

for meeting

SMOKEY ROW
DECLARATION of CC&R's

Inst #
2004-006040
March 3, 2004

The undersigned, The Nichols Group, LLC, an Indiana Limited Liability Company, by its duly authorized Members, makes this Declaration of Covenants, Conditions, and Restrictions this 16th day of May 2002

ARTICLE 1 – DEFINITIONS

"Articles" means the Articles of Incorporation of the Association, as amended from time to time.

"Assessable Property" means each of 83 Lots within the Project Property.

"Assessment" means an Annual Assessment or Special Assessment.

"Assessment Period" means the period set forth in Section 6.2.2.

"Assessment Lien" means the lien created and imposed by Section 6.2.1.

"Association" means Smokey Row Community Association, Inc., an Indiana nonprofit corporation, and its successors and assigns. [REDACTED]

"Association Land" means land with improvements that the Association owns or in which it has an interest.

"Association Official" means each and every officer and director of the Association and its Board, each and every member of the Design Review Panel, and each and every member of any committee appointed by the Board.

"Association Rules" means the rules adopted by the Board pursuant to Section 5.7, as amended from time to time.

"Board" means the board of directors of the Association.

"Board Action" and "Action by the Board" mean any legal action authorized by the Bylaws and/or this Declaration and taken or approved by a majority or Super Majority (as the case may be) of the Board pursuant to a duly convened meeting of the Board, proper and required notice having been given.

"Bulk Services" means those services contemplated by Section 9.17

"Bylaws" means the Bylaws of the Association, as amended from time to time.

"Committee" means a group of not less than three (3) persons (one of whom may be a Director), who are appointed by the Board from time-to-time, to serve at the pleasure of the Board, to perform such advisory and other functions as required and/or permitted by the Project Documents and/or the Board pursuant to the Project Documents, including for purposes related but not limited to, Landscaping, budget and finance, governmental issues and affairs, social interactions and functions, communications, architectural matters, pond issues, infrastructure, and nominations. The Design Review Panel shall be a standing Committee of the Board in that it is a permanent, mandatory Committee whose membership and functions are controlled by this Declaration.

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"Common Area" means (a) all Association Land; b) all land, and the Improvements situated thereon, within the Project which the Declarant indicates on a Plat, Plat Declaration or other Recorded instrument is to be conveyed to the Association for the benefit and use of the Members; (c) all land, and the Improvements situated thereon, which is situated within the boundaries of a Lot and which is designated on a Plat Recorded by the Declarant or approved by the Declarant or the Association as land which is to be improved, maintained, repaired and replaced by the Association; (d) all land, and the Improvements situated thereon, within or adjacent to the Project which the Declarant indicates on a Plat, Plat Declaration or other Recorded instrument is to be used for landscaping, drainage or water retention or flood control for the benefit of the Project or the general public; (e) all real property, and the Improvements situated thereon, within or adjacent to the Project located within dedicated rights-of-way with respect to which Johnson County has not accepted responsibility for the maintenance thereof, but only until such time as Johnson County has accepted all responsibility for the maintenance, repair and replacement of such areas, and only if the specific areas to be maintained, repaired and replaced by the Association pursuant to this clause (e) have been expressly approved by either the Declarant or the Board; and (f) all land, and the Improvements situated thereon, which is designated in a Plat Declaration or a Recorded amendment to this Declaration as a Common Area.

"Common Area Open Space" means any approved, re-vegetated Common Area and any area of undisturbed natural land with no man-made improvements, whether or not included in any easements or dedications to or in favor of Johnson County or any utility company. The term includes areas designated and approved as Common Areas from time-to-time by the Board pursuant to any provision of the Project Documents permitting such designations and approvals,

"Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves

"Declarant" means The Nichols Group, LLC, an Indiana Limited Liability Company, its successors and any Person to whom it may expressly assign any or all of its rights under this Declaration.

"Declarant Affiliate" means any and all expressly and duly authorized and designated agents acting for and on behalf of the Declarant, within the scope and nature of the express agency.

"Declaration" means this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

"Design Review Panel" and "Panel" mean the committee established pursuant to Section 5.15.

"Design Review Rules" means the rules, criteria and guidelines adopted by the Design Review Panel pursuant to Section 5.15.3, as amended or supplemented from time to time.

"Developer" means any Person (other than the Declarant) who is in the business of building homes, and developing, selling or leasing real property, and who acquires one or more Lots in connection with and in the course of such business for the purpose of developing, selling or leasing such Lots.

"DUE" and "D.U.E." mean areas shown on the Plat designated as Drainage-Utility Easements.

"Exempt Property" means: (a) all land and improvements owned by, or dedicated to and accepted by, the United States, the State of Indiana, Johnson County, or any political subdivision of any of them, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective; and (b) all Common Areas.

"First Mortgage" means a Mortgage Recorded against a Lot that has priority over all other Mortgages Recorded against that Lot.

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"Governing Documents" means all Project Documents, plus all pertinent federal, state, county, and/or local laws, regulations, and/or ordinances

"Improvement" means: (a) any Residential Unit, building, fence or wall, (b) any swimming pool, tennis court, basketball court, road, driveway, parking area or satellite dish. (c) any Landscaping, devegetation, excavation, grading, or planting, (d) any statuary, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot), and (e) any other structure of any kind or nature, all within the Project Property.

"Improvement Professionals" means licensed (if required of the particular profession by any law, regulation or ordinance and/or by any government agency), professional, insured or bonded Developers, builders, contractors, architects, landscapers, landscape architects, civil engineers, plumbers, electricians, and other construction contractors, subcontractors and/or design professionals, who may perform Improvements within the Project Property.

"Landscaping" means any and all shrubs, trees, plants, hedges, grass, groundcovers, landscaping improvements and other plantings or pavements of every type and kind, and includes the acts of devegetation, excavation, grading, or planting, all within the Project Property.

"Lessee" means the lessee or tenant under a lease, oral or written, of any Lot (or part thereof), including an assignee of the lessee or tenant's interest under a lease.

"Lot" means a portion of the Project intended for independent ownership and residential use and designated as a lot on a final Recorded and approved Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot. The ultimate number of Lots may increase or decrease from the number of Lots reflected on any preliminary plat prior to the recording of the final Plat.

"Member" means any Person who is a Member of the Association as provided in Section 5.11.

"Membership" means a membership in the Association.

"Membership Assessment" shall have the meaning given such term in Section 6.5.

"Model Home" means any Residential Unit constructed by a Developer or Declarant (or Declarant Affiliate), being used for marketing and sales purposes and not being lived in by an Owner or Occupant

"Mortgagee" means a beneficiary under a deed of trust, or a mortgagee under a mortgage, Recorded against a Lot, and "First Mortgagee" means such a beneficiary or mortgagee under a First Mortgage.

"Occupant" means any person other than an Owner who occupies as a resident or is in possession of a Lot, or any portion thereof or building a structure thereon, whether as a Lessee, tenant, or otherwise.

"Owner" means the Person or Persons who individually or collectively own fee simple title to a Lot (as evidenced by a Recorded instrument). Notwithstanding the foregoing, the term includes the Declarant (and not the fee simple title holder) in the following circumstances: a) The Declarant shall be deemed to be the "Owner" of each Lot with respect to which title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of the Declarant or a Declarant Affiliate; and (b) In the event that, and for so long as, the Declarant or a Declarant Affiliate has an existing right or option (in writing) to acquire any one or more Lots (other than by exercise of a right of first refusal or right of first offer), the Declarant shall then also be deemed to be the "Owner" of each Lot. In any case where fee simple title to a Lot is vested in a trustee under a deed of trust pursuant to any Indiana Statute, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot.

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Where reference is made in this Declaration to Lots "owned by" a Person, such phrase shall be deemed to refer to Lots of which that Person is the Owner, as determined pursuant to this definition.

"Parcel" means any portion of the Property that is not included in a recorded Plat, or that is not designated as a Lot within a recorded Plat.

"Percent Fully Funded" refers to the Reserve Fund Account as defined in Section 6.22 and means *the ratio, at the beginning of each fiscal year, of the actual (or projected) reserve balance to the calculated, fully funded balance, expressed as a percentage*. The formula to be used in computing a 100% fully funded reserve Fund Account at any given time for any given asset shall be *the actual age of the asset ÷ by the projected useful life of the asset x the current cost of repair or replacement of the Asset*.

"Period of Declarant Control" means the period commencing on the date of the Recording of this Declaration and ending on the earlier of: (a) the date by which Residential Units have been built and occupied by Residents on each Lot within the Project Property, or (b) the date the Declarant Records a written instrument terminating the Period of Declarant Control.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, Limited Liability Company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

"Plat" means, individually, any subdivision plat or condominium plat Recorded against any portion of the Project with the intent or effect of subdividing such portion into Lots (together with any related Common Area, and public rights-of-way), together with all amendments, supplements and corrections to such plat, and, collectively, all such Plats Recorded against all or any portion of the Project.

"Plat Declaration" means a declaration Recorded pursuant to Section 2.2.

"Project" or "Property" means the real property described on Exhibit A, together with all Improvements located thereon, and all real property, together with all Improvements located thereon, which is annexed and subjected to this Declaration pursuant to Article 2.

"Project Documents" means this Declaration, all Plat Declarations, the Articles, the Bylaws, the Association Rules and the Design Review Rules.

"Purchaser" means any Person, other than the Declarant, who by any means of transfer becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to the Declarant or Private Investor for use as a model in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is expressly assigned any or all of the Declarant's rights as the Declarant under this Declaration.

"RDA" means the Reserve Data Analysis as defined and used in Section 6.22.

"Record," "Recording," "Recorded" and "Recordation" means placing or having placed an instrument of public record in the official records of Johnson County, Indiana.

"Reserve Fund Account" has the meaning stated in Sections 6.22 and 6.22.3.1.

"Reserve Fund Allocation" and "Reserve Fund Contribution" have the meaning stated in Section 6.22.2.

"Resident" and "Resident of the Project" mean each individual who resides in a Residential Unit.

"Residential Unit" means any building, designed and intended for separate, independent use and occupancy as a residence.

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"Spec Home" means a Residential Unit initially constructed and owned by a Developer with no particular prospective buyer contractually obligated to purchase the unit at the time construction is commenced.

"Special Assessment" means any Assessment levied pursuant to Section 6.12.

"Special User Fees" means any fees charged by the Association for use of Common Areas pursuant to Section 4.3.

"Street Lighting" shall be streetlights installed by the local electric utility provider, at locations within the Project as determined by the Declarant.

"Super Majority" means not less than sixty-six percent (66%) of Association or Board Members who would be entitled to cast a vote on any matter requiring such a majority for approval if all Owners and Members were present at the meeting where such a majority is required by any Governing Document. It does not mean sixty-six percent (66%) of any quorum actually in attendance at or during a meeting where such a majority is required in order to approve or take any action.

The term "Visible From Neighboring Property" as used herein means that which would be visible to a person six feet tall standing at or on street or ground level of any other Lot or roadway within the Project.

End of Article 1

ARTICLE 2 – PURPOSE OF DECLARATIONS / DISCLAIMERS

2.1. Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project.

2.1.1. All of the property within the Project shall be held, sold and conveyed subject to this Declaration.

2.1.2. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration.

2.1.3. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees (tenants) and transferees thereof.

2.1.4. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners

2.1.5. This Declaration, if and when Recorded, shall be binding upon and shall benefit the Association upon the issuance of a Certificate of Incorporation to and for the Association by the Indiana Secretary of State.

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2.2. Plat Declarations. The Declarant has the right, but not an obligation, to Record one or more Plat Declarations with respect to Lots within the Project.

2.2.1. A Plat Declaration must be executed by the Declarant (and by the Owner of the Lots subject to such Plat Declaration, if other than the Declarant). A Plat Declaration may: (a) designate Common Areas, (b) establish land uses for property subject thereto; (c) establish the number of Lots, as increased or decreased from any prior plat; (d) reserve or grant easements to such Persons and for such purposes as the Declarant may deem appropriate; (e) impose such additional covenants, conditions and restrictions as the Declarant may deem appropriate for the property subject to the Plat Declaration; and (f) annex and subject the property covered thereby to this Declaration (subject to the provisions of Section 2.4).

2.3. Disclaimer of Representations. The Declarant makes no representations or warranties whatsoever that any particular portion of the Project will be completely developed by any certain date. Infrastructure may be built in more than one stage as per the recorded plats, and there may be an undetermined length of time between the development or construction of different sections.

2.3.1. In addition, and in any event, representations by real estate brokers or Developers, or salespersons representing the Declarant, which representations are not also contained in this Declaration or other Project Document as duly recorded, and that may be made to any purchaser or prospective purchaser of any Lot, shall be not be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property and infrastructure otherwise subject to this Declaration or other Project Documents.

2.4. Recordation Prerequisite to Creation of Covenants and Restrictions. Until this Declaration is duly recorded, nothing contained herein shall be deemed to create any obligation, covenant or restriction, implied or express, with respect to the development, dedication, and/or use of any Property and/or infrastructure otherwise subject to this Declaration.

End of Article 2

ARTICLE 3 - LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

3.1. Land Uses. The purpose for which property within the Project may be used shall be, (a) "single family detached" residential use, (b) private recreational use by Owners and their guests, (c) Common Area Open Space with water retention ponds, and (d) such other residential, recreational or related uses as may be set forth in any Plat Declaration. A Plat Declaration may, but shall not be required to, specify the use or uses, which may be made of the Lots to which such Plat Declaration applies.

3.2. Architectural Control – Design Review Panel. All Improvements constructed or effected within the Project shall be of new construction approved in advance and in writing by the Design Review Panel ("Panel"), and no other buildings or structures shall be removed from another location and installed on the Project site (except for temporary construction and sales trailers approved by the Panel). No Improvement that would in any way alter the exterior appearance (including but without limitation, the exterior color scheme) of any property, Lot or Improvement within the Project, may be initiated or performed without the prior written approval of the Panel.

3.2.1. Written Applications, Prior Approvals. Any Owner or other Person desiring to construct or effect any Improvement, shall first submit to Panel a written request for prior approval specifying in detail the nature and extent of the intended Improvement.

3.2.2. Any Owner or other Person requesting the approval of the Panel shall also submit to the Design Review Panel any additional information, plans and specifications ("supporting materials") that the Design Review Panel may reasonably request.

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3.2.3. After receiving an application and any other materials pursuant to pursuant to Sections 3.2.1 and 3.2.2, the Panel shall, (a) provide the applicant with written notice stating the date when the application and all supporting materials were received by the Panel (the "Application Completion Date"), and (b) approve or disapprove the application within sixty (60) days after the Application Completion Date and after meeting and consulting with the applicant if so requested by either the Panel or Applicant.

3.2.4. Approvals Not Waivers. The Panel's approval of any application for Improvement shall not be deemed a waiver of the Panel's right to withhold approval of any similar application submitted for approval by the same or any other Owner or Person.

3.2.5. Timely Completion of Approved Improvements. Improvements approved by the Panel shall be initiated and completed as soon as reasonably practicable and within the time prescribed by the Panel.

3.2.6. Changes to Approved Plans. Any change, or deviation from the plans and specifications approved by the Panel must be first approved in writing by the Panel before implementation.

3.2.7. Inapplicable to Common Area and Infrastructure Development. The provisions of Section 3.2 do not apply to, and approval of the Panel shall not be required for any Improvement or other construction, installation, addition, alteration, repair, change, replacement or other work by or on behalf of the Declarant (or Declarant Affiliate), as applicable to infrastructure and/or Common Area development, construction, repair or Project Improvement in general.

3.2.8. Other Approvals Applicable. The approval required of the Panel pursuant to this Section 3.2 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any Governing Documents. The Panel may condition its approval of any application for Improvement upon delivery to the Panel of evidence acceptable to the Panel, that the Applicant also make appropriate applications for (and prior to commencing work on the Improvement, shall have obtained) any and all such other approvals or permits. The Panel shall reasonably cooperate with any other approving authorities or entities, provided, however, that the Panel shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity.

3.2.9. Prior Approval of Improvement Professionals. In order to help assure that all Improvement Professionals who may do work within the Project are aware of the design and construction standards applicable to the Project, that such Professionals are aware of the requirements of this Declaration and any applicable rules and guidelines adopted by the Panel and/or the Board, in order to help assure that such Professionals are both willing and able to comply therewith and to perform their work to the high standards intended for the Project, and to help reduce the likelihood of improper or incomplete submissions or other such delays, the Panel may require that all Improvement Professionals be approved in writing by the Panel (in accordance with such standards, rules and procedures as the Panel may prescribe) before any plans, drawings or other materials prepared by such Professionals may be submitted to the Panel and before the Professionals may directly or indirectly perform or cause any Improvement within the Project.

3.2.10. Remedies For Non-Compliance. The Board, acting on behalf of and at the expense of the Association, shall have the right, power and authority to compel the prompt cessation of any Improvement that the Design Review Panel determines was commenced or is being undertaken in violation of Section 3.2.

3.2.10.1. In furtherance of Section 3.2, the Board may take any legal action it deems necessary, including without limitation, the commencement of judicial proceedings for injunctive relief or otherwise, and/or entry upon the applicable property for purposes of removing or correcting the violation.

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3.2.10.2. All reasonable expenses (including, without limitation, court costs and attorneys' fees) incurred by the Association and/or the Board in taking such actions shall be the responsibility of the applicable Owner, shall be paid by such Owner to the Association and/or the Board immediately upon demand (with interest at the rate established by the Board for delinquent Assessments, pursuant to Section 6.15, from the date incurred until fully paid), and shall be secured by an Assessment Lien against the Owner's Lot.

3.3. Occupancy of Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time as a residence, either temporary or permanent.

3.4. No Outdoor Laundry. No outside clothes lines or other facilities or equipment for drying or airing clothes may be placed or erected on any Lots unless approved by the Design review Panel and not Visible From Neighboring Property.

3.5. Maintenance of Landscaping. No Lot Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Common Area (including, without limitation, any plants, vegetation, rocks or soil thereon) (except as contemplated by Section 3.2.6).

3.5.1. Each Owner of a Lot shall properly maintain and keep neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material all Landscaping located on any of the following areas that are not within a Common Area: (a) the Owner's Lot; (b) any public right-of-way or easement area that abuts or adjoins the Owner's Lot and that is located between the boundary line of the Owner's Lot and the paved area of any street, sidewalk, bike-path or similar area (unless otherwise directed by the Board); and (c) any non-street public right-of-way or easement area adjacent to the Owner's Lot (unless otherwise directed by the Board in writing).

3.5.2. Provided, however, that Owners shall not be responsible for the maintenance of any area for which (a) the Association assumes the responsibility in writing, (b) the Association has been given such responsibility by a Plat Declaration, or (c) any governmental agency or entity having jurisdiction over such property assumes and maintains responsibility.

3.5.3. For purposes of this Section 3.5, proper maintenance of Landscaping shall include, without limitation, removal and replacement of dead Landscaping from areas (other than Common Areas), subject to the Design Review Rules or as may otherwise be directed in writing by the Design Review Panel.

3.6. Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors, loud noises or loud music shall be permitted to arise or emit therefrom, so as to render any such Lot or property (or any portion thereof), or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot or property in the vicinity thereof or to the occupants of such other Lots.

3.6.1. No other nuisance shall be permitted to exist or operate upon or adjacent to any Lot, or other property so as to be offensive or detrimental to any other Lot or property in the vicinity thereof or to its occupants.

3.6.2. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but must nonetheless comply with the Design Review Rules and any other requirements of the Design Review Panel.

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3.6.3. No Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Common Area (except as contemplated by Section 3.2.6).

3.7. Diseases, Insects, Rodents and Vermin. No Person shall permit any thing or condition to exist upon any Lot, or other property, which shall induce, breed or harbor infectious disease or noxious insects, rodents, vermin or other such creatures.

3.8. Repair of Building. No Residential Unit or other Improvement on any Lot or other property, shall be permitted to fall into disrepair, and all Residential Units and other Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residential Unit or other Improvement is damaged or destroyed, then, subject to the approvals required by Section 3.2, it shall be immediately repaired or rebuilt, or shall be demolished and removed.

3.9. Mineral Exploration. No Lot or other property shall be subjected to, in any manner, the exploration for, or removal of, any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind. This restriction does not include the drilling, operation and/or maintenance necessitated by and for the purpose of testing and/or inspecting ground water or soils if and as approved by the Declarant, or the excavation and/or removal of soil, rock and earth incidental to and as the unavoidable by-product of effecting approved Improvements within the Project.

3.10. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, or other property except in sanitary, covered containers of a type, size and style, to be approved by the Design Review Panel. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be maintained on any Lot or other property. However, notwithstanding anything in this Section to the contrary, no Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Common Area (except as contemplated by Section 3.2.6).

3.11. Utility Services. No lines, wires or other devices for the communication or transmission of electric current or power, including but not necessarily limited to telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures, approved by the Design Review Panel.

3.11.1. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings or structures approved by the Design Review Panel.

3.11.2. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a residence or other building facing the street running directly in front of such residence.

3.12. Overhead Encroachments. No tree, shrub or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise encroach upon any street or pedestrian way from ground level to a height of eight (8) feet without the prior approval of the Design Review Panel.

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3.13. Health, Safety and Welfare. In the event additional uses, activities or facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Occupants, the Board may make rules prohibiting, restricting or regulating their occurrence or presence in the Project as part of the Association Rules, or may direct the Design Review Panel to make rules governing their presence on Lots or other property as part of the Design Review Rules. However, notwithstanding anything in this Section to the contrary, no Owner, Occupant or other Person shall in any way alter, modify or otherwise disturb any Common Area Open Space (except as contemplated by Section 3.2.6).

3.14. Model and Spec Homes. No provision of this Declaration and/or Plat Declarations that prohibits non-residential use of Lots shall prohibit the construction and maintenance of Model or Spec Homes so long as the construction, operation and maintenance of such Model or Spec homes otherwise complies with all of the provisions of this Declaration, the Design Review Rules, and all Governing Documents.

3.15. Residential Use and Trades or Businesses. All Lots and Residential Units shall be devoted to and used, and Improved exclusively for, residential purposes.

3.15.1. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident may conduct a business activity in a Residential Unit so long as:

3.15.1.1. The existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit;

3.15.1.2. The business activity conforms to all applicable zoning ordinances or requirements;

3.15.1.3. The business activity does not involve the door-to-door solicitation of Owners or other Residents in the Project;

3.15.1.4. The use of the Residential Unit for trade or business shall in no way destroy or be incompatible or inconsistent with the residential character of the Residential Unit or the surrounding neighborhood, or threaten the security or safety of other Owners or Residents;

3.15.1.5. The trade or business shall be conducted only inside the Residential Unit or inside an accessory building or garage, and shall not involve the viewing, purchase or taking delivery of goods or merchandise at or to the Residential Unit, and shall not have non-Resident employees working from or in any Residential Unit;

3.15.1.6. The Residential Unit used for trade or business shall not be used as a storage facility for a business conducted elsewhere;

3.15.1.7. The volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary within the Project where no such trade or business is conducted;

3.15.1.8. A trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary within the Project where no such trade or business is conducted; and

3.15.1.9. A trade or business shall not utilize large vehicles not customary within the Project where no such trade or business is conducted.

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3.15.2. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to persons other than the provider's family occupying the residence, and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license or permit is required for such activity.

3.15.2.1. The following shall not be considered a trade or business within the meaning of this Section: (a) leasing of a Residential Unit by the Owner thereof; or (b) construction, remodeling or repair of a Residential Unit or other Improvements on a Lot by or for the Owner thereof.

3.16. Animals. No animal, livestock, poultry or fowl of any kind, other than a reasonable number of house pets, may be maintained on or in any Lot and then only if they are kept or raised thereon solely for family or personal (not commercial) purposes.

3.16.1. No house pet shall be permitted to make an unreasonable amount of noise or create a nuisance.

3.16.2. No structure for the care, housing or confinement of any pet shall be Visible From Neighboring Property.

3.16.3. Notwithstanding the foregoing, no pet may be kept on or in any Lot, which, in the opinion of the Board, result in an annoyance to other Owners or Occupants in the vicinity.

3.16.4. All pets shall be leashed when not on or within the securely enclosed or fenced Lot owned by the pet's owner or on which the pet's owner is a Resident or guest.

3.16.5. All pet waste shall be promptly and properly removed from the Owner's Lot and from all other Property within the Project, and properly disposed of by the pet's owner or the Owner of the Lot where the pet primarily resides or is visiting.

3.17. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or other Improvements; and (b) that which Declarant (or Declarant Affiliate) or the Association may permit or require for the development, operation and maintenance of the Project.

3.18. Signs. No signs whatsoever (including, but not limited to commercial, political, and similar signs) shall be erected or maintained on any Lot except:

3.18.1. Signs required by legal proceedings or order of court or law enforcement agency;

3.18.2. Residence identification signs and "For Sale" or "For Rent" signs, provided the size, color, content and location of such signs have been first approved in writing by the Design Review Panel;

3.18.3. Signs of Developers approved from time to time by the Design Review Panel as to number, size, color, design, message content, location and type; and

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3.18.4. Such construction job identification signs, business identification signs and subdivision identification signs that are in conformance with the requirements of any governmental agency or unit having jurisdiction over the property and that have been approved in writing by the Design Review Panel as to number, size, color, design, content, location and purpose.

3.19. Required Approvals for Further Property Restrictions. All proposed site plans and subdivision plats for any Lot, or any portion thereof, must be approved in writing by the Design Review Panel prior to Recordation thereof or commencement of construction on the applicable Lot.

3.19.1. No Lot, or portion thereof, shall be further subdivided, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Design Review Panel.

3.19.2. No neighborhood declarations or further covenants, conditions, restrictions, or easements shall be recorded against any Lot or Parcel, or portion thereof, without the prior written approval of the Design Review Panel.

3.19.3. No applications by any Developer or Lot Owner for rezoning, variances or use permits, or for waivers of or modifications to existing variances, use permits, zoning stipulations or similar restrictions, shall be filed with any governmental authority or agency without the prior written approval of the Design Review Panel, and then only if such proposed zoning, variance or use, or waiver or modification, is in compliance with this Declaration and all other Governing Documents.

3.19.4. No site plan, subdivision plat, condominium declaration, neighborhood declarations, easements, or further declarations of covenants, conditions, restrictions or easements or other instrument that is to be Recorded and is required by this Section 3.19 to be approved by the Design Review Panel, shall be effective unless the required approval is evidenced on such instrument by the signature of an authorized representative of the Panel.

3.19.5. No site plan, subdivision plat, condominium declaration, or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be submitted to Johnson County or any other governmental authority or agency unless the same has first been approved in writing by the Design Review Panel as provided in this Section 3.18.

3.19.6. Further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Design Review Panel hereunder (whether requested by Johnson County or otherwise) unless such changes or modifications have first been approved by the Design Review Panel in writing.

3.19.7. Notwithstanding the foregoing, the Declarant shall not be required to seek or obtain any of the approvals or consents otherwise required under this Section 3.18 as to any Lot, or any portion of either, of which Declarant is the Owner.

3.20. Vehicles. Except as otherwise provided in this Section, all Vehicles (as defined below) must be parked, kept, maintained, stored, constructed, reconstructed or repaired only within a fully-enclosed garage approved by the Design Review Panel pursuant to Section 3.2 et seq.

3.20.1. For purposes of this Section, the term "Vehicles" includes cars, trucks and vans of all sizes, motorcycles, motorbikes, mopeds, mini-bikes, motor scooters, all terrain vehicles, off-road vehicles, motor homes, recreational vehicles, trailers, travel trailers, tent trailers, camper shells, detached campers, boats, boat trailers, mobile homes, or other similar machinery or equipment, whether motorized or not, whether wheeled or not and whether or not in operating condition.

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3.20.2. Notwithstanding the foregoing:

3.20.2.1. If more vehicles, (in excess of the garage capacity, are collectively owned by the Occupants, Residents or Owners of a Lot, vehicles in excess of that capacity may be parked on the paved driveway for that Lot, but none may be parked curbside or on non-paved portions of the Lot (subject to the exceptions stated in Section 3.19.2.2.);

3.20.2.2. Automobiles, minivans and other primarily passenger Vehicles of guests or visitors of Owners or Occupants of a Lot may be parked outside on a driveway on such Lot (and, subject to such rules and regulations as may be adopted by the Board, on adjacent streets or roadways) on a short-term basis during daylight and evening hours, and, on an occasional basis only, may be parked outside on a driveway on such Lot overnight (provided that the Board may adopt rules or regulations relating to the number or frequency of guest or visitor Vehicle parking, if it determines, in its discretion, that such rules or regulations are, or become, necessary);

3.20.2.3. Service, repair or delivery vehicles may be parked on or adjacent to a Lot, but only for the period reasonably required to effect the needed service, repair or delivery; and

3.20.2.4. A temporary construction trailer may be placed and maintained on a Lot in connection with construction of Improvements on that Lot, but only if the temporary construction trailer, its location on the Lot, and the period during which it will be permitted to remain on the Lot, are approved in writing by the Design Review Panel.

3.20.3. Except for emergency repairs, no Vehicle shall be repaired, constructed or reconstructed on the Property except within a fully enclosed garage

3.20.4. Except as expressly provided above, no Vehicle shall be parked on any roadway or street within or adjacent to the Property.

3.20.5. The Design Review Panel may adopt, and from time to time amend, rules governing parking within the Property of Vehicles used in connection with the construction or reconstruction of Improvements on any Lot (including, without limitation, Vehicles used by construction workers for transportation to and from the job site).

3.20.6. The provisions of this Section 3.20 shall not be deemed to prohibit the Design Review Panel from adopting or amending such rules, which may, under circumstances the Design Review Panel deems appropriate in its discretion, waive or modify the provisions of this Section 3.20 for limited times during periods of construction or reconstruction of Improvements on Lots and/or Common Areas within the Property.

3.20.7. Towing of Vehicles. The Board has the right, after giving written, thirty (30) days advanced notice, to have any Vehicle that is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Governing Documents towed away at the sole cost and expense of the owner of the Vehicle. Any expense incurred by the Association in connection with the towing of any Vehicle must be paid to the Association upon demand by the owner of the Vehicle or by the Owner of the Lot from where (or adjacent to) the Vehicle was towed. If the Vehicle is owned by an Owner or Occupant, or by the guest or invitee of an Owner or Occupant, any amounts payable to the Association will be secured by the Assessment Lien against that Owner's or Occupant's Lot, and the Association may enforce collection of those amounts in the same manner provided for in this Declaration for the collection of Assessments

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3.21. Variances The Design Review Panel may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 or in any Plat Declaration if the Design Review Panel determines in its discretion that the activity permitted under the variance will not have any substantial adverse effect on Owners and Occupants and is consistent with the high quality of life and design standards intended for Residents of the Project.

3.22. Change of Use of Common Area. After not less than thirty (30) days written notice to Members of the Association of any pending action pursuant to this Section 3.22, identifying the nature and purpose of the action, and upon (a) the adoption of a resolution by the Board stating that, in the Board's opinion, the then present use of any designated part of the Common Area is no longer in the best interests of the Association, and (b) the approval of such resolution by Members casting more than fifty percent (50%) of the votes entitled to be cast by Members who are present in person or by proxy at a meeting duly called for such purpose (with not less than thirty (30) days written notice) and who are entitled to use such Common Area under the terms of this Declaration or any Plat Declaration, the Association through its Board shall have the power and right to change or alter (but not eliminate) the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided :

3.22.1. Such new use shall not decrease the total area designated for Common Area uses by the Recorded Plat and this Declaration by more than 10%;

3.22.2. Such changes or alterations shall be consistent with any zoning regulations restricting or limiting the use of the Common Area; and

3.22.3. Section 3.22 shall not apply to, or be deemed to limit in any way, the right and power of the Association pursuant to Section 4.1.1, to grant easements over, under or through portions of the Common Area, or to dedicate portions of the Common Area, to public, quasi-public or private utility companies, municipalities or other governmental agencies or entities, in connection with or at the time of development of the property within or adjacent to the Project, where required or rightfully requested by any municipality or other governmental agency or entity, or any public, quasi-public or private utility company.

3.23. Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would restrict, obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located

3.24. Garages and Driveways. The interior of all garages shall have finished walls and ceilings, and shall be maintained in a neat, clean and sightly condition. Garages shall be used only for parking vehicles and storage, and shall not he used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons, or for maintenance, repairs and/or cleaning. This provision shall not prevent the Declarant or a Developer from modifying or converting the garage of a Model home into a sales or presentation area while the Model Home is being used for marketing purposes, so long as such modification or conversion is returned to garage uses when the Model Home becomes a Residential Unit.

3.25. Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building unless permitted in writing by the Design review Panel or Board.

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3.26. Solar Collecting Panels or Devices. The Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of energy for residential use. At the same time, the Declarant desires to promote and preserve the attractive appearance of the Property and the Improvements thereon, thereby protecting the value of the Property and the various portions thereof, and of the Owners' respective investments therein. Therefore, subject to prior approval of the plans therefore by the Design Review Panel, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property so long as such panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the Design Review Panel may reasonably deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed from any street or from any other property (whether within or outside the Property).

3.27. Minimum Living Area Square Footage. No single story dwelling shall be permitted on any lot unless the ground floor area of the main structure, exclusive of basements, open porches, garages, and below grade areas, shall be not less than 1,400 square feet; No two story dwelling shall be permitted on any Lot unless both floors taken together, exclusive of basements, open porches, garages, and below grade areas, shall be not less than a total of 1,800 square feet.

3.28. Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot of an above ground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace, space heater, or a spa or "hot tub," so long as any such tank either (a) has a capacity of ten (10) gallons or less, or (b) is appropriately stored, used and/or screened, in accordance with the Design Review Rules or as otherwise approved by the Design Review Panel.

3.29. Exterior Lighting. Exterior lighting shall be permitted on a Lot so long as: (a) the source of such lighting is not directed to a Neighboring Property in such a manner that disturbs or creates a nuisance thereto; (b) such lighting is limited to that which is reasonably necessary for the safety and convenience of the Occupants of such Lot; and (c) such lighting conforms to such other requirements as may be imposed by the Design Review Panel. Notwithstanding the foregoing, but subject to reasonable regulation by the Design Review Panel, Owners or Occupants of Lots may display temporary holiday and/or holiday lighting during the period from November 1, through the immediately following January 31, and during the period beginning one (1) week before and ending one (1) week after any other holiday or holiday period recognized nationally or by any bonafide religious or cultural denomination.

3.30. Antennas, Poles, Towers and Dishes. No television, radio, short-wave, microwave, satellite, flag or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot, or other part of the Property unless such antenna, pole, tower or dish is fully and acceptably screened or concealed so as to not be a nuisance or disturbance to Neighboring Property, which means of screening or concealment shall be subject to the regulation and prior approval of the Design Review Panel.

3.30.1. Notwithstanding the foregoing, the Panel may adopt a rule or regulation that conditionally permits Owner or Occupants to install and maintain a flagpole upon their Lots, provided that the location and size of such flagpole (and the number and size of any flag(s) mounted thereon) may be regulated by the Design Review Panel. Such rule or regulation may include a requirement for the prior approval thereof by the Panel.

3.31. Basketball Goals, Play or Storage/Workshop Structures. Basketball goals, backboards or similar structures or devices, swing sets or other play structures, and storage or workshop structures may be placed or constructed on any Lot only with the prior written approval of the Design Review Panel (including, without limitation, approval as to the design, construction materials, appearance and location).

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3.32. Declarant's Exemption. Nothing contained in this Declaration or in any Plat Declaration or Neighborhood Declaration shall be construed to prevent the construction, installation or maintenance by the Declarant, any Declarant Affiliate or any agents or contractors thereof, during the period of development, construction and sales on the Property, of Improvements, landscaping or signs deemed necessary or convenient by the Declarant (or Declarant Affiliate), in its sole discretion, to the development or marketing of Lots within the Project.

End of Article 3

ARTICLE 4 - EASEMENTS

4.1. Owners' Use and Enjoyment of Easements Over Common Areas. Subject to the rights and easements granted to the Declarant in Section 4.9 et seq., each Owner, Resident and Occupant shall have a non-exclusive right and easement of enjoyment in, to and over the Common Areas, which right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of this Declaration including, without limitation, the following:

4.1.1. To the extent required or reasonably requested by any governmental agency or entity having jurisdiction, or by a utility company, in connection with or at the time of the development of portions of the Property, and notwithstanding any provision of this Declaration to the contrary, the Association (through its Board) shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property), to mortgage, encumber or transfer Common Areas, or portions thereof, under circumstances where the Board deems it necessary, appropriate or in the best interest of the Association to do so, to dedicate portions of the Common Area to the public, or to grant easements over, under or through portions of the Common Area to the public, to any governmental agency or entity, or to any utility company, for use as rights-of-way, utilities, public landscaping and the like.

4.1.2. The Association shall have the right to regulate the use of the Common Areas through the Association Rules (which may include, without limitation, the adoption and implementation of a user reservation system for portions of the Common Areas, or Improvements or amenities thereon, as the Board deems appropriate) and to prohibit access to such portions of the Common Areas, such as landscaped right-of-ways not intended for use by the Owners, Lessees or other Occupants.

4.1.3. If a Recorded Plat Declaration designates a portion of the Common Area as a Water Retention Area and/or Recreational Pond, then only the Owners and Occupants and their guests and invitees shall have the right to use such Common Areas, so long as they comply with all Association Rules.

4.1.4. The Declarant (and Declarant Affiliate) and the Association shall each have the right to grant easements or licenses to Developers or other Persons for the construction of Improvements on the Common Areas, and the Declarant (and Declarant Affiliate) and the Association shall each have the right to grant ingress and egress easements over the land and walk paths in the Project to members of the general public in addition to Members of the Association, Occupants, Residents, or Lessees.

4.2. Boundary Disputes. Any and all good faith boundary disputes that may arise involving boundaries of any Lot, Common Area, and or the Project Property's perimeter boundaries, may be resolved by the Declarant (and Declarant Affiliates) and/or Association in accordance with the following provisions:

4.2.1. The Declarant (and Declarant Affiliates) and the Association shall each have the right to convey certain portions of the Common Area (not to exceed strips of land five (5) feet in width) to Owners of adjoining Lots, or to owners of any adjoining property not part of the Project Property, in order to correct or adjust, as the case may be:

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4.2.1.1. Any boundary between a Common Area and any one or more adjoining Lots, as part of and for the sole purpose of resolving or settling any good faith dispute about any boundary between a Common Area and any one or more adjoining Lots; and/or

4.2.1.2. Any boundary between a Common Area and any adjoining property that is not a part of the Project Property, as part of and for the sole purpose of resolving or settling any good faith dispute about any boundary between a Common Area and any non Project Property adjoining the Common Area.

4.2.2. Each Lot Owner and Member agrees to indemnify and hold harmless, the Declarant (and Declarant Affiliate), the Board (and its individual Members) and the Association, for any and all Common Area and/or Lot boundary disputes that may arise and be settled according to the provisions of Section 4.2 et seq., and each Lot Owner and Member waives and releases any and all claims for damages against the Declarant (and Declarant Affiliate), the Board (and its individual Members) and the Association that might otherwise be made as a result of any boundary dispute contemplated by Section 4.2 (including but not limited to any claim for lost value related to property conveyed or lost as settlement of, or as a result of any judgment related to, any dispute contemplated by Section 4.2).

4.2.3. In the event the circumstances contemplated in this Section occur, any modification of any boundary shall be reflected in a revised and Recorded Plat of the Project.

4.3. Special User Fees Permitted. The Association shall have the right (but not the obligation), by a Super Majority vote of its Members, to charge Special User Fees for the use of any Common Area and/or for the provision of any Bulk Services. The amount of Special User Fees, if any shall be authorized by the Association, shall be set by the Board from time to time, at its discretion, subject to review (and change or approval) by a simple majority vote of the Association's Members. Special User Fees, if any, shall be charged only for actual entry upon or use of those portions of the Common Area and/or Bulk Services selected by the Association to be subject to a Special User Fee, and shall be imposed only where the Association deems it appropriate to collect revenue from the actual users of such selected portions of the Common Area and/or Bulk Services, such that all of the costs of operating and maintaining such Common Areas and for the provision of such Bulk Services, are not borne unfairly by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other Persons actually using such selected portions of the Common Areas and/or actually benefiting from the Bulk Services.

4.4. Suspension of Right To Use Common Area. The Association shall have the right to suspend the rights of any Owner or Occupant to use and enjoy recreational facilities on the Common Area (a) for any period during which payment of an Assessment remains delinquent, (b) for a period not to exceed sixty (60) days for any infraction of the Project Documents, or (c) for successive 60-day periods if any such infraction is not corrected during any preceding suspension period.

4.5. Renters' Rights To Use. If a Lot is leased or rented by its Owner, the Occupants of such Lot shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

4.6. Right To Limit Access. The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

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4.7. Utility Easement. There is hereby created an easement upon, across, over and under the Common Area, Lots, and other property for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on the Common Area, Lots, and other property but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Area, Lots, and other property except as initially designed, approved and/or constructed by the Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot). If any utility company requests that a more specific easement be granted in its favor in substitution for the blanket easement hereby established with respect to the Common Area, the Association, through its Board, shall have the power and authority, without the need for consent of any Owner or other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.8. Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across paths, walks and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time maybe paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the general public, Owners and Occupants of the Lots and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Common Area, private driveways and private parking areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel.

4.9. Declarant's Use and easements. The Declarant (and Declarant Affiliate) shall have the right and an easement (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject to such terms and conditions as the Declarant may deem appropriate) to maintain sales or leasing offices, management offices and Model Homes throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sale of Lots, or other Property in the Project so long as the Declarant (or Affiliate) is marketing Lots.

4.9.1 The Declarant reserves the right (which, in its discretion, it may delegate to and/or share with one or more Developers, upon and subject to such terms and conditions as the Declarant may deem appropriate) to place Model Homes, management offices and sales and leasing offices on any Lot, or other Property owned by the Declarant (or by such Developers) and on any portion of the Common Area, in such number, of such size, and in such locations, as the Declarant (or Declarant Affiliate) deems appropriate.

4.9.1.1 When the use of such Lots or other property as a Model Home and/or management, sales or leasing office has been served and terminated, the Declarant, Developer or other such Person shall render the Lots or property so as to be useable in a manner consistent with all other normally intended aspects of the Project and Lots.

4.9.2 So long as the Declarant (or Declarant Affiliate) is marketing Lots or other portions of the Property, the Declarant shall have the right to regulate and restrict the use of any parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective Purchasers and/or Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities within and for the benefit of the Project.

4.9.3 The Declarant (and Declarant Affiliate) shall have the right and an easement on and over the Common Areas to construct all Improvements required by this Declaration and/or the Plat, or that the Declarant may deem necessary, and to use the Common Areas and any Lots, and other Property owned by the Declarant for construction or renovation related purposes including the temporary storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project and property adjacent to the Project.

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4.9.4 The Declarant (and Declarant Affiliate) shall have the right and an easement upon, over and through the Common Areas as may be reasonably necessary for the purpose of exercising the rights and/or performing the obligations, granted to, reserved by, and/or created in the Declarant in this Declaration.

4.9.5 The Declarant (and Declarant Affiliate) shall have the right to grant and establish non-exclusive easements for pedestrian and vehicular access over and across any existing or future streets or roadways in or through the Project to all Owners and Residents of any property or properties adjacent to any part of the Project (and their respective guests, occupants, tenants, visitors, employees, contractors and invitees), and to members of the public in general

4.9.6 The Declarant shall have the right to grant and establish non-exclusive easements for pedestrian access over and across drainage corridors (and any other areas required by Johnson County) within or through the Property for purposes of establishing, extending or enhancing local pedestrian systems.

4.10. Easements in Favor of Association. The Lots and Common Areas are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.10.1 For inspection during reasonable hours of the Lots and Common Area in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible.

4.10.2 For inspection, maintenance, repair and replacement of portions of the Common Area accessible only from such Lots or Common Area.

4.10.3 For correction of emergency conditions on one or more Lots or Common Areas, or on portions of the Common Areas accessible from such Lots or Common Area.

4.10.4 For the purpose of enabling the Association, the Board, the Design Review Panel or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Project Documents.

4.10.5 For inspection during reasonable hours of the Lots and Common Area in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Project Documents.

End of Article 4

ARTICLE 5 - THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1. Formation of Association. The Association shall be a nonprofit Indiana corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Design Review Rules, this Declaration shall control.

5.2. Mission Statement Of The Association: "The Mission of the Smokey Row Community Association is to serve as the organization through which its Owners and residents may sustain and enhance the character, quality of life and desirability of their community."

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5.3. Board of Directors and Officers. The Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws shall conduct the affairs of the Association. There shall at all times be an odd number of Board members.

5.3.1. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

5.3.2. The Board may or shall (as the case may be) appoint various Committees, subject to conditions, limitations and requirements found in the Project Documents.

5.3.3. The Board may also appoint or engage a manager/administrator to be responsible for the day-to-day ministerial operation of the Association and the Common Areas, so long as such manager is not a Member or within the first degree of kinship to any Member. In such a case, the Board shall determine, subject to approval by the Members of the Association, the compensation to be paid to any such manager. However, and notwithstanding the provisions in this Section 5.3.3, the Board may not delegate to such hired manager, the authority or responsibility for reviewing and/or executing legal contracts or other legal documents, or otherwise delegate the Board's responsibilities, duties or obligations under the Governing Documents.

5.3.4. During the Period of Declarant Control, the Board of Directors shall be appointed by, and serve at the pleasure of, the Declarant; after the Period of Declarant Control, the members of the Board shall be elected by the Members in accordance with the Articles and Bylaws, for the terms specified therein.

5.3.5. During the Period of Declarant Control, the Declarant may, at its option and in its sole discretion, allow the Members to elect one or more members of the Board for such period and on such other terms as the Declarant may impose, but in such a case, notwithstanding any other provision of the Project Documents to the contrary, during the Period of Declarant Control, the Declarant may nevertheless remove (with or without cause) as a member of the Board, any individual so elected by the Members, without the consent or approval of the other Board members or Member of the Association.

5.3.6. The Association shall have the option to hire and pay reasonable fees for professional Directors to serve on the Board if there are not enough Members to volunteer for the required number of positions.

5.3.7. Eviction of Tenant by Board. The Board shall have the right and authority to initiate a legal action to cause the eviction of any Tenant of an Owner's Lot under the following terms, conditions and procedures:

5.3.7.1. That such Tenant is, and has been, in violation of any term or condition of any Governing Document in such a manner as to disrupt the peace and quiet enjoyment of the Project by other Residents or Occupants;

5.3.7.2. That such Tenant has engaged in or is engaging in any conduct that jeopardizes the health, safety and welfare of other Residents or Occupants; or

5.3.7.3. That such Tenant has engaged in or is engaging in any conduct that jeopardizes the peace and tranquility within the Project or that impairs the Mission of the Association as stated in this Declaration, or that is illegal or in violation of any criminal law, nuisance ordinance or other similar regulations or enactments of any governmental entity.

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5.3.7.4. No such action as contemplated by this Section 5.3.7 may be commenced by the Board unless and until the following occurs:

5.3.7.4.1. The Board has provided the Owner of the Lot in which such Tenant resides, a written request that the Owner immediately and successfully compels the Tenant to cease and desist from further violations and/or illegal conduct;

5.3.7.4.2. The Owner has been unable or unwilling, within Thirty (30) days of the Board's request, to successfully compel the tenant to cease and desist from further violations and/or illegal conduct, or has been unable or unwilling to remove the Tenant during that time; and

5.3.7.4.3. After the thirty (30) day period of Section 5.3.7.4.2, The Board has provided the Owner of the Lot in which such Tenant resides, a written request that the Owner initiate the eviction action contemplated hereby within ninety (90) days of the request in this Section 5.3.7.4.3, and such Owner either refuses or fails to initiate such eviction within that time.

5.3.7.5. In the event the Owner of the Lot refuses or fails to initiate such eviction and the Board commences the action pursuant to this Section 5.3.7, the reasonable attorney's fees, costs and expenses associated therewith shall become an Assessment and Assessment Lien against that Owner's Lot as with any and all other Assessments and liens under this Declaration.

5.4. Removal of Director. Any Board Member may be removed, for cause, prior to the expiration of the removed member's term of office by majority vote of the other Board Members or by majority vote of the Members of the Association, for a knowing and intentional violation of these Declarations, the Bylaws, Association Rules, or other governing document. This Section 5.4 does alter or affect the provisions of Section 5.3.5.

5.5. Interim Directors. In the event any Director is removed from office, resigns, or dies before that Director's elected term in office has expired, the Board shall have the discretion to appoint a replacement Director on an interim basis (unless such removal, resignation or death should result in an even number of Board Members in which case an appointment under this Section 5.5 shall be mandatory). Any interim Director so appointed shall serve out the remaining term of the Director being replaced, after which time the position shall be filled by the normal election process.

5.6. Incurrence of Attorneys' Fees. Other than, and in addition to fees for the enforcement and collection of unpaid Assessments, the Board may not incur legal fees in excess of \$1,000 per year without the express consent and authorization of a majority of the Members of the Association, and may only incur such fees (up to and including \$1,000 per year) for the review and drafting of contracts to be executed or performed by or on behalf of the Board or Association, or for legal advice directly related to such matters.

5.6.1. The Board may not incur legal fees for litigation purposes other than to enforce the collection of unpaid Assessments and for the enforcement of the Design Review Rules and the actions and decisions of the Design Review Panel, without the prior approval of a majority of the Members of the Association.

5.6.2. The restrictions in this Section 5.6 shall not apply to a situation where the Board has been advised by legal counsel that its failure to act, by filing a complaint or answer to a complaint, prior to the time the Board can reasonably convene a meeting of the Members, will likely cause irreparable harm to the Association or Board by suffering a default judgment against the Association or Board, or by the running of a statute of limitations that would foreclose the exercise of a right or remedy the

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Association or Board might otherwise have. In such a case, the Board may incur only such attorneys' fees as necessary to preserve the rights and remedies of the Association or Board, but must obtain ratification and authority from the Members at a special meeting convened for that purpose at the earliest opportunity and before additional legal costs may be incurred.

5.6.3. Any Member of the Association or Board who incurs attorneys' fees and expenses for the purpose of prosecuting any civil action against the Board or Board Member for legal damages and/or equitable relief based on one or more knowing and willful violations of these Declarations, the Bylaws, or other Governing Documents by the accused, shall be entitled to recover his, her or its reasonable attorneys' fees, costs and expenses incurred in the enforcement of these Declarations, Bylaws, or other Governing Documents in the event the Member prevails either in a court with proper jurisdiction or through settlement or alternative dispute resolution.

5.7. Association Rules. The Board, from time to time, and subject to the provisions of this Declaration and any restrictions imposed by law, may adopt, amend and/or repeal rules and regulations pertaining to (a) the management, operation and use of the Common Area including, but not limited to, any recreational facilities situated upon the Common Area, (b) traffic and parking restrictions within the Project, (c) minimum standards for any maintenance of Common Areas, and Lots within the Project; or (d) any other subject within the jurisdiction and authority of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.8. Personal Liability. No member of the Board, the Design Review Panel or any other committee of the Association, no officer of the Association and no manager or other employee of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board or any member thereof, the Design Review Panel or any member thereof, the manager, any representative or employee of the Association, any officer of the Association or any member of any other committee of the Association.

5.8.1. Provided, however, the limitations set forth in this Section shall not apply to any person who has failed to serve and perform his or her duties with the Board and the Association, and its Members, in an open, honest and fair manner and has failed to act in good faith, or has engaged in willful or intentional misconduct.

5.8.2. The Business Judgment Rule as codified by Ind. Code § 23-1-35-1 (and amendments thereto) shall apply in construing this Section 5.8 and in judging the conduct of the Association Officers.

5.9. Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied or inferred from the existence of any right or privilege given to the Association by the Project Documents, or that are reasonably necessary to effectuate any such right or privilege. Unless otherwise limited, expanded or abrogated by the Project Documents, the Association shall also have and enjoy all of the rights, powers and obligations conferred upon not for profit corporations by the Indiana Business Corporations Law and other applicable statutes.

5.10. Neighborhood Declarations and Associations. No neighborhood declaration (nor any amendment to any such declaration) shall be Recorded by any Person other than the Declarant (and, if recorded, such neighborhood declaration or amendment shall not be effective) unless it has been expressly approved, in a written, Recorded instrument (which may be attached to or made a part of such neighborhood declaration or amendment) by: (a) the Declarant, so long as the Declarant or any Declarant Affiliate owns any Lot in the Project or any portion of the Additional Property; or (b) the Board, if at the time, neither the Declarant nor any Declarant Affiliate any longer owns any Lot. Likewise, no articles of

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incorporation, bylaws or similar formative or governing documents (or any amendment thereto) of a neighborhood association formed by any Person other than Declarant shall be filed or effective unless they have been expressly approved in writing by: (a) the Declarant, so long as the Declarant or any Declarant Affiliate owns any Lot in the Project or any portion of the Additional Property; or (b) the Board, if at the time, neither the Declarant nor any Declarant Affiliate any longer owns any Lot in the Project or any portion of the Additional Property.

5.11. Membership in the Association. Every Owner of a Lot that is Assessable Property shall be a Member of the Association, and the Declarant shall be a Member of the Association so long as either: (a) the Declarant owns any part of the Project or of the Additional Property; or (b) the Period of Declarant Control has not expired or terminated. Each such Owner shall have the following number of Memberships in the Association:

5.11.1. A Lot Owner shall have one (1) Membership for each Lot owned by that Owner.

5.11.2. The Owner of any Parcel (as defined) shall have one Membership for each Residential Unit permitted on such Parcel under then-current zoning and proposed plat. Total Memberships attributable to a Parcel with respect to which no Plat Declaration has yet been Recorded shall, upon Recordation of a Plat Declaration, be adjusted and re-determined in accordance with the provisions of this Section 5.11. Further, as to any Parcel which is subdivided into Lots, upon such subdivision the Memberships attributable to such Lots shall be adjusted and re-determined in accordance with Section 5.11.1 (and, as to any portion of such Parcel which is not subdivided and therefore itself constitutes a Parcel, the total Memberships attributable to such "new" Parcel shall be adjusted and re-determined in accordance with this Section 5.11).

5.11.3. If, at any time when the Declarant is a Member of the Association but would have no Memberships pursuant to Sections 5.11.1, 5.11.2 or 5.11.3, the Declarant shall nevertheless be deemed to have one (1) Membership, provided, however, that the number of votes held by the Declarant shall be determined pursuant to Section 5.12.

5.11.4. Lot Owners must provide and keep the Board informed at all times with the current names, addresses and phone numbers of all Tenants of all Lots owned by the Owner.

5.12. Allocation of Votes in the Association. The following provisions govern the voting rights of Members of the Association:

5.12.1. Each Owner/Member other than the Declarant shall be entitled to one (1) vote per each issue and per each Board position up for election. In the event there is more than one Board position up for election, each member shall have the right to cumulate his votes (i.e., may cast his or her votes for each position in favor of a single candidate).

5.12.2. Until the expiration or termination of the Period of Declarant Control, the Declarant shall be entitled to the number of votes equal to the total number of Lots (per the final plat), minus the total number of outstanding votes held at the time by Owners other than the Declarant. After the expiration or termination of the Period of Declarant Control, the Declarant shall have one (1) vote for each Membership held by the Declarant. The Declarant may cast all of its votes as other Members may cast theirs, that is, by cumulative voting for Board positions up for election, and a vote for or against each issue being voted upon by the membership.

5.12.3. Until the expiration or termination of the Period of Declarant Control: (a) the Association shall be deemed to have two classes of Members, Class A and Class B; (b) the Declarant shall be the Class B Member, and all votes held by the Declarant shall be Class B votes; (c) all Owners other than Declarant shall be Class A Members, and all votes held by such Owners shall be Class A votes. Following expiration or termination of the Period of Declarant Control, the Association shall be

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deemed to have a single class of Members and votes. Notwithstanding the foregoing, however, except as otherwise expressly provided in this Declaration or in any of the other Project Documents, any issue put to a vote at a duly called meeting of Members at which a quorum is present shall be decided by a simple majority of all votes represented in person or by valid proxy at such meeting, regardless of whether such votes are otherwise deemed to be Class A votes or Class B votes. Proxy's shall be in the form of an absentee ballot filled out by the member and signed.

5.13. Meeting Protocol and Voting Procedures. *Robert's Rules of Order* is hereby incorporated herein by reference and shall govern the conduct and procedure of all meetings of the Association and Board. In any event, the President of the Board shall not vote on issues before the Board unless that vote is needed as a tiebreaker.

5.13.1. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded; the Board shall thereafter be given written notice of such change and provided satisfactory evidence thereof.

5.13.2. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that more than one Person owns a Lot and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot, unless objection thereto is made prior to or at the time the vote is cast. In the event more than one Owner attempts to cast the vote or votes for a particular Lot, the vote or votes for that Lot shall be deemed void and shall not be counted.

5.13.3. Any Member may have his, her or its attorney-in-fact (as duly authorized by a notarized Power of Attorney pursuant to Ind. Code § 30-5-1 et seq.) cast the Member's votes, so long as a copy of the instrument creating the Power of Attorney and affidavit of non-revocation have been provided to the Board in advance of any vote being cast pursuant to the Power.

5.14. Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his, her or its purchase of a Lot. The Association may require the Purchaser of a Lot to pay to the Association a transfer fee in an amount to be set by the Board, and the transfer fee shall be secured by the Assessment Lien.

5.15. Design Review Panel. The Association shall have a Design Review Panel, consisting of an odd number of members, to perform the functions assigned to it as set forth in this Declaration.

5.15.1. Until expiration or termination of the Period of Declarant Control, the Design Review Panel shall consist of the Declarant and two appointees. After expiration or termination of the Period of Declarant Control, the Design Review Panel shall consist of such number of regular and alternate members as the Board may deem appropriate from time to time (but in no event less than three (3) nor more than five (5) regular members, nor less than one (1) nor more than three (3) alternate members), each of whom shall be appointed by and serve at the pleasure of the Board.

5.15.2. Notwithstanding the foregoing, the Declarant may at any time prior to expiration or termination of the Period of Declarant Control voluntarily surrender in a Recorded instrument its right, as the Declarant, to serve on the Design Review Panel pursuant to Section 5.15.1, and in that event

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the Declarant may require, for so long as the Declarant owns any Lot, or other property within the Project, or any portion of the Additional Property, that specified actions of the Design Review Panel, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective, and may further provide in such Recorded instrument for the resumption by Declarant of its right to appoint all members of the Design Review Panel, on such terms and conditions as Declarant may provide in such Recorded instrument.

5.15.3. Design Review Rules. The Design Review Panel shall promulgate Design Review Rules and standards (including, but not limited to, color palettes and plant materials) to be used in rendering its decisions. Subject to Section 5.14.4, the decision of the Design Review Panel shall be final on all matters submitted to it pursuant to this Declaration. In the event of any conflict between this Declaration and any Rules adopted by the Design Review Panel, this Declaration shall control. The Design Review Panel shall also oversee compliance with the Design Review Rules and its own decisions and actions, shall keep the Board apprised of compliance issues, problems and/or violations, and shall advise when enforcement action by the Board may or should be considered.

5.15.4. Owners' Exclusive Remedies and Recourse. In the event any Owner disagrees with any decision or action of the Design Review Panel involving an issue in which the Owner has a vested interest, the Owner may appeal or protest such decision or action within ten (10) days of receiving written notice of the decision or action of the Panel by submitting a written request to the Board that the Board review and reverse or otherwise alter or amend the decision or action of the Design review Panel. The Board must then meet to consider the matter within seventy-five (75) days of receiving the appeal or protest, and render its decision on the Owner's appeal or protest in such a matter within ten (10) days after meeting with the Owner to consider the appeal or protest, or the decision or action of the Design Review Panel shall be deemed affirmed just as though specifically ruled upon by the Board ("Summary Affirmation").

5.15.4.1. In the event the Owner who submits a timely appeal or protest under Section 5.15.4 remains dissatisfied with the Board's subsequent decision and ruling (or Summary Affirmation) regarding the Design Review Panel's action or decision, the Owner shall then, and only then, have the additional option to appeal the actions of the Panel and Board by filing, within ninety (90) days of receiving the Board's written decision or action (or within ninety (90) days from the effective date of a Summary Affirmation), an action in Johnson County Superior or Circuit Court for declaratory judgment, seeking the equitable remedy of specific performance against the Board and Design Review Panel.

5.15.4.2. Specific Performance shall be the sole and exclusive remedy to which any Owner may be entitled pursuant to any action that is timely filed in the Johnson County Superior or Circuit Court by any Owner under Section 5.15.4.1 and under no circumstances shall any Owner be entitled to seek a judgment for, or recover, money damages in such a case, nor shall any Owner be entitled or permitted to recover his or her attorney's fees, expenses, or costs of such an action.

5.15.4.3. If an appeal or protest to the Board is not submitted by the Owner in writing within the thirty (30) day period required in Section 5.15.4, the Owner shall forever be barred from protesting or appealing the decision or action of the Design Review Panel. Such failure shall serve as an estoppel and waiver of all further appeals, and the action or decision of the Design review Panel shall then become final.

5.15.4.4. If an action is not filed in the Johnson County Superior or Circuit Court by the Owner within the time required pursuant to Section 5.15.4.1, the Owner shall be forever barred from protesting or appealing the decision or action of the Board and/or Design Review Panel in any court of any jurisdiction. Such failure shall serve as an estoppel and waiver of all further appeals, and the action or decision of the Board shall then become final.

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5.15.5. Indemnifications. No member of the Design Review Panel shall be personally liable to any Owner, the Association or any other Person for any mistake of judgment or for any other acts or omissions of any nature whatsoever (including, without limitation, any mistake in judgment, negligence, malfeasance or nonfeasance) except for willful or intentional misconduct or fraud.

5.15.5.1. The Association shall indemnify and hold harmless the members of the Design Review Panel, and their respective heirs and legal representatives, against all contractual and other liabilities to others arising out of (a) contracts executed by the Board in furtherance of the Design Review Panel's work hereunder, (b) acts or omissions of such members of the Design Review Panel, or (c) a Person's status as member of the Design Review Panel or Board, provided, however, that:

5.15.5.2. Such indemnification shall not be applicable where any such contract, act, omission or violation of any Governing Document, constitutes reckless, willful or intentional misconduct or fraud.

5.15.5.3. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, reasonable attorneys' fees and disbursements, amounts of judgments paid and settlement amounts) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such member of the Design Review Panel may be involved by virtue of being or having been a member of the Design Review Panel; Provided, however, that

5.15.5.4. Such indemnity shall not be operative with respect to (a) any matter as to which a member of the Design Review Panel shall have finally been adjudged in such action, suit or proceeding to be liable for willful or intentional misconduct or fraud in the performance of his or her duties as such member of the Design Review Panel, or (b) any matter adjudicated to an adverse judgment, settled or compromised, unless in the opinion of independent counsel selected by the Board, there is no reasonable basis for finding that the member of the Panel or Board engaged in willful or intentional misconduct, or fraud, in the performance of his or her duties as a member of the Panel or Board.

5.15.6. Subject to the provisions of Section 5.15.4, neither the Association, the Board, nor the Design Review Panel, nor any of the members of any of them, shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications.

5.15.7. Further, the design and construction of any Improvement shall be the sole responsibility of the Owner, and no approval recommendation, requirement or condition with respect to any plans or specifications or the means or method of construction made by the Design Review Panel or any member thereof shall alter the Owner's responsibility for the safe and proper design and construction of said Improvement, nor shall such approval give rise to any claim by anyone against the Association, the Board or the Panel (or any member of any of them) for any defect in design or construction of any Improvement, or of any change to any design or Improvement made at the request or insistence of the Panel, the Board, or the Association.

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5.16. Decision and Actions Must Be Written. All directives, decisions, requests and actions emanating from the Association, the Board and/or the Panel, must be memorialized and communicated in writing to the members, and recorded in the official minute book of the respective body.

End of Article 5

ARTICLE 6 - COVENANT FOR ASSESSMENTS AND CREATION OF LIENS

6.1. Annual Assessment. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board shall assess an Annual Assessment for each Assessment Period (beginning with the fiscal year ending July 31, 2003, for the 2003 Assessment Period) against each Lot that is Assessable Property. The initial Annual Assessment shall commence on August 1, 2002.

6.2. Lot Assessments. The Declarant, for each Lot, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration.

6.2.1. Creation of Lien. The Association shall have a lien on each Lot for all Assessments levied against the Lot and for all other fees and charges payable to the Association by the Owner of the Lot pursuant to this Declaration. Recording of this Declaration constitutes legal and actual notice and perfection of the Assessment Lien.

6.2.2. Assessment Period. The Annual Assessments are to be levied on a fiscal year basis (the "Assessment Period"). The Board may change the Assessment Period in its sole discretion from time to time.

6.2.3. Assessments Become Personal Debt of Owners. Each Assessment, together with interest and all costs, including, but not limited, to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due, and also of any new Owner who takes Title having knowledge or notice of the unpaid Assessment by reason of the recorded lien and this Declaration or by any other direct disclosure. The personal obligation for delinquent Assessments shall become the joint and severable liability of the previous Owner and the new Owner taking with actual or constructive notice.

6.2.4. Assessments Also Run With the Land. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Notwithstanding Section 6.2.3, the lien created by this Declaration against the applicable Lot shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same are fully paid.

6.2.5. Each Purchaser of any Lot (other than the Declarant or Declarant Affiliate) shall pay the prorated Annual Assessment calculated in accordance with this Article 6, regardless of whether construction of a Residential Unit had been commenced or completed at the time the Purchaser acquires title to the Lot.

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6.3. Notice of Assessment. Beginning with the 2003 Assessment Period, the Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period.

6.3.1. Any failure to give timely notice of an Assessment shall not affect the validity of the Annual Assessment established by the Board or relieve any Owner from its obligation to pay the Annual Assessment.

6.3.2. Each Member/Owner shall have the affirmative duty to keep the Board apprised, in writing, of any and all changes of address to which the Board should provide written notice of Assessments (and all other notices that may be required by the Governing Documents). In the absence of written notification of change of address, all notices shall be sent to the address of the Owner's Lot, and shall be conclusively presumed to have been received by the Owner.

6.3.3. All notices from the Board shall be conclusively deemed received by the intended addressee as of the date of mailing such notice, and failure to receive a notice shall not remove or mitigate the obligation to pay proper Assessments.

6.3.4. Notwithstanding sections 6.3.1 through 6.3.3, an Assessment Lien shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment.

6.4. Mid Year Increases in Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate to meet all Common Expenses, for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board (provided, however, that the total Annual Assessment for such Assessment Period shall not exceed the maximum amount determined pursuant to Section 6.5 nor any maximum imposed by applicable law).

6.5. Membership Assessment and Rate of Assessment. Each member shall be assessed a Membership Assessment against each Lot owned by the Member as follows:

6.5.1. For the fiscal year beginning August 1, 2002, Four Hundred Dollars (\$400.00); and

6.5.2. For each subsequent fiscal year, the amount equal to the total budget of the Association (Annual Assessment) for the applicable Assessment Period, divided by the total number of potential Memberships (i.e. no. of Lots) in the Association, subject to Section 6.5.

6.5.3. Except for Lots and parcels owned by the Declarant (which are exempt from assessment under Section 6.12), each Owner shall be assessed its share of an Annual Assessment, in an amount equal to the number of Memberships attributable to such Owner pursuant to Section 5.10.1 of this Declaration, multiplied by the per Lot Membership Assessment.

6.5.4. Notwithstanding any provision of this Declaration to the contrary, beginning with the fiscal year August 1, 2002 through July 31, 2003, the Membership Assessment for any fiscal year of the Association, provided for herein, shall not exceed the Assessment as determined in accordance with Section 6.5.5.

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6.5.5. The Membership Assessment for any fiscal year (the "New Year"), subsequent to the first Assessment Period, may be equal to the Assessment for the immediately preceding fiscal year (the "Prior Year") increased at a rate not greater than the percentage increase in the CPI from the Base Month to the Index Month (as each of those terms is defined below).

6.5.6. If the Board adopts a New Year Budget that is not increased greater than the increase in the CPI (pursuant to Section 6.5.5), no Association vote shall be required in order for the Board to implement the budget and adopt an Assessment based on that budget. However, in the event the Board adopts a New Year budget that increases from the prior year budget by a percentage greater than the increase in the CPI, the Association must vote on the budget at the annual Members' meeting, and majority approval shall be required before the Board may implement the Budget or adopt an Assessment based thereon.

6.5.7. Consumer Price Index. For purposes of Section 6.5.5, the term "CPI" means the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics (or its successor governmental agency). In the event the Bureau or its successor agency no longer publishes the CPI, the index most similar in composition and adopted by the Bureau shall be the Index used for these purposes.

6.5.8. Index Month. For purposes of Section 6.5.5, the term "Index Month" means the month of July immediately prior to the beginning of the New Year.

6.5.9. Base Month. For purposes of Section 6.5.5, the term "Base Month" means the month of July immediately prior to the beginning of the Prior Year.

6.5.10. Index and Base Months Subject to Change. Notwithstanding Sections 6.5 through 6.9, should the Board change the Assessment Period pursuant to Section 6.2.2, the Board shall have the right to change the calendar month used for purposes of Sections 6.5.8 and 6.5.9 (so long as the same calendar month in successive years is used for both clauses).

6.6. Initial Budget. The initial Association budget will include (but not necessarily be limited to) providing and paying the costs associated with the operations and maintenance of: a) Street Lighting, b) all common areas and the right-a-way along County Road 600 N., c) landscape maintenance, including automatic irrigation system, tree, and plant and turf materials, d) building maintenance (for Common Area facilities and structures), e) entry fence and signage, f) mowing of any developed but unsold lots, g) administrative expenses, including but not necessarily limited to printing, postage, accounting and publication expenses, h) recreational and social expenses, i) Insurance, and k) water retention areas and/or pond expenses.

6.7. Special Assessments. The Association may levy against each Lot that is Assessable Property, in any Assessment Period, an additional assessment ("Special Assessment") in the amount and for the purposes approved by a Super Majority Vote of the Members at a meeting duly called for that purpose.

6.8. Declarant Exemption From Assessments. Notwithstanding any other provision of this Declaration to the contrary, no Annual or Special Assessments shall be levied against Lots owned by the Declarant.

6.9. Declarant's Loans to Association. During the Period of Declarant Control, the Declarant shall loan to the Association without interest, an amount (not to exceed a total of \$10,000 outstanding and unpaid at any one time) equal to the difference between the Annual Assessment levied against the Members (other than Declarant) and the actual costs of operating and administering the Association, and for replacement, repairs and contingencies related to the obligations of the Association.

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6.9.1. The loan required of Declarant under this Section 6.9 may be in the form of cash or "in-kind" contributions of goods or services, or in any combination thereof. Any loan made by Declarant in the form of "in-kind" contributions of goods or services shall be valued and repaid by the Association at the fair market value of those goods or services rendered to the Association at the time rendered.

6.9.2. Declarant shall make loans in respect to the needs of the Association under Section 6.9 at such times as the Board may reasonably request from time to time, but such requests may not be made more often than four (4) times per year.

6.9.3. At the end of each fiscal year, the Association shall apply any accrued cash surplus (after all expenses and obligations are paid current, including mandatory deposits into the Reserve Fund Account pursuant to Section 6.27, which funds shall not be considered as "surplus" for purposes of this Section 6.9.3), to the repayment of or to pay down Declarant's loan balance as of the end of that year. In the event the Association has no cash surplus at the end of the fiscal year and has unpaid obligations, the Declarant shall make whatever additional loans (in cash and/or in-kind goods or services) are necessary to the Association, up to and including the maximum outstanding loan amount stated in Section 6.9.

6.9.4. In any event, and notwithstanding any of the provisions in this Section 6.19, the Association shall be required to repay Declarant's outstanding loan balance in full, with no interest, not later than the time by which 80% of the Lots are owned by class A members obligated to pay assessments. In the event the Association does not have the funds to make such repayment in full, a mandatory Special Assessment ("Loan Assessment") shall be promptly imposed on the Members by the Board, without notice or vote, in an amount sufficient to retire the full amount of the Declarant's unpaid loans. Member shall have sixty (60) days from the date of written notice of any Loan Assessment within which to pay the Assessment.

6.9.5. When the terms and conditions of Section 6.13.4 have been met and fully satisfied, the Declarant shall convey fee simple title to, and deed over, the Common Area land to the Smokey Row Community Association, Inc., and the Association shall accept the Property and deed therefore, in the state and condition as the Property may exist at that time, and the Declarant shall then have no further obligation or liabilities related to the Property or Project (barring the existence of partially performed executory contracts to which the Declarant is a party).

6.10. Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for making, billing and collecting Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. Annual and Special Assessments shall be collected with such frequency as may be selected by the Board (but in no event more often than monthly nor less often than annually).

6.11. Nonpayment of Assessments; Association's Remedies. Any Assessment or approved installment of an Assessment not paid within thirty (30) days after the Assessment or installment first became due, shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish, charge and collect late fees to be charged to the Owner in the event any Assessment or approved installment has not been paid within thirty (30) days after such payment was due. The provisions in this Section 6.11 are not exclusive and are in addition to any and all other remedy provisions contained elsewhere in this Declaration or any other Governing Document.

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6.12. Recording of Specific Liens. The Association may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, late fees, lien recording fees, reasonable attorneys' fees, and reasonable expenses incurred in the collection of unpaid Assessments and the enforcement of these Declarations and other Governing Documents.

6.13. Lien Priority. Assessment Liens shall have priority over all liens or claims as permitted by law. The only liens with higher priority (if such is required or established by law or judicial decree) shall be (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body; and (c) the lien of any First Mortgage. If such is not required or established by law or judicial decree, any Assessment Lien shall be of the highest priority.

6.14. Release of Liens. The Association shall not be obligated to release any Recorded notice of lien against any Lot unless and until all delinquent Assessments, interest, late fees, lien fees, reasonable attorneys' fees, court costs, expenses of collection and enforcement, and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.15. Other Rights and Remedies of Association. In addition to the right to enforce collection of any delinquent Assessments together with interest, late fees, lien fees, reasonable attorneys fees, expenses of collection and enforcement and any other sums due to the Association, the Association and its Board shall have all other rights and remedies at law and in equity, including but not necessarily limited to (a) bringing an action at law or in equity against the Owner personally obligated to pay the delinquent Assessments, and or (b) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage or other liens on real property.

6.15.1. Such actions may be brought without waiving the Assessment Lien securing the delinquent Assessments.

6.15.2. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.15.3. Any judgment against any Owner for payment of any Assessment may be duly recorded as a judgment lien on and against any other property, personal and real, owned by the Owner, as permitted by law.

6.16. Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other Person (including any title company), the Association shall issue to such Member, other Person or Title Company, within a reasonable period of time thereafter, a written certificate stating (in addition to any other statements required by applicable Indiana law): (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date.

6.16.1. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made.

6.16.2. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

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6.17. Purposes for Which Association's Funds May be Used. The Association shall apply all funds collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received from any other source) for the common good and benefit of the Association.

6.17.1. The common good and benefit of the Association may include, but need not be limited to a) paying or reducing loans, b) the acquisition, construction, alteration, maintenance, repair, and operation, by any lawful manner or method not prohibited by any Governing Document, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Association, c) the establishment and funding of reasonable reserves for replacements and contingencies, d) sponsoring or providing opportunities, facilities and/or equipment and/or materials intended to (i) enhance the social interaction among Member and Residents, (ii) the maintenance of landscaping of and on Common Areas, public rights-of-way and/or drainage areas within the Project (including without limitation, irrigation systems, construction, operation and maintenance of recreational and other facilities, including water retention areas, and Common Areas, and (iii) providing insurance, communications, education, transportation, utilities, and/or public services for the safety, health and welfare of Members, Owners, Residents, Tenants and Occupants.

6.18. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any remaining balance. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes, as permitted by the Governing Documents.

6.19. Fund Raisers. The Board may adopt programs and services that raise one-time and/or recurring revenues for the Association, such as but not limited to, the publication and printing of a Members' Directory with commercial ad sales, etc.

6.20. Transfer Fee. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as established from time to time by the Board to defray various administrative costs associated with the transfer of ownership of a Lot, changing the Board's and Association's (and any manager's) records and the like.

6.21. Notice and Quorum for Meetings. Notwithstanding any other provision within this Declaration, the Articles, Bylaws, or Association Rules, written notice of any meeting called for the following purposes shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days prior to the date of said meeting: (a) approving the establishment of any Special Assessment; (b) approving any increase in the Annual Budget (and Assessment) greater than that permitted by Section 6.5.5; (c) conducting the mandatory annual meeting of the Association, and/or (d) taking any required vote on any action item, the outcome of which may affect all or substantially all of the Members of the Association. No action may taken at any such meeting unless and until a quorum, as defined in this Section 6.21, et seq., is present at the time the meeting is brought to order and commenced.

6.21.1. At the first meeting called for any of the purposes pursuant to Section 6.21, a quorum shall consist of sixty-six percent (66%) of each class of Membership (whether represented in person or by valid proxy).

6.21.2. In the event a quorum of sixty-six percent (66%) is not present at the initial meeting called for the particular purpose, a second meeting may be called (subject to the same notice requirements as set forth above) for that same purpose to consider only the same issue(s), and the required quorum

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at the second meeting shall be one-half (1/2) of the quorum required at the first meeting (whether represented in person or by valid proxy). Such second meeting may not be held more than sixty-five (65) days after the first meeting.

6.21.3. In the event a quorum is not attained at the second meeting, a third meeting may be convened (subject to the same notice requirements as set forth above) to consider the same issue, and the required quorum at the third meeting shall be ten percent (10%) of each class of membership (whether represented in person or by valid proxy). The third meeting may not be held more than sixty-five (65) days after the second meeting.

6.22. Reserve Data Analysis/Reserve Fund Account. In order to provide for the perpetual high maintenance of the Association's Common Areas and facilities and amenities related thereto, and to avoid future significant financial shortfalls, there shall be established a Reserve Fund Account, according to the provisions of this Section 6.22, et seq.

6.22.1. Initially, the Declarant shall do an annual and accurate inventory compilation of all major Common Area components ("Assets") of the Project for which the Association has responsibility ("Reserve Data Analysis" or "RDA"), and shall allocate an appropriate portion of the Annual Assessments to a Reserve Fund Account as provided in Section 6.22.3.1 ("Reserve Fund Allocation" or "Reserve Fund Contribution").

6.22.2. Upon the termination of the Period of Declarant Control (or earlier at the discretion of the Declarant), the Board shall do the annual RDA and make the required Allocation or Contribution pursuant to this Section 6.22.

6.22.3. Reserve Fund Allocations shall be included in every annual operational budget as a separate line item entry, and made a part of the Annual Assessment.

6.22.3.1. Such Reserve Funds shall be deposited into and maintained in a separate bank account ("Reserve Fund Account").

6.22.3.2. Such Reserve Funds (and the interest earned on such funds) may not be commingled with any other Association funds, except under such limited circumstances and according to the provisions and requirements stated elsewhere in this Section 6.22.

6.22.4. Any expenses associated with maintaining and preserving the life, usefulness, and value of the Assets that are the subject of the RDA (which expenditures are not expected to occur on an annual basis), shall be scheduled for funding and payment as part of the RDA, based on the particular asset's expected useful life and calculated according to the present day cost of repair or replacement of the asset factored by the time value of money as of the date of the RDA.

6.22.5. The Reserve Fund shall remain not less than 70% nor more than 110% Fully Funded, according to definition and formula stated in Article 1 of this Declaration, under "Percent Fully Funded."

6.22.6. Funds in the Reserve Fund Account ("RFA") may be used only for those purposes allocated in the Reserve Data Study, as the RDA concludes or recommends are needed for long-term needs, and for other, additional long-term expenditures the Board deems necessary, including the long-term preservation of Association assets, including, without limitation, allocation to a reserve for contingencies, repairs or replacements (not covered or fully covered by insurance) and for construction, repair or maintenance of capital improvements to Common Areas. The RFA funds are not intended for those expenditures that are considered regular, annual, line-item costs or expenses.

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6.22.6.1. The Reserve Fund Contribution shall not be adjusted more frequently than once in any twelve-month period.

6.22.6.2. Notwithstanding any of the foregoing to the contrary, the Board may, pursuant to Section 6.22.6.2.1, based on its best financial and cash flow analysis justifying same, and considering the most recent RDA then available to the Board, temporarily suspend the allocation of the Reserve Fund Contribution, or may proportionately reduce the amount of the Reserve Fund Contribution to be allocated and funded in any given year.

6.22.6.2.1. Prior to making any such reduction or suspension of the Reserve Fund Allocation, the Board must determine, based on then current cash flow needs and other relevant factors concerning the purpose of and need for the Reserve Fund, that a further Reserve Fund Contribution at that time would cause the balance in such Reserve Fund Account to be more than 110% Fully Funded. Any change in the RDA or the Reserve Fund Allocation must be disclosed or confirmed in writing to the Members within thirty (30) days.

6.22.6.3. No portion of the Reserve Fund Account may be used or expended for any annual line item expense otherwise contained in the annual budget, unless and until the Board first obtains an audited review of the Association's financial affairs, and unless and until the Association, by a Super Majority Vote after notice and meeting for that purpose, approves the amount of the Reserve Fund to be used for the annual line item expense, and the reason proffered by the Board for the necessity for such expenditure.

6.22.6.4. In any event, any approved expenditure of Reserve Account Funds for an annual line item expense, pursuant to Section 6.22.6.3, must be repaid or re-deposited in full (plus simple interest on the amount at the annual rate of 8%) into the Reserve Fund Account, within twelve (12) months from the date the Reserve Funds were transferred for use on the annual line item expense. The Board must provide the Members with written documentation of such repayment to the Reserve Fund Account on or before the next annual meeting of the Association subsequent to the repayment.

End of Article 6

ARTICLE 7 - MAINTENANCE

7.1. Common Area and Public Right of Way and Easements. The Association, through its Board, shall manage, maintain, repair and replace the Common Areas of the Project and all pertinent facilities and amenities of the Common Areas and all improvements thereto, subject to this Article 7.

7.1.1 The Association shall not be obligated to maintain areas that any governmental entity or any utility company is maintaining or is obligated to maintain.

7.1.2. However, the Association may seek agreements with any unit of government to provide or arrange for the provision of certain services, including but not necessarily limited to the removal of snow from the streets and sidewalks of the Project Property, as the Board and unit of government may determine would be beneficial to the Association and the unit of government or tax payers at large. Nothing in this Section 7.1.2 shall be construed to allow or permit any Owner, Occupant or other Person to alter, modify or otherwise disturb any Common area (except and unless as contemplated elsewhere in this Declaration).

7.2. Responsibility of Board. The Board shall have ultimate responsibility for the implementation and execution on a day-to-day basis, of all obligations and duties imposed on the Association by this Article and all other provisions of the Governing Documents, unless expressly provided otherwise within any Governing Document. The Board is therefore responsible on a day-to-day basis, to manage and protect

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Association's Assets within the parameters of, and pursuant to this Declaration and other Governing Documents, all in furtherance of the Association's Mission Statement and the purposes defined in this Declaration and other Project Documents.

7.3. Responsibilities of Owners. Each Lot Owner shall be responsible for maintaining, repairing, replacing, and otherwise keeping the Owner's Lot in good condition and repair, including but not necessarily limited to all buildings, Residential Units, landscaping and/or other Improvements situated thereon, unless and except any portion of the Lot is also designated on the Recorded Plat as a Common Area (e.g. walkway easements). Landscaping shall be maintained as required by Section 3.4 and elsewhere in this Declaration or other Project Documents.

7.3.1. Installation of Landscaping. The Owner of a Lot shall install (if not already installed) landscaping improvements in accordance with plans and a schedule approved in writing by the Design Review Panel, and otherwise in accordance with the Design Review Rules.

7.3.2. If such landscaping improvements are not installed on a Lot in accordance with plans and a schedule approved by the Design Review Panel as required by this Section, the Association shall have the right, but not the obligation, (after providing written sixty (60) days notice of its intent) to enter upon such Lot to install such landscaping improvements as the Association deems appropriate. The cost of any such Improvements shall be paid to the Association by the Owner of the Lot, upon demand from the Association.

7.3.3. Any amounts payable by an Owner to the Association pursuant to this Section 7.3 shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.4. Assessment of Certain Costs of Repairs and Maintenance. In the event any Member, Owner, or Occupant, or any family member, Tenant, invitee or guest of any Member, Owner or Occupant, causes (whether intentionally or through common negligence, but not through normal, routine use and wear) the need for repair or maintenance of any Common Area or any other area maintained by the Association, the cost of such repairs or maintenance shall be borne and paid by the Member or Owner, and if necessary to effectuate the same, may be added to and become a part of the Assessment to which such Member or Owner's Lot is subject, and shall likewise be secured by the Assessment Lien provided elsewhere in this Declaration. Any charges or fees to be paid by an Owner pursuant to a contract entered into by the Association with the Owner for the performance of any maintenance responsibilities, shall also become a part of such Assessment and shall be secured by the Assessment Lien.

7.5. Improper Maintenance and/or Use of Lots/Association's Remedies and Procedures. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner that violates this Declaration or any Plat Declaration applicable thereto, or in the event an Owner failing to perform any of the Owner's obligations under the Governing Documents, the Association, through the Board (acting without need of express Association instruction or approval), may make a finding to such effect, specifying the particular condition or conditions that exist and the measures recommended or required to remedy or rectify the condition.

7.5.1. Pursuant to such finding, the Board shall give written notice of the offending condition or situation to the offending Owner, and therein inform the Owner that unless the recommended or required corrective action (or its substantial equivalent if approved by the Board) is taken within ninety (90) days of the date of the notice, the Board may cause such action to be taken at said Owner's cost and expense in order to rectify and remedy the situation.

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7.5.2. If at the expiration of said ninety days (90) day period the requisite corrective action (or its substantial equivalent if approved by the Board) has not been taken, the Board shall be authorized and empowered to cause such action to be taken to correct the situation, and the cost and expense thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot shall be subject, which additional amount shall be secured by the Assessment Lien.

7.6. Maintenance of Common Area Open Space and Retention/Pond Areas All property designated as Common Area Open Space, whether by a Plat Declaration or by applicable zoning or other laws or ordinances, shall be maintained by the Association, through the Board, in a natural, undisturbed condition, and the Association, through the Board and its designated agent, shall promptly remove any litter, waste or debris as may be left or deposited thereon, and shall protect and preserve and maintain the same in compliance with all Governing Documents.

End of Article 7

ARTICLE 8 - INSURANCE

8.1. Scope and Nature of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Declarant (and later the Association) shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1. Property Insurance. Property insurance on the Common Areas (and pertinent facilities and amenities) insuring against all risk of direct property loss and damage, with maximum coverage limits sufficient to provide for the replacement costs of the Common Areas (and pertinent facilities and amenities), as determined by the Board; provided, however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less deductibles), exclusive of the land, excavations, and other items normally excluded from a property policy;

8.1.2. Corporate General Liability. Comprehensive Corporate General Liability Insurance, including medical payments insurance, with coverage limits to be determined by the Board, but not less than \$2,000,000 per occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage to third parties, arising out of or in connection with the use, ownership, repairs or maintenance of the Common Areas (and pertinent facilities and amenities) and other portions of the Project that the Association is obligated to maintain under this Declaration or other Governing Documents, and shall include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Association (and its agents) to an Owner or third party;

8.1.3. Workers' Compensation. Workmen's compensation insurance to the extent necessary to meet the requirements of applicable law; and

8.1.4. Errors and Omissions and Miscellaneous. Errors and Omissions coverage for Association Officials, and fidelity insurance or bonds, and any and all other insurance coverage, with coverage limits the Board shall determine from time to time to be appropriate in order to protect the Association, the Board, and all committees, and all Association Officials, for monetary and non-monetary claims alike, arising out of the performance of any duty, obligation, role, employment or function required or permitted by any Project Document or contract engaged in pursuant to any Project Document.

8.1.5. Commercial Umbrella. Commercial Umbrella coverage shall be maintained with coverage limits in excess of the limits provided by the General Corporate Liability Coverage.

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8.2. Required Policy Provisions. Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

8.2.1. The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

8.2.2. No act or omission (either prior or subsequent to any loss or claim) by any Owner, unless acting within the scope of his duties and authority as an agent of the Association and on behalf of the Association, will void the policy or adversely affect any coverage decision or recovery on the policy;

8.2.3. No coverage under any Association policy may be brought into contribution or proration with any insurance that may be purchased by Owners, Occupants or Mortgagees;

8.2.4. A "severability of interest" endorsement shall be included, which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Association or other Owners or Occupants;

8.2.5. The Association shall be named as the insured, with individual Members of the Association and Board named as additional insured in the case of Errors and omissions coverage, and as otherwise necessary to indemnify and hold such Members harmless pursuant to any provision of this Declaration and any other Project Document; and

8.2.6. For policies of hazard insurance, a standard mortgagee clause shall be included, providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.3. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association, and upon request, to any Owner or Mortgagee.

8.4. Notice of Cancellation Required. Any insurance obtained pursuant to this Article shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

8.5. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the budget of the Association, paid by the Association, and included as part of the Annual Assessments.

8.6. Payment of Insurance Proceeds. With respect to any loss to the Common Areas covered by property insurance obtained by the Association, the loss shall be adjusted with the Association, through its Board, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of Section 8.6, the proceeds shall be disbursed for the repair or restoration of affected Common Areas.

8.7. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area that is damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement (or the timing or method thereof) would be illegal under any state or local health or safety statute or ordinance, or (b) Owners representing at least ninety percent (90%) of the total votes in the Association vote not to rebuild or repair.

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8.7.1. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association and may become part of an Assessment to the Members, unless the Association opts to not make the repair or replacement pursuant to Section 8.7.

8.7.2. If the damaged Common Area is not fully or entirely repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a like-new condition that will not be in violation of any state or local health or safety statute or ordinance; any remainder of the proceeds shall either (a) be retained by the Association as an additional capital reserve; or (b) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote of a majority of the Members after notice and meeting for that purpose.

End of Article 8

ARTICLE 9 - GENERAL PROVISIONS

9.1. Enforcement. The Association, whether by its Board or as a body, and any Owner, shall have the right to enforce the Project Documents, either in the name and for the benefit of the Association or in the name and for the benefit of one or more individual Owners.

9.1.1. The Board shall have an affirmative duty to manage the Association's Assets in a prudent manner with high standards, consistent with all other standards and provisions of this Declaration.

9.1.2. The Board shall require consistent, fair and equal compliance with this Declaration and all other Project Documents on the part of each Owner and Member.

9.1.3. The Board shall enforce the Project Documents without any discrimination, selective enforcement or arbitrary or capricious preferential treatment taken, imposed or allowed as to any Owner or member.

9.2. Term and Method of Termination of Declaration. This Declaration shall continue in full force and effect for an initial term ending December 31, 2032, after which time it shall be automatically extended for successive periods of ten (10) years each, unless and until terminated in accordance with this Section 9.2.

9.2.1. However, this Declaration may be terminated at any time after all of the Lots of all sections of the Project have been sold or conveyed to Persons other than the Declarant, if such termination is approved by the affirmative vote of 90% of the Members of the Association, after Notice and meeting for that purpose.

9.2.2. If the necessary votes of the Members of the Association are obtained to terminate this Declaration, the Board shall cause a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, to be duly Recorded, with all signatures acknowledged by a licensed Notary. Thereupon, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to applicable law.

9.3. Amendments to Declaration. Except for amendments made pursuant to Section 9.3.1 of this Declaration, this Declaration may only be amended by a Super Majority of the Association after Notice and meeting for that purpose.

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9.3.1. Amendments to Conform. Either the Board or the Declarant may amend this Declaration without obtaining the approval or consent of any Member, Owner, Mortgagee or other Person, in order to conform this Declaration to the requirements or guidelines of any federal, state or local governmental (or quasi-governmental) agency or entity whose approval of the Project or the Project Documents is required by law or requested by the Declarant.

9.3.2. Declarant Approval to Amendments. So long as the Declarant or any Declarant Affiliate owns any Lot, or other portion or Parcel of the Property, no amendment to this Declaration shall be effective unless first approved in writing by the Declarant. Any waiver or release of this right in the Declarant must be in writing and Recorded.

9.3.3. Certification of Amendments. Any amendment approved pursuant to Section 9.3 of this Declaration or by the Board pursuant to Subsection 9.3.1 of this Declaration, shall be certified in writing by the President or Vice President of the Association or its Board and shall be duly Recorded, and such certification shall affirm and state that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Section 9.3.1 of this Declaration shall be certified in writing by the Declarant and shall be duly Recorded, and such certification shall affirm and state that the amendment has been approved as required by this Section.

9.3.4. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

9.4. Interpretation. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Declaration, using the rules and principles of construction and interpretation of contracts that are then applicable under Indiana Law.

9.4.1. Board's Interpretation Binding. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of any or all of the provisions of this Declaration and other Project Documents shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

9.4.1.1. Challenge To Board's Interpretation. Any and all Persons with legal standing to do so, who wish or intend to dispute or challenge the Board's written interpretation or construction of any part of this Declaration or other Project Document, must commence an action for Declaratory Judgment for that purpose in the Superior or Circuit Court of Johnson County, Indiana within thirty (30) days of such Persons' receipt of the written interpretation or construction, or such right to seek such judgment shall be forever lost and waived by all such Persons and the interpretation and construction by the Board shall be deemed conclusive and forever binding. In the event such a challenge is successful, all provisions regarding indemnification and payment of fees and expenses provided in this Declaration shall be binding and applicable.

9.4.2. Provisions Severable. Any determination by any court of competent jurisdiction that any provision of this Declaration or any Project Document is invalid or unenforceable for any reason, shall not affect the validity or enforceability of any of the other provisions hereof.

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9.4.2.1. Reformation of Invalid Provision In the event any provision of this Declaration or any Project Document is deemed by any court of competent jurisdiction to be invalid or unenforceable for any reason, all such offensive or invalid provisions shall be deemed to be reformed and re-written in a manner and with such new or revised terms and conditions that would cause the least possible change or alteration of the Project Document or the portion of the Project Document necessary to remove the objectionable portion, while at the same time retaining the maximum benefit possible to the Association after such change or revision. Such revision or change shall be incorporated in a written amendment hereto and duly Recorded

9.4.2.2. Rule Against Perpetuities If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded

9.5. Violation of Laws, Ordinances and/or Regulations Also Violation of Project Documents. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Design Review Panel with respect to certain actions are in addition to and independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation to also comply with all applicable laws, ordinances and regulations.

9.6. Reference to this Declaration in Deeds Not a Prerequisite to Notice. Although Deeds to, and instruments affecting, any Lot or any other part of the Project may contain or incorporate this Declaration by reference, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming title through any instrument and his, her or its heirs, executors, administrators, successors and assigns. Recordation of this Declaration shall be deemed legal and actual notice of the Declarations and each and every provision herein.

9.7. Gender and Number. Wherever the context of this Declaration or any Project Document so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

9.8. Captions and Title; Section References; Exhibits. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof.

9.8.1. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires.

9.8.2. Any inadvertent, mistaken, inaccurate or incorrect reference to any Section or Article in this Declaration shall be deemed to be typographical error and shall be considered to be de facto reformed, corrected and revised if necessary to make the reference logical and internally consistent with the particular Article and/or Section, with the Declaration as a whole, and if necessary, the intentions of the Declarant regarding the intended correct entry

9.8.3. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof

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9.9. Notices. Unless otherwise provided in this Declaration, any notice of any action or proposed action (or of any meeting) by the Association, the Board or any committee, or of any meeting, required by any Governing Document or by resolution of the Board, shall be deemed satisfied if notice of such action, proposed action or meeting is published once in any newspaper in general circulation within Johnson County, Indiana. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner. Actual notice of any action, proposed action and/or meeting shall be deemed to be legal notice under any and all circumstances, regardless of the means actual notice was obtained or given, and constructive notice shall be deemed to be legal notice.

9.10. Indemnification of Association Officials. In addition to any and all other provisions in this Declaration, and without limiting or altering such other provisions, the following provisions shall be applicable.

9.10.1. The Association shall indemnify each and every active and past Association Official against any and all expenses, including reasonable attorneys' fees incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official.

9.10.2. Section 9.10.1. shall not apply in the event of willful misfeasance, malfeasance, misconduct or bad faith on the part of the Association Official.

9.10.3. No active or past Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action.

9.10.4. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled.

9.10.5. Unless the Board, after thorough and good faith inquiry determines that an accused Association Official is not likely to be entitled to indemnification hereunder due to apparent personal misconduct by the Official as provided herein, the Association and/or its insurance carrier, shall advance funds to or for the benefit of any Association Official who is likely entitled to indemnification hereunder to enable such Association Official to meet the cost and expense of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official.

9.10.6. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 9.14 or otherwise under any Governing Document, such Association Official shall promptly, upon demand, repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with simple interest at the rate of eight percent (8%) per annum from the date(s) such funds were advanced until paid.

9.10.7. In the event the Board wrongfully determined that an accused active or past Association Official was not entitled to indemnification, and the Official is later found to have been so entitled (whether or not a finding of liability or settlement occurs), the Association shall reimburse the Official's reasonable attorneys' fees, expenses and costs incurred in defending himself or herself, in addition to the payment of any judgment or liability against the Official.

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9.11. No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's legal or equitable interest in the Common Areas or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only appurtenant thereto), or except as otherwise expressly permitted herein.

9.11.1. This section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Areas, subject to Section 4.1), which may or may not be subject to this Declaration.

9.12. Property Held in Trust. Except as otherwise may be expressly provided in this Declaration, any and all portions or Parcels of the Property which are now or hereafter held in a subdivision or similar trust or trusts (or similar means of holding title to property), the beneficiary of which trust(s) is the Declarant or a Declarant Affiliate, such property or Parcels shall be deemed for all purposes under this Declaration to be owned by the Declarant or such Declarant Affiliate, as applicable, and shall be treated for all purposes under this Declaration in the same manner as if such property were owned in fee simple by the Declarant or such Declarant Affiliate, as applicable. No conveyance, assignment or other transfer of any right, title or interest in or to any of such property by the Declarant or any such Declarant Affiliate to any such trust (or the trustee thereof), or to the Declarant or any such Declarant Affiliate by any such trust (or the trustee thereof), shall be deemed for purposes of this Declaration to be a sale of such property or of any right, title or interest therein.

9.13. Computation of Time. In computing the number of days for purposes of any provision of this Declaration or any Project Document, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

9.14. Right to Record Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Project Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner (and if different, the Occupant); (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation.

9.14.1. Recordation of a notice of violation pursuant to section 9.14 shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation.

9.14.2. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state (a) the name of the Owner (and if different, the Occupant); (b) the legal description of the Lot against which the notice of violation had been Recorded; (c) the Recording date of the notice of violation; and (d) a statement that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist.

9.14.3. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

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9.15. Disclaimer of Representations. Notwithstanding anything to the contrary herein, until final and full approval of all aspects and sections of the Project by all governing or controlling bodies or entities, and until Recordation of all Project Documents pursuant to such final and full approval, neither the Declarant nor any Declarant Affiliate make any warranties or representations whatsoever that the plans envisioned for the complete development of the Project at the time this Declaration is submitted, can or will be approved or executed as herein intended, or that any real property now owned or hereafter acquired by the Declarant or by any Declarant Affiliate is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular purpose, such use will continue in effect for that same purpose.

9.15.1. While neither the Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Declarant nor any Declarant Affiliate make any warranty or representation as to the present or future validity or enforceability of any such restrictive covenants.

9.15.2. Any Owner acquiring a Lot in reliance on one or more of these restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold the Declarant and all Declarant Affiliates harmless there from.

9.16. Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as the Declarant, any Declarant Affiliate or a trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Declarant.

9.17. Bulk Service Agreements. The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which term is defined below), under such terms and conditions as the Board deems appropriate, with the primary goal of all such Bulk Service Agreements to be the provision to Owners and Occupants of Lots within the Project, with cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, data, communication or security services, which services might not otherwise be generally or readily available, under as favorable terms and conditions, to such Owners and Occupants.

9.17.1. If all Lots within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly).

9.17.2. If fewer than all Lots within the Property will be served by a particular Bulk Service Agreement, the Board shall have only the billing option described in clause (b) of section 9.16.1 above.

9.17.3. Declarant, for each Lot, and each Owner other than the Declarant, by becoming the Owner of a Lot, hereby covenant and agree or shall be deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (and/or the Lot) by the Board, pursuant to this Section 9.16.

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9.17.4. All such amounts that become due and payable pursuant to any and all Bulk Service Agreements shall be deemed to be part of the Annual Assessments, with all of the provisions applicable under this Declaration thereto, also becoming applicable to Assessments related to Bulk Service Agreements.

9.17.5. No Owner of a Lot covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot under this Section 9.16, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall exempt from payment of such amounts any Lot upon which no Residential Unit or other building has been completed.

9.17.6. "Bulk Provider" means a private, public or quasi-public utility or other company that provides a Bulk Service.

9.17.7. "Bulk Service" means any service for the delivery of one or more of the following products and/or services, or similar such products or services to and/or within the Property, or within one or more portions of the Property, pursuant to a "Bulk Service Agreement" (as defined below): cable television, trash collection and disposal, recycling collections, public, private or community satellite television, high speed Internet access, security monitoring and services, electronic entertainment, or other information, data, and/or communications services

9.17.8. "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider agrees to provide a Bulk Service.

9.17.9. No Bulk Service Agreement may be entered into by the board during the Period of Declarant Control unless and until the Board first obtains the approval and consent of the Declarant, and further obtains the approval of the Association by majority vote of all Members eligible to vote, after notice and meeting for that purpose. Majority vote for this purpose refers to all classes of votes of all Members of the Association, i.e. 51% of all Lots and potential Lots within the Project, and not merely a majority of those in attendance (whether in person or by proxy) at the meeting. To the extent the quorum rules otherwise applicable elsewhere in this Declaration would result in a majority of votes of those in attendance, but fewer than a majority of *all* classes of votes by all Members, such rules shall be inapplicable for this purpose.

9.18. Elective Resident Services. The Board, acting on behalf of the Association, shall have the right, power and authority to make available to Members who opt to participate, on a contract basis, various services not generally provided by the Association to its Members.

9.18.1. Such services may include, without limitation, landscaping, swimming pool maintenance, and other specialized or non-required services of benefit to the Members who elect to participate.

9.18.2. The costs for any such services shall be paid by the Members electing to participate in the specific service, pursuant to separate contracts between the service providers, the Association and those Members electing to contract for such services; such costs or expenses shall not become Common Area expenses and shall not be generally Assessed to the Members at large.

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9.18.3. However, the amounts owed by each Member for such Elective Resident Services shall be secured by an Assessment Lien against such Member's Lot, and the Association shall have all of the same rights against those elective Members who fail to pay, in a timely fashion, all amounts they owe for such elective services as it would have for failure to pay other, routine and mandatory Assessments hereunder, including, without limitation, the right to charge and collect interest, late fees and other monetary penalties and the right to foreclose the Assessment Lien against the particular elective Member's Lot.

9.18.4. The Board may elect, at its option, to make such Elective Resident Services available to the Members in one or more packages or "bundles," on a cafeteria-style basis, or in such other combination or on such other basis as the Board deems appropriate, in its discretion.

9.18.5. The Board shall not, in making such elective services available to Members or in entering contracts with Members for such services, discriminate among Members except to the extent necessary or appropriate, taking into account the nature of the service at issue. (For example, but without limiting the generality of the foregoing, the Board may decline to enter into a contract to provide pool maintenance or landscape services to a Member with pets, which may pose a threat to the persons providing those services).

9.18.6. In furtherance of the foregoing, the Association shall have the right, power and authority to enter into contracts with various third party contractors (which may include, without limitation, any management company hired by the Association) to actually provide any or all of such services.

9.18.7. No Occupant or Resident of a Lot, who is not also the Lot Owner, may enter any Elective resident Service Agreement with the Association without first providing the Board with the signed, notarized, written consent and authority of the Lot Owner, stating that the Owner agrees that any and all obligations incurred by the Occupant or resident shall bind and become the personal obligation and liability of the Owner and shall subject the Owner's Lot to the Assessment Lien created thereby.

End of Article 9

END OF SMOKEY ROW CC & Rs

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IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

DECLARANT: The Nichols Group, LLC, an Indiana limited liability company By: Daniel R. Nichols an Arizona resident, its Manager

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EXHIBIT A

SMOKEY ROW
LEGAL DESCRIPTION

A part of the Southwest Quarter of Section 15, Township 13 North, Range 3 East of the Second Principal Meridian in Johnson County, Indiana, described as follows:

Beginning at the Southeast corner of said Quarter section being marked by a railroad spike found in place; thence North 89 degrees 52 minutes 00 seconds West on and along the South line of said Section 880.12 feet to a P.K. nail found in place marking the Southeast corner of the Cox Minor Plat (plat book "C" page 471 in the Office of the Recorder of Johnson County); thence North 00 degrees 05 minutes 34 seconds West on and along the East line of said Cox Minor Plat 943.89 feet to an iron pin in concrete found in place marking the Southeast corner of Bradford Place Second Section (plat book "C" page 741); thence North 00 degrees 00 minutes 00 seconds East (basis of bearings from said Bradford Place Second Section) on and along the East line of said Bradford Place Second Section 944.95 feet to an iron pin in concrete found in place marking the Northeast corner of said Bradford Place Second Section also being a point on the South line of Water's Edge Section Two (plat book "D" page 279); thence South 89 degrees 52 minutes 54 seconds East on and along a portion of the South line of said Water's Edge Section Two 874.44 feet to an iron pin in concrete found in place marking the Southeast corner of said Water's Edge Section Two also being a point on the West line of Cedar Hills Tract 13 (plat book 6 page 12); thence South 00 degrees 13 minutes 07 seconds East on and along a portion of the West line of said Cedar Hills Tract 13 and along the entire West line of Woodland Streams Section One (plat book 8 page 15) 1889.10 feet to the Point of Beginning, containing 38.059 acres, more or less, subject to all rights-of-way, restrictions and easements of record.

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Stephen Ullrich