, resort, timeshare, or other type transient lodging where the term of occupancy, possession, or tenancy of the property by the person entitled to such occupancy, possession or tenancy is temporary in nature. In the event the Association or any Owner brings an enforcement action pursuant to Article VII, Section 36, the prevailing party shall be entitled to the costs of such action, including, but not limited to, attorney’s fees and court costs.”

Section 53. Storage Sheds. No storage sheds, outbuildings, or similar structures shall be allowed on any Lot, except for buildings required to house mechanical equipment servicing in-ground pool as herein permitted. Any such building allowed hereunder shall meet all applicable requirements of the City of Fort Wayne Zoning Ordinance. This Section 53 shall not apply to Auxiliary Buildings allowed under Section 54.

Section 54. Auxiliary Buildings. An Auxiliary Building (as herein defined) may be permitted on Lots T1-T14, E1-E13, and H10-H23, subject to the sole and absolute discretion of the Architectural Control Committee or Developer, as appropriate, as herein permitted. For purposes of this Declaration, an “Auxiliary Building” shall mean a building or structure (a) not to exceed two (2) stories in height and not to exceed 1,300 square feet on the first or second floors; (b) constructed of materials present and exterior design and appearance harmonious with the Dwelling Unit constructed on the subject Lot; and (c) for which the Owner of the Lot shall have received Architectural Control Committee approval as herein provided. An Auxiliary Building may be used as an additional garage and storage area, game room, exercise room, loft, pool house, or for other uses similar thereto. No Auxiliary Building shall be used by an Owner as a residence, nor shall an Auxiliary Building be permitted to exist without the prior existence of a separate, single-family residence on the same Lot.

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IN WITNESS WHEREOF, B1 Enterprises, LLC, as declarant and Developer of the Real Estate, has executed this document on the 24<sup>th</sup> day of October, 2023.

**“Developer”**

B1 Enterprises, LLC

A handwritten signature in black ink, appearing to read 'James Khan', written over a horizontal line.

By: James Khan, its Manager





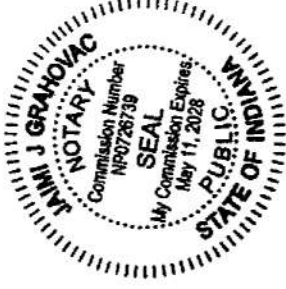
STATE OF INDIANA )  
 ) SS:  
COUNTY OF ALLEN )

Before me, a Notary Public in and for said County and State, this 20<sup>th</sup> day of October, 2023, personally appeared James Khan, the duly authorized Manager of B1 Enterprises, LLC, (the "Company") and acknowledged the execution of the above and foregoing document as his voluntary act and deed on behalf of the Company for the purposes and uses set forth in this document.

Witness my hand and seal on this 20<sup>th</sup> day of October, 2023.

*Jami Grahovac*  
Jami Grahovac, Notary Public

My Commission Expires: 5/11/28  
My County of Residence: Allen  
My Commission Number: NP0726739



This instrument prepared by Joshua C. Neal, Attorney No. 23697-02, Barrett McNagny LLP, 215 E. Berry Street, Fort Wayne, IN 46802.

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/ Joshua C. Neal.

