

2011-025882

Amendment # 1 to Declaration of Covenants and Restrictions for  
Sagamore Subdivision dated November 21<sup>st</sup>, 2011.

STATE OF INDIANA  
PORTER COUNTY  
FILED FOR RECORD  
12/07/2011 09:58AM  
JON C. MILLER  
RECORDER

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This amendment #1 to the Declaration of Covenants and Restrictions for Sagamore Subdivision (Plat 50-F-5) dated 4/27/2007 and recorded as Document No. 2007-012807 in the Office of the Porter County Recorder is made this 21st day of November, 2011 by Sagamore Valparaiso LLC, an Indiana limited liability company (hereinafter referred as the "Developer").

The Developer is replacing Article I, Section 5 with the following covenants and restrictions:

**Section 5. "Developer"** shall mean Sagamore Valparaiso LLC, an Indiana limited liability company, its successors and assigns, if any such successor or assignee acquires the undeveloped portion of the Subdivision, from the Developer for the purpose of development.

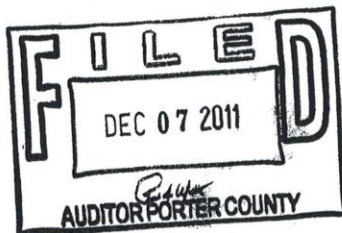
The Developer is replacing Article VII, Section 11 with the following covenants and restrictions:

**Section 11. Rubbish, Trash and Garbage.** No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot or on the Common Area, except in sanitary containers located in appropriate areas concealed from public view. All homeowners must use the same waste removal company in order for all trash to be picked up on the same day. The Developer and/or Association will negotiate an annual contract.

The Developer is replacing Article VII, Section 12 "Fences, Hedges and Walls." with the following covenants and restrictions:

**Section 12. Fences, Hedges and Walls.** No fence, hedge, wall or other dividing instrumentality shall be erected, constructed or maintained on any Lot in the front yard and no fences shall be permitted to extend closer to the street than the back of the dwelling structure, or elsewhere on any Lot and shall not exceed five (5) feet high in height, measured from the ground on which it stands, unless such fence is specified within the original approval of the dwelling by the Developer. All fence must be black in color and constructed of materials approved by the Committee. Chain link or solid wood fencing of any type is not permitted in the Subdivision. The spacing between fence balusters shall be a minimum of twice the width of the baluster itself. All fences must be approved by the Committee in writing before installation.

The Developer is replacing Article VII, Section 18 "Residential Setback Requirements." with the following covenants and restrictions:



COPY

**Section 18. Residential Setback Requirements.**

No dwelling, house or other above-grade structure designed to be used in connection with such house shall be constructed or placed on any Lot in the Subdivision except as provided herein.

- (i) Front Setbacks. All dwellings or houses and above-grade structures designed to be used in connection therewith shall be constructed or placed on Lots in the Subdivision so as to comply with the front yard setback lines as established in the plat or plats of the various portions of the Subdivision. Specifically for Phase One, minimum garage setback is 25 feet behind the property line and the minimum of any other part of the structure is 20 feet per recorded plat.
- (ii) Side and Rear Yards. The side rear yard setback lines shall not be less than the required distance required by the Porter County Zoning Ordinance.
- (iii) Plans submitted where the garage is not setback a minimum of 2 feet from the front of the structure are subject to disapproval.

The Developer is replacing Article VII, Section 22 "Swimming Pools" with the following covenants and restrictions:

**Section 22. Swimming Pools, Trampolines and Basketball Hoops.** No above ground swimming pool, whether permanent or temporary, shall be permitted on any Lot in the Subdivision with the following exception. Small plastic kiddie pools are allowed, but must be emptied and put out of sight at night. The appearance of the subdivision is of the utmost importance.

The design of any in-ground swimming pool and fencing shall be subject to the prior written consent of the Committee. All approved in-ground pools shall be continuously fenced, surrounding said pool with a non-climbable fence, with an outside locking gate, in height to comply with all building codes or protected with a State of Indiana approved pool cover. Swimming pools should be designed with adequate buffers to minimize impact on adjacent lots. When fencing around a swimming pool is required, the area fenced shall be no larger than necessary to adequately define the pool area.

Trampolines are allowed on a trial basis in approved locations by the Committee. They are to be maintained and mowed under and must be removed if the Committee determines they affect the appearance of the subdivision. Basketball hoops must be of high quality. Lights shining on the basketball area must not intrude on the neighbors. All portable baskets must be out of sight at night. The appearance of the subdivision is of the utmost importance.

The Developer is replacing Article VII, Section 26 "Time in Which to Build Structures" with the following covenants and restrictions:

**Section 26. Time in Which to Build Structures.** There is no time limit to commence building a structure on said lot.

Twenty Four months after purchase date developer may require that owner of said lot install public walks. Such requirement shall be submitted in writing and owner shall have 30 days (weather permitting) to install public walk. Areas must also be graded to top of walk and seeded from curb to 20' inside of public walk at owners expense. Elevation of public walk shall be approved by Developer or Committee.

The Developer is replacing Article VII, Section 30 "Utility Compliance" with the following covenants and restrictions:

**Section 30. Utility Compliance.** Each owner shall comply with all terms and conditions pertaining to water and sewer utility service of Indiana American Water Company and Shorewood Forest Utilities, Inc., respectively and their respective successors and assigns. Each Owner shall be solely responsible at their sole cost and expense for paying all fees and charges associated with obtaining utility service from the water and sewer companies providing service to their Lot. Notwithstanding anything to the contrary in this Declaration and without the prior written consent of Shorewood Forest Utilities, Inc., (i) no lots in the Subdivision, including any additional real estate that is subjected to this Declaration pursuant to Article II, Section 3, shall be platted for any use other than single family residential purposes and/or open space as required by the Porter County Plan commission, and (ii) no amendment to this Declaration shall be effective which permits uses on the property subjected to this Declaration other than single family residential purposes an/or open space uses consistent with the Porter County Open Space Ordinance. Nothing herein contained shall in any way obligate Shorewood Forest Utilities, Inc. to provide sewer utility service to any real estate other than the real estate specifically described in Shorewood Forest Utilities, Inc.'s Verified Petition to Expand its Certificate of Territorial Authority under Cause No. 43145 filed before the Indiana Utility Regulatory Commission.

The Developer is adding the following Sections to Article VII:

**Section 31. Air Conditioners.** No window air conditioners are allowed.

**Section 32. Unlawful Activity.** All owners must comply in all respects with all governmental rules and regulations and County Ordinances. No Owner shall conduct or permit any person to conduct any unlawful activity on the Lot owned by such Owner.

The Developer is replacing Article VIII, Section 4 "Lot Maintenance" with the following covenants and restrictions:

**Section 4. Lot Maintenance**

The Owner and their builder shall be required to keep the entire Lot clean at all times. Each Lot shall have a dumpster for refuse during construction. All debris and refuse shall be deposited into the dumpster. Debris is not to be allowed to accumulate on the Lot. The dumpster shall not be allowed to fill to the point of overflowing. If the Owner or Builder fails to clean the site at the end of the day, the Developer may enter the site to effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot.

The burning of construction debris or of removed landscape material is prohibited.

Silt fences and/or silt filter socks shall be installed and maintained on down slope grades at the request of the developer. Above mentioned erosion control methods shall be in place on each Lot prior to and throughout any construction on a Lot. Care should be taken to minimize excessive drainage onto the roadway and adjacent lots, including sump pump discharge and natural drainage. If the Owner or builder fails to clean the street at the end of the day, the Developer may effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot.

The Developer is replacing the address section only of the SUBMITTAL REQUIREMENTS FOR NEW CONSTRUCTION, Contractors and Home Owners shall direct submittals for review to: with the following covenants and restrictions:

Contractors and Home Owners shall direct submittals for review to:

Sagamore Valparaiso, LLC  
179 Buckskin Lane  
Valparaiso, IN 46383  
219-309-0254

The rest of the SUBMITTAL REQUIREMENTS FOR NEW CONSTRUCTION, attachment still apply.



In Witness Whereof, the Developer has caused this Amendment to be executed on the date first written above.

Sagamore Valparaiso LLC

By: Bryan Bucher - Manager  
Bryan Bucher, Manager

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF PORTER    )

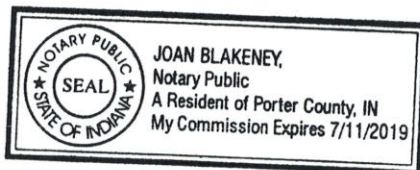
Before me, the undersigned, a Notary Public, do hereby certify that Bryan Bucher, Manager of Sagamore Valparaiso, LLC, an Indiana limited liability company, personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he executed the foregoing instrument as his free and voluntary act as manager of said company.

Given under my hand and notarial seal this 7 day of Dec, 20011.

Joan Blakeney  
Notary Public

My Commission Expires:

Printed: Joan Blakeney



"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law."

Bryan Bucher MGR

Recorded as Document No. 2007-012807  
04/27/2007 Porter County Recorder  
Plat File 50-F-5

# DECLARATION OF COVENANTS AND RESTRICTIONS

## FOR

### SAGAMORE SUBDIVISION

*THIS DECLARATION*, made this 27th day of April, 2007 by 100 North Properties, LLC,  
an Indiana limited liability company (“Developer”).

#### ***WITNESSETH***

**Whereas**, the Developer is the owner of the real estate legally described herein and commonly known as Sagamore (“Subdivision”); and

**Whereas**, the Developer desires Sagamore to develop as a residential community focusing on quality land planning and enhancement of environmental features of the property through the implementation of conservation design; and

**Whereas**, the Developer has created three different neighborhoods as part of the Subdivision, which neighborhoods are The Meadows, The Ravines, and The Woods; and

**Whereas**, the Developer desires to promote the orderly development of the Subdivision and to provide for the maintenance of common area by subjecting the real estate owned by the Developer to the covenants, restrictions, conditions, reservations, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the subdivision and real estate comprising the development; and

**Whereas**, the Developer deems it desirable to subject the real estate to the said covenants, restrictions, conditions, reservations, easements, charges and liens for the mutual benefit of the real estate and under a general plan and scheme of development and improvement of the Subdivision.

*NOW THEREFORE*, the Developer hereby declares that all of the platted lots and real estate located within the Subdivision as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, restrictions, conditions, reservations, easements, charges and liens, all of which are declared and agreed to be in furtherance of a plan for the improvement of the real estate and sale of the said lots in the Subdivision, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of the said lots situated therein.

## **Article I**

### **DEFINITIONS**

The following terms or words, when used in this Declaration, shall have the meanings attributed below:

**Section 1. "Association"** shall mean and refer to Sagamore Property Owners Association, Inc., an Indiana not for profit corporation.

**Section 2. "Board"** shall mean the Board of Directors of the Association.

**Section 3. "Committee"** shall mean the Architectural Control Committee for the Subdivision which is created and shall have the authority and duties as provided for herein.

**Section 4. "Common Area"** shall mean all real estate, whether in one or more separate parcels, which the Association or the Developer owns for the non-exclusive common use and enjoyment of the Owners of Lots shown on the recorded Subdivision plat or plats.

**Section 5. "Developer"** shall mean 100 North Properties, LLC, an Indiana limited liability company, its successors and assigns, if any such successor or assignee acquires the undeveloped portion of the Subdivision, from the Developer for the purpose of development.

**Section 6. "Lot"** shall mean and refer to any lot or other tract in the Subdivision, together with any and all improvements thereon, as shown on the plat or plats thereof and designated thereon with a number for identification on which a residential structure could be constructed, whether or not one has been constructed.

**Section 7. "Maintenance"** shall mean the exercise of reasonable care, including buildings, roads, easements of ingress and egress, drainage easements, water detention or retention easements,

utility easements, parks, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition.

**Section 8. "Owner"** shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Subdivision, including the Developer, and including contract sellers, but not including contract purchasers.

**Section 9. "Member"** shall mean every person or entity holding membership in the Association.

**Section 10. "Subdivision"** shall mean and refer to all such existing properties, and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations, under the provisions of Article II hereof, and shall initially include the real property described in Article II, Section 1. It is the intent of the Developer to plat additional property as part of the Subdivision at which time such property shall become subject to this Declaration.

## **Article II**

### **PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERE TO, DELETIONS THEREFROM**

**Section 1. Legal Description.** The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Porter County, Indiana, and comprises all of the Lots, tracts and easements shown and/or platted within or upon the property legally described on Exhibit "A" attached hereto and incorporated herein by reference.

**Section 2. Platting and Subdivision Restrictions.** The Developer shall be entitled at any time and from time to time, to plat, replat or vacate existing plattage of all or any part of the real estate subjected to this Declaration, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion, or portions of, or additions to the Subdivision.

**Section 3. Additional Real Estate.** Developer may, but shall have no obligation to, add at any time or from time to time to the scheme of this Declaration additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration shall be contiguous to property then subject to the scheme of this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted as single family residential lots, (c) said plat of added real estate shall dedicate, or commit to dedicate, the Common Area of said plat of real estate, and (d) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association for their *pro rata* share of Association expenses. The addition at any time or from time



to time of all or any portion or portions of the real estate to the scheme of this Declaration shall be made and evidenced by filing in the Office of the Recorder of Porter County, Indiana, a supplementary Declaration with respect to that portion of real estate to be added. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any Owner and/or Mortgagee of land in the Subdivision. The real estate described on Exhibit "B" was included as part of the primary plat approved by the Porter County Plan Commission and is anticipated to be additional real estate added to the scheme of this Declaration.

**Section 4. Retractable Real Estate.** At the sole election of the Developer, all of the real estate specifically described in Section 1 of this Article and subject to this Declaration may be withdrawn from submission hereunder at one time, or portions thereof at different times; provided, however that no real estate may be withdrawn which has been developed. All Owners, mortgagees and the Association are hereby deemed to consent to the vacation, and waive all right to remonstrate thereto, of any portion of the plat of the Subdivision not developed in which the Developer has withdrawn from this Declaration.

**Section 5. Easements.** There are platted on the plat of the Subdivision certain easements which shall be and are hereby reserved for the installation, construction, maintenance, repair or replacement of any and all public utilities and drainage and their poles, ducts, wires, pipelines, lines, conduit, sewers, manholes or other related utility or drainage facility. No permanent structure shall be erected or allowed to be maintained on any easement. No Owner shall grant an easement, license or permit others to use any Lot, or portion thereof, in the Subdivision for access to any property or real estate not located within the Subdivision.

### **Article III**

#### **PROPERTY RIGHTS**

**Section 1. Title to Common Area.** Developer may retain the legal title to the Common Area so long as it owns at least one Lot in the Subdivision. On or before conveyance by Developer of the last Lot which Developer owns in the Subdivision, Developer shall convey the Common Area to the Association subject to taxes for the year of conveyance and to restrictions, conditions, limitations, reservations and easements of record; subject, however, to a reservation hereby perpetually reserved to the Developer, its successors and assigns, of the non-exclusive right to use and enjoy the common utility easements, easements of drainage, and ingress and egress easements for the benefit of real estate owned and to be owned by the Developer located on real estate which is contiguous to the Subdivision.

**Section 2. Owners' Easements of Enjoyment.** Every Owner of a Lot shall have a non-exclusive common right and easement of enjoyment and ingress and egress in and to the Common Area which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

- A. The right of the Association to take such steps as reasonably necessary to protect the above-described properties against foreclosures;
- B. All provisions of this Declaration, any plat of all or any part or parts of the property, and the Articles and By-Laws of the Association;
- C. Rules and Regulations governing the use and enjoyment of the Common Area adopted by the Association;
- D. Restrictions contained on any and all plats of all or any part of the Common Area or filed separately with respect to all or any part or parts of the property; and
- E. Easements for installation and maintenance of utilities and drainage facilities as shown on the recorded plat of the Subdivision. Within these easements, no structure, planting other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, impede, or change the direction of flow of drainage facilities in the easements. The easement areas shown on each Lot and all improvements thereon shall be continuously maintained by the Owner of such Lot, except for improvements for maintenance of which a public authority or utility company is responsible. No dwelling unit or other structure of any kind shall be built or erected or maintained on any such easement, reservation or right-of-way, and such easements, reservations and rights-of-way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Developer, its successors and assigns of the right to use and enjoy the same non-exclusive easements, for the benefit of additional real estate owned or later acquired by Developer located or real estate contiguous to the Subdivision.

**Section 3. Right of Entry.** The Developer and the Association, through their duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot or tract of real estate at any reasonable hour on any day to perform such maintenance as may be authorized herein.

**Section 4. No Partition.** There shall be no judicial partition of the Common Area, nor shall Developer, or any Owner or any other person acquiring any interest in the Subdivision, or any part thereof, seek judicial partition thereof of the Common Area. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co-tenancy.

## **Article IV**

### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Purpose of the Association.** The primary purpose of the Association shall be to insure high standards of maintenance and operation of all property and real estate in the

Subdivision, including that property reserved by the Developer for the detention and management of storm water easements, to insure the provision of services and facilities of common benefit, and in general to maintain and promote the desired character of the Subdivision. In addition, the Association shall consider its primary purpose to manage and support financially all real estate owned by the Association, if any, as well as the storm water management systems and easements located within the Subdivision.

**Section 2. Creation of the Association.** As soon as is practicable following the recordation of this Declaration, Developer shall cause the Association to be incorporated as an Indiana Not-for-Profit Corporation. Prior to the appointment of the Board of Directors by the Developer, responsibility for the control of the Association shall remain the exclusive responsibility and obligation of the Developer or its designated agents and employees.

**Section 3. Membership.** Every Owner, including the Developer, at all times so long as the Owner owns all or any part of the property subject to this Declaration, shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment.

**Section 4. Classes and Voting.** The Association shall have such classes of membership, which classes shall have such voting rights, as are set forth in the Articles of Incorporation.

**Section 5. Board of Directors.** The Association shall have an initial Board of three (3) Directors who shall constitute the Board of Directors.

- (a) The Directors and Officers of the Association shall not be liable to any Owner for any mistake of judgment or any acts or omissions made in good faith by such Director or Officer. The Owners shall indemnify and hold harmless each of the Directors or Officers against all liability arising out of contracts made by such Directors or Officers on behalf of the Owners and Members of the Association, unless any such contracts shall have been made in bad faith or contrary to the provisions of this Declaration.
- (b) The Board shall have the authority to and shall obtain comprehensive public liability insurance, as it shall deem desirable, and other liability insurance or insurances as it may deem appropriate in the circumstances. The premiums for such insurance shall be an expense to be paid by the Association.

**Section 6. Powers and Duties of the Association.** The Board of Directors of the Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law and as otherwise set forth in this Declaration:

- (a) To own, maintain and otherwise manage the storm water management systems and easements located within the Subdivision and vacant and unimproved property, if any, and to do any and all other things necessary or desirable in the sole judgment of the Officers or Directors of the Association..
- (b) To care for and maintain the landscaping, plantings and signs located within the Subdivision in a good and neat appearance.
- (c) To make such improvements to the facilities under its control within the Subdivision, and to provide such other facilities and services as may be authorized from time to time by the affirmative vote of a simple majority of the Members of the Association acting in accordance with its constitution and Bylaws provided, however, that any such actions so authorized shall always be for the express purpose of keeping the Subdivision a highly desirable and exclusive residential community.
- (d) Until such time as the Board of Directors is duly elected, all the powers and duties enumerated above shall be exercised exclusively by the Board of Directors, as appointed by the Developer. The Developer, at Developer's discretion may appoint Owners to serve on the Board of Directors at such time as it deems appropriate. The first elected Board shall be elected not later than one year after 100% of those Lots which have been subjected to this Declaration have been sold and title has been conveyed from the Developer to an Owner. All Owners of record who have been subjected to this Declaration shall be eligible to vote for said Board. All Directors of the first elected and all subsequent Boards of Directors of the Association, shall be nominated and elected pursuant to the Bylaws of the Association. The first elected Board of Directors shall consist of five (5) directors.

## **Article V**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of Lien and Personal Obligation of Assessment.** Each Owner of any Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments or charges, and any special assessments for capital improvements or major repair; such assessments to be fixed, established and collected

from time to time as hereinafter provided. All such assessments, together with interest thereon from the due date at the rate of ten (10%) per cent per annum, and costs of collection thereof (including reasonable attorneys' fees), shall be a charge on the real estate and shall be a continuing lien upon the Lot or Lots against which each such assessment is made, and shall also be the personal obligation of the Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment, or otherwise.

**Section 2. Purpose of Assessment.** The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Subdivision, including but not limited to, the following:

- A. Improvement, maintenance and repair of the Common Area;
- B. Water, sewer, garbage, electrical lighting, telephone, gas and other necessary utility services for the Common Area;
- C. Maintenance and repair of all storm drains, drainage easements, storm water detention or retention easements, sanitary sewers, parks, private roads, and easements shown on the plat or plats of the Subdivision recorded in the Office of the Recorder of Porter County, Indiana.
- D. Fire insurance covering the full insurable replacement value of all improvements located on the Common Area with extended coverage;
- E. Liability insurance insuring the Association and the Board, as well as each Director in their individual capacity, against any and all liability to the public, to any Owner, or to the licensees, invitees, or tenants of any Owner arising out of their occupation and/or use of the Common Area. The policy limits shall be set by the Association and shall be reviewed at least annually and increased or decreased in the discretion of the Association;
- F. Worker's compensation insurance to the extent necessary to comply with the Indiana law, and any other insurance deemed necessary by the Board;
- G. Acquisition of furnishings and equipment for the Common Area as may be determined by the Association, including without limitation, all equipment, furnishings, and personnel necessary or proper for use of the Common Area.
- H. Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration, or by law, or which shall be necessary or proper in the opinion of the Board for the operation of the Common Area, for the benefit of the Owners, or for the enforcement of these restrictions.

**Section 3. Annual Assessments.** The Board shall fix the assessments, which shall be in amounts determined in accordance with the projected financial needs of the Association as to which the decision of the Board shall be dispositive.

**Section 4. Uniform Rate of Assessment.** All regular and special assessments shall be at a uniform rate for each Lot in the Subdivision without adjustment for size of Lots, number of residents or use or non-use of the Common Area.

**Section 5. Special Assessments for Capital Improvements and Major Repairs.** In addition to the annual assessment, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, re-construction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-third ( $\frac{2}{3}$ ) of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

**Section 6. Date of Commencement of Annual Assessments: Due Date.** The assessments for which provision is herein made shall commence on the first day of the month, or as fixed by the Board to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due date of any assessment shall be fixed in the resolution authorizing such assessment and any such assessment shall be payable in advance in monthly installments unless such other periods are determined by the Board.

**Section 7. Duties of the Board of Directors.** The Board shall fix the date of commencement, and the amount of the assessment against each Lot for each assessment, at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owners. Written notice of the assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof. The Association shall, on demand, and for a reasonable charge, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 8. Effect of Non-Payment of Assessment: The Lien, Personal Obligation, Remedies of Association.** If any assessment is not paid on the date when due, such assessment shall then become delinquent and shall, together with interest thereon, and the cost of collection thereof, become a continuing lien on the Lot or Lots against which such assessment is made that shall bind such Lot in the hands of the Owner, and the Owner's heirs, devisees, personal representatives and assigns, and shall also be continuing personal obligation of the Owner against whom the assessment is levied.



If the assessment is not paid within thirty (30) days after the delinquency date the assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum, and the Association may, at any time thereafter, bring an action to foreclose the lien against the Lot or Lots in like manner as a foreclosure of a mortgage on real property and/or a suit on the personal obligation against the Owner, and there shall be added to the amount of such assessment the cost of any such action (including a reasonable attorneys' fee), and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action.

**Section 9. Subordination to Lien of Mortgages.** The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a bank, life insurance company, Federal or State savings and loan association, or real estate investment trust provided such mortgage is a purchase money mortgage. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No such sale or transfer or proceeding in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment. The written opinion of either the Developer or the Association that the lien is subordinate to a mortgage shall be dispositive of any question of subordination.

**Section 10. Exemption for Assessments.** The Developer shall not be responsible or liable for any assessments on Lots owned by Developer and held as inventory prior to sale to another Owner. In the event that the Developer owns any Lot that is improved with a residential dwelling that is occupied as a residence, the Developer shall then be obligated to pay assessments levied against the Lot. No assessments shall accrue against any Lot for the first six (6) months of ownership commencing on the date the title to the Lot is conveyed from the Developer to the Owner on which the Owner is constructing the original construction of a dwelling on speculation or pursuant to a bona fide purchase contract with an independent third party.

**Section 11. Maintenance of Roads.** Private roads, if any, in the Subdivision shall be maintained by the Owners whose Lot abut such private road. Each Owner's maintenance obligation and costs of the same shall be determined on a pro-rata basis of the number of Lots abutting such road. Each Owner of any Lot abutting a private road (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay the prorata cost and expense of the repair, maintenance, upkeep and replacement of the private road. This obligation shall include, without limiting the generality of the foregoing, the removal of snow and ice as well as the patching, the adding of new stone aggregate and grading or maintenance and repair of the asphaltic surface as the case may be. The obligation herein shall be joint and several among the Owners and shall be borne among the abutting Lot Owners, and shared equally without regard to the size of individual Lots, number of residents, or use or non-use of the roadway. No Owner shall incur any of the repair, maintenance, upkeep and replacement costs or be obligated to make any payment for the repair, maintenance, upkeep and replacement required hereunder until such

time as a building permit for the construction of a dwelling unit is granted for the Owner's respective Lot. Decisions regarding the repair, maintenance, upkeep and replacement shall be made by the Declarant until the Declarant no longer owns a Lot in the Subdivision, and thereafter, a vote of a majority of the then Owners of the Lots abutting the private road with each Lot being entitled to one (1) vote, regardless of the number of joint owners of each Lot. Such decisions shall include a determination of the work to be performed and the selection of the representative to oversee the performance of such work. No owner shall be compensated for time spent in oversight of the work performed. The covenants of this Section shall run with and bind the real estate submitted hereto, and shall inure to the benefit of and be enforceable by the Declarant or any Owner, their respective legal representatives, heirs, successors and assigns, in perpetuity. Violation or breach of any condition, covenant or restriction herein contained shall give the Declarant or any Owner (or any two or more of them in concert or individually) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants or restrictions and shall be entitled to recover all costs incurred, including, but limited to attorney's fees. The Declarant or any Owner (or any two or more of them in concert or individually) shall have and are hereby granted, the right to recover such costs of repair, maintenance and replacement from the owner or owners in violation or breach of this Section, and the failure of any Owner to perform or pay within thirty (30) days after receipt of notice for payment, shall give rise to a lien in favor of the Declarant and non-breaching or non-violating Owners against the breaching or violating owner(s) Lot(s) which may be enforced in the same manner as provided under the then existing Indiana Mechanic's Lien Law. The obligation to pay as required by this Section is a separate, independent and personal covenant on the part of each owner of a Lot abutting a private road. The lien for which provision is herein made shall be subordinate to the lien of any first mortgage to a bank, life insurance company, Federal or State savings and loan association, or real estate investment trust provided such mortgage is a purchase money mortgage. No sale, transfer or proceeding in lieu of foreclosure shall relieve any Owner(s) or Lot(s) from liability for the respective share of the costs repair, maintenance, upkeep and replacement of the private roadway or incurred to enforce this Section.

## **Article VI**

### **ARCHITECTURAL CONTROL COMMITTEE**

**Section 1. Power of Committee.** There is hereby created an Architectural Control Committee for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. The Developer exclusively shall function as the Committee and grant all approvals and variances provided for herein until Developer conveys the last Lot which Developer owns in the Subdivision, except that Developer may elect to delegate and assign such duties and responsibilities to the Committee prior to that time. The Committee shall be composed of not less than three (3) individuals appointed by the Board to serve at the Board's pleasure. Two-thirds (2/3rds) of the Committee shall also be Members of the Association. A majority of members of the Committee shall constitute the decision of the Committee.

A. In General. No dwelling, house, building, fence, structure or improvement of any type or kind shall be constructed, placed, altered, modified, or added on to on any Lot in the Subdivision without the prior written approval of the Committee. The Owner shall make written application to the Committee requesting approval from the Committee. The Owner shall submit all plans, including, but limited to building, landscaping and site grading plans, specifications, fees and other documentation in accordance with the then current requirements of the Committee. The Owner shall submit the resume of its selected builder which shall be reviewed by the Committee and said builder shall only be permitted to build in the Subdivision upon a showing by the builder in the Committee's sole discretion it has quality experience and demonstrated achievements including not less than two (2) references proof of the builder's financial capability.

B. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when in its sole discretion it determines:

- (i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions;
- (ii) The design, color scheme or construction materials of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or
- (iii) The proposed improvement, or any part thereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of the other Owners.

C. Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these restrictions where in its sole discretion it finds that any such variance or adjustment is in conformity with the general intent and purposes of these restrictions, and no variance or adjustment shall be granted which the Committee finds is materially detrimental or injurious to other Lots in the Subdivision. Variances which may be allowed by the Committee include, but are not limited to, the amount of stone required for a structure and roof pitch.

D. Return of Plans. One copy of each plan or other document submitted for review shall be retained by the Developer, one copy shall be retained by the Committee, and one copy shall be returned to the Owner.

**Section 2. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. The decision of the Committee shall be final. Should the Committee fail to act within the specified

time, the requirements of this Article shall have been automatically waived and the Owner's plans shall be deemed to have complied with all requirements hereof. One copy of all submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for the disapproval. No Owner shall submit plans for any improvement to any Lot for which a similar improvement has been denied without identifying in writing all changes and differences in the plans and improvements depicted therein from the improvement denied previously by the Committee.

**Section 3. Liability of Committee.** Neither the Committee nor any agent thereof, the Developer, nor the Association, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, for any defects in any work done according thereto, compliance with applicable building codes and other construction regulations, nor for the Owner or Owner's agent's use or misuse of copyrighted plans and specifications. The Developer, the Association, the Board, the Committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot, and each Owner hereby agrees to indemnify and hold harmless the Developer, the Association, the Board, the Committee, or member of any of the foregoing against and claims, demands or causes of action arising from the same.

**Section 4. Inspection.** The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

## **Article VII**

### **USE RESTRICTIONS**

**Section 1. Residential Use.** The real estate subject to these covenants and restrictions may be used for single family residential living units and for no other purpose, except as otherwise provided herein. There shall be no more one (1) principal dwelling on any one (1) Lot. No business or commercial building may be erected on any Lot. No building or other improvements shall be erected upon any Lot without prior approval of the Committee as elsewhere herein provided. No accessory building shall be erected prior to erection of the principal dwelling or house.

A. Subdivision of a Lot. No Lot shall be divided, subdivided or reduced in size unless each divided or subdivided portion thereof is consolidated with one or more contiguous Lots under one ownership. In the event of the division or subdivision of any Lot as aforesaid, which results in the division of more than ten (10%) percent of any one Lot, the obligation

for Association expenses attributable to the divided or subdivided Lot shall be and become proportionately attributable and chargeable to the contiguous Lot or Lots, and the Owner or Owners thereof, to and with which all or portions of the divided or subdivided Lot or Lots become consolidated.

B. Consolidation of Two or More Lots. In the event that one or more Lots are developed as a unit, the provisions of these covenants and restrictions with the exception of assessments shall apply thereto as a single Lot. No dwelling or other structure or improvement shall be erected, altered, placed, or permitted to remain on any site not including at least one (1) full platted Lot according to the recorded plat or plats of the Subdivision.

**Section 2. No Temporary Building.** No tents, trailers, vans, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot or in the Common Area without the written consent of the Developer, or of the Association after Developer has conveyed the last Lot which Developer owns in the Subdivision. All approved accessory buildings or structures shall have siding and roofing materials and colors that match the principal structure on the Lot.

**Section 3. Accessory Structures.** Prior to the construction or placement of any accessory structure, the plans and specifications shall be submitted to the Committee for its review and approval in accordance with Article VI. There shall be no more than one (1) accessory building on any Lot which shall not exceed one hundred twenty (120) square feet in size. All accessory buildings shall be located in the rear or side yards of a Lot and shall be constructed of the same exterior materials (including siding and roofing materials), used in substantially the same proportion as shall be utilized on the primary dwelling structure constructed on the Lot, to ensure that the appearance of the accessory building is substantially similar to the primary dwelling.

**Section 4. Antennae.** No exposed radio or television antennae or solar heat panels shall be allowed on any residence on any Lot which is visible from outside such residence. Satellite dish antennae, the dish for which does not exceed one (1) meter in diameter, shall be permitted subject to the approval of the Committee in accordance with generally acceptable Committee standards. Any permitted satellite dish must be properly screened from the view of surrounding Lots and screening of the satellite dish must be approved by the Committee.

**Section 5. Boats and Motor Vehicles.** No boats, recreational vehicles or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Lot or in the Common Area, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot, except within a fully enclosed building and totally isolated from public view.

**Section 6. Trees.** At the time of occupancy of the dwelling on a Lot, such Lot must have at least two (2) trees growing upon it in the front yard. The type, size and variety of tree shall be approved by the Committee. No tree or shrub, the trunk of which exceeds three (3) inches in

diameter, shall be cut down or otherwise destroyed without the prior express written consent of the Committee.

**Section 7. Artificial Vegetation and Landscaping Gravel/Rock.** No artificial grass, plants or other artificial vegetation, or landscaping gravel or rock shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Committee.

**Section 8. Automobile Storage Areas and Driveways.** All homes erected upon a Lot shall have a garage attached to and architecturally consistent with the home. No automobile garage shall be permanently enclosed or converted to other use without the substitution of another enclosed automobile storage area upon the Lot. No carports shall be permitted unless approved by the Committee and all garages shall be at least adequate to house two (2) standard size American automobiles. All garages must have doors that are to be maintained in useable condition. The maximum width of any driveway located between the curb at the street and the property line shall be sixteen feet (16'-0").

**Section 9. Clothes Drying Area.** No portion of any Lot or Common Area shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the building to be constructed on a Lot.

**Section 10. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or on the Common Area. However, dogs, cats and other common household pets may be kept on Lots subject to such rules and regulations as may be adopted by the Association, so long as they are not kept, bred, or maintained for commercial purposes. No animals shall be allowed to run loose at any time.

**Section 11. Rubbish, Trash and Garbage.** No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot or on the Common Area, except in sanitary containers located in appropriate areas concealed from public view.

**Section 12. Fences, Hedges and Walls.** Prior to the construction or placement of any fence, hedge or wall, the plans and specifications shall be submitted to the Committee for its review and approval in accordance with Article VI. No fence, hedge, wall or other dividing instrumentality shall be erected, constructed or maintained on any Lot, except in the rear yard only (no fences shall be permitted to extend closer to the street than the dwelling structure) and then not to exceed six (6) feet high in height, measured from the ground on which it stands. Chain link fencing of any type is not permitted in the Subdivision.

**Section 13. Nuisances.** Nothing shall be done or maintained on any Lot or on the Common Area which may be or become a nuisance to the neighborhood.

**Section 14. Signs.** No sign of any kind shall be displayed to public view on any Lot or any Common Area, except for the following:



A. The Developer, or the sales agent for the Developer, may place one professional sign on any Lot or Lots advertising the Lot or Lots for sale.

B. A professional sign displaying the words "for sale", not to exceed six square feet, may be displayed.

The size and design of all signs shall be subject to approval by the Committee.

**Section 15. Common Area.** Nothing shall be altered in, constructed on or removed from, any of the Common Area except upon the written consent of the Association.

**Section 16. Miscellaneous.** No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot or any Common Area, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that any Owner shall fail or refuse to keep Owner's Lot free of weeds, underbrush or refuse piles, or other unsightly growths or objects, then the Association may, after thirty (30) days prior written notice to the Owner, enter upon said Lot and remove the same at the expense of the Owner as provided for herein, and such entry shall not be deemed a trespass.

**Section 17. Size Requirements.** The minimum square footage of living space dwellings constructed in the neighborhoods in the Subdivision, exclusive of porches, terraces, garages, carports, accessory buildings, or basements, or portions thereof, or similar facilities not designed for regular and continuous habitation shall be as follows:

- A. The Meadows. 1,500 square feet for one-story homes; 1,700 square feet for one and one-half (1 ½) story homes; and 1,900 square feet for all two story homes.
- B. The Ravines. 1,700 square feet for one-story homes; 1,900 square feet for one and one-half (1 ½) story homes; and 2,100 square feet for all two story homes.
- C. The Woods. 1,900 square feet for one-story homes; 2,100 square feet for one and one-half (1 ½) story homes; and 2,300 square feet for all two story homes.

Split level style homes, such as a bi-level or tri-level, shall not be permitted in the Subdivision.

**Section 18. Residential Setback Requirements.** No dwelling, house or other above-grade structure designed to be used in connection with such house shall be constructed or placed on any Lot in the Subdivision except as provided herein.

- (i) Front Setbacks. All dwellings or houses and above-grade structures designed to be used in connection therewith shall be constructed or placed on Lots

in the Subdivision so as to comply with the front yard setback lines as established in the plat or plats of the various portions of the Subdivision.

(ii) Side and Rear Yards. The side rear yard setback lines shall not be less than the required distance required by the Porter County Zoning Ordinance.

**Section 19. Yard Lights.** Prior to occupancy of a home or dwelling, each Owner of a Lot in the Subdivision shall cause to be erected and maintained on each Lot an exterior light pole fixture, at such Owner's expense. Exterior light fixtures shall be on and illuminated from dusk to dawn unless the Association's Board shall provide otherwise by rule or regulation. No exterior lighting fixture, other than those fixtures approved by the Committee, shall be installed on the exterior of any Lot. No lighting fixtures shall be installed that may become an annoyance or a nuisance to Owners or occupants of adjacent properties. All modifications of exterior lighting must be approved in writing by the Committee. The Committee shall select and designate a standard light fixture and post for the Subdivision and shall determine the appropriate location for the same. No light fixture and post shall be located closer than ten feet (10'-0") from the front property line and shall be located not more than five feet (5'-0") from the side of the driveway.

**Section 20. Mailboxes** The Developer shall select and designate a standard mailbox and post for the Subdivision. No exterior newspaper receptacles shall be permitted in the Subdivision unless incorporated in the approved and designated standard post. All repairs and replacements to such standard mailboxes and posts shall be consistent in color, quality and appearance with the original mailbox and post unless the advance written approval of the Board is obtained.

**Section 21. Exterior Construction.** All structures shall be required to meet the following minimum standards for exterior materials in the construction:

A. Roofing materials shall be made of premium asphalt shingles, wood shakes, slate or simulated slate, tile, or similar premium roofing material. The minimum roof pitch shall 6/12 or steeper, except in The Woods where the minimum roof pitch shall be 8/12.

B. Except for The Meadows, each home shall have no less than twenty-five percent (25%) masonry type or stone siding materials on the front or street elevation. There shall be a minimum of 2'-0" return along the sides of the dwelling for all masonry siding materials. Where a house wall returns to the front wall of the house (for example: projecting garage wall), the returning wall shall have the same masonry siding as the front wall.

C. All exterior chimneys on the front elevation of the structure facing any street must be of brick, stone, or other similar type material, in no case shall small exterior chimneys be sided with metal. Direct vent or flueless fireplaces are permitted provided that the vents and appurtenances are located in a rear or side yard, and provided further that no vents or appurtenances face any street.

D. All driveways shall be made of concrete and shall be installed prior to occupancy of the home on any Lot, weather permitting.

E. No structure shall have metal prefabricated flues or solar panels that extend above the highest roof line. Except for ridge vents, all roof vents shall be located on the rear roof surface.

Exterior construction material shall be approved by the Committee subject to this Article and the provisions of Article VI, Section 1(C).

**Section 22. Swimming Pools.** No above ground swimming pool shall be permitted on any Lot in the Subdivision. The design of any in-ground swimming pool and any accessory building shall be subject to the prior written consent of the Committee. All approved in-ground pools shall be continuously fenced, surrounding said pool with a non-climbable fence, with an outside locking gate, in height to comply with all building codes or protected with a State of Indiana approved pool cover. Swimming pools should be designed with adequate buffers to minimize impact on adjacent lots. When fencing around a swimming pool is required, the area fenced shall be no larger than necessary to adequately define the pool area.

**Section 23. Building Method.** All dwellings constructed on Lots in the Subdivision shall be erected from new materials. No dwelling previously constructed elsewhere shall be moved to a Lot in the Subdivision. Manufactured homes, modular homes, mobile homes or other similar building methods are prohibited. For purposes of this paragraph, a "manufactured home" shall mean a structure that (i) is assembled in a factory, (ii) bears a seal certifying that it was built in compliance with the federal manufactured housing construction and safety standards law (42 U.S.C. 5401 *et seq.*); (iii) is designed to be transported from the factory to another site in one (1) or more units; (iv) is suitable for use as a dwelling in any season; and (v) is more than thirty-five (35) feet long.

**Section 24. Owner's Obligation to Maintain Lot.** The Owner of a Lot in the Subdivision shall at all times maintain the Lot, real estate and improvements in such a manner as to prevent the Lot and improvements from becoming unsightly, and specifically such Lot Owner shall (a) mow and otherwise tend to the landscaping on the Lot as such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds; (b) cut down and remove dead trees; (c) remove all debris and rubbish and prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Lot or Subdivision; and (d) keep the exterior of the improvements in such a state of repair or maintenance as to avoid the improvements from becoming unsightly.

**Section 25. Heating Plants.** Every dwelling or house in the Subdivision must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation.

**Section 26. Time in Which to Build Structures.** An Owner of a Lot within the Subdivision must commence construction of the dwelling or house within two (2) calendar years after the Owner's purchase of the Lot or the Developer's sale of said Lot if the Owner did not purchase the Lot from the Developer directly. If construction does not begin or if a dwelling or house is not completed upon a Lot within the prescribed time, the Developer shall have the option to repurchase such Lot for a price, in cash, equal to the Owners' cost basis in the Lot, without paying the cost of improvements up to the time of repurchase. This option shall expire if Developer has not notified the Owner of Developer's intent to exercise the option prior to the time of commencement of the construction.

**Section 27. Diligence in Construction.** Every dwelling, house or other structure whose construction or placement on any Lot in the Subdivision is begun shall be completed within nine (9) months after the beginning of such construction or placement and the Lot sodded or seeded prior to occupancy. Should the weather not permit the sodding or seeding of a Lot prior to occupancy, the owner of the Lot must request a variance from the Architectural Review Committee with the granting of any variance being conditioned or withheld as said committee deems appropriate in its sole discretion. No improvement which has partially or totally been destroyed by fire, windstorm or other casualty shall be allowed to remain in such state for more than three (3) months from time of such destruction or damage.

**Section 28. Prohibition of Used Structures.** All structures constructed or placed on any Lot in the Subdivision shall be constructed with substantially all new material, and no used structures shall be relocated or placed on any such Lot.

**Section 29. Necessary Exceptions for Development.** Developer, or the transferees of Developer, shall undertake the work of developing all Lots included within the Subdivision. The completion of that work and the sale, rent, or other disposition of the dwellings is essential to the establishment and welfare of the Subdivision as an on-going residential community. In order that such work may be completed and the Subdivision established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, Developer's transferees, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease or otherwise. Owner, upon commencement of construction of any residence, dwelling unit or other structure, which is not prohibited by this Declaration shall pursue the performance of any construction diligently and continuously until completion of the structure involved. As used in this Section, the words, "its transferees" specifically exclude purchasers of an individual Lot or Lots improved with completed residences or intended for construction at a later date by someone other than the Developer.

**Section 30. Utility Compliance.** Each Owner shall comply with all terms and conditions pertaining to water and sewer utility service of the Indiana American Water Company and Shorewood Forest Utilities, Inc., and their respective successors and assigns. Each Owner shall be

solely responsible at their sole cost and expense for paying all fees and charges associated with obtaining utility service from the water and sewer companies providing service to their Lot. At the initial transfer of title to a Lot from the Developer, the Owner shall pay the Developer Two Thousand Dollars (\$2,000.00) which amount was advanced by the Developer for and on behalf of the Owner's Lot for the reservation of sanitary sewer allocation with Shorewood Forest Utilities, Inc. Notwithstanding anything to the contrary in this Declaration and without the prior written consent of Shorewood Forest Utilities, Inc., (i) no lots in the Subdivision, including any additional real estate that is subjected to this Declaration pursuant to Article II, Section 3, shall be platted for any use other than single family residential purposes and/or open space as required by the Porter County Plan Commission, and (ii) no amendment to this Declaration shall be effective which permits uses on the property subjected to this Declaration other than single family residential purposes and/or open space uses consistent with the Porter County Open Space Ordinance. Nothing herein contained shall in any way obligate Shorewood Forest Utilities, Inc. to provide sewer utility service to any real estate other than the real estate specifically described in Shorewood Forest Utilities, Inc.'s Verified Petition to Expand its Certificate of Territorial Authority under Cause No. 43145 filed before the Indiana Utility Regulatory Commission.

## **ARTICLE VIII**

### **Construction Rules and Regulations**

**Section 1. Builder Responsibility.** It shall be the responsibility of the Owner and the Owner's builder to comply with all construction regulations contained herein. If any builder or contractor is found deficient in the performance of any of these construction requirements, the Developer or the Committee reserves the right to take any corrective action necessary, including the right to deny any contractor access to the Subdivision.

**Section 2. Access to the Homesite/Contractor Parking.** Individual Lots shall be accessed only via the streets and gravel. No other access will be permitted. Access onto the Lots from the street shall be restricted to the driveway curb cut which shall consist of gravel. The curb cut, and sidewalk cut, if necessary, shall be located by the surveyor, then cut and the access leveled with gravel fill prior to any vehicular traffic or construction is permitted on the Lot. The gravel drive shall consist of a minimum of two (2) loads of stone and shall run from the curb to the foundation at the garage entry. The driveways of homes under construction and any area available for parking are to be kept stoned for access by suppliers and parking for contractor's vehicles. All vehicles shall be parked within the Lot boundaries whenever possible. If the Lot driveway is occupied, parking on one side of the road will be allowed. Street parking will only be allowed when parking on the Lot is impossible. Construction equipment may be left on site while needed, but must be kept on the Lot.

**Section 3. Delivery and Storage of Materials.** Delivery of supplies and equipment shall be limited to normal hours of operation. Supplies and equipment shall be unloaded promptly and in an orderly fashion. Delivery vehicles shall exit the Lot and Subdivision immediately after delivery. The delivered equipment or materials shall immediately be stored in an orderly manner within the

Lot boundaries. The storage of materials and supplies shall be confined within the Lot boundaries of the specific Lot. Such materials and supplies are to be maintained in a neat and orderly manner and, whenever possible, located in the rear of the residence. Such stored materials shall not under any circumstances be permitted to obstruct the flow or drainage patterns of the Lot or any adjacent Lots.

**Section 4. Lot Maintenance.** The Owner and their builder shall be required to keep the entire Lot clean at all times. Each Lot shall have a dumpster for refuse during construction. All debris and refuse shall be deposited into the dumpster. Debris is not to be allowed to accumulate on the Lot. The dumpster shall not be allowed to fill to the point of overflowing. If the Owner or Builder fails to clean the site at the end of the day, the Developer or Association may enter the site to effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot.

The burning of construction debris or of removed landscape material is prohibited.

Erosion control methods shall be in place on each Lot prior to and throughout any construction on a Lot. Silt fences and silt filter socks shall be installed and maintained on all property lines to minimize erosion and flow of silt to adjacent property and street. Care should be taken to minimize excessive drainage onto the roadway and adjacent lots, including sump pump discharge and natural drainage. If the Owner or builder fails to clean the street at the end of the day, the Developer or Association may effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot.

The washing or cleaning of concrete delivery trucks, shall be confined to within the Lot boundaries. Such activities shall not be permitted on any street and not on any other Lot or parcel within the Subdivision. If any party associated with the construction of or development of a Lot fails to comply, the Developer or Association may effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot.

**Section 5. Insurance.** Each Owner shall require that all builders provide and maintain the following insurance policies at all times while performing any work in Subdivision, and the amount of these policies may be amended by the Developer or Committee from time to time.

Workmen's Compensation Insurance	Statutory limits
Comprehensive General Liability	\$2,000,000
Owner's and Builder's Protective Liability	*Based on contract price
Automobile Liability Insurance	\$1,000,000

All builders are required to submit current copies of these coverages to the Committee.

The Owner or Owner's builder and contractor and all subcontractors shall be responsible for any and all injuries or damage to any persons or property, including loss of human life arising



directly or indirectly from or in connection with work performed or to be performed under this Declaration, and shall indemnify and hold the Developer and its agents harmless of any and all loss or damage from such injuries, damage or death.

The Owner and Owner's builder and contractor and all subcontractors further agrees to maintain such insurance as will fully protect Developer and its agents from any and all claims under any Worker's Compensation Act, Employer Liability Laws, and from any and all other claims of whatsoever kind and nature for the damage to property or for personal or bodily injury including death, made by anyone whosoever, which may arise from the operation carried on under this Declaration, either by the Developer, owner, contractor or subcontractor or by anyone directly or indirectly or indirectly engaged or employed by either of them.

## **Article IX**

### **TRANSFER OF UNIMPROVED LOTS**

**Section 1. Developer's Right of First Refusal.** So long as Developer owns at least one Lot in the Subdivision, no Lot and no interest therein, upon which a single family residence has not been constructed shall be sold or transferred unless and until the Owner of such Lot shall have first offered to sell such Lot or Lots to Developer and Developer has waived, in writing, the right to purchase said Lot.

**Section 2. Notice to a Developer.** Any Owner or Owners intending to make a bona fide sale of a Lot or any interest therein shall give to Developer notice of such intention, together with a fully executed copy of the proposed contract of sale (the "Proposed Contract"). Within thirty (30) days of receipt of such notice and information, Developer shall either exercise, or waive exercise of, the right of first refusal. If Developer elects to exercise the right of first refusal, Developer shall, within thirty (30) days after receipt of such notice and information, deliver to the Owner an agreement to purchase the Lot upon the following terms:

- A. The price to be paid, and the terms of payment shall be ninety percent (90%) of that stated in the Proposed Contract or the amount the Owner paid when acquiring the Lot from the Developer, whichever is more, or other terms agreed to by the Owner;
- B. The sale shall be closed within thirty (30) days after the delivery or making of the Developer's agreement to purchase.

**Section 3. Certificate of Waiver.** If Developer shall elect to waive the right of first refusal, or shall fail to exercise said right within thirty (30) days of receipt of the Proposed Contract, Developer's waiver shall be evidenced by a certificate executed by Developer in recordable form which shall be delivered to the Owner or the Proposed Contract purchaser.

**Section 4. Unauthorized Transactions.** Any sale of a Lot, or any interest therein, upon which a single-family residence has not been constructed, without notice to Developer and waiver of Developer's right of first refusal as aforesaid, shall be void.

**Section 5. Exceptions.** This Article shall not apply to a transfer to or sale by any bank, life insurance company, Federal or State savings and loan association, or real estate investment trust which acquires its title as a result of owning a purchase money mortgage upon the Lot concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successors in title or through foreclosure proceedings; nor shall this Article apply to a sale by any such institution which so acquires title. Neither shall this Article require the waiver by Developer as to any transfer of title to a Lot at a duly advertised public sale with open bidding which is provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

## **Article X**

### **GENERAL PROVISIONS**

**Section 1. Duration and Remedies for Violation.** The covenants and restrictions of this Declaration shall run with and bind the real estate submitted pursuant to Article II hereof, and shall inure to the benefit of and be enforceable by the Developer, the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifteen (15) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless amended as provided for elsewhere in this Declaration. Violation or breach of any condition, covenant or restriction herein contained shall give the Developer, Association, or Owner (or any two or more of them in concert or individually) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants or restrictions, and to prevent the violation or breach of any of them, and the expense of such litigation shall be borne by the non-prevailing party. Expenses of litigation shall include reasonable attorneys' fees incurred by the prevailing party.

**Section 2. Owner's Obligation to Maintain and Repair.** Each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction.

**Section 3. Compliance with Soil Erosion Control Plan.**

- A. The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15, as amended, relating to Storm Water Run-off Associated with Construction Activity. Each Owner shall undertake all erosion control measures contained therein as the plan applies to "land disturbing activity" initiated by Owner or Owner's builders, contractors and their subcontractors and to comply with the Developer's general permit under Rule 5 as

well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources. Each Owner acknowledges the conservation design concept employed in connection with the Subdivision and the interrelationship of the erosion control and storm water management system for the Subdivision. No obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Developer and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent. It shall be the duty of every Owner of every Lot to keep any ditches, swales, including vegetative plantings in bio-swales, waterways, or storm drainage portion areas as may be situated upon his Lot continuously unobstructed and in good repair and to repair all erosion with respect to such areas situated on such Owner's Lot even if said ditch or swale or waterway is not specifically referenced by an easement on the plat or elsewhere. In the event any ditch, bio-swale, waterway or storm drainage area is altered, destroyed, changed, the Owner shall promptly repair same to its original condition. If the Owner does not remedy the problem within a reasonable amount of time as determined by the Board, the Board may correct the problem and impose a specific assessment at three (3) times the cost to correct and a lien against the Lot as contemplated by this Declaration. The vegetation in the bio-swales shall not be disturbed or mowed.

- B. Owner shall indemnify and hold Developer harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Owner, Owner's employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Developer.

**Section 4. Notices.** Any notices required to be sent to any Member or Owner under the provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 5. Severability.** Invalidation of any one or more of these covenants and restrictions by judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 6. Amendment.** This Declaration may be amended, modified or terminated at any time and from time to time upon the execution and recordation of an instrument executed by Owners holding not less than two-thirds ( $\frac{2}{3}$ ) of the voting interests of the membership, provided that so long as Developer is the Owner of any Lot or any property affected by this Declaration, said amendment shall not be effective without Developer's express written joinder and consent.

**Section 7. Usage.** Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

**Section 8. Effective Date.** This Declaration shall become effective upon its recordation in the Office of the Recorder of Porter County, Indiana.

**Section 9. Damage Deposit.** At closing on the acquisition of the Lot from the Developer or prior to the commencement of construction on any Lot as determined by the Developer, the Owner shall deposit One Thousand Dollars (\$1,000.00) ("Damage Deposit") with the Developer to insure that any damage to streets, parkways, entry or island, debris cleanup, mud removal from streets or other damage by the Owner or the Owner's builder or builder's subcontractors or suppliers shall be re-paved, repaired, replaced or cleaned up. The Damage Deposit shall be refunded at the time the Committee determines the construction on the Lot is complete. Any deductions necessary to satisfy any costs to correct damages or to satisfy costs incurred for clean up shall be made first and the balance, if any, shall then be refunded to the Owner. If the costs to repair, replace or remove debris, etc. exceed the Damage Deposit, the amount in excess of the Damage Deposit shall become a lien against the Lot which lien is enforceable in the same manner as a mechanic's lien. The amount of the Damage Deposit may be increased from time to time by the Committee. The Developer or its agent shall at all times have the right to enter upon any Lot to effectuate the clean-up, repair, maintenance or replacement contemplated by this Section.

This Instrument Prepared By:  
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