

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HAWTHORN GLEN**

STATE OF INDIANA  
COUNTY OF CLARK

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KNOW BY ALL THESE PRESENT:

This Declaration is executed and effective as of February 1, 2006 by HAWTHORN GLEN, LLC., an Indiana Corporation ("Declarant").

**RECITALS:**

1. Declarant is the owner of certain real property in Clark County, Indiana, described on Exhibit "A" attached hereto and made a part hereof, that is the subject of this Declaration ("Property").

2. Declarant has subdivided and improved the real property in accordance with all actions, approvals, and authorizations of the Clark County Plan Commission and other applicable agencies of government authority, the Plat(s) of which is recorded in the Office of the Clark County Recorder, and otherwise known as Hawthorn Glen.

3. Declarant desires to construct upon the Property a master-planned community consisting of multiple land uses, including attached and detached single-family and multi-family residences, commercial enterprises, and community open spaces to be used for recreational and utilitarian purposes, and accordingly, has executed this Declaration to impose the covenants, conditions, restrictions, and easements herein described upon the Property.

**SECTION A  
ESTABLISHMENT**

**A.1 Establishment of Covenants, Conditions and Restrictions.** Declarant hereby imposes upon the Property the covenants, conditions, restrictions, liens and easements set forth in this Declaration ("Covenants") for the purposes of establishing a general scheme for development of the Property, enhancing the value of the Lots and Residences (defined below), and establishing restrictions for residential use for the benefit of Declarant and the Owners (defined below). Declarant does not guarantee that all of these purposes will be accomplished through the creation and imposition of the Covenants.

The Covenants touch and concern title to the Property, run with the land and shall be binding upon all persons hereafter acquiring any portion of the Property.

**A.2 Definitions.** The terms set forth below shall have indicated meanings when used in this Declaration; other terms are defined elsewhere herein and shall have the meaning given to them in this Declaration.

**"Assessments"** means the Maintenance Assessments and Special Assessments provided for herein.

**"Association"** means the Hawthorn Glen Property Owners' Association, its Board of Directors, or any person or entity acting in an official capacity on behalf of the Association.

**"Board"** means the Board of Directors of the Association.

**"Builder"** means any homebuilder or contractor constructing the initial Residence, structure, or building upon a Lot in the normal course of conducting its business for profit.

**"County"** means the government of Clark County, Indiana.

**"Common Area/Park"** means those portions of the Property as described in or on the Plat that do not constitute Lots or Streets or any portion thereof. The Common Area also includes: (i) any areas within the Property owned by the County, the Association, or any other governmental entity, but which are required to be maintained by the Association; and (ii) those areas, if any, which are owned by an Owner, but on which are located monuments, signs, fences, landscaping, berms, sidewalks, irrigation systems, drainage structures and basins or other improvements installed by the Declarant that may be maintained by the County or the Association. The Common Area shall also include all improvements on or connected to any portion of any of the areas described in the preceding sentence. Declarant shall at all times have and retain the right, but without the obligation, to effect minor redesigns or reconfigurations of the Common Area and to execute any declarations applicable to the Common Area for the express benefit of the Declarant or Association.

**"Declarant"** means Hawthorn Glen, LLC, including any affiliate of any Partner thereof and any other person or entity who is designated as a successor Declarant in writing pursuant to the provisions of this Declaration.

**"Lot"** means any of the individual platted building lots reflected upon the Plat that are to be used for purposes as herein described.

**"Managing Agent"** means any Person who has been engaged and designated by the Declarant or Association to manage the daily affairs and operations of the Association.

**"Multi-Family Use"** means the use of any individual platted building lots reflected upon the plat that are used for housing multiple (more than one) families, occupants, or tenants within a single building. Multi-family uses shall include various forms of attached housing, including apartments (for rent), condominiums (for sale), duplexes or townhomes (for sale), and assisted living or other common-living arrangements.

**"Owner"** means any Person owning fee simple title to any Lot.

**"Park/Common Area"** means those portions of the Property as described in or on the Plat that do not constitute Lots or Streets or any portion thereof. The Common Area also includes: (i) any areas within the Property owned by the County, the Association, or any other governmental entity, but which are required to be maintained by the Association; and (ii) those areas, if any, which are owned by an Owner, but on which are located monuments, signs, fences, landscaping, berms, sidewalks, irrigation systems, drainage structures and basins or other improvements installed by the Declarant that may be maintained by the County or the Association. The Common Area shall also include all improvements on or connected to any portion of any of the areas described in the preceding sentence. Declarant shall at all times have and retain the right, but without the obligation, to effect minor redesigns or reconfigurations of the Common Area and to execute any declarations applicable to the Common Area for the express benefit of the Declarant or Association.

**"Person"** means any individual, corporation, limited liability company, partnership or other entity of any kind or type whatsoever.

**"Phase"** means a particular phase developed upon the Property. Declarant may impose additional or different restrictions on each Phase. If Declarant annexes additional real estate into the Property, it may designate the area annexed as a particular Phase, and may impose additional or different restrictions on such area.

**"Plat"** means (i) initially, the Preliminary Plat, and thereafter the Final Plat, for any Phase of the Property submitted to and approved by the County, or any other applicable governmental entity; (ii) after recordation thereof, the Final Plat for any Phase of the Property as recorded in the Records of Clark County, Indiana; and, (iii) any replat of, or amendment to, the foregoing made by Declarant in accordance with this Declaration. The term "Plat" shall also include the final recorded plat of any additional property annexed into the Property.

**"Residence"** means a multi-family or single-family attached or detached home, house, or residence constructed upon a Lot in conformance with this Declaration.

**"Street"** means any paved road that is located within a public right-of-way as depicted upon the plat and serves the front of a Lot upon which a Residence is constructed.

**"Structure"** means any structure (other than a Residence), such as a fence, driveway, sidewalk, patio, wall, outbuilding (mini-barn), detached garage, playground equipment, or other improvement of any kind or type.

**"Vehicle"** means any vehicle of any kind or type whatsoever, including any automobile, truck, motorcycle, all-terrain vehicle, golf cart, boat, mobile home, motor home, boat trailer, or other kind of trailer.

## **SECTION B** **USE PROVISIONS**

**B.1 Single-Family Residential Use.** Lots No. 1 thru 302 as depicted upon the plat shall be used only for single-family residential purposes and activities reasonably related thereto, and shall at all times be in conformance with applicable zoning and subdivision regulations of the County and approved by the Declarant or the Association.

**B.2 Park/Common Area Use.** The Park/Common Areas, Lots No. B, H, J, K, L, M, N, P, R, and S as depicted upon the plat, shall be used only for drainage, utilities, and recreational and community purposes and activities reasonably related thereto, and shall at all times be in conformance with applicable zoning and subdivision regulations of the County and approved and maintained by the Declarant or the Association.

**B.3 Multi-Family Residential Use.** Lots No. C, G, I, O, and Q as depicted upon the plat shall be used only for multi-family residential purposes and activities reasonably related thereto, as defined herein, and shall at all times be in conformance with applicable zoning and subdivision regulations of the County and approved by the Declarant or the Association.

**B.4 Commercial Use.** Lots No. A, D, E, and F as depicted upon the plat shall be used only for commercial or business purposes and activities reasonably related thereto, as defined herein, and shall at all times be in conformance with applicable zoning and subdivision regulations of the County and approved by the Declarant or the Association.

**B.5 Specific Use Restrictions.** The Property is restricted solely to land uses expressly provided for in this declaration that shall include attached and detached single-family and multi-family residences, commercial businesses (including, but not limited to the sale of retail and wholesale goods and services, professional offices, restaurants and eateries, banking and financial services, and similar and related uses), religious, governmental, and educational facilities, community open spaces to be used for recreational and utilitarian purposes, and similar and related uses; Accordingly, no agricultural, industrial, manufacturing, warehousing, or distribution activities, uses, or functions are permitted. Likewise, any business engaged in the retail, wholesale, or online production, sale, promotion, and distribution of explicit pornographic materials, including movies, magazines, pictures, gifts, toys, games, and the like is expressly prohibited. This Section shall not be construed so as to prohibit the conduct of a reasonable amount of in-home work, such as computer work or similar activities, provided that such work or activity does not involve the parking of vehicles of employees, consultants, or other parties other than the occupants of the Residences in question.

**B.6 Sales and Construction Offices.** Declarant may maintain one or more signs, sales offices, or trailers on Lots for the purpose of facilitating the sale and construction of Residences on the Property (i.e., model home).

**B.7 No Further Subdivision.** Once conveyed to a Builder or Home Owner by Declarant, no lot may be further subdivided to create an additional building lot without the written consent of the Declarant or Association, and the County. However, Lots No. 1 thru 302 may be combined for the purpose of constructing a single residence on more than one Lot. Similarly, Park/Common Areas (Lots No. B, H, J, K, L, M, N, P, R, and S), Multi-Family Lots (Lots No. C, G, I, O, and Q), and Commercial Areas (Lots No. A, D, E, and F) as depicted upon the plat may contain multiple buildings, structures, or residences such that compliance with all intentions, express or implied, herein are satisfied and approved by Declarant or Association, and the County.

**B.8 Parking and Vehicle Restrictions.** All Vehicles shall be parked, stored or placed only in the driveway or in the garage on each Lot, except that boats, trailers, campers, motor homes, motorcycles, and similar recreational vehicles shall be parked, stored, or placed only within an enclosed garage. On-Street parking shall be limited to temporary parking of guests or invitees of Owners during social gatherings, service delivery, and similar limited (no more than twenty-four (24) hours) time periods. No inoperative or unlicensed Vehicles may be parked or stored, other than in an enclosed garage, within the Property. All work on Vehicles, including routine maintenance, shall be performed only in an enclosed garage. The foregoing provisions shall not restrict the parking of trucks and other vehicles as necessary in connection with construction of Residences or other Structures on Lots.

**B.9 Pet and Animal Restrictions.** Only regular household pets such as cats, dogs, and birds shall be permitted on the Property and then only for personal use and not for any business use such as breeding, kennel operations and the like. No other animals shall be permitted to be maintained upon the Property, including the following: cows, horses, bees, hogs, sheep, goats, poultry, skunks, or exotic pets of any kind such as snakes, lizards, spiders, alligators, and the like. No more than three (3) domesticated household pets are permitted in any Residence. All pets shall be kept within the area of an Owner's Lot and shall not be permitted to run free through the Property. Additionally, all pets must be kept on a leash and observed by the Owner at all times when not within the area of an Owner's Lot.

**B.10 Outdoor Burning Restrictions.** Outdoor burning of trash, leaves, and other items is prohibited. This restriction shall not be construed as prohibiting outdoor cooking on barbecue grills in connection with use of a Residence.

**B.11 Trash/Garbage Disposal.** Trash, garbage and other waste shall at all times be kept in clean, well maintained, sanitary containers for regular scheduled pickup for removal of such items. Trash, garbage or other waste shall not be dumped on the ground of any Lot or in the Common Area.

**B.12 Occupancy.** Each Lot shall be improved in accordance with this Declaration and no person(s) shall occupy, reside or habitate in any structure, building or residence without the written consent of the Declarant or Association, and the County.

**B.13 Public Water/Sewer Systems.** Each Residence shall be connected to the public water and sanitary sewer system, and no private water well or water, sanitary or storm sewer system is permitted within the Property unless the Declarant constructs it. If Declarant establishes public or private drainage easements in areas that necessitate or contain a private or public sub-surface storm sewer drainage system, then such easements and facilities therein are to be kept freely running and unobstructed at all times. If the lines become obstructed, all parties that benefit from their function shall be required to equally and promptly share in the cost of repair or replacement of the facilities.

**B.14 Changes in Grade.** Except for such changes as are reasonably necessary to facilitate construction of a structure, building, or residence on a Lot, no Owner shall change the grade of any Lot except in compliance with all applicable laws. After Declarant has developed the Lots, the general grading, slope and drainage plan of a Lot may not be altered, and no dams, berms, channels or swales may be constructed or excavated without the prior written approval of Declarant or Association, the County (if applicable) and other appropriate agencies having authority to grant such approval.

**B.15 Visible Activities - Outdoors.** Outdoor drying of clothes is prohibited. Lawn mowers, rakes, carts, and other yard tools and equipment shall be stored indoors and not in view from adjoining Lots and Streets when not in use. Above-ground swimming pools shall be prohibited. Hot tubs, whirlpools, and similar facilities, less than 100 square feet in size, are permitted to be placed only in the rear yard of a lot, and shall be screened from view from adjoining Lots and Streets.

**B.16 General Restriction - Nuisances.** In general, no condition shall be allowed to exist on a Lot which, by sight, noise, or smell (as determined exclusively by the Declarant or Association), shall constitute a public or private nuisance or unreasonably disturbs any other Owner in the use and enjoyment of its Lot, Residence, or the Common Area.

**B.17 Adjoining Uses.** All adjoining land uses to the property shall be construed to be lawfully permitted uses in accordance with applicable codes and permit requirements of the County and other agencies of governmental authority. As of the date of this declaration, there exists or the potential exists in the future for agricultural operations involving the raising of crops, cattle and other farm animals, mining of rock and other aggregate, residential subdivisions, burial grounds, and other commercial or light industrial uses on adjoining property.

## **SECTION C**

### **CONSTRUCTION PROVISIONS**

**C.1 Plan Approval Required.** No Residence or Structure shall be constructed within the Property until the plans therefor have been approved in writing by the Declarant or Association.

**C.2 Submission of Plans.** An Owner wishing to construct, reconstruct, or materially alter the exterior appearance of a Residence or any Structure on the Property shall submit two (2) copies of complete plans and specifications therefor to the Declarant or Association for its approval prior to commencing construction. Such plans and specifications shall include engineering and architectural details, landscaping, and construction plans showing the location and elevations of the proposed improvements and the materials to be used in constructing the same, all in sufficient detail to enable adequate evaluation of the proposed improvements by the Declarant or Association. The Declarant or Association may request additional information, including samples of proposed materials to aid it in its decision process. After receipt of a complete set of plans and specifications, the Declarant or Association shall promptly review the information and notify the Owner of its decision to approve or deny the plans, and the reason for denial. No construction shall be commenced on any portion of the Property unless and until the plans for the proposed improvements in question have been approved in writing by the Declarant or Association.

**C.3 Time for Review/Approval.** The Declarant or Association shall approve or deny all plans submitted for construction within five (5) days after the date it receives a complete set of plans and specifications therefor; if the Declarant or Association fails to approve or deny the plans within such five (5) day period, the plans will be deemed to be automatically approved.

**C.4 Review Standards.** The Declarant or Association, in reviewing and approving plans for construction, shall use reasonable efforts to promote and ensure a high level of taste, design quality, aesthetic harmony, and conformity throughout the Property that is consistent with the standards established by this Declaration and the Design Guidelines, as established and amended from time to time.

**C.5 Design Guidelines.** The Declarant or the Association may, from time to time, establish specific guidelines and building standards to assist Persons in determining the type and style of Structures and Residences, which may be constructed on the Property. The Declarant or Association may amend or modify such guidelines or standards from time to time in its sole discretion. Such guidelines or standards shall supplement this Declaration and be general guides to permitted construction within the Property, but shall not diminish the authority of the Declarant or Association to approve plans as otherwise herein provided.

**C.6 Failure to Obtain Approval.** The construction, repair, replacement, installation, or placement of any Structure, Residence, or other improvement of any type on a Lot without the prior written approval from the Declarant or Association shall constitute

grounds for the imposition by the Declarant or Association of an automatic fine against the Owner of said Lot in the amount of One Thousand Five Hundred and No/100 Dollars (\$1,500.00). A fine levied under this Section shall be charged to the Owner's assessment account, payable upon demand and secured by the lien created in Article 6.

**C.7 Limitation of Liability.** Neither the Declarant, its officers, directors, partners, agents, employees, representatives, parent or subsidiaries, nor the Association, the Board, including any of its respective members, shall be liable to any Person for any official act of the Declarant or Association in connection with submitted plans and specifications. Notwithstanding any approval by the Declarant or the Association, neither the Declarant nor the Association shall be responsible or liable to any Person with respect to any loss, liability, claim or expense which may arise by reason of such approval or the construction of a Residence or Structure related thereto. Neither the Declarant nor Association shall be responsible in any way for any defects in any plans or specifications submitted, reviewed or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans or specifications. No approval of any plans by either the Declarant or the Association shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation, it being the responsibility of the Person submitting any plans to assure compliance with all applicable laws. Conversely, the issuance of a building permit or any approval from any governmental authority shall not, under any circumstance, constitute any evidence that construction of a Residence or a Structure complies with the terms and conditions contained in this Declaration. Declarant and members of the Association shall have no liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious in nature.

**C.8 Exterior Appearance of a Residence to be Maintained.** The exterior appearance of a Residence shall be maintained with a high level of taste, design quality, aesthetic harmony, and conformity with the neighborhood, the standards set forth in this Declaration and the Design Guidelines. This provision shall be strictly applied to all Residences.

**C.9 Building Setbacks.**

(a) **Single-Family:** Each single-family residence constructed upon a Lot shall be so located upon that Lot so as to be setback a minimum distance from the property line of each lot as follows:

- (1) **Front Yard:** Varies, per plat
- (2) **Side Yard:** 5 Feet
- (3) **Rear Yard:** 20 Feet

Except, Lots No. 19-30 and 126-154 shall be permitted a zero (0') feet side yard setback with an aggregate separation between residences of eight (8') feet. Lots No. 31-61 and 109-125 shall be permitted a zero (0') side yard setback with an aggregate separation between residences of ten (10') feet. Furthermore, the Declarant or Association reserves the right to modify setback distances in response to peculiar or adverse topographic,



environmental, or structural conditions that create an undue hardship upon the buildable area of a Lot, thereby preventing a residence from being constructed as intended herein above. In such an instance, the aggregate setback between residences shall not be less than that which is intended herein above.

(b) **Multi-Family:** Each multi-family building constructed upon a Lot shall be so located upon that Lot so as to be setback a minimum distance from the property line or other buildings located upon the same Lot as follows:

- (1) **Front Yard:** 40 Feet (adjacent to Salem Noble Rd., S.R. 403, or Melbourne Drive); 15 Feet (adjacent to all other streets and parking lots)
- (2) **Side Yard:** 10 Feet
- (3) **Rear Yard:** 20 Feet

(c) **Commercial:** Each commercial building constructed upon a Lot shall be so located upon that Lot so as to be setback a minimum distance from the property line or other buildings located upon the same Lot as follows:

- (1) **Front Yard:** 40 Feet (adjacent to Salem Noble Rd., S.R. 403, or Melbourne Drive)
- (2) **Side Yard:** 10 Feet
- (3) **Rear Yard:** 10 feet

#### **C.10 Size and Type of Residence.**

(a) **Single-Family:** Each Residence constructed upon a Lot shall contain a minimum of 1,300 square feet (single-story) or 1,500 square feet (1.5-story) and 1,700 square feet (2-story) of living area, excluding garages, basements, stoops, patios, and porches. Each Residence shall be of new construction on a Lot and no mobile homes or manufactured housing shall be permitted on the Property except on a temporary basis in connection with construction or sales activities.

(b) **Multi-Family:** Each Residence constructed upon a Lot shall contain a minimum of 500 square feet (one bedroom) or 600 square feet (two bedroom) and 700 square feet (three bedroom) of living area, excluding garages, basements, stoops, patios, and porches. Each Residence shall be of new construction on a Lot and no mobile homes or manufactured housing shall be permitted on the Property except on a temporary basis in connection with construction or sales activities.

#### **C.11 Garage/Parking Requirements.**

(a) **Single-Family:** Each Residence constructed upon a Lot shall have an attached garage constructed as a part thereof, and that shall be utilized for the parking of vehicles therein. Parking of vehicles in or on any area of a Lot other than the driveway or garage is prohibited at all times. Each Residence shall have a minimum of two off-street parking spaces.

(b) **Multi-Family:** Each Residence constructed upon a Lot shall have a

minimum of one and one half (1.5) parking spaces. Each parking space shall be a minimum of ten (10') feet in width and twenty (20') in depth. Two-way vehicular traffic shall be maintained in all driving lanes within parking lots. All driving lanes shall be a minimum of twelve feet (12') in width.

**(c) Commercial:** Each Commercial building, use, or tenant shall have a minimum of one (1) parking space per four hundred (400) square feet of floor area. Each parking space shall be a minimum of ten (10') feet in width and twenty (20') in depth. Two-way vehicular traffic shall be maintained in all driving lanes within parking lots. All driving lanes shall be a minimum of twelve feet (12') in width.

**C.12 Driveway/Sidewalk Requirements.** All residential driveways and sidewalks shall be constructed of approximately four-inch (4") thick concrete. Driveways shall generally extend from the street to the front of the garage of each Residence. Each residential lot is permitted only one (1) driveway or point of access onto a street. The maximum residential driveway width at its intersection with the street shall not exceed twenty (20') feet. Sidewalks shall be constructed throughout the Property as depicted upon the plat and as otherwise determined by the Declarant or the Association. Maintenance of sidewalks shall be the responsibility of the Declarant or the Association.

**C.13 Antennae/Satellite Dishes.** The erection, construction, placement or installation of any television, radio, or other electronic tower, serial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcasts or for any means of communication upon a Lot or upon any improvement thereon is prohibited except as provided for herein. This prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time. The Declarant or Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. All television antennas, satellite dishes, and other antennas and aerials shall be located inside the attic of the residence or mounted to the roof and located on the side or rear of the residence and not visible from the street. Amateur radio towers and antennas (whether for reception or transmission) are specifically prohibited. No exterior television, radio or other antenna of any type shall be placed, allowed or maintained upon any Lot, Residence, or Structure without prior written approval and authorization of the Declarant or Association.

**C.14 Fences.** No fence shall exceed six feet (6') in height. All fences shall be located in the rear yard of a Lot, and shall be so located so as not to extend beyond the back corner of the residence toward the front yard. All fences shall be located adjacent to and along the property lines of a Lot. All fences shall be constructed of wrought iron, aluminum, or similar material and painted black. Privacy fences are permitted only to screen areas such as patios or porches from view. No fence or wall may be constructed, repaired, rebuilt, or relocated if it impedes or obstructs drainage. Prior written approval from the Declarant or Association is required for any construction, placement or repair of fences on any Lot. Furthermore, the Declarant or Association, not the individual lot owners within the plat, shall be responsible for the care and maintenance of the partition fence

along its common boundary with adjoining property owners (outside of the Property) in accordance with Indiana Code Title 32, Article 26, Chapter 9, otherwise known as the Indiana Fence Law, unless otherwise agreed with the adjoining property owners.

**C.15 Outbuildings.** No outbuildings, storage sheds, mini-barns, detached garages, or similar improvements shall be permitted to be placed or constructed in the Common Areas or upon Lots No. 1-302 within the Property at anytime.

**C.16 Trash Containers.** All trash containers pertaining to Lots No. 1-302 shall be kept indoors on a regular basis, except on regularly scheduled days upon which trash and garbage is collected by the County or other service provider. Commercial and Multi-Family trash containers shall be screened from view by masonry enclosure and placed to the side or rear of a building.

**C.17 Mailboxes.** All mailboxes shall be of a consistent and similar design and constructed of materials approved by the Declarant or Association and shall conform to United States Postal Service regulations. The Builder of the residence upon each lot shall be responsible for the installation of a mailbox upon each lot prior to the transfer of ownership of said lot to its first owner other than Builder or Declarant.

**C.18 Signs.** Except for Declarant's signs, including entrance markers, signs, and monuments, no signs may be displayed upon any residential Lot or in the Common Area other than signs, which do not exceed 9 sq. ft., of tasteful design, which advertise a Lot or Residence for sale or rent. Political signs which do not exceed 6 sq. ft. in size and are of tasteful design are permitted, when such signs are allowed by public authorities prior to and after an election. Commercial signs may be wall-mounted, ground-mounted or pole-mounted. Painted wall signs are not permitted. Commercial signs shall be located upon the building or lot which they are intended to identify and shall at all times be in conformance with applicable zoning and subdivision regulations of the County and approved by the Declarant or the Association.

**C.19 Exterior Materials.** All exterior construction materials shall be subject to approval by the Declarant or Association in accordance with applicable County codes, and shall contain a minimum of seventy-five (75%) percent brick and/or stone on the front, side, and rear elevations of the residence. Alternative materials are permitted only on non-foundation walls such as dormers, second floor gables, cantilevered walls, fireplaces, etc.

**C.20 Height Restrictions.**

**(a) Single-Family Residence:** The maximum height of any Single-Family Residence or Structure on the Property shall not exceed twenty-five feet (25').

**(b) Multi-Family Residence:** The maximum height of any Single-Family Residence or Structure on the Property shall not exceed thirty-five feet (35').

(c) **Commercial:** The maximum height of any Commercial building or structure on the Property shall not exceed forty feet (40').

**C.21 Roof Restrictions.** The roof lines on the front elevation of each Residence shall have a minimum 7:12 pitch and are subject to approval by the Declarant or Association.

**C.22 Construction Period and Process.** Construction of any Residence shall be pursued with all due diligence and, in any event, shall be completed within nine (9) months after commencement. Construction of any other Structure shall be completed within the time periods specified in the plan approval process. All areas under construction shall be maintained in a clean, safe condition, and debris, trash, and rubble shall be stored in appropriate containers and promptly removed from the Property.

**C.23 Landscaping.** Lots No. 1-302 shall be landscaped and maintained in a good and healthy condition, including grass, trees, shrubs, and other vegetation to be maintained by the Owner of the Lot unless otherwise provided herein. Any dead, dying, or diseased trees and shrubs shall be replaced by the Owner of the Lot upon which the dead, dying, or diseased tree or shrub is located. All front and side yards shall be initially planted in sod and all rear yards with seed and straw or sod. Street trees shall be planted upon each lot in conformance with the Master Landscape Plan and two additional trees at least two-inch caliper in size shall also be planted upon each lot by the Builder prior to the transfer of ownership of said lot to its first owner other than Builder or Declarant.

**C.24 Floodplain Areas.** In accordance with all applicable laws, the Builder of any structure or residence upon a lot which adjoins or lies within the 100-year floodplain of any creek, stream, or body of water shall be so constructed with a finished floor elevation at least two feet (2.0') above the floodplain elevation.

**C.25 Right to Waive or Modify Specific Instruction Provisions.** The Declarant or Association shall have the right, in its discretion, to grant reasonable waivers of the construction provisions set forth in this Declaration, and any such waiver shall not entitle any other person to a similar waiver.

**C.26 Declarant Rights.** So long as Declarant owns any Lot, Declarant may exercise any of the rights of the Association as provided herein.

## **SECTION D**

### **MAINTENANCE PROVISIONS**

**D.1 Owner's Obligation to Maintain.** Each Owner shall maintain its Lot and the Residence and other Structures thereon in a clean and orderly condition. Each Owner shall regularly maintain the trees, shrubs, flowers, and other landscaping on its Lot in good condition at all times, including regular mowing of the lawn. Each Owner shall maintain the exterior of all Residences and Structures in good condition and shall make such repairs and replacements as necessary to maintain good order and the aesthetic harmony of the Property.

**D.2 Damaged Improvements.** If any Residence or Structure is damaged in any way, the Owner shall immediately repair such damage or, in the case of substantial damage the Owner shall raze the damaged Structure or Residence and remove the debris from the Lot and commence rebuilding of the Structure or Residence in compliance with the terms of this Declaration.

**D.3 Declarant/Association Right to Perform.** If any Owner fails to maintain the condition of its Lot, the landscaping thereon, including the prompt removal of deceased trees and shrubs, or the Residence or other Structures thereon as contemplated herein and fails to take action to correct such defect within thirty (30) days after the Declarant or the Association has furnished written notice thereof to such Owner, then the Owner of such Lot hereby grants permission to the Declarant or Association (or its duly authorized agents) to enter upon such Lot and perform those duties which the Owner failed to perform without liability whatsoever to such Owner or any Person for trespass, conversion, or any claim for damages. The cost of performing such duties shall be added to the Owner's assessment account and shall bear interest at the rate of eighteen percent (18%) per annum (but not in excess of the lawful maximum rate), be payable upon demand, and shall be secured by the lien provided for herein.

**D.4 Easement Maintenance.** Each Owner grants to the Declarant and Association, the right but not the obligation to access, repair, and maintain all facilities and improvements within any easement as depicted on the Plat. The Owner of each Lot hereby grants, creates and conveys unto the Declarant, Association, and other adjacent Owners, a perpetual Drainage Easement (herein so called) over, through, under and across the Owner's Lot for the purpose of permitting runoff and/or storm water to drain from other adjacent Lots over, through, under and across the Owner's Lot(s). Without limiting the foregoing, in order to facilitate drainage from the Property subject to the Declaration over, through, under and across the Owner's Lot, each Owner hereby agrees that the Declarant or Association, as the case may be, shall have the right but not the obligation to enter onto the Owner's Lot at any time to (i) prevent possible interference with the Drainage Easement and to remove possible hazards from the Drainage Easement area, (ii) prevent the construction or placement of any building, structure or other obstruction within the Drainage Easement area which may endanger or interfere with the efficient and convenient use of the Drainage Easement, (iii) grade, improve, construct, reconstruct, repair and perpetually maintain swales within the Drainage Easement area, and (iv) or

regrade portions of the Drainage Easement area necessary or appropriate to permit drainage as generally described herein or as approved or required by appropriate governmental authorities. Notwithstanding any of the foregoing rights of the Declarant or Association, each Owner hereby agrees to maintain the Drainage Easement area at such Owner's sole cost and expense. If any structures or other obstructions are constructed, created or placed by any Owner within the Drainage Easement area without the prior written consent of the Declarant or Association, the Declarant or Association shall have the right to remove such structure or obstruction at the sole cost of such Owner.

## **SECTION E** **OWNER'S ASSOCIATION**

**E.1 Establishment.** The Association will hereafter be created as an Indiana corporation. Each Owner of a Lot shall be a member in the Association and such membership is appurtenant to and shall not be separated from ownership of a Lot. Upon the transfer of a Lot, the new Owner shall automatically become a member of the Association. The term of existence of the Association and other matters pertaining to its operation shall be set forth in its Articles of Incorporation and the By-Laws. The Association is established to enforce this Declaration and the Covenants, to promote the interests of the Owners as residents of the Property, and to enhance the value of the Lots as a part of a harmonious, high quality, residential subdivision.

**E.2 Voting Power.** The Association shall have three classes of voting membership as follows:

(a) **Class A.** The Class A Member shall be the Owners of Lots No. 1-302 and shall be entitled to one vote for each Lot owned. If more than one person owns an interest in a Lot, they shall combine their vote in such a way as they see fit, but there shall be no fractional votes, and no more than one vote with respect to any Lot.

(b) **Class B.** The Class B Member shall be the Owners of Lots No. C, G, I, O, and Q (Multi-Family) and Lots No. A, D, E, and F (Commercial) and shall be entitled to one vote for each Lot owned, plus 7 votes for each acre or fractional part thereof comprising the lot owned.

(b) **Class C.** The Class C Member shall be the Declarant who shall be entitled to six hundred (610) votes for each Lot owned by Declarant. Subject to the conditions set forth in the remainder of this paragraph, the Class C membership shall be converted to Class A membership at such time when the total votes of Class A and Class B membership equal the total votes of Class C membership. In determining the number of Lots owned by Declarant for the purpose of Class C membership status hereunder, the total number of Lots covered by this Declaration, including all Lots annexed thereto, shall be considered. In the event the Class C membership has previously lapsed, but annexation of additional property restores the ratio of Lots owned by Declarant to the number required for Class C membership status, such Class C membership shall be reinstated until it expires pursuant to the terms hereof.

(c) **Board of Directors Election.** The Board shall be elected as provided in the articles and bylaws of the Association. The Board shall act by majority vote as provided in the bylaws.

(d) **Specific Powers of Board.** Without limiting the authority granted to a board of directors under Indiana law, the Board shall have the following specific powers on behalf of the Association:

- (1) to enforce the provisions of this Declaration;
- (2) to enter into contracts;
- (3) to retain third parties, as necessary, to assist the Board in carrying on the Association's activities, including engineers, accountants, lawyers, architects, land planners, professional management, and other consultants;
- (4) to take such action as necessary to maintain the Common Area in good order and condition;
- (5) to acquire property, services and materials to carry out its duties;
- (6) to purchase insurance covering potential liability for use of the Common Area and for other risks;
- (9) to promulgate reasonable rules and regulations for access to and use of Common Areas as well as a policy establishing a schedule and procedures by which the Association may assess fines against Owners for violations of the Covenants.

**E.3 Officers.** The Association will have such officers as are set forth in the bylaws.

**E.4 Dissolution.** So long as Declarant owns record title to any Lot, the Association shall not be dissolved. Once Declarant is divested of all ownership interest in the Property, the Association may be dissolved upon the written consent of Owners owning at least seventy-five percent (75%) of the Lots. Upon such dissolution, the assets of the Association shall be sold, distributed, donated or otherwise divested in such a manner which best serves the interests of the Association and complies with applicable laws.

## **SECTION F** **ASSESSMENTS**

**F.1 Power to Establish Assessments.** The Association is empowered to establish and collect Assessments as provided herein for the purpose of performing its duties and responsibilities, and to otherwise preserve and further the operation of the Association and the Property as a high quality mixed-use subdivision development. The purposes for which Assessments may be used include, without limitation, maintaining, operating, managing, repairing, replacing or improving the Common Area or any improvements thereon; mowing grass and maintaining grades and signs; paying legal fees and expenses incurred in enforcing this Declaration; paying expenses incurred in collecting and administering assessments; paying insurance premiums for liability and fidelity coverage for the Association; and satisfying any indemnity obligation under the articles or bylaws. The Association may reject partial payments and demand payment in full of all

amounts due and owing the Association from any Owners. The Association is specifically authorized to establish a policy governing how assessment payments are to be received and applied.

**F.2 Commencement of Assessments.**

(a) **Owner other than Declarant.** Unless otherwise provided by separate agreement by and between Declarant and any Person, the Assessments shall commence as to each Lot upon its conveyance by Declarant to any Person.

(b) **Declarant.** Declarant shall not be liable for Assessments for any Lots that it owns. Declarant may, but shall have no obligation to, subsidize the cost of operating the Association from time to time. In the event Declarant decides to subsidize the Association and any shortfall in the operating budget of the Association is due in part to the failure of the Association to collect delinquent Assessments, then the Association shall immediately and vigorously pursue collection of such delinquent Assessments through foreclosure, if necessary, and shall reimburse the Declarant the amounts, if any, so collected.

**F.3 Regular Annual Maintenance Assessments.**

(a) **Annual Budget.** For each calendar year or a part thereof during the term of this Declaration, the Declarant or Association shall establish an estimated budget of the expenses to be incurred by the Association for the forthcoming year. Based upon such budget, the Association shall then assess each Lot an annual fee ("Maintenance Assessment") which shall be paid by each Owner, in advance, on the first day of each January unless the Association determines a different schedule. The Association shall notify each Owner of the Maintenance Assessment for the ensuing year by December 1 of the preceding year, but failure to give such notice shall not relieve any Owner from its obligation to pay Maintenance Assessments. Any Maintenance Assessment not paid within fifteen (15) days of the date due shall be delinquent and shall thereafter be subject to late charges as provided herein. As to any partial year, Maintenance Assessments on any Lot shall be appropriately prorated.

(b) **Maintenance Assessments.** The initial Maintenance Assessment for each Single-Family Lot shall be in the amount of Two Hundred and No/100 Dollars (\$200.00), paid in one installment as indicated herein. The initial Maintenance Assessment for each Multi-Family and Commercial Lot shall be in the amount of Two Hundred and No/100 Dollars (\$200.00), paid in one installment as indicated herein while the Lot(s) remain unimproved. Once improved, the Maintenance Assessment for each Multi-Family and Commercial Lot shall be in the amount of Five Hundred and No/100 Dollars (\$500.00) per acre or fractional part thereof, paid in one installment as indicated herein. Thereafter, the Declarant or Association may increase or decrease the Maintenance Assessment of any Lot Owner annually to meet the anticipated needs of the appropriate budget, but the Maintenance Assessment may not be increased in any year by an amount in excess of fifty percent (50%) above the previous year's Maintenance Assessment, unless such increase is approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, where a quorum exists.

(c) **Initial Payment of Assessments.** Upon the sale or transfer of record title to a Lot by Declarant or a Builder to the first Owner, the total annual maintenance



assessment, or pro-rated portion thereof, shall be paid to the Association by or on behalf of such first Owner. This amount is not refundable and shall account for all maintenance assessments for the calendar year in which the transfer of record title to a lot is accomplished. This amount shall be used by the Declarant or Association for operating and other expenses incurred by the Association pursuant to the terms of this Declaration and the bylaws of the Association.

(d) **Uniform Assessments.** Maintenance Assessments for all Single-Family Lots shall be uniform and equal. Maintenance Assessments for all Single-Family Lots shall be uniform and equal.

(e) **Use of Maintenance Assessments.** Maintenance Assessments shall be used by the Declarant or Association to maintain the Property in a clean and orderly manner so as to promote the Property as a high quality residential subdivision.

**F.4 Special Assessments.** The Association may impose special assessments ("Special Assessments") to make capital improvements to the Common Area, to satisfy its indemnity obligations under the articles or bylaws, or for other similar purposes. Any Special Assessment proposed by the Association must be approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, at which a quorum exists. At least fifteen (15) days prior to any meeting of the Association called to consider any Special Assessment, the Board shall notify each Owner thereof by written notice specifying the total amount of the Special Assessment required, the amount thereof imposed on each Lot (which shall be uniform), the purpose for such Special Assessment, and the time and method of payment thereof. The time for paying any Special Assessment (which may be in installments) shall be as specified in the approved proposal therefore.

**F.5 Liability for and Enforcement of Assessments.**

(a) **Personal Liability.** Each Owner shall be personally liable for all Assessments imposed during the time it owns a Lot.

(b) **Reservation, Subordination, and Enforcement of Assessment Lien.** Declarant hereby reserves for the benefit of itself and the Association, a lien (the "Assessment Lien") against each Lot to secure payment of (1) the Assessments imposed hereunder and (2) payment of any amounts expended by the Declarant or Association in performing a defaulting Owner's obligations as provided for herein. Each Owner, by accepting conveyance of a Lot, shall be deemed to have agreed to pay the Assessments herein provided for and to the reservation of the Assessment Lien. The Assessment Lien shall be subordinate to the liens of any valid first mortgage lien encumbering a particular Lot. No sale or transfer of ownership of a Lot shall relieve such Lot from Liability and the Assessment Lien for any Assessments thereafter becoming due. Each Owner, by accepting conveyance of a Lot, expressly grants the Association a power of sale in connection with the foreclosure of the Assessment Lien. The Association is empowered to appoint a trustee, who may be a member of the Association, to exercise the powers of the Association to non-judicially foreclose the Assessments Lien in the manner provided for under Indiana law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(c) **Notices of Delinquency of Payment.** The Association, the Association's attorney or Declarant may file notice of any delinquency in payment of any Assessment in the Records of Clark County, Indiana. Upon the timely curing of any default for which a notice was recorded by the Association, the Association through its attorney is hereby authorized to file of record a release of such notice upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and filing a release. Upon request of any Owner, any title company on behalf of such Owner or any Owner's mortgagee, the Association through its agents may also issue certificates evidencing the status of payments of Assessments as to any particular Lot (i.e., whether they are current or delinquent and if delinquent, the amount thereof). The Association or its Managing Agent may impose a reasonable fee for furnishing such certificates or statements.

(d) **Suit to Recover.** The Association may file suit to recover any unpaid Assessment and, in addition to collecting such Assessment and interest thereon, may also recover all expenses reasonably expended in enforcing such obligation, including reasonable attorneys' fees and court costs.

(e) **Late Charges and Collection Fees.** If any Assessment or any part thereof remains unpaid after fifteen (15) calendar days from and after the due date established by the Association, a late charge shall be assessed against the non-paying Owner for each day or any part thereof, that any portion of any Assessment remains unpaid. Should any Assessment be payable in installments, the Association is authorized to accelerate the entire Assessment and demand immediate payment thereof. The late charge shall be in the amount of Five and No/100 Dollars (\$5.00) per day. The Association's Managing Agent shall be entitled to charge an Owner a monthly collection fee to compensate Managing Agent for its administrative costs and efforts to collect and process the late payment of Assessments. A service charge in the amount of Twenty-Five and No/100 Dollars (\$25.00) shall be charged for each check that is returned because of insufficient funds or any other reason. The amount of late charges and service charges may be adjusted, from time to time, by the Association consistent with any changes in the administrative costs to collect unpaid Assessments or the Association's bank charges. All late charges, collection fees, service charges and attorneys' fees assessed or incurred due to late payment of Assessments shall be charged to an Owner's Assessment account which shall be part of the delinquent Assessment and shall be payable and secured in the same manner as herein provided with regard to Assessments.

(f) **Interest on Past Due Amounts.** All Assessments past due more than thirty (30) days, unpaid fines and other amounts owed to the Association by any Owner which are not paid when due shall bear interest from the date due until paid at the rate of ten percent (10%) per annum, but not in excess of the maximum rate allowed by applicable law.

(g) **Suspension of Right to Use Common Areas.** In addition to the other powers herein granted, the Association may suspend the rights of any Owner to participate or otherwise use and enjoy any facility, activity, or Common Areas during the time that such Owner is delinquent in paying any Assessment.

(h) **Suspension of Voting Rights.** No Owner who is delinquent in paying its Assessments shall have the right to vote as a member of the Association while such delinquency continues. An Owner may cure a delinquency at a meeting to regain the right

to vote by paying all outstanding amounts (including interest, fines, and penalties) by cash, cashier's or certified check or other good funds acceptable to the Board.

## **SECTION G** **PARK & COMMON AREAS**

**G.1 Right to Use Common Areas.** Each Owner, the members of that Owner's immediate family, and the Owner's guests (provided guests are accompanied by an Owner) shall have the right to use the Common Areas for its intended purposes as herein provided. The Declarant and Association shall have the right to enter on and use the Common Areas at all times to exercise their rights or (in the case of the Association) perform its duties hereunder.

**G.2 Specific Facilities.** Improvements, if any, to be located in the Common Areas shall be determined initially by Declarant, and thereafter by the Association. The Declarant or Association may promulgate reasonable rules and regulations for use of these improvements.

**G.3 Maintenance of Common Areas.** The Association shall be solely responsible for all maintenance, repair, replacement, and improvement of the Common Areas, utilizing the Maintenance Assessments for such purposes as herein provided. Declarant shall be responsible for maintenance, repair, replacement, or improvement of the Common Areas after initial construction and until ownership of the Common Areas is transferred from the Declarant to the Association.

**G.4 Risk of Loss - Use of Common Areas.** Each Owner shall be individually responsible and assume all risk of loss associated with its use of the Common Areas and use by its family members and guests. Neither the Association nor Declarant shall have any liability to any Owner or their family members or guests, or to any other Person, arising out of or in connection with the use, in any manner whatsoever, of the Common Areas or any improvements comprising a part thereof from time to time.

**G.5 Conveyance of Common Areas to Association.** The Association shall accept ownership of the Common Areas at such time that Declarant conveys the Common Areas to the Association but not later than sixty (60) days after Declarant no longer owns a Lot in the Property. Declarant reserves the right, but not the obligation, to convey the Common Areas to the Association with mortgage indebtedness and other payment obligations such that the sum of the Association's annual payment obligations at the time of conveyance of the Common Areas do not exceed the sum of the owners' maintenance assessments.

## **SECTION H** **SPECIFIC DECLARANT RIGHTS**

**H.1 Rights to Annex.** Declarant may annex additional property to become a portion of the Property and thereafter be subject to the terms, provisions and conditions of

shall automatically renew for subsequent periods of ten (10) years each unless Owners of at least seventy-five percent (75%) of the Lots vote to terminate these Covenants by written instrument recorded in the Records of Clark County, Indiana.

**1.2 Enforcement.** The terms, provisions and conditions of this Declaration shall be enforceable by the Declarant or Association, and each Owner. The Board shall have the power and authority to impose reasonable fines (which shall not exceed Two Hundred Fifty and No/100 Dollars (\$250.00) for each separate violation) for violation of this Declaration or any rule or regulation of the Association, which shall constitute a lien upon the Lot of the violating Owner as provided in the Declaration, and to suspend the Owner's right to vote or any Person's right to use of the Common Area. If any occupant, guest, or invitee of a Lot violates the Declaration or a rule or regulation of the Association and a fine is imposed, the fine shall be assessed against the Owner to which such occupant, guest, or invitee is associated; The Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration or any rule or regulation of the Association shall not operate as a waiver of the right of the Association to do so thereafter.

**1.3 General Easement for Access, Maintenance and Utilities.** Each Owner grants to the Declarant, the Association, the other Owners, the County, and applicable Utility Companies a general easement for the maintenance of any Common Area improvements and for access to and from each Owner's Lot through driveways, rights of way and easements as reflected on the Plat for the purpose of giving effect to the provisions of these Covenants.

**1.4 Amendment of Declaration.** These Covenants may be amended by Declarant as provided herein. In addition, the Declaration may be amended at any time and in any respect with the approval of Owners owning at least seventy-five percent (75%) of the Lots; provided, however, that no such amendment shall be effective unless agreed to by Declarant until such time as Declarant no longer owns a Lot.

**1.5 County Provisions.** All construction within the Property shall comply with all applicable County ordinances and regulations. No ordinance or regulations adopted by the County shall lessen the requirements set forth in these Covenants.

**1.6 Waiver of Right to Remonstrate Against Annexation.** The Declarant, Association, and any and all heirs, successors, and assigns in title, interest, and ownership of a Lot within the Property shall hereinafter agree and waive their individual and collective rights to lawfully remonstrate against annexation of the Property, in whole or in part, to the Town of Sellersburg, Indiana, a municipal corporation as a condition for the provision of sanitary sewer and water service.

**1.7 Notices.** Any notice required to be given to any Owner under the terms of this Declaration shall be deemed to have been properly delivered in writing and received by an Owner by electronic mail, facsimile transmission, hand-delivery, or first class mail delivery by the United States Postal Service, postage prepaid, properly addressed to the