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MASTER DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR RESIDENTIAL HOUSING OF  
LIBERTY ESTATES

THIS DECLARATION (the "declaration") is made this 1<sup>st</sup> day of November, 2023, by Hallmark Development, Inc. an Indiana Corporation and Hall Family Investors, LLC and Indiana Limited Liability Company (hereafter referred to as "Initial Declarant")

PREAMBLE

- A. Initial Declarant owns fee simple title to certain parcels of real estate in the Town of Merrillville, County of Lake, State of Indiana, legally described in Exhibit "A" attached hereto and, made a part hereof (the "Property"); and
- B. Declarant (hereafter defined in Article I) desires to develop a single and multi-family residential development on the property to be known as Liberty Estates and to establish a homeowner's association corporation; and
- C. Declarant is desirous of submitting the Property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold conveyed and occupied, subject to the covenants, condition, restrictions and easements hereinafter set forth.

The benefits of these covenants run to the Merrillville Plan Commission and shall be specifically enforceable by the Merrillville Plan Commission in addition to enforcement by the Owners and Declarant.

ARTICLE I  
DEFINITIONS

When used in the Declaration, the following word and terms shall have the follow meanings:

Section 1.1. "Additional Property" shall mean any real estate added to the terms of these Restrictive Covenants pursuant to the procedures set forth in Section 2.3

Section 1.2 "Annexed Property" shall mean any real estate added to the terms of these Restrictive Covenants pursuant to the procedures set forth in Section 2.3.

Section 1.3. "Architectural Review Committee" shall have the meaning set forth in Section 4.2.

Section 1.4. "Association" shall mean and refer to Liberty Estates Homeowners Association, Inc., a not for profit corporation, its successors and assigns, or another corporation to be named by Declarant.

Section 1.5. "Board" shall mean and refer to the Board of Directors of the Association.

Section 1.6. "Building" shall mean a structure having a roof, supported by columns or walls, for the shelter, support, or enclosure of persons, property, or animals; and when separated by division walls for the ground up without openings, each portion of such building shall be deemed as a separate building.

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PEGGY HOLINGA KATONA  
LAKE COUNTY AUDITOR

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Section 1.7. "Accessory Building or Structure" shall mean a building or use which:

1. Is subordinate to and serves a building or principal use.
2. Contributes to the comfort, convenience or necessity of occupants of the principal building or principal use served.
3. Is subordinate in area, extent or purpose to the principal building or principal served, and
4. Is located on the same lot as the principal use or structure served, with the exception of accessory off street parking facilities as are permitted elsewhere than on the same lot with the use structure.

Section 1.8. "Building Height" shall mean vertical height measured from the lot ground next to the garage opening to the highest point of the roof.

Section 1.9. "By-Laws" shall mean those by-laws duly enacted by the Association which govern the Association.

Section 1.10. "Common Areas" shall mean real property to be owned and/or maintained by the Association for the common use and enjoyment of the Owners, together with all improvements located thereon. Common Areas shall be as delineated as on the Recorded Plat of the Development or as thereafter may be designated by Declarant.

Section 1.11. "Contingency and Replacement Reserve" shall have the meaning set forth in Section 6.4.

Section 1.12. "Contiguous Lots" shall mean and refer to a group of not more than three

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(3) lots each having at least one (1) common boundary with one of the other two (2) lots.

Section 1.13. "Declarant" shall mean and refer to the Initial Declarants. On a revocable basis, Hall Family Investors, LLC herein assigns its declarant authorities to Hallmark Development, Inc. Any additional successors or assign shall be deemed a Declarant and be entitled to exercise all or any rights of Declarant provided herein if designated as such by Declarant in any instrument recorded for such purposes.

Section 1.14. "Development" shall mean and refer to the single and multi-family residential subdivision commonly known as Liberty Estates, as the same has been or shall be created by the recording of the Subdivision Plat. The development includes the Property and Additional Property.

Section 1.15. "Dwelling" Shall mean a building or structure or portion thereof, conforming to all requirements applicable to the residential use districts and building code, used exclusively for residential occupancy, including single family dwelling units, two family dwelling units, three family dwelling units, and multiple family dwelling units, excluding hotels, boarding houses, and lodging houses.

Section 1.16. "Estimated Cash Requirement" shall have the meaning set forth in Section 6.3.

Section 1.17. "Improvement" or "Improvements" shall mean and include Dwellings, any and all Buildings, Accessory Buildings, driveways, pedestrian walkways, fences, mailboxes, lighting, decks, swimming pools, sheds, patios, lawns, beaches, docks, shore stations, shore line erosion control, sidewalks, planted trees, shrubs and all other structures or landscaping improvements of every kind and description.

Section 1.18. "Lot" shall mean any piece or parcel of land or a portion of a subdivision, the boundaries of which have been established by some legal instrument of record and are

coterminous with all adjoining real estate, that is recognized and intended as a unit for the purpose of transfer of ownership.

Section 1.19. "Lot Deed" shall mean the deed of Declarant conveying a Lot to an Owner.

Section 1.20. "Member" shall mean and refer to every Person who holds membership in the Association and "Members" shall mean and refer to all Persons who hold membership in the Association.

Section 1.21. "Mortgage" shall mean either a mortgage or deed of trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

Section 1.22. "Multi-Family Unit" shall mean a detached residential dwelling unit containing multiple dwelling units designed for occupancy by multiple families.

Section 1.23. "Municipality" shall mean the Town of Merrillville, County of Lake, or State of Indiana, whichever applies.

Section 1.24. "Owner" shall mean and refer to the title record owner, whether one or more Persons, of fee simple title to any Lot in the case of single family housing or to any Parcel in the case of multifamily housing, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include the Declarant to the extent Declarant owns Lot(s) and also includes the interest of Declarant as contract seller of any Lots.

Section 1.25 "Parcel" shall mean each separately conveyed living unit and portion of a Lot as conveyed as a single living unit in a multi-unit dwelling.

Section 1.26. "Person" or "Persons" shall mean all natural individuals, corporations, partnerships, trustees or other legal entities holding title to real property.

Section 1.27. "Plans and Specifications" shall have the meaning set forth in Section 4.6.

Section 1.28. "Property" shall mean and refer to the real estate legally described in Exhibit "A" attached hereto and made a part herof.

Section 1.29. "Sale Contract" shall have the meaning set forth in Section 3.23.

Section 1.30. "Single Family" shall mean one or more persons each related to the other by blood, marriage or adoption, or a group of not more than three persons not-so related, plus domestic employees, maintaining a common household in a Dwelling.

Section 1.31. "Standards" shall have the meaning set forth in Section 4.3.

Section 1.32. "Story" shall mean that portion of a Building included between the surface of any floor and the surface of the floor next above; or if there is no floor above, the space between the floor and the ceiling next above. A Basement shall not be considered a Story.

Section 1.33. "Structure" shall mean anything constructed or erected upon the Property, the use of which requires more or less a permanent location on the ground or attachment something having a permanent location on the ground. A sign or other advertising device, detached or projecting, shall be considered a separate Structure.

Section 1.34. "Subdivision Plat" shall mean a plan, map, or drawing on which the subdivider's plan for the subdivision of land is presented and which he submits for approval and intends to record in final form.

Section 1.35. "Trails" and paths within the easements, shall have the meaning set forth in Section 7.2.

Section 1.36. "Turnover Date" shall have the meaning set forth in section 5.3.

## **ARTICLE II DECLARATION PURPOSES AND PROPERTY SUBJECTED TO DECLARATION**

Section 2.1. The Declarant desires to create on the Property a single-family and multi-family development for the future owners of Lots for the following purposes:

- (a) The Declarant desires to provide upon the Property, through its planning and layout, the harmonious development of a single-family community by the imposition of the Covenants, conditions, restrictions and easements as hereinafter set forth, for the benefit of the Property and the Owners.
- (b) By the recording of the covenants, conditions and restriction set forth herein and the reservation of certain powers as herein contained, Declarant intends to provide a plan for development of the property which is intended to enhance and protect the values of Declarant's residential community.
- (c) The Declarant desires to (i) prevent improper use of Lots which may depreciate the value of the Owners' property; (ii) prevent the construction of Buildings containing improper or unsuitable materials; (iii) ensure adequate and reasonable development of the Property; (iv) encourage the construction of attractive improvements on the property; (v) prevent haphazard and inharmonious development; (vi) ensure uniform design standards within the Development and (vii) in general, provide for the highest quality environment for the Property.
- (d) The Declarant desires to provide for the maintenance of the common Areas, if any, and such other property as is provided herein to be maintained by the Association.

Section 2.2. To further the general purpose herein expressed, the Declarant, for itself, its successors and assigns, hereby declares that the Property at all times is and shall be held; transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements set forth in this Declaration.

Section 2.3. The Declarant reserves the right to add "Additional Property" or "Annexed Property" to the provisions of this Declaration and any property so added by the Declarant shall inure to the benefits and be subject to restrictions of this Declaration the same as if originally included herein. The recording of this Declaration or a Declaration substantially similar to this Declaration shall be sufficient evidence of this property being added to this Declaration, excepting only any changes which may be made in the Declaration regarding said "Additional Property" or "Annexed Property".

## **ARTICLE III GENERAL RESTRICTIONS**

Section 3.1. All lots shall be used only for Dwellings by a single Family; no Buildings other than Dwellings or residential type Accessory Buildings shall be constructed or maintained on a Lot. All Dwellings shall have an attached garage containing no less than two parking spaces (except as defined on the plat), which shall be for the sole use of the owner of the Lot. Each Owner shall (i) maintain his Lot and all improvements located thereon in a clean, sightly and safe condition, (ii) cause the prompt removal of all papers, debris and refuse therefrom and the removal of snow and

ice from all sidewalks, driveways and similar areas serving said Lot and (iii) comply with all applicable governmental codes, laws, ordinances, orders, decrees, rules and regulations.

Section 3.2. All improvements shall be constructed in accordance with the Plans and Specifications approved in accordance with the terms and conditions in Article IV and in accordance with all applicable governmental zoning code, laws, ordinances, orders, decrees, rules and regulations. In the event of a conflict between such codes, laws, ordinances, decrees, rules and regulations such conflict shall be resolved by the application of the more stringent provision providing the higher or better quality result.

Section 3.3. The floor area of a Dwelling, in square feet of living area, shall be calculated by using the exterior dimensions, exclusive of porches, basements, breezeways or garages, or living areas of Basement, shall be:

- a) For Level 1 Lots: Single Family Homes
  - (i) For any one-story Dwelling, not less than one thousand four hundred fifty (1,450) square feet finished.
  - (ii) For any multi-story Dwelling (1 1/2 or 2 story homes) not less than two thousand (2,000) square feet finished space;
  - (iii) For any Tri/Quad level Dwelling, not less than seven hundred (700) square feet per level, with at least 1800 square feet finished; and
  - (iv) For any Split level Dwelling, not less than one thousand two hundred fifty (1,250) square feet per level, with at least 2,000 square feet finished.
- b) For Level 2 Lots: Patio Homes
  - (i) For any one-story Dwelling, not less than one thousand four hundred (1,400) square feet finished.
  - (ii) For any multi-story Dwelling (1 1/2 or 2 story homes) not less than one thousand eight hundred (1,800) square feet finished space;
  - (iii) For any Tri/Quad level Dwelling, not less than six hundred (600) square feet per level, with at least 1600 square feet finished; and
  - (iv) For any Split level Dwelling, not less than one thousand two hundred (1,200) square feet per level, with at least 1,800 square feet finished.
- c) For Level 3 Lots : Duplex Homes
  - (i) For any one-story Dwelling, not less than one thousand four hundred (1,400) square feet finished.
  - (ii) For any multi-story Dwelling (1 1/2 or 2 story homes) not less than one thousand six hundred (1,600) square feet finished space;
  - (iii) For any Split level Dwelling, not less than one thousand two hundred (1,200) square feet per level, with at least 1,800 square feet finished.
- d) For Level 4 Lots : tri-plex/quad homes
  - (i) For any one-story Dwelling, not less than one thousand four hundred (1,400) square feet finished.
  - (ii) For any multi-story Dwelling (1 1/2 or 2 story homes) not less than One thousand Four Hundred Fifty (1,450) square feet finished space;
  - (iii) For any Split level Dwelling, not less than one thousand (1,000) square feet per level, with at least 1,600 square feet finished.

Section 3.3. (A). The minimum setback requirements on each lot within the Development shall be as per the Subdivision Plat.

Section 3.4. All exteriors of Dwellings shall consist of brick, stone, cedar planking, vinyl siding, or "Exterior Stucco Systems" or any combination thereof. No other exterior materials shall be used without the prior written consent of the Architectural Review Committee. Front elevations shall be composed of brick, stone, siding, or "Exterior Stucco Systems" with the following minimums:

- a) For Level 1 Lots: 25% front elevation brick, stucco, or stone;

- b) For Level 2 Lots: 25% front elevation brick, stucco, or stone;
- c) For Level 3 Lots : at least 15% front elevation brick, stucco, or stone;
- d) For Level 4 Lots : at least 5% front elevation brick, stucco, or stone;

Architectural Variation: Except for Level 2, 3, & 4 Lots, no two houses shall have materially matching front elevations within 90 feet of each other, as reasonably determined by the Architectural Review Committee.

Exceptions may be approved by the Architectural Review Committee to promote architectural variety.

Section 3.5. The maximum Building Height of a Dwelling shall be two (2) Stories or thirty-five (35) feet, whichever is less, without written approval from the Architectural Review Committee.

Section 3.6. . The roofing materials used on Level 1 Lots shall be at least 30 year architectural grade shingles or comparable, fire-retardant cedar shake, clay, tile, or decorative concrete roof tile. The roofing materials used on Level 2, 3 & 4 Lots shall be at least 25 year grade shingles or comparable, fire-retardant cedar shake, clay, tile, or decorative concrete roof tile. The use of other materials shall be subject to the consent of the Architectural Review Committee. All chimneys and exterior flues shall be located on the rear or side of the roof. All roof shall contain a pitch of not less than 5/12 except porches which may vary subject to Architectural Committee approval.

Section 3.7. All Accessory Buildings, visible garbage receptacles, woodpiles and gas and electric meters (unless otherwise required by applicable authority) shall be located in the rear or side yards of a Lot. Woodpiles shall consist of no more than one (1) face cord of wood and shall be stacked as not to interfere with the view of any adjacent lot owner and in no event shall be stacked more than four (4) feet high. In no event should any woodpiles be covered with any tarpaulin or any other such cover. Any screening fence must receive the prior approval of the Architectural Review Committee as to design physical characteristics and location.

Section 3.8. Access drives and other paved areas for vehicular use on a Lot (excepting roads and alleys) shall have a base of compacted gravel or sand or crushed stone and shall have a wearing surface of all concrete, or paving stone.

Section 3.9. Any visible solar collectors shall be subject to the prior written consent of the Architectural Review Committee.

Section 3.10. Each Owner shall be responsible, at its sole expense, for the repair, maintenance and replacement, as necessary, of the fencing located upon its Lot. Any repairs or replacements shall be performed in a manner so as to cause such fencing to remain in appearance similar to the original appearance thereof. All fencing, including swimming pool fencing, shall be as approved by the Architectural Review Committee.

Section 3.11. No flood lights or bright lights which excessively illuminates adjoining Lots shall be permitted. No permanent basketball standards or backboards shall be permitted without the prior written approval of the Architectural Review Committee.

Section 3.12. Mailboxes shall be aesthetically uniform and located, constructed, maintained, replaced and repaired in accordance with standards and specifications established by the Architectural Review Committee. No unapproved mail boxes or front yard light fixtures shall be located on any lot within the Development. No mailboxes shall be located on any trail or path easement or common area.

Section 3.13. No above-ground communication, electric or television lines or cables shall be placed by any Owner anywhere on the Property other than within Dwellings. All television or radio antenna, earth station dish, pole, wire, rods, satellite dish, or other device used in connection with the reception or transmission of any television, radio, or any other electrical signal shall be

erected or maintained on the rear exterior of any Dwellings. Unless otherwise approved by the Architectural Review Committee, all such devices should be in compliance with rules of the Federal Communication Commission, and no dishes shall be in size greater than thirty-six (36) inches in diameter.

Section 3.14. No noxious or offensive activity shall be carried on, in , or upon the Property, nor shall anything be done thereon which may constitute or become an annoyance or nuisance to the Owners. The Architectural Committee shall have authority of judging such violations. Without limiting the foregoing, the following activities are specifically prohibited:

- a) Permitting rubbish or debris of any kind to accumulate on any Lot.
- b) Permitting unsightly plants or underbrush or plants breeding infectious plant diseases or noxious insects grow.
- c) The burning of refuse outside a Dwelling.
- d) Foil or reflective materials used on windows as sun screens.
- e) Heating/air conditioning units installed in any windows.
- f) Exposed PVC or other pipe in any exterior location visible from the street in front of said dwelling.
- g) Allowing overhead garage doors to remain open when not in use.
- h) The accumulation of derelict vehicles, garbage, rubbish, or other unsightly materials within the Development. A derelict vehicle is defined as a vehicle not currently licensed and/or inoperable for a period in excess of twenty-four hours.
- i) The overnight parking of vehicles on any driveway for any period accumulating more than five (5) consecutive days or fourteen (14) calendar days in any one (1) calendar year, except for vehicles parked inside the garage, without Board approval.
- j) The hanging of laundry, clothing, rugs, or any other articles on any railings, fence, hedge, or wall, or the erection of laundry drying equipment including clotheslines, outside a Dwelling.

Section 3.15. Except as expressly provided herein, no temporary building, truck over ¾ ton, trailer, boat, mobile home, recreational vehicle, tent, or other similar improvement shall be located upon any Lots on more than five (5) consecutive days or fourteen (14) calendar days in any one (1) calendar year, except for vehicles parked inside the garage.

Section 3.16. Landscape Requirements: Dead grass, trees or shrubbery and excessive weeds or overgrown landscaping shall be promptly removed/remedied from an improved Lot by the Owner thereof. Unimproved Lots other than the Lots owned by the Declarant, shall be planted with grass or other vegetation as permitted by the rules and regulations adopted by the Association. The front yard and side yards of each improved Lot, other than such portion as underlies the Improvements, shall be landscaped. The Lots shall be landscaped as aforesaid, as weather conditions permit, within a timeframe equal to the lesser of a) six (6) months of completion of construction or b) within ninety (90) days of occupancy. Landscaping shall not be installed in a manner which may unreasonably obstruct any vehicular traffic along public ways or present a visual obstruction creating safety hazards. No existing Trees with a caliper greater than 2" shall be removed or relocated without prior approval from the Architectural Committee. The Architectural Control Committee shall review and approve all landscaping plans prior to installation. Subject to the details of any Detailed Landscaping Plan, which shall control if different from these covenants, all lots and/or units shall include the following minimum landscaping:

- a. Trees:
  - a. Level 1 & 2 Lots: at least two trees shall be installed along the front yard border approximately five (5) feet behind the sidewalk. Such trees shall have a minimum caliper of 2" measured six (6) inches from the ball and be of approved species type;
  - b. Level 3 & 4 Lots: at least one trees shall be installed along the front yard border approximately five (5) feet behind the sidewalk between each driveway. Such trees shall have a minimum caliper of 2" measured six (6) inches from the ball and be of approved species type;

- b. Sod shall be installed in all front and sideyards;
- c. No plant species shall be installed in conflict with Article 9 herein or Town Ordinance.
- d. Additional bushes and flower plantings shall be required at the front of all Lots to create a pleasing and consistent attractive look.

Section 3.17. Except as provided in Section 3.15, trucks, boats, recreational vehicles, campers, snowmobiles, motorized golf carts, trailers, commercial vehicles or other vehicles shall, when not being driven or operated, at all times be parked in the garage of the Dwelling. The repair or maintenance of said vehicles shall not be permitted except within the confines of the garage. The term "commercial vehicle" shall include all automobiles, station wagons, trucks, or vehicular equipment which bear signs referring or having printed on them, references to any commercial undertaking.

Section 3.18. No animals (other than inoffensive common domestic household pets such as dogs and cats) shall be kept on any Lot or within the confines of any Improvements thereon. The breeding or keeping of animals for sale or profit is expressly prohibited. No more than three (3) pets shall be allowed to reside at any one Dwelling or on any Lot.

Section 3.19. No motorized vehicles or motorized devices of any type, except approved motorized vehicles for handicapped residents, shall be permitted upon the trails or common areas without the express approval of the Board.

Section 3.20. The Owner shall observe such rules and regulations regarding the parking or motor vehicles within the Development as may be prescribed by the Association from time to time, including rules restricting parking to one or the other side of the streets. No vehicles shall be parked on any common area, alley, private or public street within the Development without the express written approval of the Association.

Section 3.21. Except for activities of the Declarant, all construction shall be performed in a manner so as not to impair or interfere with the enjoyment by other Owners of their right, title and interest at the Property, and each Owner shall refrain from any activities which shall be injurious to person or property.

Section 3.22. Each Owner shall keep all areas of the Lots designed or intended for the proper drainage or detention of water, including culverts, swales and ditches, unobstructed, maintained, and mowed regularly. No trees, plantings, shrubbery, fencing, patios, structures, landscaping treatment or other obstructions shall be planted, placed or (except for existing trees or plantings) allowed to remain in any such areas without Architectural Committee approval. In no case shall an Owner alter the rate or direction of flow of water from any Lot by impounding water, changing grade, blocking, redirecting swales, ditches or drainage areas or otherwise. Each Owner acknowledges, by acceptance of a deed to a Lot, that any and all such drainage or detention areas are for the benefit of the entire Property.

Section 3.23. Except for activities of the Declarant it is the intent that all lots within the Development shall be used for residential purposes and no home business which causes an increase in traffic, noise, or disturbs the peace and quiet of the neighborhood shall be allowed within the Development.

Section 3.24. No signs excluding political signs and Declarant advertising shall be displayed on any lot other than house numbers; provided, however, that the Declarant shall be entitled to place but is not limited to For-sale-signs, model home signs, open house signs, flags, flyer boxes, directional signs and similar on lots and common areas within the development at Declarant's discretion; and provided further that General Contractors building Dwelling units shall have the right to display a sign on the Lot its building setting out its name, web page and telephone number, which sign shall not exceed two (2) feet in height by three (3) feet in width or as otherwise



approved by Declarant. General Contractors' signs shall be permanently removed not more than one (1) month after the date of occupancy of the Dwelling.

Section 3.25 No firearms shall be discharged within the Development except by authorized police personnel in the performance of their duties.

Section 3.26 Seasonal Ornamentation. All exterior seasonal ornamentation and/or decorations shall be installed no earlier than thirty (30) days before and removed within thirty (30) days following the date of the recognized holiday or occasion.

Section 3.27 Right to Repurchase Lots. As long as Declarant owns at least one Lot or Parcel and in the event that 1) construction of a residential dwelling meeting the requirements of these restrictions is not commenced on a lot or Parcel within a period of two (2) years from the date on which such lot is conveyed by the Declarant to the original purchaser thereof ("First Sale Date"), or 2) the original purchaser sells or otherwise transfers his interest to a third party Owner prior to obtaining a certificate of occupancy illustrating that construction is materially completed of a residential dwelling on the Lot; then the Declarant shall thereupon have the right at any time after either event to repurchase such lot from the current owner of such lot. The current Owner shall within thirty (30) days from notice by Declarant, transfer by warranty deed to Declarant free and clear of all liens and encumbrances, except current property taxes which shall be prorated to the date of closing, at a price equal to the same price which the Declarant sold such lot to the original purchaser thereof, without payment of interest or any other charges. Declarant may extend or waive this right, in its sole discretion, by a written instrument duly executed by the Declarant.

#### **ARTICLE IV ARCHITECTURAL CONTROLS**

Section 4.1. Except for Improvements constructed by Declarant, no improvements, whether original or replacement, temporary or permanent, shall be constructed, placed or permitted on any lot without the prior written approval of the committee established in accordance with section 4.2 (the "Architectural Review Committee"), which approval shall be obtained in the manner hereafter set forth.

Section 4.2. The Board shall establish the Architectural Review Committee which shall consist of up to five (5) but not less than three (3) members, all of whom shall be Owners and who may or may not be members of the Board, provided that prior to the Turnover Date, such members do not have to be Owners and there may be less than three (3) members. The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any 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 by the Board to fill such vacancy shall serve the remainder of the term of the former member. The Architectural Review Committee shall elect a chairperson and he or she, or in his or her absence, the vice chairperson, shall be the presiding officer at its meetings. The Architectural Review Committee shall meet as needed, as well as upon call of the chairperson, and all meetings shall be held at such places as may be designated by the chairperson. A majority of the total number of members 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 Architectural Review Committee shall constitute the action of the Architectural Review Committee on any matter before it. The Architectural Review Committee is authorized, with the approval of the Board of Directors, to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Review Committee in performing its functions set forth herein. Each member of the Architectural Review Committee may be paid a stipend or honorarium as from time to time determined by the Board.

Section 4.3 The Architectural Review Committee is hereby authorized, with the approval of the Board of Directors, to promulgate from time to time written architectural standards, policies, and

guidelines (the "Standards") governing the construction, location, landscaping, and design of Improvements, the contents of submissions of Plans and Specifications, and other information required to evidence compliance with and obtain approvals pursuant to the provisions hereof. It may also charge reasonable fees to cover its review costs for the above items. Any such Standards shall be binding and enforceable on all Owners with respect to all improvements requiring the approval of the Architectural Review Committee. No improvements shall be commenced, constructed, altered, added to or maintained upon any part of the Property (except for Dwellings and other Improvements which are constructed by Declarant and its assigns and for Improvements which pursuant to the Article IV do not require the consent of the Architectural Review Committee) unless and until the Architectural Review Committee has approved said improvements in writing.

Section 4.4. The specific consent of the Architectural Review Committee shall be required as a condition to the construction or alteration of all improvements as defined in paragraph 1.17 including yard lights, fences, patio screens, decks, exterior lighting, air condition units, mailboxes and landscaping. The foregoing shall not be deemed to limit the authority of the Architectural Review Committee to promulgate Standards relative to such Improvements or to take corrective action in accordance with the Declaration with respect to such Standards.

Section 4.5. No construction of improvements shall be undertaken or conducted between the hours of sunset and 7:00 am or on Sundays, except for a) construction activities of Declarant, b) emergency situations involving the potential loss, injury, or damage to person or property, and c) otherwise permitted by the Architectural Review Committee.

Section 4.6. To preserve the architectural and aesthetic appearance of the Development, no construction of Improvements of any nature whatsoever (other than such Improvements specified in Section 4.4) shall be commenced or maintained by any Owner, other than Declarant, with respect to the construction of or affecting the exterior appearance of any Dwelling or with respect to any portion of the Property, nor shall any exterior addition to or change or alteration therein be made (including, a color other than as originally approved by the Architectural Review Committee), unless and until two (2) copies of the "Plans and Specifications" shall have been submitted to and approved in writing by the Architectural Review Committee as to the compliance of such Plans and Specifications with such Standards as may be published by the Architectural Review Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. For purposes hereof, "Plans and Specifications" shall be deemed to include at the Architectural Review Committee's discretion:

- a) The Lot site plan, as prepared by the Owner's engineer, showing, among other things, site drainage, the location and dimensions of all intended improvements and/or surveyor;
- b) Soil test reports showing test borings, soil composition and load bearing capacity of area(s) where buildings are to be located. By not furnishing this information to the Board, Owner hereby forever waives any rights it may have at equity or otherwise for damages against the Association or Declarant due to soil conditions of a Lot or Parcel. Owner further herein agrees to indemnify, defend, and hold harmless the Association and/or Declarant from any such suit brought on its behalf or by a third party regarding Owner's Lot;
- c) Drawings, plans and specifications, as prepared by the Owner's architect, of all exterior surfaces, including roofing, showing elevations and grade, and including the color, quality and type of exterior construction materials and landscaping
- d) As a condition for Plan and Specifications approval. The Architectural Review Committee shall have the right to require payment of an application fee and a cash sum in an amount not to exceed One Thousand Dollars (1,000.00) to be held by the Architectural Review Committee until completion for the purpose of guaranteeing that said construction will conform to and be completed within the provisions of the Declaration. In the event that the Architectural Review Committee shall determine

the property owner and/or builder has failed to keep the lot, surrounding streets, lots, and Common Areas in a clean, sightly, safe condition during the construction, or has failed to install or maintain adequate soil erosion protection, the Architectural Review Committee shall be entitled to expend said sum for said purposes. Upon completion of construction, said cash sum, less any amount expended by the Architectural Review Committee as herein provided, shall be returned to applicant, without interest.

- e) In the event construction is commenced prior to obtaining Architectural Review Committee approval, the Plan Review Fee, if any, shall be twice the normal amount.

Section 4.7. No approval of Plans and Specifications and no publications of Standards shall be construed as representing or implying that such Plans and Specifications of Standards shall, if followed, result in properly designed Improvements. Such approvals and Standards shall in no event be construed as representing or guaranteeing that any Dwelling or other Improvement built in accordance therewith shall be built in a good and workmanlike manner. Neither Declarant, the Association, the Architectural Review Committee, its advisors, consultants, architects, nor engineers, shall be responsible or liable for any defects in any Plans or Specifications submitted, revised or approved pursuant to the terms of this Article IV, any loss or damages to any persons arising out of the approval or disapproval of any Plans or Specifications, with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such Plans and Specifications.

Section 4.8. The Architectural Review Committee may allow reasonable variances or adjustments of these Restrictions where application would result in unnecessary hardship, in its sole judgment, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions.

## ARTICLE V HOMEOWNER'S ASSOCIATION

Section 5.1. The Declarant shall form an Indiana not-for-profit corporation or other entity as prescribed by the Declarant, which shall provide for maintenance and operation of the Common Areas and in general to maintain and promote the desired character of the Development in accordance with these covenants.

Section 5.2.

- a) The association shall have a Board of up to five (5) but not less than three (3) directors (except prior to the turnover date, less than 3 is allowed) who shall be elected by the Members of the Association at such intervals as the Articles of Incorporation and By-Laws of the Association shall provide, except (i) that vacancies in the Board occurring between regularly scheduled annual meetings of the Members may be filled by the Board if so provided by the Articles of Incorporation or By-Laws and (ii) that the first Board and subsequent Boards (until the Turnover Date) shall be appointed by the Declarant. Except for directors of the Board appointed by the Declarant, all directors shall be Member of the Association. The Declarant may, from time to time, by written notice to the Association, elect to relinquish its rights to appoint any one or more directors and continue to exercise its right to appoint the remaining directors of the Board until the Turnover Date.
- b) The Association shall have such officers as shall be appointed from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. The Board shall have the authority to appoint such committees as it may from time to time deem appropriate. Except as expressly provided otherwise by the corporate charter or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in the Board in its officers under the direction of the

Board, and shall not be subject to the approval of the Members. The director and officers of the Association shall not be liable to the Owners or any other person, firm, or corporation for any mistake or judgment or any acts or omissions made in good faith as such director or officers.

- c) In the event that, after the Turnover date, the Members of the Association fail to elect a Board of Directors or otherwise fail to reasonably manage the affairs of the Association, then, at the sole election and discretion of the Town of Merrillville, the Town of Merrillville, may upon notice to all Members of the Association, act as the Board of Directors of the Association. In such case, The Town of Merrillville shall have all rights, powers, remedies, indemnities, etc. allotted to the Board of Directors until such date that the Town of Merrillville deems it in the best interests to relinquish control of the Board of Directors back to the Members of the Association.

Section 5.3. The Declarant shall, through the Board appointed by it, in accordance with Section 5.2, exercise control over all Association matters, until the first to occur of the following ("Turnover Date"): a) the date of the sale and conveyance of legal title to, one hundred percent (100%) of the Lots and/or residential living units in the last phase of the PUD, to Owners other than Declarant or an assignee of Declarant, or b) the Declarant elects voluntarily to turn over to the Members the authority to appoint the Board, which election shall be made by the Declarant executing and recording in the Office of the Recorder of Lake County, Indiana an instrument setting forth its intention to so turn over its authority hereunder. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date". On or prior to the Turnover Date, the Declarant shall convey to the Association hereunder and the Association shall maintain the Common Areas as required hereunder. The recording of a deed from the Declarant for all or a portion of the Common Areas shall be sufficient evidence of said conveyance.

Section 5.4. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or any of its successors in interest owns one or more Lots. From and after the Turnover Date, each member shall be entitled to one (1) vote for each Lot owned by him or her on each matter submitted to a vote of Members; provided, however, that where there is more than one Owner of a Lot, such co-owners of a Lot shall only be entitled to one vote for each Lot.

Section 5.5. The Association, through the Board, shall have the power and duty to:

- a) Own, maintain, install landscaping and/or structures and otherwise manage streets, roadways, wetlands, ponds, Common Areas and all Improvements thereon and all other property acquired by the Association or which the Association, pursuant to easement, license agreement, or these covenants it is permitted or required to maintain, or which the Association agrees to maintain, including any obligation or agreement (including any which may be entered into with the County of Lake, the Town of Merrillville, or other governmental agency) to install structures and landscaping & to maintain the Common Areas, wetlands, ponds, the entrance, landscape mounding and berms, and any landscaping located in cul-de-sac islands in the dedicated roads or street which are within the Property and to maintain any signage and lighting located thereon
- b) Contracts with independent contractors to perform all or any part of the duties and responsibilities of the Association
- c) Establish and maintain a Contingency and Replacement Reserve in an amount to be determined by the Board
- d) Maintain, at the expense of the defaulting Owner, all drainage areas and facilities located on the property in accordance with the reasonable and acceptable engineering requirements of the Association, the Town of Merrillville, or County of Lake in the event that one or more Owners fail to do so

- e) Provide for the maintenance of Common Areas, landscaping, sign monuments, fencing, retaining wall, water systems, lighting and other improvements located on the Common Areas or on the other property acquired by the Association or which the Association, pursuant to easement or license agreement, is permitted or required to maintain, or which the Association agrees to maintain
- f) At its option, enter upon any Lot to complete the construction or maintenance of any lot, Dwelling, or other improvement, the construction/maintenance of which is not being performed in a diligent, timely or workmanlike manner
- g) At its option, mow, care for, maintain and remove rubbish from any vacant or unimproved portions of the Property and to do any other things necessary or desirable in the judgment of the Board to keep any vacant or unimproved portions of the Property neat in appearance and in good order.
- h) Make such improvements to the Common Areas and provide such other facilities and services as may be deemed desirous from time to time by the Board acting in accordance with its Articles of Incorporation and By-Laws, provided, however that any such action so authorized shall always be for the purpose of keeping the Development a highly desirable residential community
- i) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members in the Declaration in the Articles on Incorporation or the By-Laws.
- j) As to Level three (3) and four (4) Lots, provide at its discretion for the maintenance of including but not limited to landscaping, sign monuments, fencing retaining walls, water systems, lighting, snow removal and lawn care and other improvements or on easement or license agreement, is permitted or required to maintain, or which the Association agrees to maintain.
- k) Charge a transfer fee in an amount not to exceed \$500.00 per transferred Lot or Parcel as reimbursement for its costs to review the status of association dues, provide a third party certifications for the same, and track the changes in ownership;
- l) Borrow monies from time to time to fund operations and improvements until an adequate number of non-Declarant Owners exist to fund orderly operations.
- m) Promulgate Rules and Regulations consistent with the purpose of these covenants.

Section 5.6. The Board shall also have the authority to obtain and maintain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workers' compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, each member, the Association, its officers, the Boards, The Declarant, Declarant's members and their respective employees and agents from liability and beyond the scope of their respective authority. Such insurance coverage shall include cross liability and insuring the officers of the Association and the Board from liability for any good faith actions taken beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties by having a severability of interests endorsement. The premiums for such insurance shall be common expenses payable out of proceeds of the assessments required by and collected in accordance with Article VI. The Association shall also have the authority and responsibility to obtain and maintain insurance policies covering, vandalism and malicious mischief endorsements as the Association shall from time to time deem prudent and to require members to be responsible for the acts of the members' family and guests.

Section 5.7. The Board, officers of the Association, members of any committee thereof (including the Architectural Review Committee) and the employees, consultants and agents of any of them shall not be liable to the Owners or any agents of any of them for a mistake of judgment for any acts or omissions of any nature whatsoever in their respective positions except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners shall indemnify, hold harmless, protect and defend the foregoing parties against all claims, suits, losses, damages, costs and expenses, including without limitation, reasonable attorney's fees and amounts paid in reasonable settlement or compromise incurred in

connection therewith. The burden of the foregoing indemnity shall be borne by the Owners as provided in Article VI hereof. To the extent possible, the Board's and Association's liability hereunder and the Owner's indemnification obligation shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association. The Board shall have the authority, but not the obligation, to exclusively contract for garbage, refuse collection, and recycling programs within the Development so as to limit the number of refuse and collection haulers within the Development, provided, however, that said authority shall be subject to the duly adopted ordinances, including subdivision control, zoning ordinances, and building codes of the Town of Merrillville, which ordinances, if adopted, will supersede the authority granted herein.

#### Section 5.8.

- a) Until the Turnover Date, the Declarant shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to exercise all power and authority of the Board.
- b) Until the Turnover Date, Declarant shall have the right, but not the obligation, to maintain the Common Areas and all Improvements, sign and monuments located thereon and, in its sole discretion, pay all expenses and costs arising in connection with the Common Areas, including, without limitation, the costs of improving and maintaining the Common Areas (and any Improvements, landscaping, signs and monuments located thereon) and general real estate taxes payable after the Turnover Date in connection with the Common Areas to the extent that any real property taxes payable after the Turnover Date in connection with the Common Areas are attributable to the period prior to the Turnover Date. Declarant shall convey the Common Areas to the Association on or before the Turnover Date.
- c) Declarant shall be entitled at all times to conduct sales of Lots for the Property and shall have the rights, for itself and its agents, employees, guests and invitees, to utilize roads, streets, common areas and all other portions of the Property, excluding sold Lots, for such purposes until all Lots are sold. Declarant may at all time utilize signage, lighting, and establish sales offices and model homes as required to conduct its sales and marketing of the property.

The Board shall have the authority to appoint such committees as it may be from time to time find useful. Such committees may include, but are not limited to, Grievance Committee, Wetland committee, Financial Committee, Security Committee, Common Areas Committee, Election Committee, etc. All such committees shall serve at the pleasure of the Board of Directors and the chairperson of such committee shall be appointed by the Board.

Section 5.9. The Board shall have the authority to impose reasonable restrictions on streets, ponds, and common areas within the Development, including the right to impose speed limits, traffic control signs, and other street signs, frost law type regulations, noise restrictions, and similar type restrictions as to the proper use of the streets, ponds, and common areas. The Board shall also have the authority to impose fines for violations of said restrictions, and said fines may be collected as provided for delinquent assessments, including interest, attorney fees, administrative expenses and court costs.

### ARTICLE VI ASSESSMENTS

Section 6.1. Each Owner, by taking title to a Lot or Parcel (except for Declarant and Declarant's Agents and assigns), shall be deemed to have covenanted and agreed to pay to the Association annual assessments or charges and special assessments for capital improvements and unforeseen expenses, to be collected for time to time as hereinafter provided. Annual Assessments may vary by Lot Level and services and amenities provided said lot. Said Assessments shall be reasonably set by the Board in relation to services and amenities provided or anticipated to be provided. The Declarant shall in no event be required to pay such annual or special assessments as pertain to the

Lots which it owns. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided shall be a lien on the Lot against which each such assessment is made. Furthermore, each such assessment together with such interest, costs and reasonable attorney's fees also shall be the personal obligation of the person who is the Owner of such Lot.

Section 6.2. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents of the Property, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Areas. Such uses shall include, without limitation, the cost of all general real estate taxes, insurance, repair, replacement and maintenance and other charges required or permitted by this Declaration and the cost of those items that the Board shall determine to be necessary or desirable to meet the purposes of the Association, including without limitation the establishment and maintenance of the Contingency and Replacement Reserve.

Section 6.3. Each year on or before December 1, the Board shall estimate the total amount of expenses necessary to pay the cost of wages, materials, taxes, insurance services, supplies and other necessary or desirable items or services which will be required during the ensuing calendar year (January 1-December 31) for items or services authorized by the Board, together with a reasonable amount necessary to fund the Contingency and Replacement Reserve, and shall, on or before December 1, make available to all Owners who so requests the amount of such estimate ("Estimated Cash Requirement"). Such Estimated Cash Requirement shall be prepared on a line-item basis. The Estimated Cash Requirement shall be assessed among all of the owners excepting the Declarant. On or before January 31<sup>st</sup> of the ensuing fiscal year, each Owner shall be obligated to pay to the Board, or as the Board may direct the annual assessment made pursuant to the Section 6.3. On or before the date of the annual member meeting of each calendar year, the Board shall make available to all Owners who so request and itemized accounting of the expenses for the preceding fiscal year incurred and paid, together with the tabulation of the amounts collected from the Owners pursuant to assessments made during such year and showing the net amount over or short of the actual expenditures, plus reserves. The Board shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments and/or charges on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment or nonpayment of any assessment and/or charges thereon. Prior to the turnover date, the Board shall not be required to hold annual member meetings.

Section 6.4.

- a) After the units on the Real Estate are more than 75% occupied, the Board shall build up and maintain a reserve for the replacement of capital improvements, other authorized capital expenditures and for unforeseen expenditures (the "Contingency and Replacement Reserve"). Capital improvement and expenditures greater than ten thousand dollars (\$10,000) which may become necessary during the year shall be charged first against the Contingency and Replacement Reserve. Improvements having a cost in excess of Fifty Thousand Dollars (\$50,000.00) shall require the prior approval of the Member's holding fifty percent (50%) of the votes of the Association.
- b) If the Contingency and Replacement Reserve proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may, at any time, levy a special assessment, which shall be assessed among the Owners, excepting Declarant. Lots shall be assessed for special assessment the same as for an annual assessment as set forth in Section 6.3. The Board shall serve notice of any such special assessment on all such Owners by a statement in writing giving the amount and reasons therefore, and such special assessment shall become effective and fully payable ten (10) days after delivery of mailing of any such notice of assessment.

Section 6.5. The failure or delay of the Board to prepare or serve the Estimated Cash Requirement on any Owner shall not constitute a waiver of release in any manner of any Owner's obligation to pay his share of such estimated Cash Requirement at herein provided, as and when

the Estimated Cash Requirement shall be determined, and in the absence of the preparation of the Estimated Cash Requirement, the Owner shall continue to pay his share of such Estimated Cash Requirement at the then existing annual rate established for the previous calendar year, subject to adjustment at such time as the Estimated Cash requirement has been prepared and the Owners have been notified thereof.

Section 6.6. The Board shall keep full and correct books of account of the receipts and expenditures pertaining the Common Areas and any other property with respect to which it may have rights hereunder, specifying and itemizing the maintenance and repair expenses of such property and any other expenses so incurred. Such records and the vouchers authorizing the payments described therein shall be available for inspection by any Owner or any representative of any Owner duly authorized in writing, or any holder of a Mortgage, by appointment, at such reasonable time or times during normal business hours, and upon payment of reasonable fees which the Board may impose to cover administrative costs, when requested by an Owner or by the holder of a Mortgage. Upon fourteen (14) days prior writing notice to the Board, any Owner shall be furnished a statement of his or her account, which statement shall set forth the amount of unpaid assessment or other charges due and owing from such Owner.

Section 6.7. All funds collected hereunder shall be held and expended for the purposes designated herein, and are hereby held in trust for the benefit, use and account of all Owners. All funds not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories or investments as the Board may select.

Section 6.8. Any assessments or other charges which are not paid when due shall be delinquent. If the assessment or charge is not paid within thirty (30) days after due date, the assessment shall bear interest from and after the due date at the lesser of the rate of eighteen percent (18%) per annum or the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, may apply a lien against the Lot or Parcel of the Owner, may foreclose the lien against the Owner's Lot or Parcel, may collect interest, costs and reasonable administrative expenses, and/or attorneys' fees incurred in such action which shall be added to the amount of any such overdue assessment. The amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be and become a lien or charge against the Lot and/or Parcel of any such Owner then payable and may be foreclosed by an action brought in the name of the Board and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey any interest so acquired. The association shall not be required to accept any member who's membership is based upon ownership of a lot for which delinquent assessments, fees, costs, or charges remain outstanding, whether or not there is an enforceable lien against the lot and whether or not said assessments, fees, costs, or charges were incurred by the present owner or a prior owner.

Section 6.9. The lien of assessment and/or charged provided for herein shall be subordinate to the lien of any Mortgage now or hereafter placed on the Lots. In the event of the issuance of a deed pursuant to the foreclosure of such prior Mortgage or in lieu of such foreclosure, the grantee of such deed shall take title free and clear of any lien for assessment authorized by the Declaration so long as any such lien shall have arisen prior to the date of recording of any such deed.

Section 6.10. Whenever two (2) or three (3) "Contiguous Lots" in the development shall be owned by the same Owner, and such Owner shall desire to use two (2) or three (3) of said lots as a site for a single dwelling house, said Owner shall apply in writing to the Architectural Review Committee for permission so to use said lots. If written permission of such a use shall be granted, the lots constituting the site for such single dwelling house shall be treated as a single lot for the purpose of applying this Declaration to said lots, so long as the lots remain improved with a single dwelling house. In the event ownership of said lots is ever separated, the Owner shall be liable to pay to the Association back assessments which were not paid due to the contiguous lot status for a



period not to exceed five (5) years any such permission, however, shall be subject to all requirements of all governmental units having jurisdiction over the property.

## ARTICLE VII EASEMENTS

Section 7.1. Declarant hereby declares the following non-exclusive easements are hereby created with respect to the Common Areas:

- (a) Each Owners and its respective quests, invitee and employees shall have a non-exclusive easement for use and enjoyment in and to the streets and Common Areas subject to the following: (i) the rights of the Association to pass reasonable rules and regulations relating to such use and enjoyment, (ii) the right of the Association to suspend an Owner's right to use or enjoy such easements (excepting streets) for any period during which such Owner may be in violation of this Declaration including any period during which the Owner has unpaid assessments more than sixty (60) days past due, (iii) the right of the Association to levy assessments as herein provided, and (iv) any and all rights reserved to Declarant and the Association top levy assessments as herein provided.
- (b) A non-exclusive easement for the installation and maintenance of drainage facilities and utility easements, including cable television, is hereby granted to the Association and reserved by the Declarant over, under, and through all unsold lots and the Common Areas. If any such drainage or utility facilities are not installed or if any easements for such purposes are not created with respect to a Lot or any portion thereof prior to delivery of a Lot Deed to any Owner, said Owner hereby grants to the Declarant and the Association a power of attorney to execute any record such easements with respect to any Lots owner by said Owner for the benefit of the property. The foregoing power of attorney is hereby coupled with an interest and is therefore irrevocable.

Section 7.2. The Association may construct and maintain social improvements upon the Common Areas and/or within the portions of the Lots which are subject to any easement therefore as established pursuant to the Subdivision Plat. The Association (excluding any third party municipality) shall complete construction of the trail system in the center outlot prior to a total of 125 homes having either building permits allowing construction to commence or occupancy certificates (combined).

Section 7.3. Declarant hereby declares a non-exclusive easement in its favor over unsold Lots within the Development and over the Common Areas for the maintenance of signs, sales offices and business offices, together with such other such facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the sale of Lots or Dwellings, for so long as Declarant owns any Lot.

Section 7.4. The Declarant, Association and any of their respective agents, employees, and independent contractors shall have the right to enter upon the Common Areas and any Lot to the extent necessary for the purpose of constructing, maintaining, repairing and replacing sight/sound barriers, landscape mounding and beams, and the common Areas and any improvements in, on , under or upon the Common Areas as herein provided or any proportion of the Property which they, or any of them, pursuant to easement or license agreement, are permitted or required to maintain or for performing any of their respective rights or obligations herein provided, including without limitation the rights and the obligations granted pursuant to section 5.5 herein above. No one other than the Declarant, or the Association shall have the right to make any changes or alterations in any sight/sound barriers or landscape mounding or beams. In any such case, the Declarant, Association or any of their agents, employees or independe4nt contractors shall not be guilty of any trespass.

Section 7.5. The Declarant and the Association hereby reserve the right to grant easements for ingress, egress, installation, construction, reconstruction, maintenance, repair, operation and

inspection of utility services over, under, across and through the Common Areas as they deem necessary or desirable in order to effectuate the intent of this Declaration and for such purpose, the right to dedicate or transfer fee simple ownership to all of or any part of the Common Areas to any appropriated governmental authority or public or private utility company is hereby reserved.

Section 7.6. Any grant change or abandonment of easement pursuant to this article shall be subject to any not in conflict with any requirements of all governmental units having jurisdiction over the property.

**ARTICLE VIII  
PARTY WALLS, COVENANTS, & EASEMENTS  
SPECIFIC TO LEVEL 3 & 4 LOTS**

Declarant or its successors may improve each Lot with a duplex, triplex or fourplex, and thereafter separately convey each separate living unit along with an appropriate portion of the Lot as determined by the Declarant or Declarant's successors (each separately conveyed living unit and portion of a Lot herein referred to as a "Parcel"); and

Declarant desires to establish a party wall and create protective and restrictive covenants and easements (hereinafter the "Restrictions") which shall be applicable to each Lot, for the purpose of maintaining a fair and adequate value of the Lot, and to insure that each Parcel will continue as a desirable residential parcel.

**Section 8.1 PARTY WALL AND EASEMENTS**

A portion of the Building to be erected on each Lot constitutes a common wall and boundary between the Parcels.

Declarant desires to settle all questions relating to the ownership and use of said common wall and Declarant does declare said wall to be a party wall and the owner of each Parcel shall have the right to use it jointly. Declarant does further declare as to said party wall as follows:

With respect to each Lot, no Parcel owner without the prior written consent of the other Parcel owner, shall extend the party wall or use the same in any manner that would impair the use of the same by the other Parcel owner.

In the event it becomes necessary or desirable to repair or rebuild the whole or any part of the party wall, the expense thereof shall be borne equally by the Parcel owners, unless same shall be necessitated by the negligent or willful acts or omissions of one owner, in which event all of the expense thereof shall be borne by such owner.

Any repair or rebuilding of the party wall shall be upon the same location, of the same dimensions, and of the same or similar materials of equal quality as that used in the original party wall.

Each Parcel and the portion of the Building located thereon is hereby imposed with a mutual reciprocal easement over and through each Parcel for the benefit of the other Parcel comprising the Lot for the following purposes:

- A. Any and all utility services facilities now or hereafter in the future existing, including, but not limited to, utility services for gas, electricity, water, sewer, telephone, communications and security to the extent that any of same are presently located on one Parcel and service the other Parcel.
- B. For the structural support of that portion of the Building located on each Parcel including roof repairs.

- C. For the encroachment of more than one-half (1/2) of the party wall over and upon each Parcel, either presently or in the future for any reason, including, but not limited to, any such encroachment arising out of the reconstruction, repair or replacement of the party wall.
- D. For the use by one owner of any storm water sump pump drainage system located on the Parcel of the other owner in the event of the failure for any reason of such owner's own storm water sump pump drainage system, without any claim for the cost of operation, maintenance or repair thereof by the owner of the other Parcel.

#### Section 8.2 EXTERIOR BUILDING MAINTENANCE AND PRESERVATION

The owner of each Parcel shall, at his sole cost and expense, repair that portion of the Building located on his Parcel, keeping the same in a condition comparable to the condition thereof at the time of its initial construction, excepting only normal wear and tear. Said owners shall, as to the exterior of the Building (including, but not limited to, windows, doors, siding, roofing, landscaping and driveway and sidewalk pavement), maintain and preserve the design, color scheme and concept of the original construction. Further, the owners shall, as to the exterior portions of the Building that require painting or staining, repaint or restain the same at least every five (5) years. The exterior color scheme shall be maintained in its original state unless all owners of the Lot and the Architectural Review Committee agree upon a different scheme.

#### Section 8.3 OWNER'S OBLIGATION TO REBUILD

If all or any portion of the Building or other improvements on a Lot are damaged or destroyed by fire or other casualty, it shall be the duty of the owners thereof, to build, repair or reconstruct in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurred and such reconstruction shall be diligently pursued until completed. The proceeds of any casualty insurance payable to the owner or its mortgagee is hereby pledged to be held in trust for the sole purpose of reconstructing the Building and shall be used solely for such purpose.

#### Section 8.4 INSURANCE

Each Parcel owner shall hold harmless the owners of the other Parcel comprising a Lot from all claims or judgments arising from the use of those areas of the Lot or Building shared by the owners, unless the claim, demand or judgment is caused by the negligence of that other owner. Further, each such Parcel owner shall maintain all risk insurance for the full replacement cost as to the portion of the Building located on that owner's Parcel. Evidence of such insurance in the form of a Certificate of Insurance shall be furnished to the owners of the other Parcel comprising a Lot and the Association upon written request providing for both the other Parcel owner and Association as Certificate Holders with the right of 30 day notice prior to expiration or cancellation of insurance. Failure to maintain adequate insurance in an amount deemed adequate by the Association shall be a violation of these covenants. In the absence of evidence of required insurance provided by a Parcel Owner, the Architectural Control Committee may require insurance on behalf of any Parcel owner at its sole discretion and access said owner.

### ARTICLE IX ENVIRONMENTAL CONSIDERATIONS

Section 9.1. In designing the subdivision, Declarant has collaborated with the Town of Merrillville to implement many principles considered to be Environmentally Friendly and Smart Growth Principles. This approach is designed to provide an attractive, convenient, safe, and healthy neighborhood. It promotes protection of the environment while stimulating economic growth. Most of all, it can create more choices for residents, workers, visitors, children, families, single people, and older adults—choices in where to live, how to get around, and how to interact with the

people around them. This approach preserves the best of the past while creating a bright future for generations to come. A partial list of some considerations included in the design of the subdivision are as follows:

- a. Employment of a Mixed-Use Site Design;
- b. Provision of Central Open Spaces;
- c. Design as Walkable Communities;
- d. Moderate Building Footprints;
- e. Minimized off-street surface parking;
- f. Enhanced Privacy for residents by designing amenity views to most housing;
- g. Creation of a Range of Housing Opportunities and Choices;
- h. Preserve of Mature Trees and Amenities;
- i. Concentration of critical services adjacent to residences;
- j. Beautification and Maintenance of existing amenities;
- k. Provide ADA access to sidewalks, streets, parks, etc.
- l. Connect walkways, parking lots, greenways and developments;
- m. Stimulate pedestrian activity
- n. Enact clear design guidelines to promote a sense of place;
- o. Implement Low Impact Development Stormwater Management techniques around Commercial parking;
- p. Comply with Rule 5 erosion guidelines;

Section 9.2. Duty to Preserve Environmental Integrity. The Association shall have the duty and responsibility to continue, maintain, and enforce the environmentally friendly principles and structures provided by the Declarant.

## **ARTICLE X GENERAL PROVISIONS**

Section 10.1. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Board, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded in the Office of the Recorder of Lake County, Indiana, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless changed in whole or in part by the Declarant (if prior to the Turnover Date) or the vote of those persons who are then the Owners of a majority of the Lots of the Development (if after the Turnover date). Prior to the Turnover Date, the Board may amend these covenants at its discretion without the authorization of the Owners. However, any such amendment shall not be contrary to a Town Ordinance. After the Turnover Date, a positive vote by two thirds of the Owners may amend the covenants but no provision of these covenants or any amendment thereto which relates to building set back lines, minimum lot size, minimum square footage, applicable subdivision control ordinances, zoning ordinances or building codes, for dwelling or other buildings may be amended or changed without the prior written consent of the governmental entity having zoning jurisdiction over the development.

Section 10.2. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute of common law rule analogous thereto or otherwise imposing limitations upon the time during which such covenants may be valid, then said covenant shall continue and endure only until the expiration of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Randolph Hall, living at the date of this Declaration.

Section 10.3. Each grantee of Declarant by taking title to a Lot, and each purchaser under any contract for a deed of conveyance pursuant to which said grantee will take title, accepts said title subject to all restrictions, conditions, covenants, reservations, liens and charges, and the

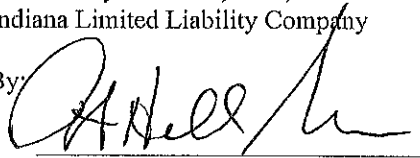
jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit or such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section 9.3 or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgages and trustees of such Lot as fully and completely as though such rights are recited fully and set forth in their entirety in any such documents.

Section 10.4 PUBLIC STREETS. All streets shall be public and transferred and donated to the Town of Merrillville except for alleys, as described per recorded plat plot.

Section 10.5. NOTICE. All notices, demands and requests to be given hereunder by either party shall be in writing and must be sent by registered or certified mail, postage prepaid. If to Declarant, to the office address of 4259 E Lincoln Hwy, Merrillville, IN 46410 or to such address as may be designated by Declarant in the future; if to Owner at their last known address. Service shall be deemed complete upon mailing.

Hall Family Investors, LLC, an  
Indiana Limited Liability Company

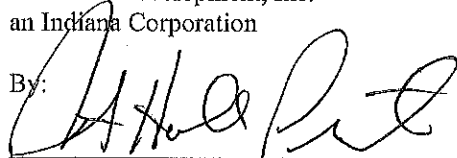
By:



Randolph A. Hall, Member

Hallmark Development, Inc.  
an Indiana Corporation

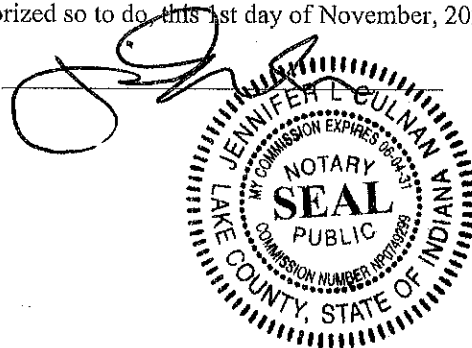
By:



Randolph A Hall, President

STATE OF INDIANA, COUNTY OF LAKE, SS:

Before me, the undersigned Notary Public in and for said County and State, personally appeared Randolph A. Hall, Member of Hall Family Investors LLC, an Indiana Limited Liability Company, and President of Hallmark Development, Inc. and acknowledged the execution of the foregoing Master Declaration of Covenants, Conditions, Restrictions and Easements for Liberty Estates, which he is authorized so to do, this 1st day of November, 2023.



(INSERT LEGAL DESCRIPTION PHASES 1,2,3)

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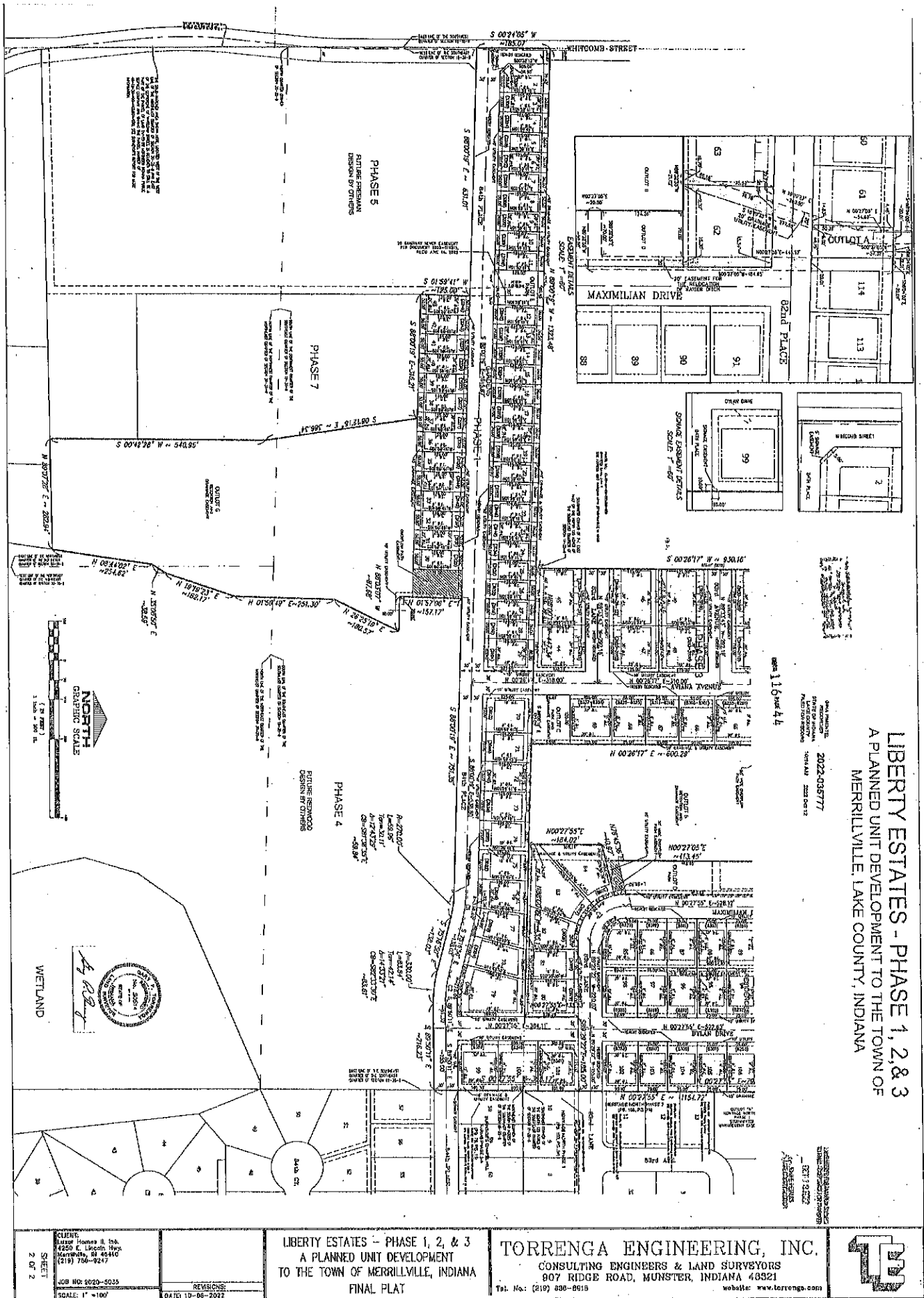
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**LIBERTY ESTATES - PHASE 1, 2, & 3**  
A PLANNED UNIT DEVELOPMENT TO THE TOWN OF  
MERRILLVILLE, LAKE COUNTY, INDIANA

[illegible]

(INSERT LEGAL DESCRIPTION PHASES 1,2,3)



## **EXHIBIT B**

Level 1 Lots Numbered (70-114)

Level 2 Lots Numbered (2-43)

Level 3 Lots Numbered (54-62, 66-68)

Level 4 Lots Numbered (44-53, 63-65, 69)