

Cross Reference: Instrument No. 1999018297
Instrument No. 1999021836

AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE HIGHLANDS SUBDIVISION

THIS AMENDED AND RESTATED DECLARATION was made and executed as of the date set forth below by the Highlands Subdivision Homeowners Association, Inc.

WITNESSETH:

WHEREAS, the residential community in Monroe County, Indiana commonly known as Highlands Subdivision was established upon the recording of certain Plats with the Office of the Recorder of Monroe County, Indiana; and

WHEREAS, the Plats for Highlands Subdivision were originally subject to a certain "Declaration of Covenants, Conditions and Restrictions of The Highlands Subdivision," which was recorded on September 8, 1999, as **Instrument No. 1999018297** in the Office of the Recorder of Monroe County, Indiana; as subsequently amended and replaced by the "Restated Declaration of Covenants and Restrictions of Highlands Subdivision," which was recorded on October 28, 1999 as **Instrument No. 1999021836** in the Office of the Recorder of Monroe County, Indiana (hereafter, the Restated Declaration shall be referred to as the "Original Declaration"); and

WHEREAS, the developer of Highlands Subdivision established the Highlands Subdivision Homeowners Association, Inc., an Indiana nonprofit corporation (hereafter, the "Association") for the purposes of administering and overseeing the affairs of Highlands Subdivision; and

WHEREAS, Article X, Section 10.3 of the Original Declaration sets forth that the document may be amended upon the signed consent of seventy-five percent (75%) of the Owners in Highlands Subdivision; and

WHEREAS, at least seventy-five percent (75%) of the Owners in Highlands Subdivision consented to and approved this Amended and Restated Declaration, as evidenced by the signatures attached hereto and filed herewith; and

WHEREAS, the Owners of said Lots desire to amend certain provisions of the Declaration and to restate the same for the convenience of the Owners such that this Amended and Restated Declaration in no way nullifies or changes the Original Declaration or the effective date(s) of the Original Declaration. However, upon the date of recording of this Amended and Restated Declaration with the Monroe County Recorder's Office, the Original Declaration shall no longer be in effect and shall be replaced by the following; and

WHEREAS, the Original Declaration contained exhibits. For historical purposes, these various exhibits may be referred to from time to time, and therefore, for cross-reference purposes, one should refer to them as they were filed with the Monroe County Recorder. Those exhibits, however, are not exhibits to this Amended and Restated Declaration. Except as to any exhibits to the Original Declaration that may remain relevant, all other provisions of the Original Declaration are hereby modified in their entirety, and superseded by this Amended and Restated Declaration.

NOW, THEREFORE, the Owners in Highlands Subdivision hereby amend and restate the Original Declaration such that all of the platted dwellings, Lots, Common Areas and lands located within Highlands Subdivision as they have been platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said homes, Lots, Common Areas and lands in Highlands Subdivision. Such restrictions below were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said homes and Lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in the development. Now, therefore, the Original Declaration which is applicable to all Owners and residents within Highlands Subdivision is hereby amended and restated as follows:

ARTICLE I

Definitions

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 1.1. "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 1.2. “Association” means the HIGHLANDS SUBDIVISION HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, its successors and assigns.

Section 1.3. “Board of Directors” means the Board of Directors of the Association elected, selected or appointed as provided in the Articles, By-Laws and this Declaration, and each member thereof shall be designated a “Director.”

Section 1.4. “Builder” means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

Section 1.5. “Common Area” means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as a “Block,” “Common Area,” “C.A.,” or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

Section 1.6. “Common Expenses” shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs, and expenses declared by this Declaration to be Common Expenses.

Section 1.7. “Dwelling Unit” means any single-family residence situated upon a Lot (as hereafter defined).

Section 1.8. “Lot” or “Lots” means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined).

Section 1.9. “Owner” means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation.

Section 1.10. “Plat” means the subdivision plats of the Property, which are recorded with the Recorder of Monroe County, Indiana, as the same may be hereafter amended or supplemented pursuant to this Declaration.

Section 1.11. “Act” shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended, or any successor Act.

Section 1.12. “Architectural Control Committee,” “Committee” or “ACC” shall mean and refer to that committee or entity established pursuant to this Declaration for the purposes herein stated.

Section 1.13. “By-Laws” shall mean and refer to the Code of By-Laws of the Association, as the same may be amended from time to time.

Section 1.14. “Restrictions” shall mean and refer to the agreements, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as well as any rules or regulations adopted by the Board, all as the same may be amended from time to time.

Section 1.15. “Good Standing” shall mean Owners who are no more than ninety (90) days delinquent on the payment to the Association of any Regular Assessments or Special Assessments as determined by the Board.

Section 1.16. “Property” means the parcel of real estate in Monroe County, Indiana submitted to the subdivision and subjected to the Declaration by the developer, and described more specifically in the recital clauses of the Original Declaration.

ARTICLE II

Property Rights, Easements and Encroachments

Section 2.1 Owner’s Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;
- (b) The right of the Association to suspend the voting rights and right to use any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any violation of the provisions of this Declaration or infraction of its published rules and regulations;
- (c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association, including, without limitation, parking, and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;

- (d) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership;
- (e) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;
- (f) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is a recorded instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of the Association; and
- (g) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 2.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Restated Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants, or contract purchasers who reside on the Lot.

Section 2.3 Certain Obligations and Access Rights to the Common Area.

- (a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association, and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.
- (b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration.

Section 2.4 General Drainage, Utility, Sewer and Other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by the Association in this Section shall run with the land:

- (a) The Association, and any applicable public or private utility, shall have a general easement (“Drainage, Utility and Sewer Easement”) for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit installation and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including, but not limited to cable and/or satellite) transmission facilities, security systems and other equipment and facilities to serve any Dwelling Unit constructed on the Property. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Association and any public or private utility to construct, maintain, repair or remove any necessary facilities. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.
- (b) The Association shall have an easement (“Lake Easement”) and right-of-way in and to any Lake Area(s) or areas now or hereafter shown on the Plat as a “Block”, “Common Area,” or “Lake” or any other Common Area within the Property used as a water retention or detention area, or on which a Lake is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).
- (c) The Association shall have the right and undefined sign and facilities easement (“Sign and Facilities Easement”) to install, erect, construct and maintain an entryway sign or signs, directional signs, signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.
- (d) The Association reserves the full right, title and authority to:
- i. Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer, Sign and Facilities Easement, or any facility at any time located therein or thereon;

- ii. Grant such further easements, licenses and right-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as it deems necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,
- iii. Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Monroe County, Indiana.

(e) The title of the Association to the Common Area and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 2.5 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 2.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, or any other Common Area which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such Common Area shall not extend upon such Common Area and the title to such Common Area is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents in the Highlands Subdivision.

Section 2.7 Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not impede the flow of drainage water and which are approved pursuant to this Declaration, shall be built, erected or maintained on said drainage easements. It shall be the responsibility of the Association and the Owners of the areas enclosed with such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that

easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release the Association or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 2.8 Designated Mounding, Landscaping, and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for (i) mounding easements, (ii) landscape or landscape maintenance easements, and/or (iii) sign easements, are hereby reserved for such (i) mounding easements, (ii) landscape easements and/or landscape maintenance easements and/or (iii) sign easements. The Association reserves any such easements for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. The Association reserves the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property.

Section 2.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 2.10 Easement Work. Notwithstanding any architectural approval under this Declaration, during the course of any maintenance, service, repair or work upon any easement, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any Owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected or maintained or planted in any easement described in Section 2.7 and Section 2.8 above.

Section 2.11 No Access. There may be strips of ground designated on the Plat as “no access strips,” “no access,” “no access easement,” “no access esmt,” or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 2.12 Reservation of Right to Grant Easement. The Association hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property.

ARTICLE III

Association Membership, Voting Rights, Board of Directors and Professional Management

Section 3.1 Membership. The Association shall have one (1) class of membership. Members shall be all Owners of Lots or Units in the Highlands Subdivision. Each Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner. When more than one person constitutes the Owner of a particular Lot, all such persons shall be Members of the Association, but all of such persons shall cumulatively have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine. No vote may be divided. Owners who are not in Good Standing as defined in Article I herein shall not be permitted to vote on any matter.

Section 3.2 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. The Board of Directors may only consist of Owners who reside and occupy Lots or Units in the Highlands Subdivision.

Section 3.3 Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide termination by either party, with or without cause and without payment of any termination fee, upon written notice of sixty (60) days or less.

ARTICLE IV

Covenant for Maintenance Assessments

Section 4.1 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot within Highlands Subdivision, by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to agree to pay to the Association a regular assessment, as paid by all Owners. These assessments are to be established and collected as hereinafter provided.

The failure to pay the regular assessment, together with associated late fees, collections costs, reasonable attorney's fees and any other obligation which may be charged to the Owner pursuant to this Declaration, shall be a charge placed on the Lot, and shall be placed as a continuing lien upon said property for which each such assessment or charge is made. Each such assessment or charge, together with late fees, costs and reasonable attorney's fees, shall also be

the personal obligation of the person who was the Owner of said Lot at the time the assessment fell due.

Section 4.2 Annual Accounting. Annually, within forty-five (45) days after the close of the Association's calendar year, or upon request by an Owner, the Board shall cause to be prepared and made available for inspection a financial statement, which statement shall show all receipts and expenses received, incurred and paid during the preceding year.

Section 4.3 Proposed Annual Budget. Annually, before the date of the annual meeting of the Association, the Board shall adopt a proposed annual budget for the ensuing fiscal year, estimating the total amount of the Common Expenses for the ensuing year, and provide a copy of said budget to the Owners at the annual meeting. The annual budget shall be the basis for the Regular Assessments (hereinafter defined) for the ensuing fiscal year. The failure or delay of the Board to prepare a budget and furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of such Owner's obligation to pay the Common Expenses as herein provided, whenever determined, and in the absence of an annual budget, the Owners shall continue to pay the then existing assessment at the times when the previous year's assessments were due until such new annual budget is established.

Section 4.4 Regular Assessments. Promptly following the adoption of the annual budget, the Board shall give written notice of the assessment against each respective Lot (herein called the "Regular Assessment"). The Regular Assessments shall be equal and uniform as to all Lots. The Regular Assessment against each Lot shall be assessed on a fiscal year basis beginning on January 1st of each year and shall be due and payable at the direction of the Board. Payment of the installments of the Regular Assessment shall be made to the Board or the Managing Agent, or otherwise, as directed by the Board. The Regular Assessment shall automatically become a lien on that Lot on the date it is due and payable.

The annual budget and the amount of the Regular Assessment shall be based on the estimated cash requirements for the Common Expenses in the current fiscal year as set forth in such budget, and shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for such purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Association in an interest-bearing account with one or more banks or savings and loan associations authorized to conduct business in Monroe County, Indiana and insured by a Federal depository agency as selected from time to time by the Board.

The Board, in accordance with the By-Laws of the Association, shall fix the amount of the annual charge each year, and written notice of the charge so fixed shall be sent to each Owner.

Section 4.5 Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any expense of an unforeseen or unexpected nature affecting the subdivision, or for any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur. The approval of a Special Assessment would require an affirmative vote by a majority of the Owners who are present, in person or by proxy, at an annual or special meeting of the Association's members. At the time of this meeting, a quorum must be present. Proxies shall count toward the quorum requirement. Special Assessments shall be equal and uniform to all Lots.

Section 4.6 Failure of Owner to Pay Assessments. No Owner may exempt himself or herself from paying the Regular Assessment. No Owner may exempt himself or herself from a Special Assessment, when such an Assessment has been levied in accordance with the procedures outlined herein.

Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of Regular or Special Assessments, a lien for such Assessment(s), together with interest, late fees, collections costs and attorney's fees, may be recorded by the Board for and on behalf of the Association as provided by law, which lien shall become and remain a lien upon that Lot until the amounts owed are paid in full, as provided by law.

Upon the failure of an Owner to make payments of any Regular Assessment or Special Assessment, within ten (10) days after such Assessments are due, the Board may: (1) impose a late charge of up to twenty-five percent (25%) of the amount of the Assessment; (2) accelerate the entire balance of the unpaid Assessments and late fees for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary; (3) suspend the Owner's right to participate on any homeowners association committees or boards; (4) suspend the right of an Owner to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended; and/or (5) suspend the right of an Owner to use some or all of the community's Common Areas and facilities. If, in the opinion of the Board, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure of its lien or otherwise, to collect the amount owing in any court of competent jurisdiction. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment, without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment and/or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot all costs and expenses incurred in connection with such action, including attorney's fees, court costs and a collections cost at the time of turnover billed to the Association by the Managing Agent for processing the Owner's delinquent account.

Section 4.7 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the property within the Highlands Subdivision which is subject to Assessment. Notwithstanding anything contained in this section or elsewhere in this Declaration or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a lien on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to the lien placement, shall extinguish the lien of any unpaid installment of any Regular Assessments, Special Assessments, late fees, and costs as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner for the personal liability thereof. No sale, transfer or conveyance shall relieve the Lot or purchaser or grantee in the event of a conveyance in lieu thereof, from the liability for any installments of Regular Assessments, Special Assessments, and fees thereafter becoming due or from the lien thereof. Such unpaid shares of a lien of any Regular Assessment, Special Assessment, fees, and fines, the lien which has been divested as aforesaid, shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

ARTICLE V

Architectural Control

Section 5.1 Composition of Architectural Control Committee (ACC). The Architectural Control Committee (ACC) was and is established to perform the functions provided in this Article V. The Committee shall be a standing committee of the Association, consisting of at least three (3) Owners appointed, from time to time, by the Board. At least one (1) member of the ACC shall also be on the Board. At the Board's discretion, the Board may serve as the ACC. The ACC shall regulate the external design, appearance, use, location and maintenance of lands subject to these restrictions and improvements thereon, in such a manner as to preserve and enhance values, maintain the aesthetic appearance of the Highlands Subdivision, and to maintain a harmonious relationship among structures, natural vegetation, topography, and improvements.

Section 5.2 Requests for Approval. No dwelling, building, structure, exterior improvement, fence, landscaping, recreational equipment, or other construction or improvement of any type or kind shall be repainted, improved, constructed or placed on any Lot in the Highlands Subdivision without the prior written approval of the ACC. The Board shall have the sole and exclusive right to establish grades and slopes on all Lots in the Highlands Subdivision and to fix the grade at which any residence shall hereafter be erected or placed thereon so that the same may conform to the general plan of development. All grades and slopes shall be established on the engineering plans submitted to and approved by the ACC. All approvals by the ACC shall be obtained only after written application has been made to a Committee member or the community's property management company by the Owner of the Lot requesting authorization from the ACC. Such written application shall be in the manner and form prescribed from time to time by the ACC, and shall, in the case of construction or placement of any improvement, be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement, except as otherwise provided herein. 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. Such plans and specifications, including look and design, shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the ACC may require. Such plans shall show the location of all improvements existing on the Lot and the location of the improvement proposed to be constructed or placed on the Lot, as well as showing the distances from the proposed improvement to all nearby Lot lines. All plans and drawings submitted to the ACC shall be drawn to scale. When required by the ACC, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided.

Section 5.3 Consideration of Requests. In requiring the submission of detailed plans and specifications as herein set forth, the parties hereto have in mind the preservation of Highlands Subdivision as an architecturally harmonious and aesthetically desirable residential subdivision, and in approving or withholding its approval of any detailed plans and specifications so submitted, the ACC may consider the appropriateness of the improvement contemplated with relation to improvements on contiguous or adjacent Lots (for example, consistent color schemes for homes, yard light pole design, or mailbox structure), its aesthetic and architectural merits, its adaptability to the Lot on which it is proposed to be made, and such other matters as may be deemed to be in the interest and benefit of the Owners of the Lots in said subdivision as a whole. The ACC shall have subjective discretion to approve or deny requests based on what it deems to be in the best interest of Highlands Subdivision and the Owners.

All requests for improvement must be submitted using a written application form provided by the ACC. Improvement projects may not commence unless and until the ACC has approved the application in writing. The ACC may request additional information not originally submitted by the Owner making the request, as it deems appropriate.

Section 5.4 Plans and Specifications. All plans and specifications submitted to the ACC for consideration must be in accordance with Section 5.2 herein, except that proposals for exterior changes that generally would be made without the need for detailed plans and specifications, such as repainting a building with a different color plan may be made without the submission of professionally prepared plans and specifications; provided, however, that the ACC reserves the right to require the proposer to provide the opinion of a professional architect, surveyor or engineer in support of any proposal before giving its approval. General specifications or pictures must be submitted for all improvements, even when professional plans and specifications are not deemed necessary. Additionally, regardless of any approval given to the Owner by the ACC, it shall be the Owner's responsibility to ensure that he or she obtains any necessary city and/or county permits for construction of improvements, and that such improvements comply with local and municipal zoning ordinances.

Section 5.5 Approval or Disapproval. The Board will, upon written recommendation of the ACC, approve or disapprove proposed improvements in writing after all required information shall have been submitted to the ACC, stating any relevant stipulations or additional conditions of approval. If the ACC or Board fails to respond to an application or provide written approval

of the same within thirty (30) days of submission, the application shall be deemed denied. All notifications to applicants shall be in writing, either by letter or electronic mail.

In the event the ACC disapproves an Owner's request, the applicable Owner shall have the right to appeal said decision to the entire Board, in writing, within fifteen (15) days of the date of the ACC's written disapproval. Within fifteen (15) days of receipt of said appeal from the Owner, the Board shall meet to consider the Owner's appeal. At that meeting, the Owner may express his or her opinions concerning the request, either in person or in writing. The decision of the Board may be reversed only by a majority vote of the entire Board. The written decision of the Board shall be mailed, emailed or delivered to the applicable Owner within ten (10) days of the Board meeting at which the appeal was considered.

Section 5.6 Liability. Neither the ACC, the Board, the Association, nor any agent thereof, 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. Further, the Association and the Committee do not make, and shall not be deemed by virtue of any action of approval or disapproval taken by them to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

Section 5.7 Inspection. The Committee may, but is not required to, inspect work being performed to assure compliance with these restrictions and applicable regulations.

Section 5.8. Guidelines. The Board of Directors shall have the authority to establish, amend and revoke Architectural Control Guidelines (may also be referred to as "Design Guidelines") for the Association, which shall be binding upon all Owners. The Architectural Control Guidelines shall not be inconsistent with any restriction or covenant in this Declaration or in the plats. If there is any irreconcilable conflict between any of the provisions of the Design Guidelines and any of the covenants and restrictions of this Declaration or the plats, the conflicting covenant or restriction in this Declaration or the plats shall control. The Design Guidelines may be enforced by the Board of Directors.

ARTICLE VI

Covenants and Restrictions on Use

Section 6.1 Lot Use and Conveyance. All Lots shall be used exclusively for single family detached residential purposes. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Property, on any Lot, or in any Dwelling Unit, except up to five (5) dogs, cats, or other normal household pets may be kept in residences provided that such pets are not kept, bred, or maintained for any commercial purpose. Owners shall abide by all applicable local animal

ordinances and take care to keep their animals properly restrained pursuant to local leash laws, and are responsible for picking up after their animals.

Section 6.3 Outside Storage. All clotheslines, service yards, woodpiles, toys, bikes, unused furniture, yard and garden tools, outdoor cooking equipment, recreational equipment (i.e. playgrounds and playsets), or storage piles shall be stored at the rear or side of the home when not in use. Permanently installed items must be installed at the rear of the home and must be approved by the Board or Architectural Control Committee through the architectural approval process set forth in Article V herein. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers. Trash containers must be stored alongside the home within twenty-four (24) hours of trash being removed.

Section 6.4 Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Association Board of Directors or ACC; provided, however, that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 6.5 Side Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 6.6 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn or other outbuilding shall be erected, placed, or altered upon any Lot for residential use, either temporarily or permanently. Storage Sheds, mini-barns, outbuildings, or other temporary structures or detached buildings may be erected on any Lot for non-dwelling or residential use only with written approval of the ACC, which approval may be conditioned upon reasonable restrictions established by the ACC and/or Board of Directors, and the restrictions of this Section. The use of any approved storage shed, outbuilding or mini-barn shall be limited to the storage of lawn equipment, household maintenance items, bicycles, children's toys and other similar household items. Once approved, only one (1) storage shed, outbuilding, or mini-barn may be located on any Lot, and it must be located at the rear of the Lot. Otherwise, no shack, trailer, shed, barn or other similar detached structure shall be placed on any Lot or on the Common Areas. The ACC or Board of Directors may impose other requirements from time to time, at their discretion.

Section 6.7 Motor Vehicle Repair, Disabled Vehicles and Street Parking. The repair of motor vehicles or material alteration of motor vehicles shall not be permitted for more than twenty-four (24) hours on any Lot unless entirely within a garage. No disabled vehicles shall be allowed to remain on the Lot or in the adjacent roadway for a period of more than five (5) days. On-street parking is subject to and must be in compliance with local ordinances governing the same. Owners must ensure guests, invitees and tenants abide by such local ordinances. Cars must be parked congruent with the flow of traffic and may not block access to neighboring Lots. Owners may not permit parking of vehicles in such a way as to impede the safe flow of traffic or

constitute a danger to pedestrians or other vehicles. Vehicles may be parked in the same location in the street for no more than seventy-two (72) consecutive hours. The Board, at its discretion, may adopt other rules and guidelines applicable to parking and vehicles, including, but not limited to, on-street parking

Section 6.8 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 6.9 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6.10 Drains. No house footing drain or roof water drain shall be discharged in the sanitary sewers.

Section 6.11 Number of Dwelling Units. The number of Dwelling Units shall not exceed the number of Lots within the Property.

Section 6.12 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling, a private garage, and other such outbuildings as are usual and incidental to the use of a residential Lot. All Lots in this subdivision shall be designated as residential Lots, and no home shall exceed two and one half (2-1/2) stories or thirty-five (35) feet in height.

Section 6.13 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 6.14 Unsightly Growth. In order to uphold the standards, curb appeal, and safety of the Property, yards and landscaping must be properly maintained. No excessive, unkempt, or unsightly growths, or unsightly objects, shall be permitted to grow or remain upon any Lot. Examples include, but are not limited to: items left out after use, trash, debris, landscaping equipment, un-mowed lawns, overgrowth encroaching on the sidewalk, street, or neighboring properties, and refuse piles. Landscaping or growth may not impede sidewalk usage, and the walkway leading to the entrance of the home must be clear and free of growth, clutter or debris. If an Owner fails to comply with this restriction, the Board of Directors may cause the Lot to be cleared of such growth, trash, debris, or unsightly objects at the expense of the Owner, and the expense thereof shall constitute a lien against the Lot and be collectable as an Assessment pursuant to the remedies set forth in Article IV.

Section 6.15 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.16 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, buses, mobile homes, trailers, motor homes, commercial vehicles, box trucks, oversized trucks and vans, or any vehicle other than ordinary passenger vehicles shall be parked within the Property or on a Lot unless fully enclosed in a garage. For the purposes of this provision, “commercial vehicle” shall mean any vehicle larger than an ordinary pickup truck or passenger van, and shall include commercial box trucks.

Section 6.17 Sign Limitations. Signs displayed to public view on any Lot must be of an area not more two (2) feet by three (3) feet. Signs supporting or advertising an event or service must be removed within one (1) week of event completion or completion of the service performed. The posting of political signs on a Lot is permitted thirty (30) days prior to an election and five (5) days after an election. Temporary signage such as real estate signs and permanent signage such as security or warning signs are not limited, provided they do not present a safety hazard. No signs of any kind, other than those installed by the Association, may be placed on any Association property or Common Areas, excluding temporary posts on the community bulletin board on the Trailhead Kiosk. The Board reserves the ability to remove signs deemed to be offensive or which present a hazard, at their discretion.

Section 6.18 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for this purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner’s last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records, financial statements available for inspection by Owners, or by holders, insurers and guarantors of first mortgages that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.19 Swimming Pools. Above ground and in-ground swimming pools are prohibited on the Property. This provision, however, does not restrict the short-term (for the purposes of this provision, “short-term” is defined as not greater than five [5] consecutive days) use of temporary structures and water toys such as inflatables, sprinklers, and small kiddie/wading/doggie pools. Allowed pools are defined for these purposes as pools of a size not

requiring permanent or semi-permanent installation and not requiring or intended for use with a pump or filtration system. These items must be emptied and stored as appropriate after use and may not be used in a manner that constitutes or contributes to a health or safety hazard such as standing or stagnant water. These items must be used with consideration for neighboring properties so that water run-off and drainage does not negatively affect other properties or landscape

Section 6.20 Mailboxes. All mailbox posts shall be made of natural wood. Painted or stained posts shall be neutral and muted tones only. All mailboxes shall be black with clearly legible numerals and a functioning flag. Mailboxes must also be maintained in good repair and must be in accordance with applicable postal service regulations.

Section 6.21 Yard Lights. Each Lot must have a minimum of either one working exterior lamp post light and/or two working carriage style lights located in the front of their Lot with bulb(s) of sufficient wattage to insure uniform illumination on each Lot, and shall be equipped with a photo-electric cell or similar device to insure automatic illumination from dusk to dawn each day. Installations or changes to exterior lights must be approved by the ACC. The exterior light(s) shall be maintained in proper working order by the Owner of each Lot.

Section 6.22 Exterior Color of Residences. The exterior color of all Dwelling Units shall be neutral and muted tones only. Any changes in color selections for the exterior of the residence must be approved by the ACC as provided in Article V herein.

Section 6.23 Fences. The Architectural Control Committee, prior to any installation, must approve any fencing and landscape screening. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenities will be taken into consideration by the Architectural Control Committee when reviewing requests for approval. No front yard fencing is permitted. If approved by the Architectural Control Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Architectural Control Committee. Non-professionally installed fences may be inspected by the Architectural Control Committee after completion in order to ensure that the fence is of professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. No fence shall be located any closer to the front line than the rear foundation line of the residence.

Fences are to be vinyl coated chain link, wrought iron, cedar, treated pine, or composite. Further, fences are to be dog-eared, flattop, or shadow box style with 1" x 6" vertical boards, and are to remain a natural wood color. The Architectural Control Committee must approve all fencing materials, design, and location. Walls above grade must be constructed of natural stone, masonry, wood, or approved fencing. The Architectural Control Committee will approve landscape screening materials, design, and location on an individual basis.

Section 6.24 Animal Kennels. All temporary or permanent animal kennels or quarters must be located in the rear portion of the Lot and used in accordance with local animal

ordinances. Animal quarters or kennels which are connected to the Dwelling Unit must be approved by the Architectural Control Committee.

ARTICLE VII

Maintenance, Repairs and Replacements

Section 7.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of the Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surfaces, siding, roofs, gutters, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot. All Lots must be maintained and all improvements must be approved and maintained, as described herein. Owners shall at all times maintain their Lots and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly or incongruent with a harmonious and uniform aesthetic appearance. Whether a Lot has become unsightly shall be at the sole determination of the Board.

Section 7.2 Common Properties and Lawns by the Association.

- (a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:
 - i. Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area; and
 - ii. Maintenance of the entry signs, permanent subdivision identification sign, and landscaping installed by the community's developer in any Common Area, Landscape Easement, or Landscape Maintenance Easement.
- (b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner, a member of their family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be

determined by the Association. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

- (c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.
- (d) The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

ARTICLE VIII

Insurance

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, and all persons acting or who may become to act as agents or employees of any of the foregoing with respect to the Association. It shall also cover all Common Area owned by the Association and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 Fidelity Bonds. The Association may have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least be equal to one (1) years' assessments on all Lots in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

Section 8.3 Miscellaneous Insurance Provision. The Association shall obtain any other insurance required by law to be maintained, including but not limited to workers' compensation

insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired or reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. The same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit and Lot. For purposes of this section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 8.5 Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 8.6 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

ARTICLE IX

Mortgages

Section 9.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any cost incurred, including reasonable attorney's fees.

Section 9.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate of notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 9.3 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 9.4 Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of a default by a mortgagor; or
- (c) Sell or lease a Dwelling Unit acquired by the mortgagee.

Section 9.5 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Lot's unpaid Assessments or charges accrued before the acquisition of the title to the Lot by the mortgagee. However, such mortgagee shall be liable for any Assessment accrued after the date on which it acquires title to the Lot.

ARTICLE X

General Provisions

Section 10.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, the Association or any Owner and all parties claiming under them shall have the right to enforce the Declaration, the covenants, conditions and restrictions contained herein, or the Rules and Regulations

promulgated by the Association, and to pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the Declaration, the covenants, conditions and restrictions contained herein, or the Rules and Regulations promulgated by the Association, and shall be entitled to recover reasonable attorney's fees and the costs and expense incurred as a result thereof.

Section 10.2 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to them upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 10.3 General Amendments. This Declaration may be amended or changed, in whole or in part, at any time upon approval by the Owners of a majority of the Lots in the subdivision who are in Good Standing. Such approval for an amendment to this Declaration may be obtained:

- (a) At a meeting of the members of the Association duly called and held in accordance with the provisions of this Declaration and By-Laws; or
- (b) by written consents or approvals received from the Owners; or
- (c) pursuant to any other procedure recognized under Indiana law, including those recognized under the Indiana Nonprofit Corporations Act of 1991, as amended, including, but not limited to, written mail-in ballots; or
- (d) any combination of the above.

The President and Secretary of the Association shall execute the amendment, certifying that a majority of the Owners in the Community who are in Good Standing approved such amendment. Thereafter, the amendment shall be filed with the Monroe County Recorder.

Section 10.4 General Amendments. The Association shall not effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association is not a transfer in the meaning of this clause;

- (b) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount of at least one hundred percent (100%) of the insurable value (based on current replacement costs);
- (c) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

Section 10.5 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Lot Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and equitable basis.

ARTICLE XI

Leasing

Section 11.1 Leasing and Rentals. The Association's Owners recognize that an Owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus Owner-occupants most generally have more incentive to maintain and improve their property to a greater extent than those who lease or rent. The practical reality is also recognized that neighborhoods where the percentage of rented/leased residential properties approaches the range of ten percent (10%) or more are subject to decreasing appraised property values and increased difficulty in obtaining favorable mortgages. These factors, coupled with the increasing numbers of single family residential properties being purchased solely to rent or lease for investment purposes, have caused the following restrictions to be placed upon all Highlands Subdivision Lots not occupied by the titled Owner(s) of record and subject to any form of a rental or lease agreement with the occupants.

- (a) Immediate Family Occupancy. Any occupancy by the immediate family member(s) of an Owner (parents, children, spouse, sibling or live-in domestic partner, including step- or -in-law of such), shall not be considered a lease or rental and is excluded from all requirements of Section 11.1
- (b) Hardship Exceptions and Waiver. Notwithstanding Section 11.1(c) and 11.1(d) below, if an Owner wishes to rent or lease his or her Lot, but the maximum number of Lots is currently being leased or the ownership Waiting Period is still in effect, the Owner may request the Board of Directors to waive the "Rental Cap" or "Waiting Period" and approve a proposed lease if the Owner establishes to the Board's satisfaction that the "Rental Cap" or "Waiting Period" will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's request,

the Board of Directors shall permit the Owner to rent or lease said Lot, subject to any further conditions or limitations imposed by the Board in the Board's discretion, but only if the Owner satisfies all other requirements of this Section 11.1. Such decision shall be at the sole discretion of the Board, which shall in no way be obligated to grant such request. Examples of an undue hardship include:

- i. death, dissolution or liquidation of an Owner;
 - ii. necessary relocation of an Owner to a long-term care facility due to mental or physical infirmity or disability of at least one (1) of such Owners;
 - iii. divorce or marriage of an Owner;
 - iv. necessary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Highlands Subdivision due to a change of employment or retirement of at least one (1) of such Owners;
 - v. deployment or change in assigned station of a member of any branch of the United States military; and
 - vi. other similar circumstances.
- (c) Two-Year Waiting Period. For a period of at least two (2) years after an Owner's acquisition of a Lot, said Owner cannot lease such Lot. After such time, said Lot will be eligible to be leased if all other conditions of this Section 11.1 are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges owed to the Association. In its sole discretion, the Board of Directors may grant exceptions to the waiting period requirement upon an Owner's showing of undue hardship, as more specifically provided in Section 11.1(b) herein.
- (d) Limits on the Number of Rented Lots ("Rental Cap"). No more than ten percent (10%) of the Lots in the Highlands Subdivision may be leased or rented to non-Owner occupants at any given time, except as may be otherwise provided in this Section 11.1. Lots described in Section 11.1(e) below shall count toward the ten percent (10%) "Rental Cap." If, at any time, such number of Lots are leased or rented, an Owner who wants to rent or lease his or her Lot which is not already rented shall be placed upon a waiting list by the Board of Directors. When an existing tenant moves out, the Owner of that Lot shall immediately notify the Board of Directors or Managing Agent of such fact and that Lot cannot be re-rented until all prior Owners on the waiting list, if any, have had a chance to rent their Lots. Prior to the execution of any lease, and in addition to the requirements set forth below, the Owner must notify the Board of Directors or the Managing Agent as to that Owner's intent to lease his or her Lot. After receiving such notice, the Board of Directors or the Managing Agent shall advise the Owner if the Lot may be leased or whether the maximum number of Lots is currently being leased. If the maximum number of Lots

and Units is being leased, the Board of Directors or the Managing Agent shall also notify the Owner of that Owner's position on the waiting list.

(e) Effective Date of "Rental Cap" on Existing Rentals. Within thirty (30) days after the date on which this Amendment is recorded in the Office of the Recorder of Monroe County (the "Recording Date"), the Board of Directors shall provide written notice to all Owners setting forth the Recording Date. The provisions of Section 11.1(d) (the "Rental Cap") shall not apply to any Lot in the Highlands Subdivision which, as of the Recording Date, is rented or leased by its Owner to a non-Owner occupant, so long as the Owner-landlord mails or otherwise delivers to the Board of Directors or the Managing Agent of the Association (at the address shown in the notice of the Recording Date), within sixty (60) days after the Recording Date, a copy of each executed lease of such Owner-landlord's Lot(s) which is in effect as of the Recording Date. The Owners of such pre-Recording Date rented Lots shall not be subject to the Rental Cap, but shall be subject to the remaining provisions of this Section 11.1. However, when the legal Owners of record of any of the pre-Recording Date rented Lots sell, transfer or convey such Lot(s) to another Owner after the date of recording of this Amendment, such Lot(s) shall immediately become subject to the Rental Cap. The failure of any such Owner-landlord of a leased or rented Lot to deliver a copy of such pre-Recording Date lease within said sixty (60) day period to the Board or Managing Agent shall result in said Owner-landlord's Lot being subject to the Rental Cap (from and after the date of expiration of such pre-Recording Date lease). However, in no event shall the Rental Cap apply to any lease executed prior to the Recording Date or to any renewals thereof provided for in any such leases, so long as the Lot continues to be occupied by one or more of the non-Owner occupants in possession of the Lot as of the Recording Date. Any Lot that falls under the exception of this Section 11.1(e) shall, nevertheless, be counted toward the ten percent (10%) "Rental Cap," even though such maximum does not apply to restrict the Owner of such pre-Recording Date leased Lot.

(f) General Lease Conditions.

- i. All leases, including renewals, shall be in writing. No lease or occupancy agreement shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors.
- ii. A copy of each executed lease by an Owner which identifies the tenant shall be provided to the Board of Directors or the Managing Agent by the Owner within thirty (30) days after execution.
- iii. No portion of any Lot other than the entire Lot shall be leased for any period.
- iv. No subleasing shall be permitted.
- v. All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, Articles of Incorporation,

Architectural Design Guidelines, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association.

- vi. All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease.
 - vii. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease.
 - viii. The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner's right to lease the Owner's Lot, even if during the term of a lease.
 - ix. The Board of Directors shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.
 - x. All Owners who do not reside in the Lot shall provide the Board of Directors with the name and contact information of the tenant(s) and any other residents living in the home.
- (g) Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, the By-Laws, and any Architectural Restrictions or rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.
- (h) Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Section 11.1 shall be voidable at the election of the Association's Board of Directors or any other Owner, except that neither party to such lease may assert this provision of this Section 11.1 to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity.
- (i) Institutional Mortgagees. The provisions of this Section 11.1 shall not apply to any institutional mortgagee of any Lot which comes into possession of the Lot by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Lot is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of this Section 11.1.

- (j) Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Lot is not occupied by one of the Owners thereof, there shall be a presumption that the Lot is being leased and subject to the provisions of this Section 11.1, and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Section 11.1, including but not limited to the delivery to the Board of Directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Section 11.1 and this Section 11.1(h), any occupancy pursuant to a rent to buy contract or similar arrangement, or pursuant to any option to purchase by anyone other than an Owner, shall be deemed to be a lease, rental or other similar arrangement.

[SIGNATURE PAGE TO FOLLOW]

Certification. The undersigned officers of Highlands Subdivision Homeowners Association, Inc. hereby represent and certify that all requirements for and conditions precedent to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Highlands Subdivision have been fulfilled and satisfied, and that the signatures attached hereto are true and accurate copies of the original signatures on file with the Association's records.

In witness whereof, HIGHLANDS SUBDIVISION HOMEOWNERS ASSOCIATION, INC. has caused this document to be executed by two of its officers.

HIGHLANDS SUBDIVISION HOMEOWNERS ASSOCIATION, INC.

BY _____
Kevin Campbell, President

BY _____
Cindi Livingston, Secretary

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a notary public in and for said County and State, this day personally appeared Kevin Campbell and Cindi Livingston, President and Secretary of Highlands Subdivision Homeowners Association, Inc., respectively, and acknowledged the execution of the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Highlands Subdivision Declaration, for and on behalf of Highlands Subdivision Homeowners Association, Inc.

WITNESS my hand and Notarial Seal this ___ day of _____, 2019.

Notary Public

My commission expires: _____

"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." Gregory A. Chandler, Esq.

This instrument prepared by, and should be returned to, Gregory A. Chandler, EADS MURRAY & PUGH, P.C., 9515 E. 59th Street, Suite B, Indianapolis, IN 46216. (317) 536-2565