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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BRIDGER PINES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIDGER PINES, dated as of the 22<sup>nd</sup> day of February 2017, is made by Boomerang Development, LLC, an Indiana limited liability company, Sunblest Farms, Inc. and Corby D. Thompson (collectively, "Declarant").

**RECITALS:**

A. Declarant is the owner of all of the land contained in the area described on Exhibit A & B attached hereto and made a part hereof (the "Real Estate"), which lots and land will be subdivided for the development of Bridger Pines, a single family housing development in Hamilton County, Indiana (the "Development"), and will be more particularly described on the plats to be recorded in the Office of the Recorder of Hamilton County, Indiana (the "Plats").

B. As provided herein, Declarant has retained and reserved the right, privilege and option to submit to the provisions of this Declaration at a later time, and from time to time as a part of the Development additional property, and has retained and reserved the right to withdraw and remove, any portion of the Real Estate from the control and provisions of this Declaration.

C. Declarant will sell and convey all or certain of the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges contained herein and as set forth in the Plats (the "Declaration" or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and land in the Development and future owners thereof.

**TERMS:**

NOW, THEREFORE, Declarant, for itself, its successors and assigns in title to the Real Estate, hereby declares that all of the Real Estate located within the Development is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and land in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein, all of the Restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of Declarant's successors in title to any Real Estate in the Development.

## ARTICLE I

The following are the definitions of the terms used in this Declaration:

**Section 1.1. "Assessment"** shall mean the share of the Common Expenses imposed on each Lot or other special Assessments, as determined and levied pursuant to the provisions of Article V hereof.

**Section 1.2. "Association"** shall mean the Bridger Pines Property Owners Association, Inc., or an entity of similar name, its successor and assigns, which shall be created as an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended.

**Section 1.3. "Board"** shall mean the Board of Directors of the Association.

**Section 1.4. "Builder"** shall mean CalAtlantic Homes of Indiana, Inc., a Delaware corporation; or any other entity which has, by contract, entered an agreement with the Declarant to purchase lots in Bridger Pines for speculative or contractual home sales. Under no circumstances shall the builder definition include a person or entity that has purchased a lot for the construction of their personal residence.

**Section 1.5. "Committee"** shall mean the Architectural Control Committee which shall be appointed by the Board and have such duties as provided in Article VI hereof.

**Section 1.6. "Commons" or "Common Area(s)"** shall mean those areas and all improvements located therein or thereon which are identified on the Plats.

**Section 1.7. "Common Expenses"** shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association or the Development.

**Section 1.8. "Declarant"** shall mean Boomerang Development, LLC, an Indiana limited liability company, Sunblest Farms, Inc. and Corby D. Thompson and their successors and assigns in title to the Real Estate.

**Section 1.9. "Development Period"** shall mean the period of time during which Declarant owns at least one (1) lot in the Development. If the Declarant shall at any time subject additional property to the provisions of this Declaration, as provided in Section 2.3 hereof, the definition of the Real Estate shall then be expanded to include the additional property and thus the Development shall include the additional property.

**Section 1.10. "Dwelling Unit"** shall mean and refer to any structure (or portion thereof) designed or intended for use and occupancy as a residence by one (1) family on a Lot located within the Development, irrespective of whether such dwelling is detached or attached to another Dwelling Unit.

**Section 1.11. "Easement Area"** shall mean any portion of the Real Estate which is subject to an easement as more particularly described in Article III hereof.

**Section 1.12. "HOA Act"** shall mean Article 32.25.5 of the Indiana Code.

**Section 1.13. "Lake" or "Lakes"** shall mean and refer to the water retention pond(s) or lake(s), whether such are also a Common Area, together with the shoreline area thereof, as shown on the Plats.

**Section 1.14. "Lot" or "Lots"** shall mean any parcel(s) of the Real Estate (excluding the Common Areas) which are designated and intended for use as a building site, or developed and improved for use as a single-family residence identified by number on the Plats. No Lot shall be further subdivided for development purposes, except as may be reasonably necessary to adjust for minor side or rear yard encroachments or inconsistencies.

**Section 1.15. "Member"** shall mean any person or entity holding membership in the Association.

**Section 1.16. "Owner"** shall mean the record owner, whether by one or more persons, of the fee simple title to any Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

**Section 1.17. "Supplemental Declaration"** shall mean an amendment or supplement to this Declaration or a Plat executed by or consented to by Declarant or by the Association pursuant to Article II hereof and recorded in the public records of the county in which the Declaration was originally recorded, which subjects additional real estate to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the Real Estate or the land described therein. A Supplemental Declaration may also remove any portion of the Real Estate then owned by Declarant from the control and provisions of this Declaration.

## **ARTICLE II** **DEVELOPMENT OF THE REAL ESTATE**

**Section 2.1. Development of the Real Estate.** All Lots shall be and hereby are restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in this Declaration. Declarant shall have the right, but not the obligation, during the Development Period, to submit additional real estate to or exclude any portion of the Real Estate from the provisions of this Declaration, and to make and maintain improvements, repairs and changes to any Common Area and all Lots owned by Declarant, including, without limitation: (a) installation and maintenance of improvements in and to the Common Areas; (b) changes in the location of the boundaries of any Lots owned by Declarant or of the Common Areas; (c) installation and maintenance of any water, sewer, and other utility systems and facilities; (d) installation of security or refuse

systems; and/or (e) additions or changes to the boundaries of any Common Area or Easement Area.

**Section 2.2. Public Streets.** The streets and public rights-of-way shown on the Plats are, upon recording of the Plats, dedicated to the public use, to be owned and maintained by the governmental body having jurisdiction, subject to construction standards and acceptance by such governmental body. All Lots shall be accessed from the interior streets of the Development.

**Section 2.3. Development of Additional Property.** Declarant hereby reserves the right and option, to be exercised at its sole discretion and without further approval by any party, to subject at any time and from time to time during the Development Period, additional real estate to the provisions of this Declaration.

**Section 2.4. Annexation of Additional Real Estate by Members.** After the Development Period, the Association may annex additional real property into the provisions of this Declaration and jurisdiction of the Association. Such annexation shall require the affirmative vote of at least two-thirds (2/3) of the Members. Annexation by the Association shall be accomplished by the appropriate filing of record of a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the owner of the property being annexed and any such annexation shall be effective upon filing unless otherwise provided therein.

**Section 2.5. Withdrawal of Property.** Declarant hereby reserves the right and option during the Development Period, to be exercised at its sole discretion and without further approval by any party, to withdraw and remove any portion of the Real Estate then owned by Declarant from the control and provisions of this Declaration. Such removal by Declarant shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which shall be filed in the public records of county in which the Declaration was originally recorded, together with a legal description of the Real Estate being withdrawn.

**Section 2.6. Monuments.** As a requirement of the State Board of Registration for Land Surveyors, the Declarant may be required to install property corners or lot corner monuments in the form of capped reinforcement bars at the time of platting of the Development. The cost of these monuments is included in the price of each Lot. The Declarant makes no warranties to any Owner as to the legitimacy of these monuments. The monuments have not been certified to any Owner but only to the Declarant. No Owner within Bridger Pines shall perform any work on their Lot including, but not limited to, the installation of fences and perimeter landscaping based upon the location of said monuments. Although each of these monuments were properly installed, they are easily bumped, dislodged, stretched and moved during the construction process, lawn work and even child's play. Prior to any work being performed upon a Lot, it is highly recommended that the Lot be surveyed by a registered land surveyor. There are street monuments located throughout the Development that any surveyor can use to accurately and quickly located all property corners. Any personal injury or property damage caused because of these

monuments should be addressed through the State Board of Registration for Land Surveyors and by acceptance of the deed to a Lot, the respective Owner agrees to hold the Declarant harmless as to any injury, whether personal or property.

**ARTICLE III**  
**PROPERTY RIGHTS AND EASEMENTS**

**Section 3.1. General.** Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The Owner of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Declarant with respect to this Declaration and also for itself, its heirs, personal representatives, successors and assigns. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of this Declaration, including, without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Common Areas as established hereunder and membership in the Association. Each Owner shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title. Lots shall not be subdivided by any Owner and the boundaries between Lots and between the Development and other neighborhoods shall not be relocated, unless the relocation thereof is made with the approval of the Board and, during the Development Period, of Declarant.

**Section 3.2. Owner's Easement of Enjoyment.** Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws of the Association ("By-Laws") and subject to the following provisions:

(a) The right of the Association to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate or expand the Common Areas.

(b) The easements reserved elsewhere in this Declaration or in any Plats of all or any part of the Real Estate, and the right of the Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an Easement Area is done at the Owner's risk and is subject to possible removal by the Association or the grantee of such easement.

(c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by Declarant during the Development Period or thereafter a majority vote of the Members as provided in the By-Laws.

(d) The rights of the Association and Declarant reserved elsewhere in this Declaration or as provided in any Plats of all or any part of the Real Estate.

(e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

### **Section 3.3. Easement for Declarant.**

(a) During the Development Period, Declarant shall have an easement for access to the Real Estate, including any and all Lots and any and all Common Areas, for the purpose of constructing structures and other improvements in, on, to or for the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements therein and thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development.

(b) In addition to the easement set forth in Section 3.3(a) above, Declarant hereby retains, reserves and is granted an exclusive perpetual easement over, above, across, upon, along, in, through, and under the Utility Easement Areas, as such is defined in Section 3.4 below, (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service, including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe, conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area; (ii) to provide access to an ingress and egress to and from the Real Estate for the purposes specified in subsection (i) above; and (iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to Declarant under this Section 3.3(b) shall be transferable by

Declarant to any person or entity solely at the option and benefit of Declarant, its successors and assigns, and without notice to or the consent of the Association, the Owners, or any other person or entity. Declarant may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, Declarant and others to whom Declarant may grant such similar or lesser easements, rights or privileges, may so use any portion of the Real Estate to supply exclusive telecommunications services to each Lot. The easements, rights, and privileges reserved under this Section shall be for the exclusive benefit of Declarant, its successors and assigns and may not be impaired, limited, transferred, sold or granted to any person or entity by the Association or any of the Owners.

**Section 3.4. Drainage, Utility and Sewer Easements.**

(a) There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any of the following providers and their respective successors and assigns, upon, over, under, and across (i) all of the Common Areas, and (ii) those portions of all Lots designated on the Plats as "D & UE", "DE", "Var. DE" or any other combination thereof and as otherwise are reasonably necessary (such areas herein referred to collectively as the "Utility Easement Areas") for installing, replacing, repairing, and maintaining the following specified services, and no other:

Specific Service

Electricity  
Water  
Sewer  
Natural Gas  
Telephone  
Internet  
Cable

Declarant, the Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power to hereafter grant and accept nonexclusive easements within the Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Development or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including, without limitation, master television antenna and/or cable systems, security and similar systems, shall be made by Declarant in accordance with the rights reserved to Declarant under Section 3.3(b) hereof. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing

utility company or other supplier or service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) Declarant hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Development with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over and across all the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Development as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall also be created sanitary sewer easements in those areas designated on the Plats as Utility Easement Areas, which easements shall run in favor of Declarant and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for the sanitary sewer system.

**Section 3.5. Drainage Easements.** There is hereby reserved an easement for the benefit of Declarant, the Association, and their respective successors and assigns for access to and installation, repair, maintenance or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on or under his Lot (as shown on any Plats) in the condition originally provided by Declarant and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Declarant, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

**Section 3.6. Landscape Easements and Sign Easements.** Landscape Easements and Sign Easements, as may be designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of Declarant and the Association, for access to and installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Declarant or the Association, no improvements or permanent structures, including, without limitation, fences, patios, decks, driveways and walkways, shall be erected or maintained in or upon said Landscape Easements without the written consent of the Board and provided such are in accordance with all applicable zoning laws. The Association shall maintain any and all landscaping installed by Declarant or the Association within a Landscape Easement. The Association shall maintain any and all signage and landscaping installed by Declarant or the Association within a Sign Easement.

**Section 3.7. Trail Easements.** The Developer does reserve the right to dedicate particular "Blocks" to the public via a recognized public authority such as a City, County or their respective park boards. Additionally, Developer may grant access and/or use easements to the City of Fishers for bicycle and or pedestrian trail uses within any Commons. These will be noted as "Trail Easements" on the recorded Secondary Plats of the various sections as the Real Estate is developed. Trail Easements permit the City of Fishers the right, but not the obligation, to install, maintain and preserve constructed paths within the Commons.

**Section 3.8. Medians and Entry Features.** There may be landscaped medians and/or islands located within the Development and within the public right-of-way of the streets which are not otherwise labeled as Common Areas or as a Landscape Easement. These areas are created and reserved for installation and maintenance of landscaping and entry features, including, without limitation, permanent or temporary walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Association as if such were a Common Area.

**Section 3.9. Sales and Construction Offices.** Notwithstanding any provisions or restrictions herein to the contrary, during the Development Period, and for a reasonable time thereafter, there is hereby reserved and created for the use of Declarant, its successors and assigns, the Builder, and persons constructing improvements within the Development, an easement for access to the Real Estate for the maintenance of signs, sales offices, construction offices, business offices, and model houses, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots and the Common Areas.

**Section 3.10. Maintenance Easement.** There is hereby reserved and created for the use of Declarant, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush weeds, stumps or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

## **ARTICLE VI** **ORGANIZATION AND DUTIES OF ASSOCIATION**

**Section 4.1. Organization of Association.** The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Declarant and the By-Laws of the Association, both of which are incorporated herein by reference. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot. Notwithstanding

anything herein to the contrary, during the Development Period, Declarant shall appoint the Board and elect all officers of the Association, and all actions of the Association shall otherwise require the prior written approval of Declarant.

**Section 4.2. General Duties of the Association.** The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

(a) *Responsibilities of the Association.* The Association shall maintain and keep in good condition and repair the Common Areas and Lakes. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and other flora, structures, play equipment, pool, pool house, and improvements, including trails and private streets situated upon or within the Common Areas, street trees planted within rights of ways of public streets across the frontage of Common Areas, entry features for the Development, and such portions of any other real property included within the Common Areas as may be provided in this Declaration or by a contract or agreement for maintenance with any other person or entity by the Association. Notwithstanding the foregoing, trails and sidewalks installed by the City of Fishers pursuant to Section 3.7, shall be maintained by the City of Fishers. The Lakes (wet retention basin) and all accompanying infrastructure shall be maintained in accordance with the Operation and Maintenance Manuals for Bridger Pines on file with the City of Fishers and recorded in the Office of the Recorder of Hamilton County, Indiana. The Association shall also maintain and keep in good condition and repair the street lights and street signs installed by Declarant in the Development. The Association may contract for such services for the Development or any part thereof as it deems necessary or advisable. If any common areas are designated "Trail Easements" and dedicated to the City of Fishers as contemplated in Section 3.7 above, the City of Fishers may accept the responsibility of maintaining any constructed path but shall not be responsible for maintaining any landscaping with the Trail Easement nor shall the City be responsible for any mowing within the Trail Easement.

(b) *Maintenance by Owners.* Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his Lot and Dwelling Unit, and all structures, parking areas, lawns, landscaping, street trees, grounds and other improvements comprising the Lot and Dwelling Unit in a manner consistent with all applicable covenants.

(c) *Association's Remedies if Owner Fails to Maintain Lot.* In the event Declarant or the Association determines that: (i) any Owner has failed or refused to properly discharge his obligations with regard to the maintenance, cleaning, repair, or replacement of items for which is his responsibility hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner as the case may be, shall have ten (10) days within which to complete such maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement within said ten (10) day period and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with any provision hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall include administrative costs or other costs expended to cure each violation, and (together with the cost of attorneys' fees, if any, in the enforcement of the Owner's obligations and collection of the charge to the Owner) shall become a lien against the individual Owner's Lot (with respect to any matter relating to an individual Owner's responsibility) and such cost shall become a part of the costs of the Association (until such time as reimbursement is received from the individual Lot Owner). In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses, including, without limitation, attorneys' fees and filing fees.

(d) *Management Company.* The Association may hire a professional management company to administer the day-to-day operations of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of a minimum of ninety (90) days.

**Section 4.3. Insurance.** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under a standard "extended coverage" provision, in an amount equal to the full insurable value of such improvements and property. The Association shall notify

all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, Declarant, any property manager, their respective employees and agents, and the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and/or the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, or employee of the Association or anyone else who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the development, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association and all mortgagees who have requested such notice before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

**Section 4.4. Owners' Insurance Requirements.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on its Lot(s) and structures constructed thereon. The Board may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures located on any Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX hereof and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that a structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall promptly clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and thereafter the Owner shall continue to maintain the Lot in a neat, safe and attractive condition.

**Section 4.5. Condemnation or Destruction.** In the event that any of the Common Areas shall be condemned or taken by any public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be

held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-Rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the Members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

**Section 4.6. Transfer of Control of Association.** Declarant may, at its discretion, transfer control of the Association to the Members, and its right to elect the Board and officers of the Association shall terminate, as soon as is practical upon the transfer of a number of Lots equal to eighty percent (80%) of the Lots in the Development ("Transfer Period"); provided, however, that Declarant may transfer control of the Association at an earlier date at its sole discretion. Notwithstanding such transfer of control during the Development Period, all actions of the Association shall continue to require the prior written approval of Declarant. Declarant shall retain all of its rights and privileges provided for herein from the Transfer Period until Dwelling Units have been constructed on all Lots in the Development.

**Section 4.7. Interim Advisory Committee.** Declarant may, in its sole discretion, establish and maintain until such time as Declarant shall transfer control of the Association pursuant to Section 4.6 hereof, an Interim Advisory Committee (the "Advisory Committee"). If established: (a) the Advisory Committee shall serve as a liaison between the Owners (other than Declarant) and the Association, and advise the Association from time to time during such period; (b) The Advisory Committee shall consist of three (3) members, each of whom must be an Owner (other than Declarant or an officer, director or employee of Declarant); (c) The members of the Advisory Committee shall serve without compensation; (d) The Advisory Committee members shall be elected for a term of one (1) year by the Owners (other than Declarant) at a meeting thereof called for such purpose; and (e) The Owners (other than Declarant) may remove any member of the Advisory Committee with cause, and elect a successor at a meeting thereof called for such purpose.

**Section 4.8. Mortgagees' Rights.** Any mortgagees of any Lots shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

## **ARTICLE V** **ASSESSMENTS**

**Section 5.1. Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots

within the Development and promoting the health, safety, and welfare of the Development and the Owners, users, and occupants of the Real Estate and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, without limitation, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided, that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except Declarant and Builder) hereby covenants and agrees to pay to the Association:

- (a) A Pro-Rata Share of the annual Assessment fixed, established and determined from time to time, as hereinafter provided.
- (b) A One-Time Assessment, as hereinafter provided.
- (c) A Reserve Assessment, as hereinafter provided.
- (d) Pro-Rata Share of any special Assessments fixed, established and determined from time to time, as hereinafter provided.
- (e) A Damage Assessment, as hereinafter provided.

**Section 5.2. Deficit.** Declarant hereby covenants and agrees to pay to the Association during the Development Period, but not beyond the Transfer Period, an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Section 5.2 and the aggregate amount of the annual Assessment collected by the Association.

**Section 5.3. Basis for Assessment.**

- (a) Each Lot owned by a person, other than Declarant and Builder, shall be assessed at a uniform rate without regard to whether a Dwelling Unit has been constructed upon the Lot.
- (b) Declarant and Builder shall at no time be assessed or required to pay any Assessment of any type.

**Section 5.4. Liability for Assessment.** Each Assessment, together with any interest thereon and any cost of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by Declarant and Builder and shall constitute a lien upon each such Lot from and after the due date thereof in favor of the Association. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due.

**Section 5.5. Subordination of a Lien to Mortgage.** The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the

lien of such Assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of and from the personal liability hereby imposed. The personal obligation is expressly assumed by such successor.

**Section 5.6. Pro-Rata Share.** The pro-rata share of each Owner for purposes of this Article V shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Development (“Pro-Rata Share”).

**Section 5.7. Basis of Annual Assessments.** The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association upon request there for. Such budget shall serve as the basis for establishing the annual Assessments. The Annual Assessment shall be determined in accordance with procedures set forth in the By-Laws and in compliance with the HOA Act.

**Section 5.8. Annual Assessment.** The annual Assessment provided for herein shall be per fiscal year, as established by the Board, and shall commence for each Lot on the day of closing of the initial conveyance of each Lot by Declarant or Builder to an Owner other than Declarant or Builder. The amount of the annual Assessment shall be established by the Board. The amount of the annual Assessment shall not increase by more than 25% from one fiscal year to the next without the approval of a majority of the Members of the Association. Notwithstanding the foregoing, the year in which the pool is opened the Annual Assessment shall increase by an amount determined by Declarant which shall not exceed two hundred dollars (\$200.00) per Lot.

**Section 5.9. One Time Assessment.** Upon the closing of the initial conveyance of each Lot by Declarant or Builder to an Owner other than Declarant or Builder, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, the amount of three hundred fifty dollars (\$350.00), which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed to the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of or reimbursement to Declarant for advances made to pay expenses of the Association for its early period of operation of the Development, to enable the Association to have cash available to meet unforeseen expenditures, and/or to acquire additional equipment or services deemed necessary by the Board.

**Section 5.10. Reserve Assessment** Upon the closing of the conveyance of each Lot by an Owner, who is not also the Declarant or Builder, to a subsequent Owner, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount equal to three hundred fifty dollars (\$350.00), which payment shall be non-

refundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital shall be held and used by the Association for payment of or reimbursement to Declarant for advances made to pay expenses of the Association for its early period of operation of the Development, to enable the Association to have cash available to meet unforeseen expenditures, and/or to acquire additional equipment or services deemed necessary by the Board.

**Section 5.11. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5.12. - Notice and Quorum.** Written notice of any meeting called for the purpose of taking any action authorized under Section 5.8 and 5.11 above shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 5.13. Damage Assessment.** In addition to all other assessments authorized or accounted for herein, the Board may levy a Damage Assessment on an Owner, (i) for an uncured violation of this Declaration, or (ii) for damages, if any portion of the Common Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee. In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair and replacement is in the sole discretion of the Board. The Damage Assessment shall be a minimum of \$150 per occurrence or the actual total amount expended to cure each violation, whichever is greater.

**Section 5.14. Fiscal Year; Date of Commencement of Assessments; Due Date.** The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The liability of an Owner, other than Declarant or Builder, for Assessments under this Article V shall commence as of the date such Owner acquires his interest in a Lot. The first annual Assessment within the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the

Association may from time to time by resolution authorize the payment of such Assessments in installments.

**Section 5.15. Duties of the Association Regarding Assessments.**

(a) The Board shall keep proper books and records of the levy and collection of each annual, one-time, reserve and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(b) The Association shall promptly furnish to any Owner or any mortgagee of any Lot upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may assess an administrative fee for each such certificate, not to exceed the sum of \$125.00.

(c) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any Owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

**Section 5.16. Notice and Due Date.** Written notice of special Assessments and such other Assessment notices as the Board shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all Assessments shall be established by the Board.

**Section 5.17. Collection.** All Assessments, together with interest thereon, attorneys' fees, and other costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due.

**Section 5.18. Effect of Non-payment of Assessments; Remedies of the Association.**

(a) If any Assessment is not paid on or prior to the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in subparagraph (b) below; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all cost of collection thereof, including attorneys' fees, shall bear interest at the rate of twelve percent (12%) per annum until paid in full. In addition to such interest, the Association shall assess a late fee, in an amount as from time to time determined by the Board. The Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all cost of such action, including the Association's attorneys' fees, administrative costs and in the event a judgment is obtained, such judgment shall include appropriate interest, late fees, costs and attorneys' fees. Additionally, Owner shall reimburse the Association for all costs, including administrative costs and filing fees, incurred by the Association in filing assessment liens against the respective Owner's Lot.

(c) Notwithstanding any other provision contained herein, the Board shall have the right to suspend the voting rights, if any, and the services to be provided by the Association, together with the right to use the Common Areas, of any Member.

**Section 5.19. Adjustments.** In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association.

**ARTICLE VI**  
**ARCHITECTURAL STANDARDS AND REQUIREMENTS**

**Section 6.1. Purpose.** In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Real Estate, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article VI and in Article VII. Notwithstanding the foregoing, neither this Article nor Article VII shall apply to the activities of Declarant or Builder, nor to construction or improvements or modifications of or to the Common Areas by or on behalf of the Association. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee.

**Section 6.2. Architectural Control Committee.** The Board shall establish an Architectural Control Committee to consist of three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the Committee may include persons who are not Members of the Association. Members of the Committee may or may not be members of the Board. During the Development Period, Declarant shall have all of the powers and authority of the Committee.

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Association. Any Committee member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee shall elect a Chairman and Vice Chairman, and the Chairman, or in his absence, the Vice Chairman, shall be presiding officer at its meetings. The Committee shall meet upon call of the Chairman, and all meetings shall be held at such places as may be designated by the Chairman. A majority of the members of the Committee shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions or alterations made on or to existing Lots or structures and the open space, if any, appurtenant thereto. The Committee shall promulgate a Common Interest and Community Information Disclosure Document (the "CICID"), which may contain additional architectural standards and guidelines for the Development. In addition to such standards, the following shall apply: plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. Nothing contained herein shall be construed to

limit the right of an Owner to remodel the interior of his Dwelling Unit, or to paint the interior of his Dwelling Unit any color desired. The Committee shall endeavor to approve or to disapprove such plans or to request additional information within thirty (30) days after submission of completed plans, proposals, specifications or drawings. If Owner fails to submit all requested materials as described, the application shall be considered not approved after thirty (30) days. Owner may resubmit later for approval. Owner must complete all work approved by the Committee within 120 days of approval, unless otherwise approved by the Committee.

**Section 6.3. Architectural Approval.** To preserve the architectural and aesthetic appearance of the Development, no construction of improvements of any nature whatsoever, with the exception of vegetative landscaping, shall be commenced or maintained by an Owner, other than Declarant or Builder, with respect to the construction of, or affecting the exterior appearance of, any Dwelling Unit or with respect to any other portion of the Real Estate, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, or outbuildings, nor shall any exterior addition to or change or alternation therein be made (excluding repainting in the original color but otherwise including, without limitations, painting or staining of any exterior surface), unless and until a written application in the manner and form prescribed from time to time by the Committee and two (2) copies of the plans and specifications and related data (including, if required by Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, composition, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of such plans and specifications with such standards as may be published by the Committee from time to time, including the harmony of external design, location, and appearance in relation to surrounding structures and topography. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $\frac{1}{4}'' = 1'$  and all plot plans shall be drawn by a professional to a scale of  $1'' = 30'$ , or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to ensure that an improvement is not encroaching onto an adjacent Lot or any Common Area. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved."

(a) *Approval Process.* Approval of the Committee shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed installation or construction. The Committee understands the Development is a compilation of two parcels of real estate that are developed under two separate and distinct Planned Unit Development Ordinances (PUD) as approved by the City of Fishers. When reviewing architectural requests, the Committee will review the request considering the appropriate underlying PUD.

(b) *Power of Disapproval.* The Committee may refuse to grant permission to construct, place or make the requested improvement, when: (i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of the restrictions contained in this Declaration; (ii) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Development in general; (iii) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners; and/or (iv) The Committee is otherwise authorized to disapprove the requested improvement in this Declaration or in the CICID.

(c) *Powers Following Approval.* Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right, during reasonable hours, to enter upon and inspect any Lot or other improvements with respect to which construction is underway to determine whether or not the plans and specifications there for have been approved and are being complied with. In the event the Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

(d) *Exercise of Discretion.* Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Committee is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

**Section 6.4. Non Vegetative Landscaping Approval.** To preserve the aesthetic appearance of the Development, no material modification to the grading, excavation or filling of any Lot shall be implemented by an Owner, unless and until the plans there for have been submitted to and approved in writing by the Committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal shall also be applicable to approvals required under this Section.

**Section 6.5. Approval Not a Guarantee.** No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be

built in a good and workmanlike manner. Neither Declarant, the Association, nor the Committee shall be responsible or liable for: (a) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article VI; (b) loss or damages to any person arising out of the approval or disapproval of any plans or specifications; (c) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor (d) any defects in construction undertaken pursuant to such plans and specifications.

**Section 6.6. Building Restrictions.** All improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, and obtain such authorizations and permits as are required hereunder, and further, shall receive the prior written approval of the Committee.

## ARTICLE VII USE RESTRICTIONS

**Section 7.1. Standards and Restrictions.** The Association, acting through its Board, shall have the authority to make and to enforce standards and restrictions governing the use of the Real Estate, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association by a majority of members entitled to vote thereon; subject to the prior written consent of Declarant during the Development Period.

**Section 7.2. Use of Lots.** Except as permitted by Section 7.30 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried therein. The use of a portion of a Dwelling Unit as an office by Owner, or his tenant shall not be considered to be a violation of this covenant if Owner is in compliance with Section 7.30 hereof. No building or structure shall be located on any Lot outside of the setback lines designated on the Plats.

**Section 7.3. Diligence in Construction.** Subject to inclement weather and other force majeure events, every Dwelling Unit shall be completed within twelve (12) months after the commencement of its construction or placement. No improvement which has been partially or totally 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 or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is requested.

**Section 7.4. Association's Right to Perform Certain Maintenance.** In the event that the Owner of any Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of this Declaration after notice from the Association and a cure period, the Association shall have the right, but not the obligation, by and through its agents, employees, or contractors, to enter upon said Lot and maintain,

repair, mow, clean or perform such other acts as may be reasonably necessary to ensure that such Lot and improvements situated thereon, if any, conform to the requirements of this Declaration. The cost incurred by the Association shall be assessed and billed to the Owner. The Association shall have the right to collect any outstanding maintenance assessments in the manner described in Article V. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any work performed hereunder.

**Section 7.5. Unsightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent any unclean, unhealthy, unsightly or unkempt condition on his Lot. The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be permitted on any part of the Real Estate. Nothing which would result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation, shall be permitted in the Development. Any Owner, or his family, tenants, guests, invitees, servants or agents, who clump or place any trash or debris upon any portion of the Development, shall be liable to the Association for the actual costs of removal thereof and such sum shall be added to and become a part of that portion of any Assessment next becoming due to which such Owner and his Lot are subject.

**Section 7.6. Maintenance of Lots and Improvements.** Each Owner shall at all times maintain his Lot and any improvement situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

(a) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. In no event shall the grass on any Lot exceed the lesser of six (6) inches or the maximum height required by applicable statute or ordinance. Notwithstanding the foregoing, vacant Lots owned by Declarant or Builder shall be mowed by the respective owner at such times as necessary so that the maximum height of the grass on those Lots shall not exceed twelve inches (12”).

(b) Remove all debris or rubbish from the Lot.

(c) Maintain the landscaping on a regular basis and replace any dead tree or shrub that is part of required landscaping.

(d) Cut down and remove dead trees from the Lot.

(e) Within sixty (60) days following completion of a Dwelling Unit, the Owner shall landscape the Lot, weather permitting.

**Section 7.7. Awnings and Window Screens.** No foil or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes. No metal,

fiberglass or similar type awnings or patio covers shall be permitted unless approved by the Committee.

**Section 7.8. Signs.** No signs of any kind shall be erected within the Development, or permitted within any windows, without the written consent of the Board, except for such signs as may be required by legal proceedings and except for a single standard real estate “for sale” or “for rent” sign may exist on a Lot if such does not exceed six (6) square feet in area. Declarant and Builder may use such signs as they deem necessary or appropriate during the Development Period. No business signs, flags, banners or similar items except those placed and used by Declarant and Builder advertising or providing directional information shall be erected by any Owner. If permission is granted to any Owner to erect a sign, including name and address signs within the Development, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

**Section 7.9. Minimum Square Footage.** Dwelling Units within the Development shall have the following minimum square footage, exclusive of basements, open porches, garages or other unheated areas:

Ranch	1800 square feet
Two-Story	2000 square feet

**Section 7.10. Parking and Prohibited Vehicles.**

(a) *Parking.* Vehicles shall be parked in the garages or on the driveways serving the Lots. Each Dwelling Unit shall have an attached garage with space for not less than two (2) automobiles. No motor vehicle, whether or not utilized by an Owner, shall be parked on any street or public right-of-way, except on a temporary and non-recurring basis. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed. Vehicles may be parked on a street in the Development for no more than forty-eight (48) consecutive hours, and such an occurrence shall not occur more than one time during any thirty (30) day period. No Owners or other occupants of any portion of the Development shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(b) *Prohibited Vehicles.* Vehicles labeled or classified as commercial by the State of Indiana, vehicles registered with the Indiana Department of Transportation in the State of Indiana, tractors, busses, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be

permitted on the Real Estate except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Real Estate during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be subject to fines imposed by the Association and/or towed at the expense of the Owner. Notwithstanding the foregoing, recreational vehicles, campers and camper trailers may be parked in the driveway of a Lot for a period of time not to exceed forty-eight (48) hours in any calendar month for cleaning, loading and unloading but for no other purposes.

During "Boating Season", defined as running from May 1st to October 31st of each year, boats on driveways shall be allowed for up to one week per month to allow for maintenance and preparation between storage and recreational use. However, boats parked or stored in front yards, on common areas, or on streets, at any time of the year, constitute a violation, subject to fines & other enforcement measures, pursuant to this Declaration. Notwithstanding this qualification, beginning November 1st of each year, and through April 30th of each year, any boat sitting at any location other than "properly stored" inside a garage, shall be deemed in violation, and shall be subject to fines & other enforcement measures, pursuant to this Declaration.

**Section 7.11. Animals and Pets.** No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any Lot or Lots in the Development. No animals shall be kept or maintained on any Lot except for the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of a dog(s) or vicious animal(s) shall constitute a nuisance as determined by the Association, and may be ordered removed from the Real Estate by the Association. All pets shall remain under the control and supervision of an adult Owner, and shall not be permitted off of such Owner's respective Lot unless on a leash or other restraint. The owner of any pet shall be responsible to clean up or repair any waste or damage caused by such pet, and assure that such pet does not create any unreasonable disturbance. Animal quarters, kennels, and runs are specifically prohibited.

**Section 7.12. Quiet Enjoyment.** No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition. No noxious or illegal activity shall be carried on upon any portion of the Real Estate. No hunting of any nature shall be permitted within the Development. With the exception of a gas or wood burning fire pit and/or outdoor fireplace, which if permanently affixed to the ground must be approved by the Committee, there shall be no outside open burning of wood, leaves, trash, garbage or household refuse within the Real Estate. Declarant or the Association may at any time order the relocation of any wood piles which, in their sole opinion, are unsightly. No horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Development.

**Section 7.13. Antennas, Aerials and Satellite Dishes.** No exterior antennas, aerials, satellite dishes, or other apparatus larger than thirty-six (36) inches in diameter and intended for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of any Lot. Any such antennas, aerials, satellite dishes or other such apparatus that do not exceed thirty-six (36) inches in diameter shall be permitted on a Lot only if such will be aesthetically concealed by landscaping or otherwise and shall be installed so as not to be visible from front elevation street view or constitute a nuisance or offensive effect on other Lot Owners. Under no circumstances shall any such antennas, aerials, satellite dishes, or other such apparatus be installed without the approval of the Committee. No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Development, provided, however, that Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Real Estate, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

**Section 7.14. Garbage Cans and Tanks.** No storage tanks of any kind shall be allowed upon a Lot with the exception of a small propane tank used exclusively for residential gas grills. The propane tank shall be stored on the gas grill, within the Dwelling Unit on the Lot, or completely out of view of other Owners. No rubbish, trash or garbage containers shall be stored or maintained outdoors except for such temporary storage necessary for immediate pick up of the trash and, in that event, trash shall be stored in appropriate containers. At the option of the Association, trash and refuse disposal for each Dwelling Unit will be provided by the Association on a weekly basis. No dumpsters or other forms of general or common trash accumulation shall be permitted within the Development, except to facilitate or in connection with construction activities. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage and other waste shall be kept in sanitary containers at all times and all equipment for storage or disposal of such materials shall be kept clean. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse.

**Section 7.15. Pools.** No above ground swimming pools shall be erected, constructed or installed on any Lot; provided, that nothing herein shall preclude installation and use of hot tubs, spas or in-ground pools with prior approval from the Committee as provided herein.

**Section 7.16. Storage Sheds and Temporary Structures.** Except as may be utilized by Declarant or Builder during the Development Period, no tent, shack, trailer, storage shed, mini-barn or other similar detached or attached structure shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Committee or Declarant and children's overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours. Any and all forms of outbuildings, including, without limitation, sheds, storage sheds, and play houses, which are not directly connected to a

Dwelling Unit, are prohibited unless the same are necessary or incident to the Declarant's or Association's business or activities.

**Section 7.17. Drainage, Water Wells and Septic Systems.**

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot.

**Section 7.18. Traffic Regulation and Sight Distance at Intersections.** All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Development shall be subject to the provisions of the laws of the State of Indiana, and any other applicable governmental agency, concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Development. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of Indiana or by any other state in the United States may operate any type of motor vehicle within the Development. All vehicles of any kind and nature which are operated on the streets in the Development shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Development.

**Section 7.19. Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Development, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

**Section 7.20. Clotheslines.** No clothesline of any kind may be erected, maintained, or permitted on or at any Lot. All clotheslines, including permanent, collapsible and retractable clotheslines, are prohibited. Clothing, rugs or other items which are visible to others in the Development shall not be hung on any railing, fence, hedge, or wall.

**Section 7.21. Air Conditioning Units.** No window air conditioning units may be installed in or at any Lot.

**Section 7.22. Mailboxes.** Each Owner of a Lot shall maintain the mailbox and structure which was originally installed by a builder, and shall replace same as necessary with a mailbox and structure which is substantially the same in appearance as that which was originally provided to the Dwelling Unit. Nothing may be attached to the mailbox structure which will affect the uniformity thereof with other such structures in the

Development. The Committee shall have the discretion to require the replacement of any mailbox within the Development at the expense of the Owner of the Lot served thereby.

**Section 7.23. Solar Panels.** No unapproved solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot.

**Section 7.24. Homeowner Landscape Requirement.** A standard landscaping package shall be included with each residence sold. This landscape package shall provide for trees and shrubs around the residence. In addition to the street tree requirement, each residence shall be planted with at least two (2) deciduous trees and/or evergreens trees and a minimum of twelve (12) shrubs. Deciduous trees shall be at least two (2) inch caliper at planting as measured twelve (12) inches from the ground and evergreen trees shall be at least six (6) feet in height at planting

**Section 7.25. Seeding of the Yard.** Within thirty (30) days of initial occupancy of a Dwelling Unit, the Owner thereof shall cause (i) sod to be installed in the front yard between the Dwelling Unit and the street, and (ii) the balance of the yard of such Lot to be seeded with grass of a type generally used in the Development. The initial seeding may be delayed if the occupancy date occurs between November 1 and the following March 31, or if, as of the date of occupancy, the final grading of the yard has not been completed; provided, however, that in either of such events, the initial seeding of the yard shall be completed on or before (a) May 1 following the date of occupancy, or (b) thirty (30) days following completion of final grading, whichever is later. In lieu of the grass seed above, the Owner may sod all of the yard, at their sole cost and expense.

**Section 7.26. Exterior Flags and Sculpture.** Exterior sculptures, fountains, flags, and similar items must be approved by the Committee.

**Section 7.27. Driveways and Sidewalks.** All driveways will be constructed by a builder of the Dwelling Unit which it serves. Owners shall maintain and replace the driveway of their Lot thereafter so as to maintain the same appearance as provided at the time of original construction, ordinary wear and tear accepted. Each Dwelling Unit shall have a continuous side walk from driveway to the front porch or entry. Any modification or extension of driveways and sidewalks beyond those constructed by a builder are subject to Committee approval as provided in Article VI. In no event will concrete, blacktop, gravel or dirt side drives or parking areas be permitted on any Lot or Common Area except where Declarant, during the Development Period, may deem necessary.

**Section 7.28. Wetlands, Lakes, and Water Bodies.** All wetlands, Lakes, ponds and streams within the Real Estate, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation; ice skating, swimming, fishing, boating, playing or use of personal flotation devices, shall be permitted, except as provided in Section 7.35. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of Lakes, ponds or streams within the Real Estate.

**Section 7.29. Fences.** The Committee, prior to any installation, must approve any fencing, walls, mounds, and landscape screening. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Committee when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or a Builder. All fences must be professionally installed. The Owner shall keep all fences in good repair. No fences shall be located any closer to the front lot line than a point twenty (20) feet back from the front corners of the residence. Notwithstanding any other provision of this Declaration to the contrary, invisible electronic fences designed to restrict the movement of animals are expressly permitted. Notwithstanding any other provision of this Declaration to the contrary, on a corner lot, no solid/privacy fences will be allowed closer than fifteen (15) feet to the adjacent street right-of-way. No fences are allowed in easements and, if erected, are erected at the Owner's risk as such fences may be partially or completely torn down by others if said fences interfere with the installation, operation, and/or maintenance of the facilities for which the easement has been reserved. Any fence located along a common area or a perimeter boundary of the Development shall be of uniform size, materials, height, and design to be determined by "Committee".

Declarant, during the Development Period, and the Committee, after the Development Period, may reasonably amend or change any of the following restrictions:

(a) *Height Restriction.* The Committee shall determine the height of fences and walls; provided, however, that the maximum heights of walls and fences shall never exceed the following:

(i) Black wrought iron fencing shall not exceed six (6) feet in height;

(ii) Wood or vinyl/PVC fencing shall not exceed four (4) feet in height; provided, however, that this restriction may be waived by the Committee to enclosed an in-ground pool or for patio screening;

(iii) Patio screens adjoining the rear of a Dwelling Unit shall not exceed six (6) feet in height; and

(iv) No fence located on a Lot abutting a lake shall exceed forty-two (42) inches in height beyond a point sixteen (16) feet from the rear building line of the Residence unless used to enclose a pool (see Section 7.29(a)(v)). This restriction may be waived by the Committee to enclose an in-ground pool.

(v) Any fence enclosing an in-ground pool shall not exceed six (6) feet in height, must be installed immediately adjacent to the pool and not along the perimeter of the Lot, and be approved by the Committee.

(b) *Materials and Finish.*

(i) Except in certain areas, such as those adjacent to Common Areas, where wooden fences may be restricted by the Committee due to obstructed views by adjoining neighbors, fences are to be wooden, wrought iron or PVC. Wooden fences may be stained but shall not otherwise be painted and be shadow box or wooden picket in style with a minimum fifty (50) percent open. If a wood fence is stained, then it should be maintained, always, in a “like new” condition. Chain link fencing is prohibited. The Committee must approve all fencing materials, design, location and stain color.

(ii) Walls above-grade must be constructed of natural stone, masonry, wood shadow box fencing, or a combination thereof.

(iii) The Committee will approve landscape screening materials, design, and location on an individual basis.

(c) *Approval.* The exact location, material, color, and height of the fence and rendering or photograph thereof shall be submitted to the Committee for written approval at least thirty (30) days prior to proposed installation or construction. If however, approval has not been received by the applicant in writing within thirty (30) days after submission, then said request shall be deemed DENIED.

**Section 7.30. Business Uses.** No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit, so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Development; and (d) the business activity is consistent with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involve the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether; (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required there for. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This Section shall not apply to any commercial property within the Development nor shall it apply to any activity conducted by Declarant or Builder and sale of the Real Estate or their use of any Lots or Dwelling Units which they own within the Real Estate.

**Section 7.31. Basketball Goals, Tennis Courts, Racquetball Courts, and Paddleball Courts.** No basketball goals shall be permitted on any Lot without the prior review and approval of the Committee, except as provided for in this section. No basketball goals shall be permitted to be used along any curb or in any street of the Community. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities will not be permitted on any Lot without approval from the Committee. All submittals to the Committee shall include landscape plans. Permanent basketball goals may be installed on a Lot immediately adjacent to a driveway with Committee approval, provided that such goals have translucent fiberglass or glass backboards, and are professionally installed. Non-permanent basketball goals or courts may not be installed or constructed on a Lot without written Committee approval. No basketball goal or backboard shall be permitted to hang from or be affixed to any part of the Dwelling Unit. Lighted courts of any kind are prohibited. Temporary or portable basketball courts located on streets or in cul-de-sacs or in the right-of-way of any public street are a safety hazard and are strictly prohibited.

**Section 7.32. Playground Equipment.** No playground equipment shall be installed on any Lot without the prior review and approval of the Committee. All such equipment shall be located at least then (10) feet from any adjacent property lines and in the rear yard of a Lot (being the portion of such Lot behind the rear corners of the residence on such Lot). Notwithstanding the foregoing, in the event such Lot is located on a corner in the Development, the Committee may, in its discretion, approve a location for such equipment other than a rear yard, provided such is not closer than ten (10) feet from any public sidewalk. Children's play equipment, such as temporary sandboxes and temporary swimming pools having a depth of eighteen (18) inches or less, shall not require approval of the Committee, provided that such equipment is maintained by the Owner in good repair and such equipment is located in the rear yard. Equipment higher than eighteen (18) inches shall require approval of the design, location, color, material and use by the Committee and in no cases, if approved, is allowed to be up for more than forty-eight (48) hours. Aluminum or metal play equipment is prohibited. Free standing plastic or metal playhouses are prohibited, while forts or playhouses that are incorporated as an integral part of a residential play system are permitted but must be approved by the Committee. Above grade trampolines are allowed and can be used daily, provided they are only used in the rear yard and are stored out of sight of the adjoining Lots at night and when otherwise not in use. In-ground trampolines are subject to approval by the Committee which will require placement in compliance with the provisions of this Section 7.32, but are otherwise permitted.

**Section 7.33. On-Site Fuel Storage.** No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Real Estate, except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of gas grills, lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

**Section 7.34. Contiguous Lots.** Whenever two (2) or more contiguous Lots shall be owned by the same Owner, such Owner shall not be permitted to use two (2) or more of said Lots as a site for a single dwelling, subject to applicable zoning and other regulations

and restrictions. Each Lot shall be, and shall remain, improved with a single Dwelling Unit, and each Lot shall be subject to Assessments.

**Section 7.35. Control of Lakes and Common Areas.**

(a) *Control by the Association.* As part of its general duties, the Association shall regulate the Lakes and Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Lakes and Common Areas. No improvements, excavation, changes in grade or other work shall be done upon the Lakes or Common Areas by any Owner, nor shall the Lakes or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Committee.

(b) *Restrictions of Use of Lakes and Common Areas.* The following covenants and restrictions on the use and enjoyment of the Lots, the Lakes and the Common Areas shall be in addition to any other covenants or restrictions contained herein or in the Plats and all such covenants and restrictions are for the mutual benefit and protecting of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners of the Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(i) No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Lakes or the Common Areas.

(ii) No nuisance shall be permitted to exist on or at any Lot and no waste shall be committed on or at any Lot which shall or might damage or cause injury to the Lakes or the Common Areas.

(iii) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or other persons entitled to use the same and to use and enjoy the Lakes and the Common Areas, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Lakes and the Common Areas.

(iv) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Lakes or the Common Areas without the express permission from the Committee.

(v) The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage system serving the Development, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, fishing, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. No Owner or other person shall take or remove any water from or out of the Lakes or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Real Estate, which extend into, or to within twenty-five (25) feet of the shoreline of any Lake, except those installed by Declarant or the Association.

**Section 7.36. Laws and Ordinances.** Every Owner and occupant of any Lot or Dwelling Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Real Estate and any violation thereof may be considered a violation of this Declaration; provided, however, that the Board shall have no obligation to take action to enforce such laws, statutes, ordinances or rules.

**Section 7.37. Sales and Construction.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and Builder and their agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwelling Units or the developing of Lots, Dwelling Units and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model houses. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwelling Units as model residences and to use any Dwelling Unit as an office for the sale of Lots and Dwelling Units and for related activities.

**Section 7.38. Owners Bound.** All provisions of this Declaration, the By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot and Dwelling Unit. Every Owner shall cause all occupants, guests and invitees of his or her Lot or Dwelling Unit to comply

with this Declaration, the By-Laws, and rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, guests and invitees, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of this Declaration, the By-Laws and rules and regulations adopted pursuant thereto.

## **ARTICLE VIII** **RULEMAKING AND REMEDIES FOR ENFORCEMENT**

**Section 8.1. Rules and Regulations.** Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots and Dwelling Units, and the amendments thereto shall be furnished by the Association to all Members prior to their effective date upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulations be specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Association by a majority of the Members as set forth in the By-Laws, subject to Declarant's consent during the Development Period.

### **Section 8.2. Authority and Enforcement.**

(a) Upon a violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Association shall have the power, after ten (10) days written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation: (i) to cause the Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or occupant who is guilty of such violation; (ii) to suspend Owner's right to vote in the Association; and (iii) to suspend an Owner or occupant's right (and the right of his or her family, guests, and tenants) to use of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. Such sanctions are in addition to the Association's remedies under Section 4.2 hereof relating to maintenance. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guest or tenants. Any such suspension of rights may be for the duration of the infraction and/or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation or By-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by Declarant, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction,

rule, or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations, declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules or regulations. Failure by Declarant, the Association, or any Owner to enforce any covenant, restriction, rule or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either Declarant or the Association for failing to enforce or carry out any such covenants, restrictions, rules or regulations.

## **ARTICLE IX** **GENERAL PROVISIONS**

**Section 9.1. Term.** The covenants and restrictions of this Declaration shall run with and bind the Real Estate, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by more than seventy-five percent (75%) of the then Owners has been recorded within the year preceding the beginning of each successive period often (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

**Section 9.2. Amendment.** Prior to the conveyance of the first Lot to an Owner, Declarant may unilaterally amend this Declaration. After such conveyance, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is: (a) necessary to bring any provision thereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwelling Units; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Development; or (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, that any amendment permitted under subsections (a) through (f) above shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, during the Development Period, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the county in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

**Section 9.3. Indemnification.** The Association shall indemnify every officer, director, and committee member against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 9.4. Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana, without regard to its conflict of law provisions.

**Section 9.5. Right of Entry.** The Association and, during the Development Period, Declarant shall have the right, but not the obligation, to enter onto any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-laws, and the Association rules, which right may be exercised by the Association's board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Association to enter a Lot and Dwelling Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

**Section 9.6. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code Section 32-1-4.5-1 *et seq.* as amended from time to time.

**Section 9.7. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote representing at least two-thirds (2/3) of the Members entitled to vote thereon. However, this Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) actions brought for collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

**Section 9.8. Notice of Sale or Transfer of Title.** In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Board, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

**Section 9.9. Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 9.10. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the

application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

**Section 9.11. Right of Third Parties.** This Declaration shall be recorded for the benefit of Declarant, the Owners and their mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Real Estate. Except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provision hereof, and subject to the rights of Declarant and the mortgagees as herein provided, the Association shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

**Section 9.12 Headings.** The headings and captions contained in this Declaration have been inserted and used solely for ease of reference and shall not be considered in the interpretation or construction of this Declaration.

**Section 9.13 Controlling Document.** In the event there is a conflict of interest between the provisions of this Declaration and any Plats, the terms and provisions of this Declaration shall control.

**Section 9.14. Waiver.** The waiver by any party of a breach of or noncompliance with any provision of this Declaration shall not operate or be construed as a continuing waiver or a waiver of any other or subsequent breach or noncompliance hereunder.

[signature page follows]



**EXHIBIT "A"****DESCRIPTION OF REAL ESTATE:**

**PART OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 18 NORTH, RANGE 6 EAST IN HAMILTON COUNTY INDIANA BEING DESCRIBED AS FOLLOWS:**

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 18 NORTH, RANGE 6 EAST; THENCE NORTH ON THE WEST LINE OF SAID NORTHEAST QUARTER NORTH 00 DEGREES 23 MINUTES 06 WEST 1312.27 FEET TO A MAG NAIL ON THE SOUTH LINE OF A 0.18 ACRE TRACT OF REAL ESTATE DESCRIBE IN INSTRUMENT No. 200200075773; THENCE ON THE SOUTH LINE OF SAID 0.18 ACRE TRACT SOUTH 85 DEGREES 49 MINUTES 02 SECONDS EAST 258.32 FEET TO A 5/8" STEEL REBAR WITH A YELLOW CAP STAMPED "MILLER SURVEYING" AT THE SOUTHEAST CORNER OF SAID 0.18 ACRE TRACT; THENCE NORTH 05 DEGREES 35 MINUTES 48 SECONDS EAST 49.17 FEET TO A 5/8" STEEL REBAR WITH A YELLOW CAP STAMPED "MILLER SURVEYING" AT THE NORTHEAST CORNER OF SAID 0.18 ACRE TRACT; THENCE NORTH 85 DEGREES 23 MINUTES 11 SECONDS WEST 128.47 FEET TO A 5/8" STEEL REBAR WITH A YELLOW CAP STAMPED "MILLER SURVEYING" AT THE NORTHWEST CORNER OF SAID 0.18 ACRE TRACT; THENCE SOUTH 05 DEGREES 15 MINUTES 08 SECONDS WEST 40.12 FEET TO A 5/8" STEEL REBAR WITH A YELLOW CAP STAMPED "MILLER SURVEYING" AT THE NORTH LINE OF SAID 0.18 ACRE TRACT; THENCE ON SAID NORTH LINE NORTH 85 DEGREES 49 MINUTES 02 SECONDS WEST 131.11 FEET TO A MAG NAIL ON THE WEST LINE OF SAID NORTHEAST QUARTER; THENCE ON SAID WEST LINE NORTH 00 DEGREES 23 MINUTES 06 SECONDS WEST 156.45 FEET TO THE SOUTH LINE OF THE TRACT OF REAL ESTATE DESCRIBED IN INSTRUMENT No. 2013012111; THENCE ON SAID SOUTH LINE NORTH 89 DEGREES 36 MINUTES 54 SECONDS EAST 40.00 FEET TO THE WEST LINE OF SAID TRACT OF REAL ESTATE; THENCE ON SAID WEST LINE NORTH 00 DEGREES 23 MINUTES 06 SECONDS WEST 50.00 FEET TO THE NORTH LINE OF SAID TRACT OF REAL ESTATE; THENCE ON SAID NORTH LINE SOUTH 89 DEGREES 36 MINUTES 54 SECONDS WEST 40.00 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER; THENCE ON SAID WEST LINE NORTH 00 DEGREES 23 MINUTES 06 WEST 52.09 FEET TO THE SOUTH RIGHT OF WAY LINE OF STATE ROAD No. 238 PER INSTRUMENT No. 200600001627; THENCE ON SAID SOUTH RIGHT OF WAY LINE THE FOLLOWING 10 COURSES: 1) THENCE NORTH 89 DEGREES 30 MINUTES 45 SECONDS EAST 4.65 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP STAMPED MILLER SURVEYING; 2) THENCE NORTH 16 DEGREES 09 MINUTES 36 SECONDS EAST 343.45 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP STAMPED MILLER SURVEYING; 3) THENCE NORTH 63 DEGREES 51 MINUTES 31 SECONDS EAST 72.09 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP STAMPED MILLER SURVEYING; 4) THENCE SOUTH 39 DEGREES 31 MINUTES 55 SECONDS EAST 135.27 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP STAMPED MILLER SURVEYING; 5) THENCE SOUTH 56 DEGREES 49 MINUTES 40 SECONDS EAST 823.02 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP STAMPED MILLER SURVEYING; 6) THENCE SOUTH 51 DEGREES 18 MINUTES 09 SECONDS EAST 165.21 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP STAMPED MILLER SURVEYING; 7) THENCE SOUTH 67 DEGREES 22 MINUTES 43 SECONDS EAST 117.10 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP STAMPED MILLER SURVEYING; 8) THENCE SOUTH 56 DEGREES 04 MINUTES 07 SECONDS EAST 147.64 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP STAMPED MILLER SURVEYING; 9) THENCE SOUTH 51 DEGREES 46 MINUTES 46 SECONDS EAST 263.20 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP STAMPED MILLER SURVEYING; 10) THENCE SOUTH 56 DEGREES 24 MINUTES 03 SECONDS EAST 1382.37 FEET TO A 5/8" STEEL REBAR WITH YELLOW CAP

STAMPED MILLER SURVEYING ON THE EAST LINE OF SAID NORTHEAST QUARTER; THENCE ON SAID EAST LINE SOUTH 00 DEGREES 15 MINUTES 53 SECONDS EAST 206.72 FEET TO THE STONE AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE ON THE SOUTH LINE OF SAID NORTHEAST QUARTER SOUTH 89 DEGREES 33 MINUTES 35 SECONDS WEST 2646.87 FEET TO THE POINT OF BEGINNING, CONTAINING 66.66 ACRES, MORE OR LESS.

**EXHIBIT "B"**  
**LEGAL DESCRIPTION**

**Part of the Southwest quarter of Section 8, Township 17 North, Range 6 East in Fall Creek Township, Hamilton County, Indiana being described as follows:**

**Beginning at the brass plug at the Southwest corner of the Southwest quarter of Section 8, Township 17 North, Range 6 East; thence on the West line of said Southwest quarter North 00 degrees 33 minutes 31 seconds West 1328.55 feet to a mag nail on the North line of the South half of said Southwest quarter; thence on said North line North 89 degrees 25 minutes 01 seconds East 1641.98 feet to a 5/8" steel rebar with a yellow cap stamped "miller Surveying S0083" on the West line of the tract of real estate described in Instrument No. 200600016145; thence on said West line South 00 degrees 33 minutes 31 seconds East 1324.34 feet to a mag nail on the South line of said Southwest quarter, thence on said South line South 89 degrees 16 minutes 13 seconds West 1641.99 feet to the Point of Beginning, containing 50.00 acres, more or less.**

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81

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Jennifer Hayden  
HAMILTON County Recorder IN  
Recorded as Presented

# Operations and Maintenance Manual

## Bridger Pines – Section Two (PUD Residential Subdivision)

16300 East 96<sup>th</sup>  
Fishers, Indiana 46040

Job #: BDX.011

Original Date: 02-21-2017  
Revised Date: 06-05-2017

Prepared by: Eric A. Gleissner, P.E.  
Reviewed by: Brian Cross, P.E.



160 West Carmel Drive  
Suite 240  
Carmel, IN 46032  
Phone: 317-810-1677 Fax: 317-810-1679

## O & M Manual – Detention Pond

BRIDGER PINES – SECTION TWO  
16300 EAST 96<sup>TH</sup> STREET  
FISHERS, INDIANA 46040

### **BMP Owner Contact Information:**

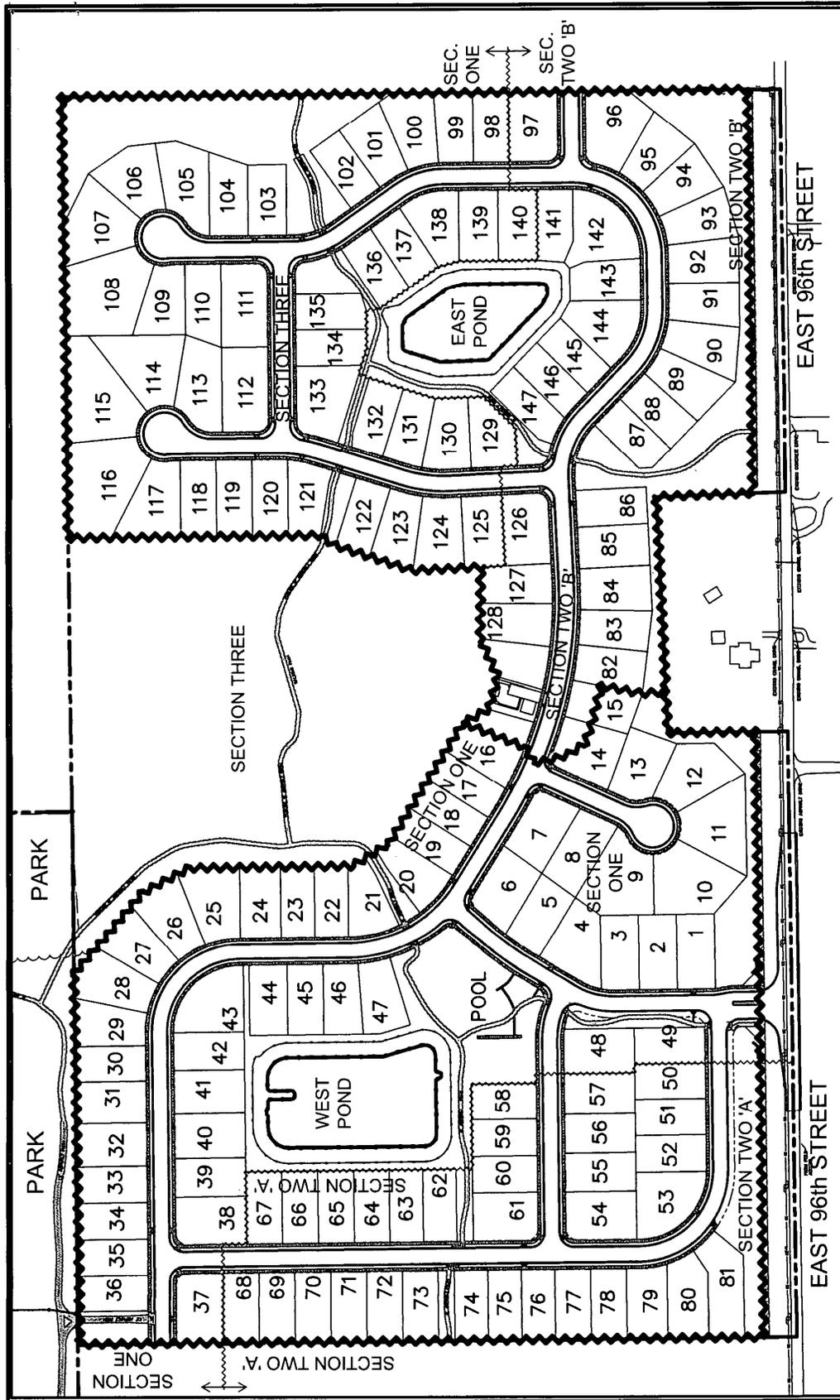
Boomerang Development  
ATTN: Corby Thompson  
(Phone): 317-849-7607

### **BMP Inspection and Maintenance:**

- The BMP owner agrees to pay all the fees required by the City of Fishers, including annual inspection fees, and/or any additional fees required.
- Routine inspections are the responsibility of the BMP owner. Maintenance is also the responsibility of the owner. The City of Fishers must be notified of any changes in BMP ownership, major repairs, or BMP failures in writing within 30 days.
- In the event that the City of Fishers finds a BMP in need of maintenance or repair, the City of Fishers will notify the BMP owner of the necessary maintenance or repairs and give the landowner a timeframe for completing the maintenance or repairs. If the maintenance or repairs are not completed within the designated time frame, the City shall perform the repairs or maintenance and bill the landowner for the actual cost of the work.
- The City of Fishers representatives have the right to enter the property to inspect the BMP.

### **Development Summary:**

This project is located on the north side of East 96<sup>th</sup> Street approximately ¼ mile east of the intersection with Cyntheanne Road in Hamilton County, Indiana. The overall site is approximately 67 acres in size. The western half of the subject site has been developed as Section One of Bridger Pines with master-planned drainage and utilities for 32 lots of Section Two. The overall proposed development will be a 147 lot single family residential subdivision. Section One consisted of 49 lots on the western half of the site which are nearly complete. A single detention pond has been constructed with Section One of the development which was master-planned for the entire western half of the subject site which included 32 lots of proposed Section Two. The remainder of Section Two will consist of 26 lots on the eastern half of parcel in order to extend infrastructure to the eastern boundary. A single detention pond will be constructed with Section Two of the development which will be master-planned for the entire eastern half of the subject site including the final 40 lots (Section Three). Please reference the exhibit on the following page for a delineated map of the overall subdivision.



**SITE MAP**

## O & M Manual – Detention Pond

### Inspections

#### A. Owner Responsibilities:

In accordance with these requirements, inspection will occur quarterly (January, April, July, & October). This will allow for inspection and required maintenance (if any) of the wet pond and wetland plantings after the heavier rain events, which typically occur in the spring and fall. Inspection will also occur after significant rain events greater than 1 inch over a 24-hour period.

#### B. City of Fishers Responsibilities:

The City of Fishers will be responsible for annual inspections. The BMP owner will be responsible for any inspection fees according to the "City of Fishers Stormwater Technical Standards Manual" (Page 1-12).

### Maintenance

#### A. Owner Responsibilities:

##### **Routine Maintenance:**

In accordance with these requirements, maintenance will occur quarterly (January, April, July, & October) or as needed. The BMP owner will also be required to perform any maintenance specified at the City's discretion. The following criteria shall be considered the minimum routine maintenance to be performed:

1. Wet pond embankments shall be maintained to keep grass cover dense and vigorous. At a minimum, maintenance should include periodic mowing, occasional spot reseeding, and weed control. Also remove all woody vegetation from the basin. Grass must never be mowed close to the ground. Grass heights in the 4-6" range are recommended on the embankments. Fertilization of grass shall be done when needed to maintain the health of the grass, with care not to over-apply the fertilizer.
2. Remove all trash and debris from storm sewer structures that route stormwater to/from the wet pond.
3. Remove all trash/debris and woody vegetation from the embankments of the wet pond.
4. Inspect rip-rap at storm sewers entering and exiting the wet pond and remove any visible excess sediment with a hand shovel. Add additional rip-rap if needed with care not to disturb the wetland plantings.
5. Occasional dredging of the wet pond may be required due to sedimentation.

**Remedial Maintenance:**

Remedial maintenance shall occur whenever deemed necessary either by the BMP owner or the City of Fishers. (i.e. mowing, cleaning, weeding, etc...)

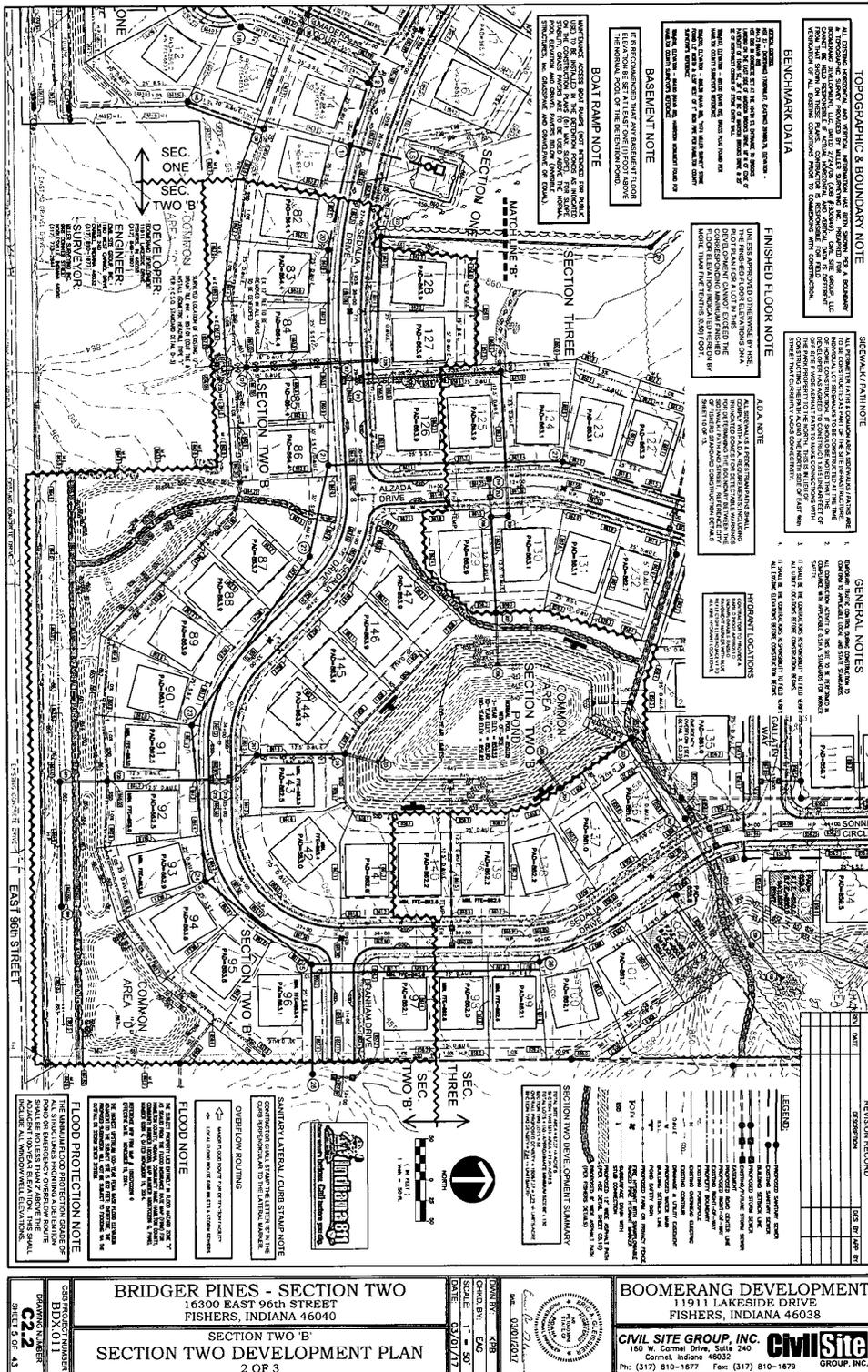
B. City of Fishers Responsibilities:

The City of Fishers will not be responsible for any required maintenance or associated costs for the BMP.

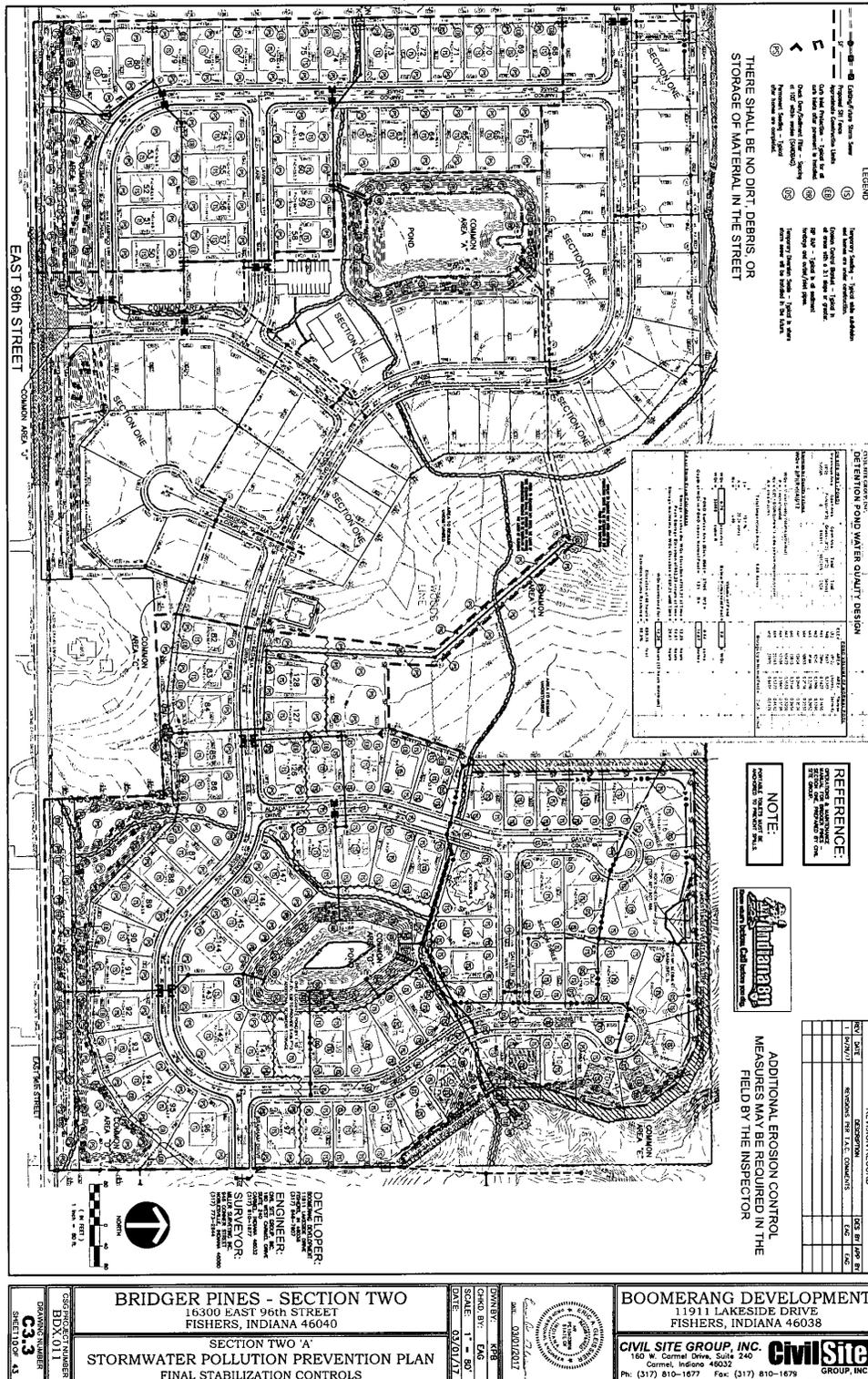
### **BMP Inspection and Maintenance Requirements**

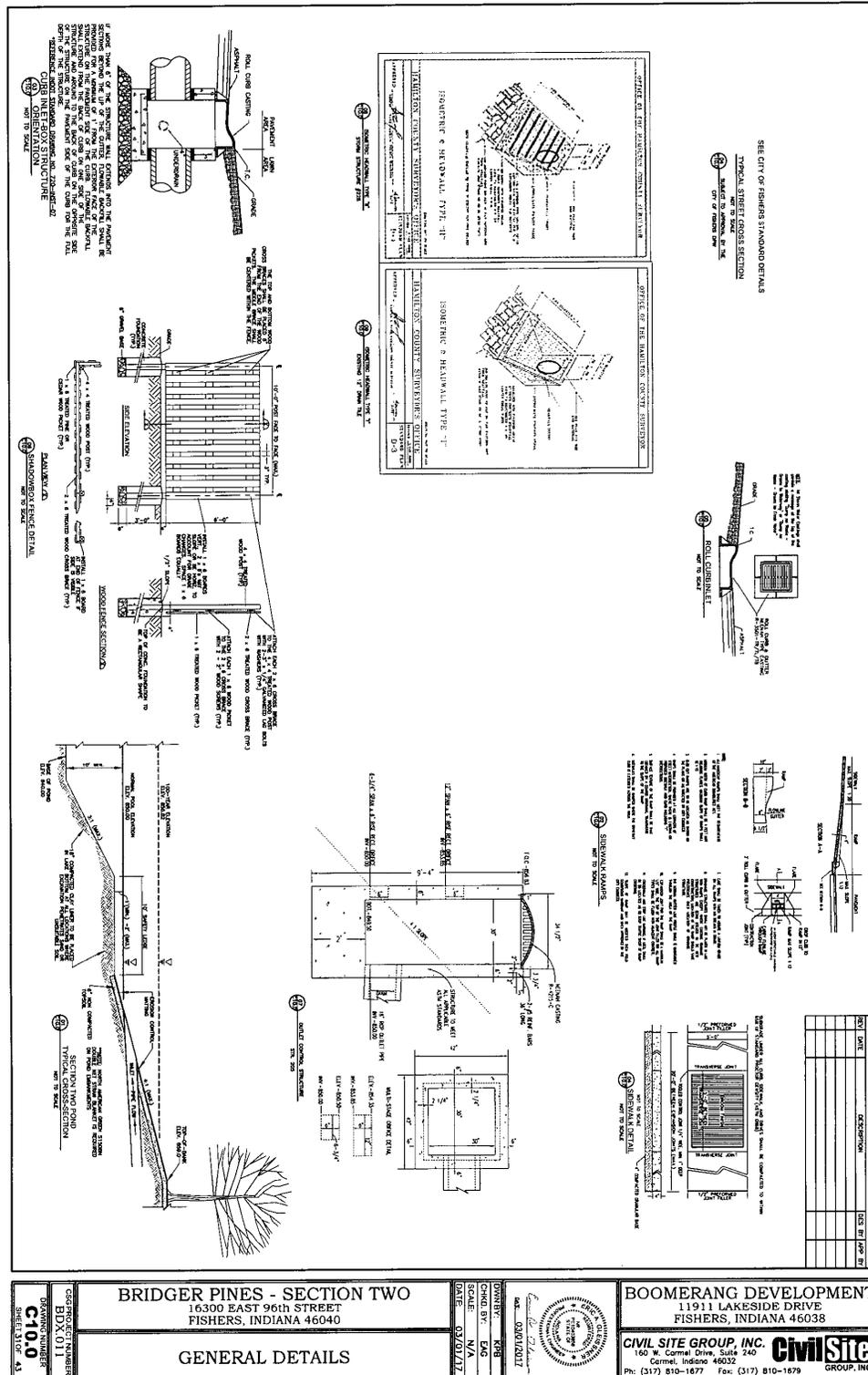
<b>BMP</b>	<b>INSPECTION REQUIREMENTS</b>	<b>MAINTENANCE REQUIREMENTS</b>	<b>FEEES</b>	<b>REFERENCE DOCUMENT(S)</b>
<b><u>Storm Sewers &amp; Inlets</u></b>	Semi-annually (June & December) by owner and after every rain event > 1 inch over a 24hr-period or as directed by City.	Remove sediment and trash as needed. Cleanout required a minimum of once per year.	N/A	N/A
<b><u>Wet Pond</u></b>	Quarterly (January, April, July & October) by owner and after every rain event > 1 inch over a 24hr-period or as directed by City.	Remove sediment and trash as needed. Mow & fertilize vegetation as needed. Add additional rip-rap if needed with care not to disturb the wetland plantings.	N/A	City of Fishers Stormwater Ordinance Technical Standards BMP PC-110 & Detention Pond Operation, Maintenance, and Management Inspection Checklist
<b>Responsibility</b>	City to perform annual inspections based upon BMP checklist.  Owner to perform semi-annual inspections of BMP for sedimentation levels.	The BMP owner is responsible for all maintenance and costs associated therewith.	Owner is responsible for annual inspection fees as required by the City of Fishers.	

**Site Drawings**









**Reference Documents**

**City of Fishers Detention Pond Operation,  
Maintenance, and Management Inspection Checklist**

**City of Fishers BMP PC-110 Wet Ponds**

Post-Construction BMP Inspection Checklist

Detention pond

**Detention Pond Operation, Maintenance, and Management Inspection Checklist**

**Project:** \_\_\_\_\_

**Location:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Time:** \_\_\_\_\_

**Inspector:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

Maintenance Item	Satisfactory/ Unsatisfactory	Comments
<b>1. Embankment and emergency spillway</b>		
Healthy vegetation with at least 85% ground cover.		
No signs of erosion on embankment.		
No animal burrows.		
Embankment is free of cracking, bulging, or sliding.		
Embankment is free of woody vegetation.		
Embankment is free of leaks or seeps		
Emergency spillway is clear of obstructions.		
Vertical/horizontal alignment of top of dam "As-Built"		
<b>2. Riser and principal spillway</b>		
Low flow outlet free of obstruction.		
Trash rack is not blocked or damaged.		
Riser is free of excessive sediment buildup		
Outlet pipe is in good condition.		
Control valve is operational		
Outfall channels are stable and free of scouring.		

## Post-Construction BMP Inspection Checklist

Detention pond

Maintenance Item	Satisfactory/ Unsatisfactory	Comments
<b>3. Permanent Pool (Wet Ponds)</b>		
No Evidence of undesirable vegetation		
No accumulation of floating or floatable debris		
No evidence of shoreline scour or erosion		
<b>4. Sediment Forebays</b>		
Sediment is being collected by forebay(s)		
Forebay is not in need of cleanout (less than 50% full)		
<b>5. Dry Pond Areas</b>		
Healthy vegetation with at least 85% ground cover.		
No undesirable woody vegetation		
Low flow channels clear of obstructions		
No evidence of sediment and/or trash accumulation		
<b>6. Condition of Outfall into Ponds</b>		
No riprap failures		
No evidence of slope erosion or scouring		
Storm drain pipes are in good condition, with no evidence of non-stormwater discharges		
Endwalls/Headwalls are in good condition		



## BMP PC-110 WET PONDS

### DESCRIPTION

**IMPORTANT NOTE:** The material presented in this fact sheet is intended to apply to a case where a wet pond is being utilized as a post-construction stormwater quality BMP only. When the pond is being designed as a multi-purpose facility acting both as a water quality BMP and a wet-bottom detention pond described in Chapter 300, several design features must be modified to accommodate both purposes and requirements. Minimum requirements for a wet-bottom detention pond stated in Chapter 300 must be met and supersede any conflicting requirements in this fact sheet when water quality BMP features are added to a wet-bottom detention pond.

The wet pond is a facility which removes sediment, Biochemical Oxygen Demand (BOD), organic nutrients, and trace metals from stormwater runoff. This is accomplished by slowing down stormwater using an in-line permanent pool or pond affecting settling of pollutants. The wet pond is similar to a dry pond, except that a permanent volume of water is incorporated into the design. The drainage area should be such that an adequate base flow is maintained in the pond. Biological processes occurring in the permanent pond pool aid in reducing the amount of soluble nutrients present in the water, such as nitrate and ortho-phosphorus (Schueler, 1987).

The basic elements of a wet pond are shown below. A stabilized inlet prevents erosion at the entrance to the pond. It may be necessary to install energy dissipaters. The permanent pool is usually maintained at a depth between 3 and 8 ft. The shape of the pool can help improve the performance of the pond. Maximizing the distance between the inlet and outlet provides more time for mixing of the new runoff with the pond water and settling of pollutants. Overflow from the pond is released through outlet structures to discharge flows at various elevations and peak flow rates. The outfall channel should be protected to prevent erosion from occurring downstream of the outlet.

Soil conditions are important for the proper functioning of the wet pond. The pond is a permanent pool, and thus must be constructed such that the water must not be allowed to infiltrate from the permanent portion of the pool. It is difficult to form a pool in soils with high infiltration rates soon after construction. Eventually, however, deposition of silt at the bottom of the pond will help slow infiltration. If extremely permeable soils exist at the site (hydrologic soil group A or B), a geotextile or clay liner may be necessary. Typical components of a Wet Pond are illustrated in Figures PC-110A.

### ADVANTAGES

1. Wet ponds have recreational and aesthetic benefits due to the incorporation of permanent pools in the design.
2. Wet ponds offer flood control benefits in addition to water quality benefits.
3. Wet ponds can be used to handle large drainage areas.
4. High pollutant removal efficiencies for sediment, total phosphorus, and total nitrogen are achievable when the volume of the permanent pool is at least three times the water quality volume (the volume to be treated).
5. A wet pond removes pollutants from water by both physical and biological processes, thus they are more effective at removing pollutants than extended/dry detention basins.
6. Creation of aquatic and terrestrial habitat.

### LIMITATIONS

1. Wet ponds may be feasible for stormwater runoff in residential or commercial areas with a combined drainage area greater than 20 acres but no less than 10 acres.
2. An adequate source of water must be available to ensure a permanent pool throughout the entire year.
3. If the wet pond is not properly maintained or the pond becomes stagnant; floating debris, scum, algal blooms, unpleasant odors, and insects may appear.
4. Sediment removal is necessary every 5 to 10 years.
5. Heavy storms may cause mixing and subsequent resuspension of solids.
6. Evaporation and lowering of the water level can cause concentrated levels of salt and algae to increase.
7. Cannot be placed on steep unstable slopes.
8. Embankment may be regulated as a dam by IDNR.

### DESIGN CRITERIA

1. *Hydrology.* If the device will also be used for stormwater quantity control, it will be necessary to reduce the peak flows after development to the levels described in Chapter 6.
2. *Volume.* Calculate the volume of stormwater to be mitigated by the wet pond using the water quality volume calculations in Section 701-05. The volume of the permanent pool should be 3 times this water quality volume.
3. *Pond Shape.* The pond should be long and narrow and generally shaped such that it discourages "short-circuiting." Short-circuiting occurs when storm flows bypass the pond and do not mix well with the pool. Short-circuiting can be discouraged by lengthening the pond or by installing baffles which slow water down and lengthen the distance between the inlet and outlet. A length to width ratio of no less than 2:1, with 4:1 being preferred, will help minimize short circuiting. Also, the pond should gradually expand from the inlet and gradually contract toward the outlet. Several examples of ponds shaped to reduce short-circuiting are shown below. [See Figure PC-110B]
4. *Depth.* The depth of the water quality pond is important in the design of the pond. If the pond is too shallow, sediment will be easily resuspended as a result of wind. Shallow ponds should not be used unless vegetation is adequate to stabilize the pond. If the pond is too deep, safety considerations emerge and stratification may occur, possibly causing anoxic conditions near the bottom of the pond. If the pond becomes anoxic, pollutants adsorbed to the bottom sediments may be released back to the water column. The average depth should be 3 to 6 ft, and depths of more than 8 ft should be avoided (Schueler, 1987). A littoral zone of 6 to 18 inches deep that accounts for 25 to 50 percent of the permanent pool surface for plant growth along the perimeter of the pool is recommended, the littoral shelf will also enhance safety.
5. *Vegetation.* Planting vegetation around the perimeter of the pond can have several advantages. Vegetation reduces erosion on both the side slopes and the shallow littoral areas. Vegetation located near the inlet to the pond can help trap sediments; algae growing on these plants can also filter soluble nutrients in the water column. Thicker, higher vegetation can also help hide any debris which may collect near the shoreline. Native turf-forming grasses or irrigated turf should be planted on sloped areas, and aquatic species should be planted on the littoral areas (Urbonas, et al., 1992). Vegetation can benefit wildlife and waterfowl by providing food and cover at the marsh fringe. A shallow, organic-rich marsh fringe provides an area which enables bacteria and other microorganisms to reduce organic matter and nutrients (Schueler, 1987).
6. *Side Slopes.* Gradual side slopes of a wet pond enhance safety and help prevent erosion and make it easier to establish dense vegetation. If vegetation cannot be established, the unvegetated banks will add to erosion and subsequently the sediment load. It is recommended that side slopes be no

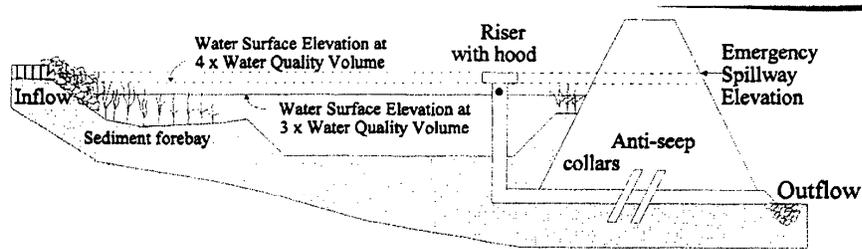
greater than 3:1. If slopes are greater than this, riprap should be used to stabilize the banks (Schueler, 1987).

7. *Hydraulic Devices.* An outlet device, typically a riser-pipe barrel system, should be designed to release runoff in excess of the water quality volume and to control storm peaks. The outlet device should still function properly when partial clogging occurs. Plans should provide details on all culverts, risers, and spillways. Calculations should depict inflow, storage, and outflow characteristics of the design. Some frequently used design details for extending detention times in wet ponds are shown and described below (Schueler, 1987). [See Figure PC-110C]
  - a. *Slotted Standpipe from Low-Flow Orifice, Inlet Control (dry pond, shallow wet pond, or shallow marsh).* An "L"-shaped PVC pipe is attached to the low-flow orifice. An orifice plate is located within the PVC pipe which internally controls the release rate. Slots or perforations are all spaced vertically above the orifice plate, so that sediment deposited around the standpipe will not impede the supply of water to the orifice plate.
  - b. *Negatively Sloped Pipe from River (wet ponds or shallow marshes)* This design was developed to allow for extended detention in wet ponds. The release rate is governed merely by the size of the pipe. The risk of clogging is largely eliminated by locating the opening of the pipe at least 1 ft below the water surface where it is away from floatable debris. Also, the negative slope of the pipe reduces the chance that debris will be pulled into the opening by suction. As a final defense against clogging, the orifice can be protected by wire mesh.
  - c. *Hooded Riser (wet ponds).* In this design, the extended detention orifice is located on the face of the riser near the top of the permanent pool elevation. The orifice is protected by wire mesh and a hood, which prevents floatable debris from clogging the orifice.
8. *Inlet and Outlet Protection.* The inlet pipe should discharge at or below the water surface of the permanent pool. If it is above the pool, an outlet energy dissipater will protect the banks and side slopes of the pond to avoid erosion. The stream channel just downstream of the pond outlet should be protected from scouring by placing riprap along the channel. Also, the slope of the outlet channel should be close to 0.5 percent. Riprap between 18 and 30 inches should be used. If the outlet pipe is less than 24 inches, 9 to 12 inches riprap may be used. Stilling basins may also be installed to reduce flow velocities at the outfall (Schueler, 1987).
9. *Forebay.* A forebay may be installed as part of the wet pond to capture sand and gravel sediment. The forebay should be easily accessible for dredging out the sediment when necessary and access to the forebay for equipment should be provided. The forebay volume should typically be 5 to 10 percent of the water quality volume. If there are multiple inlets to the detention facility, each forebay should be sized based on the portion of water quality volume attributed to the particular inlet.
10. *Emptying Time.* A 12 to 48 hour emptying time may be used for the water quality volume above the permanent pool (Urbonas, et al., 1992).
11. *Freeboard.* The pond embankment should have at least 2 ft of freeboard above the emergency spillway crest elevation (Schueler, 1987).

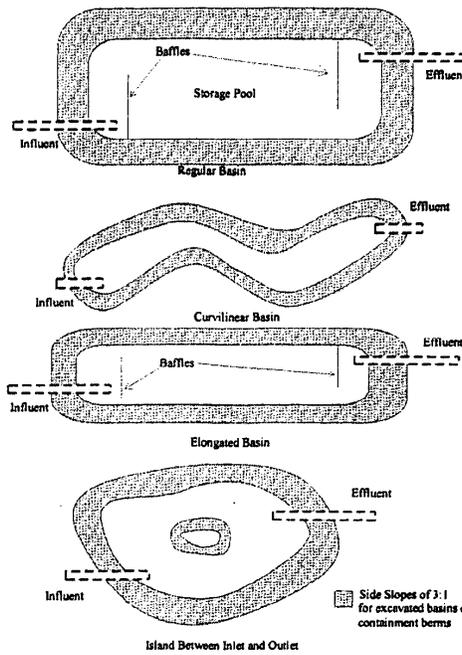
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5. B. R. Urbonas, J. T. Doerfer, J. Sorenson, J. T. Wulliman, and T. Fairley, 1992. *Urban Storm Drainage Criteria Manual, Volume 3 - Best Management Practices, Stormwater Quality, Urban Drainage and Flood Control District*, Denver, CO.
6. *Manual for the Standard Urban Stormwater Mitigation Plan (SUSMP)*, Los Angeles County Department of Public Works, September 2002.



**Figure PC-110A**  
**Typical Wet Pond Components (SUSMP, 2002)**



**Figure PC-110B**  
**Strategies to Increase residence time in detention facilities (SUSMP, 2002)**

**Reference Documents**

**City of Fishers Detention Pond Operation,  
Maintenance, and Management Inspection Checklist**

**City of Fishers BMP PC-110 Wet Ponds**

