

2017-024583  
STATE OF INDIANA  
PORTER COUNTY  
FILED FOR RECORD  
10/05/2017 9:34 AM  
JON MILLER, RECORDER  
REC FEE: 25.00  
PAGES: 31

DECLARATION  
OF  
COVENANTS AND RESTRICTIONS  
FOR  
HAWTHORNE NORTH SUBDIVISION



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DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

HAWTHORNE NORTH SUBDIVISION

*THIS DECLARATION*, made this 5 day of October, 2017 by Von Tobel Corporation, an Indiana corporation (hereinafter referred to as the "Developer").

WITNESSETH

Whereas, Developer is the owner of the real estate legally described herein and commonly known as Hawthorne North Subdivision; and

Whereas, Developer desires Hawthorne North Subdivision to develop as a residential community; and

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

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

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

enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of the said lots situated therein.

## **Article I**

### **DEFINITIONS**

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

**Section 1. "Association"** shall mean and refer to Hawthorne North Homeowners Association, Inc., an Indiana not-for-profit corporation.

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

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

**Section 4. "Developer"** shall mean Von Tobel Corporation, an Indiana corporation their successors and assigns, if any such successor or assignee acquires the undeveloped portion of Hawthorne North Subdivision, from Developer for the purpose of development.

**Section 5. "Lot"** shall mean and refer to any lot or other tract in the Subdivision, together with any and all improvements thereon, as shown on the plat or plats thereof and designated thereon with a number for identification on which a residential structure could be constructed, whether or not one has been constructed.

**Section 6. "Maintenance"** shall mean the exercise of reasonable care, including buildings, roads, easements of ingress and egress, drainage easements, water detention or retention easements, utility easements, parks, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition.

**Section 7. "Owner"** shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Subdivision, including Developer, and including contract sellers, but not including contract purchasers.

**Section 8. "Member"** shall mean every person or entity holding membership in the Association.

**Section 9. "Subdivision"** shall mean and refer to all such existing properties, and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations, under the provisions of Article II hereof, and shall initially include the real property described in Article II, Section 1.

## Article II

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

**Section 1. Legal Description.** The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Porter County, Indiana, and comprises all of the Lots, tracts and easements shown and/or platted within or upon the property legally described as follows:

Parcel (Parcel #64-10-06-406-007.000-003)

A parcel of land in the Northwest Quarter of the Southeast Quarter of Section 6, Township 35 North, Range 5 West, in Porter County, Indiana, described as follows: Commencing at the Southeast Corner of Lot 17 in Sunny Lane Subdivision; thence West along the South line of said Sunny Lane Subdivision, 720 feet to the East right-of-way line of State Road No. 49; thence Southerly along said East right-of-way line, 200 feet to the TRUE POINT OF BEGINNING for said parcel; thence continuing Southerly along said East right-of-way line of State Road No. 49, 210 feet; thence East 414.86 feet; thence Northerly 210 feet; thence West 414.86 feet to the TRUE POINT OF BEGINNING; subject to all legal highways.

Parcel 2 (Parcel #64-10-06-406-009.000-003)

A parcel of land located in the Southeast Quarter of Section 6, Township 35 North, Range 5 West, Porter County, Indiana, more particularly described as follows: Commencing at an iron pipe on the East line of said Section 6 which is 1204.5 feet North of the Southeast corner of said Southeast Quarter Section; thence South 89 degrees 57 minutes 30 seconds West parallel to the South line of said Southeast Quarter Section 660.00 feet to the TRUE POINT OF BEGINNING for said parcel; thence continuing South 89 degrees 57 minutes 30 seconds West 1105.50 feet; thence South 00 degrees 00 minutes 00 seconds West 7.00 feet; thence South 89 degrees 57 minutes 30 seconds West 311.45 feet; thence North 05 degrees 43 minutes 00 seconds East 330.00 feet; thence South 89 degrees 57 minutes 30 seconds West 79.9 feet to an iron pipe which is 30.0 feet East by rectangular measurement from the centerline of State Road 49 (said point begin on the East right-of-way line of State Road #49); thence Northeasterly along said East right-of-way line 925 feet, more or less, to an iron pipe; thence South 89 degrees 54 minutes 10 seconds East 737.50 feet; thence South 00 degrees 01 minutes 30 seconds East 528.38 feet; thence South 89 degrees 54 minutes 30 seconds East 648.56 feet; thence South 00 degrees 00 minutes 00 seconds West 712.03 feet to the TRUE POINT OF BEGINNING for said parcel. Containing 32.5 acres and subject to all legal highways and easements.

EXCEPTING THEREFROM, a parcel of land in the Northwest 1/4 of the Southeast 1/4 of Section 6, Township 35 North, Range 5 West, in Porter County, Indiana, described as follows:

Commencing at the Southeast Corner of Lot 17 in Sunny Lane Subdivision; thence West along the South line of said Sunny Lane Subdivision, 720 feet to the East right-of-way line of State Road No. 49; thence Southerly along said East right-of-way line, 200 feet to the TRUE POINT OF BEGINNING for said parcel; thence continuing Southerly along said East right-of-way line of State Road No. 49, 210 feet; thence East 414.86 feet; thence Northerly 210 feet; thence West 414.86 feet to the TRUE POINT OF BEGINNING; subject to all legal highways.

Parcel 3 (Parcel #64-10-06-406-008.000-003)

A parcel of land located in the Southeast Quarter of Section 6, Township 35 North, Range 5 West of the Second Principal Meridian in Center Township, Porter County, Indiana, being more particularly described as follows:

Commencing at an iron pipe on the East line of said Section 6 which is 1204.5 feet North of the Southeast corner of said Southeast Quarter; thence South 89 degrees 57 minutes 30 seconds West parallel with the South line of said Southeast Quarter, a distance of 1765.50 feet; thence South 00 degrees 00 minutes 00 seconds West, a distance of 7.00 feet; thence South 89 degrees 57 minutes 30 seconds West parallel with said South line, a distance of 311.45 feet to the POINT OF BEGINNING; thence North 05 degrees 43 minutes 00 seconds East, a distance of 330.00 feet; thence South 89 degrees 57 minutes 30 seconds West parallel with said South line, a distance of 79.9 feet to an iron pipe which is 30.0 feet by rectangular measurement from the centerline of State Road No. 49 (said point being on the East right-of-way line of State Road No. 49); thence Southwesterly along said right-of-way on a chord bearing of South 18 degrees 58 minutes 57 seconds West, a distance of 347.30 feet, more or less, to an iron pipe being 30.0 feet East of the centerline of said State Road No. 49 by rectangular measurement; thence North 89 degrees 57 minutes 30 seconds East parallel with said South line, a distance of 160.00 feet to the POINT OF BEGINNING. Containing 0.9 acres, more or less.

Parcel 4 (Parcel for Lynn Lane Extension)

The West 32.00 feet of the North 196.00 feet of the following described parcel: The East 660.00 feet of the North 712.03 feet of the South 1916.53 feet of the East Half of the Southeast Quarter of Section 6, Township 35 North, Range 5 West of the Second Principal Meridian.

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



**Section 3. Additional Real Estate.** Developer may, but shall have no obligation to, add at any time or from time to time to the scheme of this Declaration additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration shall be contiguous to property then subject to the scheme of this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted as residential lots or dwelling units, and (c) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association for their pro-rata share of Association expenses. The addition at any time or from time to time of all or any portion or portions of the real estate to the scheme of this Declaration shall be made and evidenced by filing in the Office of the Recorder of Porter County, Indiana, a supplementary Declaration with respect to that portion of real estate to be added. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any Owner and/or Mortgagee of land in the Subdivision.

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

### Article III

#### PROPERTY RIGHTS

**Section 1. Right of Entry.** Developer and the Association, through their duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot or tract of real estate at any reasonable hour on any day to perform such maintenance as may be authorized herein.

**Section 2. Sign Easement.** A non-exclusive easement is reserved over and across the common areas of Lots 1 and 44 in favor of the Association and Developer, its successors or assigns, for installation of a monument sign or signs, and (ii) maintenance, repair, and replacement of the sign(s) and sign face(s) thereon from time to time, such easement to be coextensive with the nature of the work to be performed on the signs and/or sign face(s).

## Article IV

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

**Section 1. Purpose of the Association.** The primary purpose of the Association shall be to insure high standards of maintenance and operation of all property and real estate in the Subdivision, including that property reserved by Developer for the detention and management of storm water easements, to insure the provision of services and facilities of common benefit, and in general to maintain and promote the desired character of the Subdivision. In addition, the Association shall consider its primary purpose to manage and support financially all real estate owned by the Association, if any, as well as the storm drainage detention easements located within the Subdivision.

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

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

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

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

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

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

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

## Article V

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of Lien and Personal Obligation of Assessment.** Developer, for each Lot owned by it within the Subdivision, hereby covenants and each Owner of any Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and

agree to pay to the Association any annual assessments or charges, and any special assessments for capital improvements or major repair; such assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from the due date at the rate of ten (10%) per cent per annum, and costs of collection thereof (including reasonable attorneys' fees), shall be a charge on the real estate and shall be a continuing lien upon the Lot or Lots against which each such assessment is made, and shall also be the personal obligation of the Owner.

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

A. Maintenance and repair of all storm drains, drainage easements, storm water detention or retention easements, sanitary sewers, parks, signs, private roads, and easements shown on the plat or plats of the Subdivision recorded in the Office of the Recorder of Porter County, Indiana.

B. Removal of snow and ice from the "knuckles" or expanded area of the public streets within the Subdivision, not provided by City of Valparaiso, if any.

C. Reimbursement to Developer for the initial landscaping of the Common Area and perimeter landscaping, installation of berms and fencing, if any, which may be made in one lump sum or paid in no more than five (5) equal annual installments at the election of the Association. No interest shall be paid by the Association for this obligation.

D. Liability insurance insuring the Association and the Board, as well as each Director in their individual capacity, against any and all liability to the public, to any Owner, or to the licensees, invitees, or tenants of any Owner. The policy limits shall be set by the Association and shall be reviewed at least annually and increased or decreased in the discretion of the Association;

E. Worker's compensation insurance to the extent necessary to comply with the Indiana law, and any other insurance deemed necessary by the Board;

F. Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration, or by law, or which shall be necessary or proper in the opinion of the Board for the benefit of the Owners, or for the enforcement of these restrictions.

**Section 3. Uniform Rate of Assessment.** All regular and special assessments shall be at a uniform rate for each Lot in the Subdivision without adjustment for size of Lots, or the number of residents.

**Section 4. Special Assessments for Capital Improvements and Major Repairs.** In addition to the annual assessment, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, re-construction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-third (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

**Section 5. Date of Commencement of Annual Assessments: Due Date.** The assessments for which provision is herein made shall commence on the first day of the month, or as fixed by the Board to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due date of any assessment shall be fixed in the resolution authorizing such assessment and any such assessment shall be payable in advance in monthly installments unless such other periods are determined by the Board.

**Section 6. Annual Budget.** Before the beginning of each fiscal year the Board shall prepare a budget of the estimated common expenses for the coming fiscal year, including estimated revenues and expenses for the budget year and the estimated surplus or deficit as of the end of the current budget year. The budget may also reflect any contributions to be made to a reserve fund and the sources which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots. The Board shall send a copy of the final proposed budget for the coming fiscal year, together with notice of the amount of the proposed assessment(s) to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the meeting of Owners.

The Board shall submit the proposed budget for approval to the Owners at a meeting called and conducted according to this Declaration, the Bylaws and the applicable law. The budget must be approved by a majority of the Owners in attendance in person, by proxy, or by other means allowed. If the number of Owners in attendance at the called meeting does not constitute a quorum, then the Board may adopt the proposed budget, a modified budget, for the coming fiscal year of the association provided that the amount of the proposed budget does not exceed the limit established by statute in the State of Indiana, currently one hundred and ten percent (110%) of the last approved annual budget.

The Board shall fix the date of commencement, and the amount of the assessment against each Lot for each assessment. The Association shall, on demand, and for a reasonable charge, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

The failure or delay of the Board to prepare or submit a proposed budget to the Owners or the failure or delay of the Association to conduct a meeting of the Owners shall not constitute a waiver or release in any manner of any Owner's obligation to pay the Owner's share of the Common Expenses as provided for herein or excuse the continued timely payment of the then current existing assessment rate which shall continue in full force and effect until the next approved budget and new assessment levied by this Declaration or otherwise allowed by law. It is the intent of the Owners that the Board be and is hereby authorized with the power to make, determine, levy and collect the assessments, make, determine and approve the annual budget in the absence of a quorum at a meeting required hereunder provided for in this Declaration, all powers to the fullest extent allowed by law. The Association shall, on demand, and for a reasonable charge, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 7. Effect of Non-Payment of Assessment: The Lien, Personal Obligation, Remedies of Association.** If any assessment is not paid on the date when due, such assessment shall then become delinquent and shall, together with interest thereon, and the cost of collection thereof, become a continuing lien on the Lot or Lots against which such assessment is made that shall bind such Lot in the hands of the Owner, and the Owner's heirs, devisees, personal representatives and assigns, and shall also be continuing personal obligation of the Owner against whom the assessment is levied.

If the assessment is not paid within sixty (60) days after the delinquency date the assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum, and the Association may, at any time thereafter, bring an action to foreclose the lien against the Lot or Lots in like manner as a foreclosure of a mortgage on real property and/or a suit on the personal obligation against the Owner, and there shall be added to the amount of such assessment the cost of any such action (including a reasonable attorneys' fee), and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action.

In the event an Owner is delinquent more than six (6) months in the payment of assessments of any kind or nature, the Owner's voting rights may be suspended by the Board, without notice. In the event the statutory law for the State of Indiana allows for suspension of an Owner's voting rights in less than six (6) months, the Board is fully authorized to suspend an Owner's voting rights providing that the delinquency is not less than sixty (60) days or such longer time if required by law.

**Section 8. Subordination to Lien of Mortgages.** The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a bank, life insurance company, Federal or State savings and loan association, or real estate investment trust provided such mortgage is a purchase money mortgage. Such subordination shall apply only to

the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No such sale or transfer or proceeding in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment. The written opinion of either Developer or the Association that the lien is subordinate to a mortgage shall be dispositive of any question of subordination.

## Article VI

### EXTERIOR MAINTENANCE ASSESSMENT

**Section 1. Exterior Maintenance.** The Association may provide upon any Lot requiring same, when necessary in the opinion of the Board to preserve the beauty, quality and value of the neighborhood, maintenance, including paint, repair, roof repair and replacement, gutters, down-spouts, exterior building surfaces, and yard clean-up and/or maintenance; provided, however, that ten (10) days written notice must first be given to the Owner of any such Lot or Lots of the need of such clean-up and/or maintenance.

**Section 2. Assessment of Cost.** The cost of such maintenance shall be assessed against the Lot or Lots upon which such maintenance is performed, or, in the opinion of the Board, against the Lot or Lots benefitting from same. The assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board. If no allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area. The exterior maintenance assessments shall not be considered a part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the Lot or Lots and the personal obligation of the Owner and shall become due and payable in all respects, together with interest, reasonable attorney's fees, and cost of collection, as provided for the other assessments of the Association and shall be subordinate to mortgage liens as provided for herein.

**Section 3. Access at Reasonable Hours.** For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Lots or the exterior of any improvements thereon at reasonable hours any day except Sunday.

## Article VII

### ARCHITECTURAL CONTROL COMMITTEE

**Section 1. Power of Committee.** There is hereby created an Architectural Control Committee for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. Developer shall function as and grant all approvals

approvals and variances provided for herein until Developer conveys the last Lot which Developer owns in the Subdivision, except that Developer may elect to delegate and assign such duties and responsibilities to the Committee prior to that time. The Committee shall be composed of no less than three (3) individuals appointed by the Board to serve at the Board's pleasure. Two-thirds (2/3rds) of the Committee shall also be Members of the Association. A majority of members of the Committee shall constitute the decision of the Committee.

A. In General. No dwelling, house, building, structure or improvement of any type or kind shall be constructed or placed on any Lot in the Subdivision without the prior approval which shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. In addition, such plans and specifications shall show the proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1" - 10', or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or reports required elsewhere in these Restrictions.

B. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions;
- (ii) The design (exterior and interior), color scheme or construction materials of a proposed improvement (including, without limitation the type, color and material of all doors) is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or
- (iii) The proposed improvement, or any part thereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of the other Owners.

C. Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the



general intent and purposes of these Restrictions, and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Subdivision.

**Section 2. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. Should the Committee fail to act within the specified time, the requirements of this Article shall have been automatically waived and the Owner's plans shall be deemed to have complied with all requirements hereof. One copy of all submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for the disapproval.

**Section 3. Liability of Committee.** Neither the Committee nor any agent thereof, nor Developer, nor the Association, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

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

**Section 5. Builder Responsibility.** It shall be the responsibility of the builder to comply with all construction regulations contained herein. If any builder or contractor is found deficient in the performance of any of these construction requirements, the Committee reserves the right to take any corrective action necessary, including the right to deny any contractor access to the Subdivision.

**Section 6. Speed Limit & Vehicle Tires.** The established speed limit within the community is 20 miles per hour for construction vehicles, including light trucks and autos. This speed limit will be strictly enforced and must be obeyed. Violators will be subject to a fine and/or denied access to the Subdivision. Only rubber-tired vehicles are allowed on the streets; "tracked" equipment will not be permitted to run on the streets.

**Section 7. Access to the Homesite/Contractor Parking.** Individual Lots shall be accessed only via the streets. No other access will be permitted. Access onto the Lots from the street shall be restricted to the driveway curb cut. The curb cut, and sidewalk cut, if necessary, shall be located by the surveyor, then cut and the access leveled with gravel fill prior to any vehicular traffic or construction is permitted on the Lot. The gravel drive shall run from the curb to the foundation at the garage entry. The driveways of homes under construction and any area available for parking are to be kept stoned for access by suppliers and parking for contractor's vehicles. All vehicles shall be parked within the Lot boundaries whenever possible. Street parking will only be allowed when parking on the Lot is impossible. If the Lot driveway is occupied, parking on one side of the street will be allowed. Vehicles shall not be permitted to

park overnight. Construction equipment may be left on site while needed, but must be kept on the Lot.

**Section 8. Delivery and Storage of Materials.** Delivery of supplies and equipment shall be limited to normal hours of operation. Supplies and equipment shall be unloaded promptly and in an orderly fashion. Delivery vehicles shall exit the Lot and subdivision immediately after delivery. The delivered equipment or materials shall immediately be stored in an orderly manner within the Lot boundaries. The storage of materials and supplies shall be confined within the Lot boundaries of the specific Lot. Such materials and supplies are to be maintained in a neat and orderly manner and, whenever possible, located in the rear of the residence. Such stored materials shall not under any circumstances be permitted to obstruct the flow or drainage patterns of the Lot or any adjacent Lots.

**Section 9. Lot Maintenance.** The builder shall be required to keep the entire Lot clean at all times. Each Lot shall have a dumpster for refuse during construction. All debris and refuse shall be deposited into the dumpster. Debris is not to be allowed to accumulate on the Lot. The dumpster shall not be allowed to fill to the point of overflowing. If the Owner or Builder fails to clean the site at the end of the day, the Declarant or Association may enter the site to effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot.

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

Erosion control methods shall be in place on each Lot prior to and throughout any construction on a Lot. Silt fences shall be installed and maintained on all property lines to minimize erosion and flow of silt to adjacent property and street. Care should be taken to minimize excessive drainage onto the roadway and adjacent lots, including sump pump discharge and natural drainage. If the Owner or builder fails to clean the street at the end of the day, the Declarant or Association may effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot. The washing or cleaning of concrete delivery trucks, shall be confined to within the Lot boundaries. Such activities shall not be permitted on any street or common area and not on any other Lot within the Subdivision. If any party associated with the construction of or development of a Lot fails to comply, the Declarant or Association may effect clean up and charge the Owner three times the actual cost of the clean up. Failure to pay upon request will result in a lien against the Lot.

**Section 10. Insurance.** All builders shall provide and maintain the following insurance policies at all times while performing any work in the Subdivision, and the amount of these policies may be amended by the Committee from time to time.

Workmen's Compensation Insurance	Statutory limits
Comprehensive General Liability	\$2,000,000
Owner's and Builder's Protective Liability	*Based on contract price in an amount determined by the Committee.
Automobile Liability Insurance	\$1,000,000

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

Contractor and all subcontractors shall be responsible for any and all injuries or damage to any persons or property, including loss of human life arising directly or indirectly from or in connection with work performed or to be performed under this Declaration, and shall hold the Declarant harmless of any and all loss or damage from such injuries, damage or death.

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

**Section 11. Restrooms.** All builders shall provide and maintain portable toilets on the job site. All portable toilets shall be removed immediately upon completion of the residence.

**Section 12. Owners Are Responsible for Builder Conduct.** Owners are responsible for the conduct of builder's and their subcontractors and making them aware of these rules and regulations. Each builder must keep a current list of all subcontractors on file with the Declarant. Each Owner or builder is responsible for all damage, fines, or otherwise caused by its subcontractors or independent contractors.

**Section 13. Excess Noise.** All contractors, subcontractors and their employees, making loud noise or using offensive language shall be denied access to the community. The builder is responsible and subject to a fine determined by the Board or Declarant for excessive noise. No radio shall be played on any Lot during construction that is able to be heard from a distance more than fifty (50) feet from the radio.

## Article VIII

### USE RESTRICTIONS

**Section 1. Residential Use.** The real estate subject to these covenants and restrictions may be used for single family residential living units and for no other purpose. There shall be no

more one (1) principal dwelling on any one (1) Lot, unless such Lot has been specifically platted and zoned otherwise. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. No building or other improvements shall be erected upon any Lot without prior approval of the Committee as elsewhere herein provided. No accessory building shall be erected prior to erection of the principal dwelling or house. In the event that one or more Lots are developed or held unimproved as a single unit, the provisions of these covenants and restrictions including the levy of assessments shall apply thereto as a single Lot. No dwelling or other structure or improvement shall be erected, altered, placed, or permitted to remain on any site not including at least one (1) full platted Lot according to the recorded plat or plats of the Subdivision.

Provided that the use complies with the Unified Development Ordinance (specifically Section 3.605), all other local zoning and building laws, ordinances, statutes, codes, rules and regulations, nothing in this Declaration shall prohibit or prevent the addition or inclusion of a secondary suite in the home intended for another generation of the Owner to live in the same structure, but with separate and shared living spaces which shall be considered as a single family residence, provided that:

- The principal home and secondary suite each have at least one (1) occupant that is related by blood, marriage or adoption with the other;
- The secondary suite may have no more than two (2) occupants;
- The secondary suite must be structurally attached to principal home and incorporated and architecturally similar
- The home structure may not have two outside entrances (entry man door or garage door) that faces the same street elevation;
- There shall be no more than one (1) secondary suite incorporated in any one (1) home;
- No borders or lodgers are permitted in the secondary suite. No occupant of the secondary suite shall be obligated to pay rent or provide compensation to the Owner or any occupant of the principal home.
- The Owner shall notify the Association of the existence of the secondary suite and cooperate and provide reasonable and periodic confirmation of compliance with the conditions of this section upon request of the Association.
- The secondary suite shall not exceed twenty percent (20%) of the total square footage of the entire home (home and secondary suite together).

**Section 2. Business Activity.** No business, trade, garage sale, moving sale, rummage sale, or similar activity shall be permitted on any Lot, except that an Owner or occupant residing in a home on a Lot may conduct business activities within the home so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the home or Lot; (b) the activity conforms to all zoning requirements for the Subdivision; (c) the activity does not involve regular visitation of the home or Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Subdivision; and (d) the

activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, including the operation of a timeshare or similar program. Exceptions to this Section may be permitted with the approval of the Board.

**Section 3. Owner's Obligation to Maintain Lot.** Each Owner of a Lot in the Subdivision shall at all times maintain the Lot, and all real estate and improvements in such a manner as to prevent the Lot and improvements from becoming unsightly, and specifically such Owner shall (a) mow and otherwise tend to the landscaping on the Lot as such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds; (b) cut down and remove dead trees and replace with new plantings; (c) remove all debris and rubbish and prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Lot or Subdivision; (d) maintain and replace all trees, bushes, shrubs, vegetation, irrigation system, fences, walls and other landscaping features or material shown on the Landscape Plan approved pursuant to Article VII; and (e) keep the exterior of the improvements in such a state of repair or maintenance as to avoid the improvements from becoming unsightly.

**Section 4. No Temporary Building.** No tents, trailers, vans, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without the written consent of Developer, or of the Association after Developer has conveyed the last Lot which Developer owns in the Subdivision.

**Section 5. Antennae.** No television or radio antenna, earth station dish, pole, wire, rods, satellite dish, or other device used in connection with the reception or transmission of any television, radio or any other electrical signal shall be erected or maintained on the exterior of any home or dwelling or on any part of a Lot that shall be visible from any public street. Such improvements must be properly screened from the view from public streets by effective natural or artificial fences, hedges, landscaping, or walls.

**Section 6. Boats and Motor Vehicles.** No boats, recreational vehicles or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Lot, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot, except within a fully enclosed building and totally isolated from public view.

**Section 7. Trees.** Each Lot must have at least the number of trees growing upon it as may be required by local ordinance within one (1) year of the date that the dwelling is occupied. The Owner shall be responsible for the installation of trees and grass in the area between the curb and the sidewalk.

**Section 8. Landscaping Requirements.** Trees, bushes, shrubs, vegetation, irrigation systems, fences, walls and other landscaping features or materials are essential elements of Owner's maintenance of its Lot. Each Owner, and their successors and assigns, is responsible for

for regular maintenance to insure the landscaping is kept and maintained in good condition and dead and diseased material removed and replaced with its equivalent.

**Section 9. Artificial Vegetation or Yard Ornaments.** No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Committee. No ornament, displays or other freestanding decorations or ornamentation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Committee

**Section 10. Automobile Storage Areas.** All homes erected upon a Lot shall have a garage attached to and architecturally consistent with the home. No automobile garage shall be permanently enclosed or converted to other use without the substitution of another enclosed automobile storage area upon the Lot. No carports shall be permitted unless approved by the Committee and all garages shall be at least adequate to house two (2) standard size American automobiles. All garages must have doors that are to be maintained in useable condition.

**Section 11. Clothes Drying Area.** No portion of any Lot which shall be visible from any public street shall be used as a drying or hanging area for laundry of any kind.

**Section 12. Animals and Beekeeping.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot. However, dogs, cats and other common household pets may be kept on Lots subject to such rules and regulations as may be adopted by the Association, so long as they are not kept, bred, or maintained for commercial purposes. No animals shall be allowed to run loose at any time. No apiculture shall be allowed on any Lot or within the Subdivision. The maintenance of honey bee colonies, in hives or by other means, in order to collect their honey and other products that the hive produces (including beeswax, pollen, and royal jelly), to pollinate crops, or to produce bees for sale to other beekeepers is strictly prohibited.

**Section 13. Rubbish, Trash and Garbage.** No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot, except in sanitary containers located in appropriate areas concealed from public view.

**Section 14. Burning.** No outside burning of trash, leaves, debris, or other materials, shall be permitted in the Subdivision.

**Section 15. Noise Pollution.** No use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes.

**Section 16. Fireworks.** No use and discharge of firecrackers and other fireworks shall be permitted in the Subdivision.

**Section 17. Firearms.** No discharge of firearms shall be allowed or permitted in the Subdivision.

**Section 18. Daycare.** No home or Lot may be used for the provision of daycare/child care services for more than five (5) children per day. A home or Lot may be used for daycare/child care for five (5) or less children per day without the approval of the Board.

**Section 19. Fences, Hedges and Walls.** No fence, hedge, wall or other dividing instrumentality over four (4) feet high in height, measured from the ground on which it stands, shall be constructed or maintained on any Lot unless approved by the Committee, except fences erected by Developer along the Subdivision boundaries or easement areas. No chain-link or wire fence shall be permitted on any Lot or within the Subdivision.

**Section 20. Nuisances.** No activity which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Lot. Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the common area or to the occupants of other Lots shall not be permitted. No outside toilets shall be permitted on any Lot in the Subdivision (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to enter the storm drainage system. No discharge from any floor drain shall be permitted to enter into the storm drainage system, nor shall any sump pump extend or discharge to a point within ten (10) feet from any property line. By purchase of a Lot, each Owner agrees that any violation, of this paragraph constitutes a nuisance which may be abated by Developer, the Association, or any Owner in the Subdivision in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees shall become a charge or lien upon the offending Owner's Lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. No noxious or offensive activities shall be carried on any Lot in the Subdivision, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Development. Neither the Developer, nor any officer, agent, employee or contractor thereof, the Association, or any Owner enforcing the provisions of this paragraph shall be liable for any damage which may result from enforcement hereof.

**Section 21. Signs.** No sign of any kind shall be displayed to public view on any Lot, except for the following:

A. Any Owner, or a sales agent for an Owner, may place one professional sign on any Lot or Lots advertising the Lot or Lots for sale.

B. Owners shall not display or place any sign of any character, including "for rent" signs except that a sign displaying the word "open", not to exceed two square feet, may be displayed during any time the Owner or his designated representative is in attendance.

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

**Section 22. Miscellaneous.** No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that any Owner shall fail or refuse to keep Owner's Lot free of weeds, underbrush or refuse piles, or other unsightly growths or objects, then the Association may enter upon said Lot and remove the same at the expense of the Owner as provided for herein, and such entry shall not be deemed a trespass.

**Section 23. Size Requirements.** The minimum square footage of living space dwellings constructed on Lots in the Subdivision, exclusive of porches, terraces, garages, carports, accessory buildings, or basements, or portions thereof, or similar facilities not designed for regular and continuous habitation, shall be 2,000 square feet for one story or ranch style homes and 2,400 square feet for two story homes. A home that is one and a half stories shall be no less than 2,200 square feet of living space. Bi-levels and tri-levels shall not be permitted.

**Section 24. Residential Setback Requirements.** No dwelling, house or other above-grade structure designed to be used in connection with such house shall be constructed or placed on any Lot in the Subdivision except as provided herein and in compliance with all local zoning ordinance provisions. All dwellings or houses and above-grade structures designed to be used in connection therewith shall be constructed or placed on Lots in the Subdivision so as to comply with the front yard setback lines as established in the plat or plats of the various portions of the Subdivision.

**Section 25. Sidewalks.** Each Owner shall install and place an approved sidewalk on each Lot prior to the time of occupancy of the dwelling located on each Lot in the Subdivision, unless a waiver or conditional waiver has been granted by the City of Valparaiso.

**Section 26. Storage Buildings and Accessory Structures.** All accessory buildings, storage sheds or buildings, visible garbage receptacles, woodpiles and gas and electric meters (unless otherwise required by applicable authority) shall be located in the rear or side yards of a Lot and screened from view by an approved fence or plantings. All accessory buildings and storage sheds or buildings shall have siding material and color, roofing material and color, and roof slope all to match the principal dwelling on the Lot. Woodpiles shall consist of no more than one (1) face cord of wood and shall be stacked as not to interfere with the view of any Owner of an adjacent Lot and in no event shall wood be stacked more than four (4) feet high. In no event shall any woodpiles be covered with any tarpaulin or any other such cover.

**Section 27. Swimming Pools.** No above ground swimming pool shall be permitted on any Lot in the Subdivision. In-ground swimming pools shall first be approved by the Committee.



**Section 28. Exterior Construction.** All structures shall be required to meet the following minimum standards for exterior materials in the construction:

A. Roofing materials shall be made of premium asphalt shingles, wood shakes, slate or simulated slate, standing seam metal, tile, or similar premium roofing material. The minimum roof pitch shall be 6/12.

B. Not less than twenty-five percent (25%) of the front or street elevation of the dwelling shall be stone, brick, or other approved masonry natural or artificial products. The Committee may permit a variance of this standard for the use of paver bricks, stone or other aesthetically pleasing uses of masonry on the Lot.

C. In the event vinyl siding materials shall be used on any dwelling or any improvement on any Lot, the siding shall be .44 mil or better quality. All siding material, regardless of material, shall extend to within eight inches of the grade.

D. All exterior chimneys on the front elevation of the structure facing any street must be of brick, stone, or other similar type material, and in no case shall exterior chimneys be sided with metal. Any exterior chimney not facing a public street may use siding material to match the remaining home.

E. All driveways shall have a dust-free surface of Portland cement concrete, brick, cobblestone or other similar type material. No asphaltic concrete driveways shall be permitted, unless approved by the Committee.

F. No structure shall have metal prefabricated flues that extend above the highest roof line. No solar panels shall be permitted anywhere on any Lot.

Exterior construction material shall be approved by the Committee.

**Section 29. Heating Plants.** Every dwelling or house in the Subdivision must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation.

**Section 30. Diligence in Construction.** Every dwelling, house or other structure whose construction or placement on any Lot in the Subdivision is begun shall be completed within nine (9) months after the beginning of such construction or placement and the Lot sodded or seeded within one (1) year. No improvement which has partially or totally been destroyed by fire, windstorm or other casualty shall be allowed to remain in such state for more than three (3) months from time of such destruction or damage.

**Section 31. Time in Which to Build Structures.** An Owner of a Lot within the Subdivision must commence construction of the dwelling or house within two (2) calendar years

after the Owner's purchase of the Lot or Developer's sale of said Lot if the Owner did not purchase the Lot from Developer directly. If construction does not begin or if a dwelling or house is not completed upon a Lot within the prescribed time, Developer shall have the option to repurchase such Lot for a price, in cash, equal to the Owners' cost basis in the Lot, without paying the cost of improvements up to the time of repurchase. This option shall expire if Developer has not notified the Owner of Developer's intent to exercise the option prior to the time of commencement of the construction.

**Section 32. Prohibition of Used Structures.** All structures constructed or placed on any Lot in the Subdivision shall be constructed with substantially all new material, and no used structures shall be relocated or placed on any such Lot.

**Section 33. Necessary Exceptions for Development.** Developer, or the transferees of Developer, shall undertake the work of developing all Lots included within the Subdivision. The completion of that work and the sale, rent, or other disposition of the dwellings is essential to the establishment and welfare of the Subdivision as an on-going residential community. In order that such work may be completed and the Subdivision established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent Developer, Developer's transferees, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease or otherwise. Owner, upon commencement of construction of any residence, dwelling unit or other structure, which is not prohibited by this Declaration shall pursue the performance of any construction diligently and continuously until completion of the structure involved. As used in this Section, the words, "its transferees" specifically exclude purchasers of an individual Lot or Lots improved with completed residences or intended for construction at a later date by someone other than Developer.

**Section 34. Environment.** No activities are allowed which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Subdivision or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution.

**Section 35. Mailboxes and Yard Lights.** Developer and Committee will control the selection of all mailboxes and yard lights within the Subdivision. It is the responsibility of the Owner or the Owner's agent to pay Developer the purchase price of the initial mailbox and yard light in addition to the purchase price of the Lot and to pay the Board for all subsequent mailbox and yard light purchases and to install the mailbox and yard light in compliance with this guideline. The location of the mailbox and yard light shall be submitted to Developer or Committee for review. Developer or Committee may cause mailboxes yard lights to be replaced as it determines. All repairs and replacements to such standard mailboxes and posts, and yard lights shall be consistent in color, quality and appearance with the original mailbox and post or yard light unless the advance written approval of Developer or Committee is obtained.

## Article IX

### TRANSFER OF UNIMPROVED LOTS

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

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

- A. The price to be paid, and the terms of payment shall be that stated in the Proposed Contract or other terms agreed to by the Owner;
- B. The sale shall be closed within thirty (30) days after the delivery or making of Developer's agreement to purchase.

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

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

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

provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

## **Article X**

### **WETLANDS AND EROSION CONTROL**

**Section 1. Delineation.** There are designated on the final plat for the Subdivision, certain private open space within Common Area or Lots in which wetlands may have been delineated. Certain activities within wetland areas are prohibited by this Declaration and federal, state and local laws. No Owner or Member within the Subdivision may alter, remove or replace or in any manner affect the vegetation and/or other materials within the designated wetlands. Where wetlands occur on Lots or within protected areas, the removal of existing plant material by an Owner may be restricted by federal and state regulations and will not be permitted without prior governmental and Committee approval. Planting within wetlands may be restricted by federal and state regulations and limited to native wetland species and will not be permitted without prior governmental and Committee approval.

**Section 2. Restricted Use.** Developer does hereby covenant and declare that no filling, dredging, or other altering, modification or development of the vegetation, soils and hydrology of the wetland areas shall be undertaken except as necessary for normal detention basin maintenance. All maintenance work will be carried out in such a fashion to minimize wetland damage or alteration.

**Section 3. Exclusive Common Area.** Certain portions of the Common Area may be designated by the Developer or Association as Exclusive Common Area and reserved for the exclusive use or primary benefit of the Association. By way of illustration not limitation, Exclusive Common Areas may include entry features, recreational facilities, walking paths and trails, landscaped medians and cul-de-sacs, lakes and other portions of Common Areas. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed as a common expense of the Association.

**Section 4. Compliance with Soil Erosion Control Plan.**

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

practices and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

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

**Section 5. Enforcement.** The covenants and restrictions of this Article shall be binding upon Developer, and its successors and assigns, and each and every Owner of a Lot. The Department of the Army Corps of Engineers and its successors and assigns shall have the right to enforce any of the provisions of this Article.

## Article XI

### GENERAL PROVISIONS

**Section 1. Duration and Remedies for Violation.** The covenants and restrictions of this Declaration shall run with and bind the real estate submitted pursuant to Article II hereof, and shall inure to the benefit of and be enforceable by Developer, the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifteen (15) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless amended as provided for elsewhere in this Declaration. Violation or breach of any condition, covenant or restriction herein contained shall give Developer, Association, or Owner (or any two or more of them in concert or individually) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants or restrictions, and to prevent the violation or breach of any of them, and the expense of such litigation shall be borne by the then Owner or Owners of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants or restrictions. Expenses of litigation shall include reasonable attorneys' fees incurred by Developer and/or the Association in seeking such enforcement but attorney fees specifically shall not be allowed to an Owner enforcing these restrictions, unless granted by a Court and based upon an independent finding of entitlement to such damages.

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

**Section 3. Notices.** Any notices required to be sent to any Member or Owner under the provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 4. Severability.** Invalidation of any one or more of these covenants and restrictions by judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 5. Amendment.** This Declaration may be amended upon the affirmative vote of the Owners at a meeting called for such purpose or by written consent the Owners, or any combination thereof. This Declaration may only be amended with the approval of at least two-thirds ( $\frac{2}{3}$ ) a majority of the Owners. No amendment shall be effective or permitted or allowed without the advance written consent of:

- (a) Developer or Developer's successor; provided Developer's consent (or the consent of the Developer's successor) is not required if Developer does not own a Lot or other parcel of real estate in the Subdivision or if more than seven (7) years have elapsed from the recording of this Declaration or the Plat of Subdivision, whichever was first recorded.
- (b) Fifty percent (50%) or a simple majority of the eligible mortgage holders of Lots. An "eligible mortgage holder" is a person, firm or institution that holds a recorded mortgage or security interest in a Lot in the public records of the county in which the Lot is located thirty (30) days prior to the date of the meeting called for approval of the amendment or in the event no meeting is called, the date of the notice of such amendment by the Board.

Amendments to this Declaration shall become effective upon recordation in the Office of the Recorder of Porter County, Indiana, unless a later effective date is specified therein.

**Section 6. Usage.** Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

**Section 7. Effective Date.** This Declaration shall become effective upon its recordation in the Office of the Recorder of Porter County, Indiana.

IN WITNESS WHEREOF, Developer has caused this Declaration of Covenants and Restrictions to be executed on the date first written above.

VON TOBEL CORPORATION, an Indiana corporation

By: Ken Pylipow  
Ken Pylipow  
President/CEO

STATE OF INDIANA        )  
  ) SS:  
COUNTY OF PORTER     )

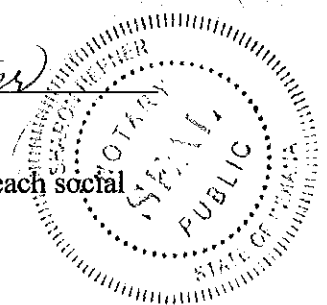
Before me, the undersigned, a Notary Public for Porter County, State of Indiana, personally appeared Ken Pylipow, the President/CEO of Von Tobel Corporation, an Indiana corporation, and acknowledged the execution of the foregoing instrument to be his/her free and voluntary act. Signed and sealed this 5 day of October, 2017.

My Commission Expires:  
10/26/2024

Sharon Hepner  
Notary Public

County of Residence: Porter

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. *Todd A. Leeth*



This Instrument Prepared By:

Todd A. Leeth  
Hoepfner Wagner & Evans LLP  
103 E. Lincolnway  
Valparaiso, Indiana 46383

**HOEPPNER  
WAGNER &  
EVANS LLP**  
ATTORNEYS AT LAW

October 4, 2017    DecRestCov2017-09-05