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**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**OF EAGLE TRACE SUBDIVISION**

## Table of Contents

|              |  |    |
|--------------|--|----|
| Article I:   | Definitions.....   | 3  |
| Article II:  | Declaration; Common Areas and Rights Therein.....                                      | 5  |
| Section 2.1  | Declaration.....   | 5  |
| Section 2.2  | Easement to Owner.....   | 5  |
| Section 2.3  | Common Areas.....  | 5  |
| Article III: | Corporation; Membership; Voting; Functions.....  | 5  |
| Section 3.1  | Membership in Corporation.....   | 5  |
| Section 3.2  | Voting Rights.....   | 5  |
| Section 3.3  | Functions.....   | 6  |
| Article IV:  | Board of Directors.....  | 6  |
| Section 4.1  | Management.....  | 6  |
| Section 4.2  | Additional Qualifications.....   | 6  |
| Section 4.3  | Term of Office and Vacancy.....  | 6  |
| Section 4.4  | Removal of Directors.....  | 6  |
| Section 4.5  | Duties of Board of Directors.....  | 6  |
| Section 4.6  | Powers of Board of Directors.....  | 8  |
| Section 4.7  | Limitations on Board Action.....   | 8  |
| Section 4.8  | Compensation.....  | 9  |
| Section 4.9  | Non-Liability of Directors.....  | 9  |
| Section 4.10 | Additional Indemnity of Directors.....   | 9  |
| Section 4.11 | Bond.....  | 9  |
| Article V:   | Eagle Trace Architectural Control Committee.....                                       | 10 |
| Section 5.1  | Creation.....  | 10 |
| Section 5.2  | Statement of Purposes and Powers.....  | 10 |
| Section 5.3  | Approval Process.....  | 11 |
| Section 5.4  | Power of Disapproval.....  | 12 |
| Section 5.5  | Change or Amendment of Rules, Regs. & Guidelines.....                                  | 12 |
| Section 5.6  | Non-Liability of Committee.....  | 12 |
| Section 5.7  | Inspection.....  | 12 |
| Article VI:  | Character of the Real Estate.....  | 13 |
| Section 6.1  | Single Family Residential Purposes.....  | 13 |
| Section 6.2  | Construction upon the Real Estate.....   | 13 |
| Section 6.3  | Occupancy and Residential Use of Partially Completed<br>Dwelling House Prohibited..... | 13 |
| Section 6.4  | Building on Contiguous lots.....   | 13 |
| Article VII  | Set-Backs; Easements; Drainage.....  | 13 |
| Section 7.1  | Set-back Requirements.....   | 13 |
| Section 7.2  | Building Set-Back Lines.....   | 13 |
| Section 7.3  | Utility and Drainage Easements.....  | 14 |

|                     |   |           |
|---------------------|---|-----------|
| Section 7.4         | Landscape Easements .....   | 14        |
| Section 7.5         | Lake Maintenance Easement .....   | 14        |
| Section 7.6         | Storm Drainage Maintenance .....  | 15        |
| Section 7.7         | Drainage Swales.....  | 15        |
| Section 7.8         | Easements Generally.....  | 15        |
| <b>Article VIII</b> | <b>Restrictions, Covenants and Regulations Regarding Construction .....</b> | <b>16</b> |
| Section 8.1         | Approval of Construction Plan and Contractor .....                          | 16        |
| Section 8.2         | Minimum Living Space .....  | 16        |
| Section 8.3         | Sanitary Waste .....  | 16        |
| Section 8.4         | Construction of Sanitary Sewage Lines.....                                  | 17        |
| Section 8.5         | Exterior Construction.....  | 17        |
| Section 8.6         | Heating Plants and Garages .....  | 17        |
| Section 8.7         | Diligence in Construction .....   | 17        |
| Section 8.8         | Temporary Construction .....  | 17        |
| Section 8.9         | Model Homes.....  | 17        |
| Section 8.10        | Utility Services.....   | 17        |
| Section 8.11        | Private Water Systems; Air Conditioners.....                                | 17        |
| Section 8.12        | Perpetuation of Drainage .....  | 18        |
| Section 8.13        | Obstructions .....  | 18        |
| Section 8.14        | Sidewalks .....   | 18        |
| Section 8.15        | Drilling.....   | 18        |
| <b>Article IX</b>   | <b>Restrictions, Covenants and Regulations on Use .....</b>                 | <b>18</b> |
| Section 9.1         | Restrictions on Use .....   | 18        |
| Section 9.2         | Lot Maintenance .....   | 22        |
| Section 9.3         | Corporation's Right to Perform Certain Maintenance.....                     | 23        |
| Section 9.4         | Maintenance of Common Areas .....   | 23        |
| Section 9.5         | Non-applicability to Corporation.....                                       | 24        |
| <b>Article X:</b>   | <b>Real Estate Taxes; Utilities.....</b>                                    | <b>24</b> |
| Section 10.1        | Real Estate Taxes .....   | 24        |
| Section 10.2        | Utilities.....  | 24        |
| <b>Article XI:</b>  | <b>Assessments .....</b>  | <b>24</b> |
| Section 11.1        | Annual Accounting .....   | 24        |
| Section 11.2        | Proposed Annual Budget.....   | 25        |
| Section 11.3        | Regular Assessments .....   | 25        |
| Section 11.4        | Special Assessments .....   | 27        |
| Section 11.5        | Special Assessments for Enforcement .....                                   | 27        |
| Section 11.6        | Failure of Owner to Pay Assessments .....                                   | 27        |
| <b>Article XII:</b> | <b>Mortgages .....</b>  | <b>28</b> |
| Section 12.1        | Notice to Corporation .....   | 28        |
| Section 12.2        | Notice of Unpaid Assessments .....  | 28        |

|  |    |
|--|----|
| Article XIII: Insurance .....  | 29 |
| Section 13.1 Casualty Insurance .....  | 29 |
| Section 13.2 Public Liability Insurance .....                                    | 30 |
| Section 13.3 Other Insurance .....   | 30 |
| Section 13.4 General Provisions .....  | 30 |
| Section 13.5 Insurance by Owners.....  | 30 |
| Article XIV: Casualty and Restoration; Owner’s Liability Due To Negligence ..... | 31 |
| Section 14.1 Restoration of Common Areas.....                                    | 31 |
| Section 14.2 Assessment for Restoration of Common Areas .....                    | 31 |
| Section 14.3 Owner’s Liability Due To Negligence.....                            | 31 |
| Article XV: Amendments; Acceptance and Ratification of Declaration.....          | 32 |
| Section 15.1 Amendments .....  | 32 |
| Section 15.2 Effect on Easements.....  | 33 |
| Section 15.3 Acceptance and Ratification .....                                   | 33 |
| Article XVI Benefit and Enforcement .....  | 33 |
| Section 16.1 Binding of Real Estate .....  | 33 |
| Section 16.2 Right to Seek Enforcement .....                                     | 33 |
| Section 16.3 No Waiver .....   | 33 |
| Article XVII Miscellaneous .....   | 34 |
| Section 17.1 Costs and Attorney’s Fees .....                                     | 34 |
| Section 17.2 Owner’s Waiver .....  | 34 |
| Section 17.3 Severability Clause .....   | 34 |
| Section 17.4 Pronouns .....  | 34 |
| Section 17.5 Interpretation.....   | 34 |
| Section 17.6 Dedication .....  | 34 |

**CROSS-REFERENCES:**

Instrument No. 88-31305, Recorded September 23, 1988, Book 60, Page 726  
Instrument No. 88-000385, Plat Book C, Pages 385 A-F, Recorded September 23, 1988  
Instrument No. 90-000449, Plat Book C, Pages 449 A-C, Recorded April 4, 1990  
Instrument No. 93-011923, Book 65, Page 872, Recorded June 10, 1993  
Instrument No. 93-000581, Plat Book C, Pages 581 A-C, Recorded July 13, 1993  
Instrument No. 95-000581, Plat Book C, Pages 581 D, Recorded July 25, 1995  
Instrument No. 99-020048, Recorded July 2, 1999  
Instrument No. 2000-001382, Plat Book D, Pages 268 D, Recorded January 19, 2000  
Instrument No. 2000-011175, Recorded May 17, 2000  
Instrument No. 2000-011770, Recorded May 24, 2000

AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
EAGLE TRACE SUBDIVISION

This Amended and Restated Declaration was made as of the date set forth below by the Eagle Trace Homeowners Association, Inc., an Indiana not-for-profit corporation.

WITNESSETH:

WHEREAS, the Eagle Trace subdivision located in Johnson County, Indiana was established by a "Declaration of Covenants and Restrictions of Eagle Trace Subdivision", recorded on September 23, 1988, at Book 60, Page 726, in the Office of the Recorder of Johnson County, Indiana as Instrument No. 88-31305, said Declaration together with all amendments and/or supplements thereto being hereafter referred to as the "Original Declaration"; and

WHEREAS, the original developer of Eagle Trace annexed additional sections or phases of property to the Eagle Trace subdivision upon the recording of amendments and/or supplements to the Original Declaration; and

WHEREAS, plats filed with the Office of the Recorder of Johnson County, Indiana established residential Lots and Common Areas, comprising the Eagle Trace subdivision in accordance with the Original Declaration and all amendments and/or supplements thereto; and

WHEREAS, the original developer of Eagle Trace provided for the preservation of the values and amenities in said community and for the maintenance of the Common Areas therein; and, to this end, subjected the Eagle Trace real property to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which was, is and are for the benefit of said property and each Owner thereof; and

WHEREAS, the plats filed with the Office of the Recorder of Johnson County, Indiana included "Plat Restrictions, Easements and Development Standards for Eagle Trace Subdivision" (hereafter, "Plat Covenants"), which incorporated the terms of the Original Declaration and were imposed upon all real estate located within the Eagle Trace subdivision; and

WHEREAS, Article XVII of the Original Declaration states that prior to September 23, 2013, its covenants, conditions and restrictions may be terminated or changed, in whole or in part, by a vote of a majority of the Owners of the Lots; and

WHEREAS, Paragraph 30 of the Plat Covenants states that after September 23, 2003, and prior to September 23, 2013, its covenants, conditions and restrictions may be terminated or changed, in whole or in part, by a vote of a majority of the Owners of the Lots; and

WHEREAS, a Special Meeting of the Owners and the Association was held on August 24, 2013; and

WHEREAS, the purpose of said Special Meeting as stated in the notice for the meeting was for the Association's members to discuss and approve the following Amended and Restated Declaration, and to discuss and approve the termination of the Plat Covenants, provisions of which have been merged and incorporated into the following Amended and Restated Declaration, so that there shall be one Amended and Restated Declaration encompassing all covenants, restrictions, easements and conditions applicable to the Eagle Trace subdivision; and

WHEREAS, at said Special Meeting, the Owners of ONE HUNDRED AND FIFTEEN (115) Lots, in person or by proxy, voted to approve this Amended and Restated Declaration and to terminate the Plat Covenants in their entirety, pursuant to the terms below; and

WHEREAS, the Owners of said Lots desire to amend certain provisions of the Original Declaration and to restate the same for the convenience of the Owners such that this Amended and Restated Declaration of Covenants and Restrictions of Eagle Trace Subdivision in no way nullifies or changes the Original Declaration, the effective date of the Original Declaration, or the Plat Covenants. However, upon the date of recording of this Amended and Restated Declaration with the Johnson County Recorder's Office, the Original Declaration and the Plat Covenants shall no longer be in effect and shall be replaced by the following Amended and Restated Declaration of Covenants and Restrictions of Eagle Trace Subdivision; provided, however, that any amendments or supplements recorded by the original developer for the purpose of annexing additional sections into the Eagle Trace subdivision shall remain valid; and

WHEREAS, the Original Declaration and Plat Covenants 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 Johnson County Recorder. Those exhibits, however, are not exhibits to this Amended and Restated Declaration. Except as to any exhibits to the Original Declaration or Plat Covenants that may remain relevant, all other provisions of the Original Declaration and the Plat Covenants are hereby modified in their entirety, and superseded by this Amended and Restated Declaration.

NOW, THEREFORE, the Owners of a majority of the total number of Lots in Eagle Trace hereby terminate the Plat Covenants, and amend and restate the Original Declaration such that all of the platted dwellings, Lots and lands located within the Eagle Trace 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 dwellings, Lots and lands in Eagle Trace. 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 dwellings 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 Plat Covenants and the Original Declaration, which are applicable to all Owners and residents within the Eagle Trace subdivision, are hereby amended and restated as follows:

## ARTICLE I

### Definitions

Section 1.1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

“Act” shall mean and refer to the Indiana Not-for-Profit Corporation Act of 1991, as amended;

“Articles” shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;

“Board” or “Board of Directors” shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws and this Declaration;

“By-Laws” shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time;

“Committee” shall mean and refer to the “Eagle Trace Architectural Control Committee”, the same being the committee or entity established pursuant to Article VII of this Declaration for the purposes herein stated;

“Common Areas” shall mean and refer to (i) all portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not dedicated to the public and which are not identified as Lots on any such plat, whether such plat is heretofore or hereafter recorded, (ii) such portions of the Real Estate as are herein declared to be Common Areas on the plats of the Real Estate even though located on or constituting part of one or more such Lots shown on any such plat, (iii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Areas whether located, installed or established entirely or partially on Lots (as herein defined) or portions of the Real Estate which are not Lots, or both;

“Common Expenses” shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Areas, and all sums lawfully assessed against the Owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses;

“Corporation” or “Association” shall mean and refer to Eagle Trace Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns;

“Dwelling Unit” shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence;

“Lot” shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Areas) designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit). A Lot will not necessarily be the same as

any single numbered parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Real Estate or any part thereof. For purposes of this Declaration, "Lot" may be (i) any single numbered parcel of land identified as a Lot on such subdivision plat, (ii) part of such a numbered parcel of land, (iii) such a numbered parcel of land combined with part or all of another such numbered parcel of land, (iv) parts or all of two (2) or more of such numbered parcels of land combined, or (v) all other data or information that the Architectural Control Committee may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Dwelling Unit or other structure or improvement thereon. For a Person to enlarge, reduce, subdivide or otherwise change the portion of Real Estate conveyed to such Person as a "Lot", then the determination of what portion of the Real Estate constitutes a "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, each tract of land originally conveyed by the Developer of Eagle Trace to the original purchaser of such "Lot," as the same has been adjusted or changed at any time by subsequent conveyances. Any deed or other instrument of conveyance changing or altering the description of a "Lot" shall state on its face that it is made for such purpose. Notwithstanding the portion of the Real Estate conveyed to another Person, it is agreed that no Person may enlarge, reduce, partition, subdivide or otherwise change the portion of the Real Estate so conveyed to such Person as a "Lot", without the approval of the Corporation and the written approval of one hundred percent (100%) of the Owners of Lots in the Eagle Trace subdivision;

"Mortgages" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;

"Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot, a mortgagee or tenant shall be an Owner;

"Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;

"The Real Estate" shall mean and refer to the parcel of real estate in Johnson County, Indiana described in the first recital clause of the original Declaration, as well as all additional parcels of real estate platted and developed as part of the Eagle Trace subdivision by the Eagle Trace Development Corp. referred to in subsequent amendments to the original Declaration recorded in the Johnson County Recorder's Office, all of which were referenced, defined and described therein as the Real Estate, and all of which were made subject to the terms and provisions of the Declaration.

"Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time;

Section 1.2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.



## ARTICLE II

### Declaration, Common Areas and Rights Therein

**Section 2.1. Declaration.** The Real Estate shall be held, transferred and occupied subject to the Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

**Section 2.2. Easement to Owner.** There shall be a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas (except for such portions of the Common Areas, if any, as to which, in accordance with other provisions hereof, the use, enjoyment and benefit is limited to the Owners of certain designated Lots to the exclusion of other Lots) subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot.

**Section 2.3. Common Areas.** All right, title and interest in and to the Common Areas are owned by the Corporation, whether owned in fee, by leasehold or in the nature of an easement or license, whether or not the same may be located entirely or partially on any one or more of the Lots.

## ARTICLE III

### Corporation; Membership; Voting; Functions

**Section 3.1. Membership in Corporation.** Each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; **provided, however,** that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

**Section 3.2. Voting Rights.** The Corporation has one class of members (singularly, a "Member", and collectively, the "Members"). Members shall be all Owners and shall be entitled to one (1) vote for each Lot owned by such Member with respect to each matter submitted to a vote of Members upon which Members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be Members of the Corporation, but all such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as

they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Section 3.3. Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas, and to perform such other functions as may be designated for it to perform under this Declaration.

## ARTICLE IV

### Board of Directors

Section 4.1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner.

Section 4.2. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 4.3. Term of Office and Vacancy. The entire membership of the Board of Directors shall be elected at each annual meeting of the Corporation. Each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by a vote of the Owners if a Director is removed in accordance with Section 4.4. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 4.4. Removal of Directors. A Director or Directors may be removed with or without cause by vote of a majority of the Owners attending a meeting that is duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners or until his successor is duly elected and qualified.

Section 4.5. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and

the collection and disbursement of the Common Expenses. The Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) protection, surveillance and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service, or security system for protection or surveillance, and the same need not be furnished;
- (b) procuring the utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);
- (c) landscaping, painting, decorating, furnishing, and maintenance and upkeep of, the Common Areas;
- (d) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;
- (e) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;
- (f) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (g) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (h) procuring and maintaining for the benefit of the Corporation, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (i) paying taxes and assessments assessed against and payable with respect to the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas; and
- (j) all duties and obligations imposed upon the Corporation or the Board under this Declaration, the Articles, the By-Laws or the Act.

**Section 4.6. Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties;
- (b) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Corporation and the Board;
- (e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Corporation;
- (g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and
- (h) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, Dwelling Units and Common Areas with facilities for utility and similar services, including, but not limited to cable television facilities and service, provided that such easements are located within or are co-extensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, or Common Areas shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded.

**Section 4.7. Limitation on Board Action.** The authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

- (a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of

insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

- (b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by Owners at the annual meeting; and
- (c) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

**Section 4.8. Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**Section 4.9. Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

**Section 4.10. Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense on such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or willful misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 4.11. Bond.** The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the

Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

## ARTICLE V

### Eagle Trace Architectural Control Committee

Section 5.1. Creation. There shall be, and hereby is, created and established the “Eagle Trace Architectural Control Committee” (the “Committee”) to perform the functions provided to be performed by it hereunder or under any subdivision plat of the Real Estate. The Committee shall be a standing committee of the Corporation consisting of no more than five (5), and no less than three (3), Persons as may, from time to time, be provided in the By-Laws. If the By-Laws do not, at any time, provide for the Committee, then the Board shall be and constitute the Committee. Members of the Board may also be members of the Committee.

Section 5.2. Statement of Purposes and Powers. The Committee shall regulate the exterior design, appearance, use locations and maintenance of lands subject to these Restrictions, and improvements thereon, in such a manner as to preserve and enhance values to maintain a harmonious relationship among and the natural vegetation and topography, and to provide for the proper functioning of the storm drainage system for the Real Estate. For these purposes, the Committee may, from time to time and at any time, make, amend and modify such rules, regulations and guidelines as it may deem necessary or desirable to guide owners as to the terms, conditions, procedures and requirements of the Committee for the submission and approval of items to it. Such rules, regulations and guidelines may, in addition, set forth additional specifications to those set forth herein or in any subdivision plat of the Real Estate, so long as the same are not inconsistent with this Declaration or any such subdivision plat.

Section 5.3. Approval Process. As set forth in Section 8.1, no construction shall be commenced nor shall any building, structure or other improvements (including, without limitation, fences) be erected, or placed or altered on any lot in the Eagle Trace subdivision until a written application requesting authorization of such construction (each a Construction Request, as defined below) has been approved by the Committee. Construction Requests shall be made in the manner and form prescribed from time to time by the Committee, which shall not be inconsistent with this Declaration. The Committee shall approve such Construction Requests in accordance with all rules, regulations and guidelines adopted by the Committee and the procedures for such approval provided below:

- (a) Construction Request. To initiate the approval process, an Owner shall submit a construction approval application (the “Construction Request”) to the Committee. The Construction Request must include the following:

- (1) plot plan which includes a complete topographic study, location of all trees and existing structures, the location of the improvement proposed to be constructed or placed upon the Lot, and other drives, proposed (or existing) sanitary sewage disposal system location, utility service and terraces;
  - (2) foundation plan, floor plans, cross-sections, exterior elevations and complete specifications for all materials to be used on the exterior (including roof) of the house, building, structure or other improvement;
  - (3) plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed (and existing) landscaping, together with any other material or information which the Committee may require;
  - (4) all building plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $\frac{1}{4}'' = 1'$  and all plot plans shall be drawn to a scale of  $1'' = 30'$ , or to such other scale as the Committee shall require; and
  - (5) plan for preserving existing trees and foliage prior to the commencement of any work on the property; and
  - (6) for new Dwelling Units, two (2) complete sets of plans and specifications are required.
  - (7) Where applicable, such other permits or reports as may be required under this Declaration.
- (b) Committee Review. The Committee shall review each Construction Request as to the quality of materials, compatibility of the same with existing structures in the Eagle Trace subdivision, compliance with the Restrictions set for in this Declaration, minimum development standards and applicable ordinances. Elevations and floor plans must be particularly suited to the Lot and compatible with the theme of the development and the adjacent dwellings.
- (c) Duties of Committee. The Committee shall approve or disapprove improvements proposed in the Construction Request within twenty-one (21) days after all required information shall have been submitted to it. One copy of 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 therefor. If the Committee fails to act upon a Construction Request within said twenty-one (21) day period, the Owner may then proceed with the building or construction activity according to the Construction Request as submitted.

Section 5.4. Power of Disapproval. The Committee may refuse to grant the authorization requested by said Construction Request when

- (a) the plans, specifications, drawings or other material are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of the Restrictions or any rules, regulations or guidelines adopted by the Committee;
- (b) the design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee; or
- (c) the proposed improvement, or any part thereof, would, in the sole opinion of the Committee, be contrary to the interest, welfare or rights of other Owners.

**Section 5.5. Change or Amendment of Rules, Regulations and Guidelines.** Any rules, regulations and guidelines at any time made by the Committee may be changed, modified and amended by the Committee at any time, and from time to time, on a prospective basis; provided, however, that no such change, modification or amendment shall be applied by the Committee retroactively as to any construction theretofore completed nor as to the construction of any improvement which has previously been formally approved by the Committee if such construction has been commenced or is commenced within ninety (90) days after such change, modification or amendment is made by the Committee, and any changes, modifications or amendment of any such rules, regulations or guidelines at any time made by the Committee, shall be set forth in a written instrument and recorded in the office of the Recorder of Johnson County, Indiana, and shall be effective upon such recording; provided, however, that the making, adoption, change, modification and amendment of any such rules, regulations or guidelines by the Committee shall not be considered or deemed to be amendments of this Declaration requiring the consent of approval of any Owners, Mortgagees or other Persons.

**Section 5.6. Non-Liability of Committee.** The Committee shall not be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or construction involved, or the materials to be used or as to the compliance of any plans submitted to approval with these Restrictions, any recorded plat governing the Real Estate of any applicable code, regulation or law. Notwithstanding any review or approval of plans and specifications submitted by an Owner, the Committee shall have no liability for compliance of such plans with the Restrictions or the Declarations or any applicable code, regulation or law.

**Section 5.7. Inspection.** The Committee may inspect work being performed to assure compliance with these Restrictions and applicable regulations. However, neither the Committee nor any member thereof, nor any agent or contractor employed or engaged by the Committee, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.



## ARTICLE VI

### Character of the Real Estate

**Section 6.1. Single Family Residential Purposes.** Every Lot in the Real Estate is a residential Lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single family dwelling house and such other improvements, appurtenances and facilities as are usual and customary accessory uses to a single family dwelling house, including a private attached garage for cars; provided, however, that all improvements shall be approved by the Committee.

**Section 6.2. Construction upon the Real Estate.** In addition to individual site plan restrictions administered by the Committee, platted building lines, minimum distances between buildings and minimum front, side and rear building lines shall be as established on any recorded plat of the Real Estate (except as varied by the Committee to the extent permitted hereunder). All construction upon the Real Estate shall be done in compliance with the requirements of all applicable zoning, building and other governmental laws, ordinances, codes and other regulations.

**Section 6.3. Occupancy and Residential Use of Partially Completed Dwelling House Prohibited.** No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

**Section 6.4. Building on Contiguous Lots.** Whenever two or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit.

## ARTICLE VII

### Set-Backs; Easements; Drainage

**Section 7.1. Set-Back Requirements.** Set-back and yard size requirements for Lots shall be set forth on any recorded plat of the Eagle Trace subdivision; provided, however, that the Committee or Corporation may, in its discretion, reduce any such side yard and rear yard requirements as set forth on any such plat as to a particular Lot or Lots, but in no event shall any such yard requirements be reduced below those required by applicable zoning laws, ordinances and regulations.

**Section 7.2. Building Set-Back Lines.** Building set-back lines are hereby established as shown on the recorded plats of the Eagle Trace subdivision, between which lines and the property lines of the streets no building, structure or improvement (except walls and fences to the

extent permitted herein) shall be erected or maintained. Furthermore, no buildings, structures or other improvements shall be erected closer to any side Lot line of any Lot than ten (10) feet and the total side yard set-back (both sides) must be at least twenty-five (25) feet, or closer to any rear Lot line of any Lot than thirty (30) feet, unless such proposed construction is approved by the Committee or the Corporation; provided, however, that no such construction shall be erected closer to any side Lot line of any Lot than eight (8) feet, and the total side yard set-back (both sides) must be at least twenty (20) feet. No buildings, structures or improvements shall be constructed on any part of a Lot lying within thirty (30) feet of the top bank of any lake unless approved by the Committee or the Corporation. Where buildings are erected on more than one single Lot, the foregoing restrictions shall apply to the combined Lots (or parts thereof) as if they were one single Lot, and the restrictions applied based on the distance from the buildings, structures or other improvements to the adjacent Lot lines of the Lots adjoining the combined Lot.

Section 7.3. Utility and Drainage Easements. There are strips of ground marked "Utility and Drainage Easements" on the recorded plats for the Eagle Trace subdivision, which are reserved for the use of the public utilities, governmental agencies and the Corporation to access various areas of the subdivision (including, without limitation, the Common Areas included therein) to permit said parties to perform their respective responsibilities and to install, maintain and service their respective installations, not including transportation companies, for the installation and maintenance of poles, mains, sewers, ducts, drains, lines, wires, and other utility installations for the purpose of furnishing utility services. No structures are to be erected or maintained upon said "Utility and Drainage Easements". The Corporation, in accordance with the terms of the Declaration, but subject to the obligations of individual Lot owners to keep "Utility and Drainage Easements" free of obstructions so that the flow of water will be unimpeded, shall maintain the storm drainage system for this subdivision to the extent it has not been dedicated and, for such purposes, shall have an easement over all portions of the subdivision used as part of such storm drainage system.

Section 7.4. Landscape Easements. The recorded plats filed for the Eagle Trace subdivision reserve portions of the Real Estate as "Landscaping Easements". The "Landscaping Easements" are reserved for the use of the owners of Lots to the extent and limited for the purposes set forth in this Declaration, and for the benefit of the Corporation for the installation, maintenance, repair and replacement of fences, walls, landscaping, other screening material, street directories, street signs, water wells and other items requiring maintenance. No structure shall be erected or maintained on said "Landscape Easements", and the owners of such Lots affected by any such "Landscaping Easement" shall take and hold title to their Lots subject to the foregoing rights of the Corporation, and shall not do or permit to be done anything which will obstruct or interfere with any installations made by the Corporation in any such "Landscaping Easement". The foregoing grant of rights to the Corporation shall not impose an obligation on the Corporation to undertake such maintenance unless it elects to do so.

Section 7.5. Lake Maintenance Easement. The owners of Lots and the Corporation shall have a nonexclusive easement over areas of the Real Estate shown on the recorded plats for Eagle Trace as lake maintenance easements. The lake maintenance easements are reserved for the use of owners of Lots to the extent permitted by the Declaration, and for the use of the

Corporation for the maintenance and repair of the lakes and surrounding ground included in the easement area. No structures are to be erected or maintained upon the lake maintenance easements.

**Section 7.6. Storm Drainage Maintenance.** The Corporation shall maintain the storm drainage system for the Eagle Trace subdivision, to the extent not maintained by the Johnson County Drainage Board. Such maintenance by the Corporation shall include, but is not limited to, the maintenance of all inlet pipes, open ditches, pipes and swales. The costs and expenses of such maintenance which is not provided by the Johnson County Drainage Board shall be part of the Common Expenses. Sump pumps, gravity drains and other drains serving individual Dwelling Units and Lots shall outfall only into drainage swales or storm structures included in the storm drainage system for the Eagle Trace subdivision.

**Section 7.7. Drainage Swales.** Drainage swales or drainage retention areas along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the Johnson County Drainage Board and the Committee. It shall be the duty of the Owner of any Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this provision and the Declaration. Property owners must maintain these swales as sodded grass areas or other non-corroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Any property owner altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given 10 days' notice by certified mail to repair said damage after which time, if no action is taken, the Corporation will cause said repairs to be accomplished and the statement for costs of the said repairs will be sent to the affected property owner for immediate payment and such costs will constitute a lien on the property owner's lot until paid. Upon the completion of the initial construction of a residence upon any lot within this development, the building contractor responsible for such construction shall be required to provide an Affidavit of Compliance with the requirements of this Declaration, the Indiana Drainage Code of 1965 and the applicable Johnson County Ordinances, which Affidavit shall be submitted to the Committee, and the office of the Johnson County Plan Commission and/or the Johnson County Commissioners.

**Section 7.8. Easements Generally.** Owners shall take and hold title to their Lots subject to the easements specifically set forth herein and any other easements that exist upon the Real Estate, and subject to the rights of the Corporation (which rights include the right of ingress and egress along, across and through said easements), to the jurisdiction of the proper governmental authorities and to the easements herein granted and reserved.

## ARTICLE VIII

### Restrictions, Covenants and Regulations Regarding Construction

#### Section 8.1. Approval of Construction Plan and Contractor.

- (a) No construction shall be commenced nor shall any building, structure or other improvements (including, without limitation, fences) be erected, or placed or altered on any lot in the Eagle Trace subdivision until the building plans, specifications, including exterior surface of all buildings, and plot plan showing the location of such construction have been approved by the Committee in accordance with the approval process set forth in Section 5.3.
- (b) Notwithstanding compliance with all minimum development standards as required by applicable ordinances and the covenants and Restrictions of this Declaration, no construction shall commence upon any lot in this development unless the Committee shall have first approved in writing the building contractor selected by the lot owner for the construction. Furthermore, no fence or wall or mailbox or post shall be erected, placed, or altered on any Lot or within the Eagle Trace subdivision unless previously approved by the Committee in writing.
- (c) The Committee must also approve the Owner's plan for preserving existing trees and foliage prior to the commencement of any work on the property. It shall be the Owner's responsibility to comply precisely with all building and site finish ground elevations as finally required and approved by the Johnson County Drainage Board and as evidenced upon the final construction plans for the development of the Eagle Trace subdivision.

Section 8.2. Minimum Living Space. The ground floor of each multi-story Dwelling Unit constructed on a Lot, exclusive of one-story open porches, garages and other areas not considered living areas, shall be not less than 1,200 square feet of finished and livable floor area, and all two-story dwellings shall contain not less than 1,200 square feet of living areas on each floor. Any such multi-story dwelling shall have not less than an aggregate of 2,400 square feet of finished and livable floor area. In the case of a one-story structure, the ground floor area, exclusive of open porches and garages, shall be not less than 1,800 square feet of finished and livable floor area. Basement floor areas shall not be counted in the above square footages and shall be in addition thereto. Notwithstanding the foregoing, the Committee may in its discretion approve construction of a Dwelling Unit that does not comply with the foregoing requirements if in the Committee's discretion the design and size of the Dwelling Unit will be compatible with the other Dwellings in the subdivision and will not detract from their value.

Section 8.3. Sanitary Waste. No outside toilets shall be permitted on any Lot (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 be exposed.

**Section 8.4. Construction of Sanitary Sewage Lines.** All sanitary sewage lines on the Lots shall be designed, constructed and installed in accordance with the provisions and requirements of Johnson County and these Restrictions.

**Section 8.5. Exterior Construction.** All materials used on the exterior of any Dwelling Unit and any other building improvements on a Lot shall be subject to the approval of the Committee. All driveways must be surfaced in accordance with the requirements as set forth on any recorded plat of the Real Estate from their point of connection with the abutting street or road to their point of connection with the garage apron.

**Section 8.6. Heating Plants and Garages.** Every Dwelling Unit located on the Real Estate must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the Dwelling Unit. Every Dwelling Unit located on the Real Estate must have a full two-car or three-car attached garage of the same architectural design and materials as the Dwelling Unit, but not larger, unless otherwise approved by the Committee. Carports with open sides will not be permitted. All driveways and vehicle parking areas shall be hard surfaced with either concrete, brick or asphalt. No gravel or stone driveways will be permitted.

**Section 8.7. Diligence in Construction.** Construction of any building or structure on any Lot shall be completed within one hundred eighty days (180) after the beginning of such construction unless circumstances beyond the reasonable control of the builder and/or owner prevent such completion. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. The Corporation shall have standing and authority to seek an injunction or order for the removal of any materials and partially completed structures in violation of this covenant.

**Section 8.8. Temporary Construction.** No construction shacks or outhouses shall be erected or situated on any Lot herein. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be permitted to remain on any Lot or used on any Lot at any time as a residence, either temporarily or permanently. All job sites must remain neat and clean during construction.

**Section 8.9. Model Homes.** No Owner of any Lot shall build or permit the Dwelling Unit upon his Lot or any dwelling house that is to be used as a model home or exhibit house.

**Section 8.10. Utility Services.** Utility services shall, to the greatest extent possible, be installed underground.

**Section 8.11. Private Water Systems; Air Conditioners.** No private or semi-private water supply may be located upon any Lot which is not in compliance with regulations or procedures as provided by the applicable public health agencies, or other civil authority having jurisdiction, approved by the Committee and restricted to use in connection with a sprinkler system or geothermal heating and cooling system. No septic tank, absorption field or any other method of sewage disposal shall be located or constructed on any Lot or Lots. Solar heating systems of any

nature must be approved by the Committee as to design and aesthetic quality prior to construction. Owners are hereby advised that such systems are generally discouraged and will not be approved unless their design blends aesthetically with the structure and adjacent properties. All outdoor air conditioning units shall be screened from view.

Section 8.12. Perpetuation of Drainage. Any field tile or underground drain which is encountered in construction of any improvements within the Real Estate shall be perpetuated and all Owners of Lots in this subdivision and their successors shall comply with the Indiana Drainage Code of 1965 and all amendments thereto.

Section 8.13. Obstructions. No wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) 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 sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of driveway pavement. 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 driveway shall be located within forty (40) feet of the intersection of two (2) street lines.

Section 8.14. Sidewalks. Sidewalks shall be constructed as required by the sidewalk plan approved by the Johnson County Plan Commission, which construction shall be the responsibility of the Lot Owner upon whose Lot the sidewalk is to be constructed. All sidewalks to be constructed by Lot Owners shall be completed at such times as the driveway on the Lot is constructed. All sidewalks shall be poured concrete, with expansion joints, such construction to be perpetual and continuous along the street frontages and across the driveway of each Lot.

Section 8.15. Drilling. No oil or water drillings, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted on any lot.

## ARTICLE IX

### Restrictions, Covenants and Regulations on Use

Section 9.1. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Areas shall be in addition to any other covenants and restrictions contained herein and in any subdivision plat of any part of the Real Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for

any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family; provided, however, that the foregoing restriction of “used exclusively for residential purposes” shall not apply to any Lot or part thereof or any other part of the Real Estate at any time owned by the Corporation which constitutes a part of the Common Areas, and upon which no Dwelling Unit is located.
- (b) Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No waste shall be committed in any Dwelling or on any Lot.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Committee unless otherwise expressly authorized herein, or in any recorded subdivision plat, or by the rules, regulations and guidelines of the Committee.
- (e) Antennas, masts, towers or satellite dishes of any kind will not be permitted on any Lot or outside any Dwelling Unit, unless first approved by the Committee.
- (f) No clothes lines are permitted outside any Dwelling Unit.
- (g) No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.
- (h) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Areas. The Common Areas shall be kept free and clean of rubbish, debris and other unsightly materials.

- (i) No industry, trade, or other commercial or religious activity, educational or otherwise, designated for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate.
- (j) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas and the Real Estate.
- (k) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express permission from the Board.
- (l) Common Areas shall be used and enjoyed only for the purposes for which they are designated and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the lakes installed as part of the Common Areas as shown on the Site Plan are and will be an integral part of the storm water drainage system serving the Real Estate and are intended to be used for such purpose and primarily as visual and aesthetic amenities and not as recreational amenities. Accordingly, no use shall be made of any of the lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing or ice skating shall be permitted in or on said lakes. No sewage, garbage, refuse or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into said lakes, except the Corporation may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shores of such lakes adjacent to an Owner's Lot by the Owner thereof and his invited guests and family shall be permitted subject to compliance with all applicable fishing and game laws, ordinances, rules and regulations. Common access to the lakes is limited solely to that area designated on the recorded subdivision plat of the Real Estate.
- (m) Mailboxes. In order to aid in the preservation of aesthetic appearances within the Real Estate, any mailbox installed on the Real Estate must be approved by the Committee as to size, location, height and composition before it is installed. A standard mailbox design shall be the standard for all mailboxes installed on the Real Estate.
- (n) Used Structures. All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.
- (o) Landscaping. Each lot owner shall provide reasonable landscaping on his Lot including, at a minimum, suitable foundation landscaping and trees of 3-4 inches



in caliper of a species acceptable to the Committee and the Corporation which shall be located ten (10) feet from the rear of the sidewalk, but not in the right of way, and thirty (30) feet on center along the street frontage of the Lot in accordance with the final street tree plan. All landscaping plans are subject to Committee approval. The Committee may, in its discretion, modify such plans to promote the integrity and the aesthetic appearances of this subdivision. Finished grading of all yards must be completed within fifteen (15) days after the dwelling is constructed, weather permitting, and all yards must be seeded or sodded with grass within ten days after the completion of finish grading, weather permitting.

- (p) Signs. Except as otherwise permitted by any plat of the Real Estate or the Committee, no signs or advertisements shall be displayed or placed on any Lot or structure without the prior written approval of the Committee. The Committee may approve certain signs such as those posted by contractors for limited-time services, school support signs and for-sale signs. However, written approval for these signs must first be obtained from the Committee, subject to any and all specifications as the Committee may require; otherwise, they will be in violation of this provision. Political support signs are not prohibited; however, the Committee or the Corporation may, at their discretion, adopt reasonable rules, regulations and restrictions limiting the size and number of such political support signs.
- (q) Garbage, Trash and Other Refuse; No Burning. No Owner of a Lot shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot unless otherwise permitted herein. All equipment, garbage cans, service yards or storage piles shall be kept from view of neighboring residences and streets, except at the times when refuse collections are being made. All rubbish, trash or garbage stored outside any residence shall be regularly removed from the premises and shall not be allowed to accumulate thereon. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All Dwelling Units shall contain a garbage disposal unit. Outside trash burners will not be permitted.
- (r) Every tank for the storage of fuel that is installed outside any building shall be buried below the surface of the ground.
- (s) All basketball backboards or any fixed games and play structures shall be located behind the front foundation line of the main structure and within Lot set-back lines.
- (t) Above ground swimming pools shall not be permitted or constructed on any Lot.
- (u) Wells and Septic Tanks. No water wells shall be drilled on any of the Lots, nor shall any septic tanks or other sewage disposal systems to be installed on any of the Lots, without the approval of the Committee and of the governing public health agency or other civil authority.

- (v) **Parking; Storage.** All motor vehicles belonging to Owners and their guests shall be parked in permanent parking spaces in garages or driveways. No disabled vehicle shall be stored on any Lot, public or private street or anywhere within the Real Estate. Also, no boat, motorcycle, commercial vehicle, trailer, camper or motor home of any kind (including, but not in limitation thereof, house trailers, camper trailers, or boat trailers) shall be kept or parked upon any Lot, public or private road, or anywhere within the Real Estate unless kept from view of neighboring residences and streets by being in a garage.
- (w) **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.
- (x) **Nuisance.** No noxious, unlawful, or otherwise offensive activity shall be carried out on any Lot in this subdivision, or anywhere within the Real Estate; nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood in the opinion of the Corporation.

**Section 9.2. Lot Maintenance.** Each Owner shall be responsible for all maintenance, repairs, furnishings, decoration and replacement of his Lot and any improvements situated thereon, both interior and exterior, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as part of a 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 Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances and other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot. Furthermore, each Owner shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (a) mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (b) remove all debris or rubbish;
- (c) prevent the existence of any other condition that reasonable tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (d) cut down and remove dead trees;
- (e) where applicable, prevent debris and foreign material from entering drainage areas; and

- (f) keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

**Section 9.3. Corporation's Right to Perform Certain Maintenance.** In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions and this Declaration, the Corporation, through its agents and employees or contractors, should have the right to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the provisions contained in any such plat. The cost thereof shall be an assessment against such Owner and his Lot, which shall be collectable in the same manner provided herein for the collection of Common Expenses and Special Assessments. Neither the Corporation, nor any of its agents, employees or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder; nor shall such entry constitute an unlawful trespass upon the Owner's Lot.

**Section 9.4. Maintenance of Common Areas.** Maintenance, repairs, replacements and upkeep of the Common Areas (including, but not limited to, the storm water drainage system for the Real Estate) shall (except to the extent provided herein as the obligation of Owners) be furnished by the Corporation, as part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Areas, the Corporation, as part of its duties, and as part of the Common Expenses, shall provide for maintenance for the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

- (a) those portions of the Real Estate, whether or not said portions are part of any of the Lots, which are located outside any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate, but only to the extent that the same are not maintained by or the responsibility of a public authority; provided, however, that the Corporation shall have no obligation to maintain any public street, road or highway located within any public right-of-way on or abutting the Real Estate. For purposes of this subparagraph (a), "outside any perimeter fencing" means the areas between such fencing and the nearest property line of the Real Estate;
- (b) any perimeter fencing (including walls) originally installed upon development of the Eagle Trace subdivision as part of the perimeter treatment of the Real Estate; and
- (c) any equipment, such as water fountains, installed upon development of the Eagle Trace subdivision or at the direction of the Board of Directors, whether or not located on Lots.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Areas (or items deemed Common Areas for purposes of maintenance), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or items deemed as such for purposes of maintenance), 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 Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, 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.

The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items deemed as Common Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any subdivision plat of any portion of the Real Estate for such purpose.

Section 9.5. Non-applicability to Corporation. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in Section 9.1 shall not apply to or be binding upon the Corporation in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Corporation in the performance of its duties, obligations and responsibilities as to the Common Areas.

## ARTICLE X

### Real Estate Taxes; Utilities

Section 10.1. Real Estate Taxes. Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Areas shall be paid by the Corporation and treated as a Common Expense.

Section 10.2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to an Owner's Lot or Dwelling Unit. Any utilities expended in connection with the Common Areas shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

## ARTICLE XI

### Assessments

Section 11.1. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end

of such fiscal year, the Board shall cause to be prepared and furnish the Owners with a financial statement of operations by the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 11.2. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Corporation at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual or special meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual or special meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners attending such meeting; provided, however, that in no event shall such annual or special meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation 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 these purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement repair of the Common Areas shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Johnson County or Marion County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget or to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual or special meeting of the Corporation at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based on the last approved budget or, at the option of the Board, based on one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 11.3. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, each Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove

provided. The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board with date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance in each quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether in one payment or in quarterly installments, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited.

Provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner or the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for the Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 11.3 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any

notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Section 11.4. Special Assessments. From time to time, Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

Section 11.5. Special Assessments for Enforcement. The Corporation may make assessments to cover any costs incurred in enforcing the Restrictions or in undertaking any activity which is the responsibility of an Owner, but which such Owner has not undertaken as required hereunder. Any such assessment shall be assessed only against those Owners whose non-compliance necessitated the enforcement action or the undertaking of said activity.

Section 11.6. Failure of Owner to Pay Assessments.

- (a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Common Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. Regular and Special Assessments against his Lot when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided or permitted by law. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby waiving) the lien securing the same. In any

action to recover a Regular Assessment or Special Assessment, or any other charges due the Corporation, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest, until paid, at a rate equal to the "prime interest rate" then National Bank or its successors (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana selected by the Board).

- (c) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure 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 mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges 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 from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments or other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefore, be deemed to be a Common Expense, collectible from all Owners (including the part acquiring the subject Lot and Dwelling Unit from which it arose).

## ARTICLE XII

### Mortgages

Section 12.1. Notice to Corporation. Any Mortgagee having a first mortgage lien on a Lot may notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary by the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

Section 12.2. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to



purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement except as such assessments may be adjusted upon adoption of the final annual budget, as referred to in this Declaration.

## ARTICLE XIII

### Insurance

Section 13.1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. The Board of Directors, at their discretion, can obtain “all risk” coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Corporation as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than one hundred fifty percent (150%) of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty on the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or distributed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and “all risk” coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of

a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

**Section 13.2. Public Liability Insurance.** The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of one million dollars (\$1,000,000.00) per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation of the Board, any Managing Agent appointed or employed by the Corporation, the Declarant, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a “severability of interest” clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

**Section 13.3. Other Insurance.** The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen’s compensation and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers’ and directors’ liability policies. 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 each Owner, the Corporation, the Board of Directors and any Managing Agent to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

**Section 13.4. General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. Upon request of any Owner or Mortgagee whose interest may be affected thereby, the Corporation shall provide such owner or mortgagee with a description of the insurance coverage maintained by the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner’s share of such proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

**Section 13.5. Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense,

affording coverage upon his person property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

#### ARTICLE XIV

##### Casualty and Restoration; Owner's Liability Due To Negligence

Section 14.1. Restoration of Common Areas. In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same architecture and materials.

Section 14.2. Assessment for Restoration of Common Areas. If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

Section 14.3. Owner's Liability Due To Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family, his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the

Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

## ARTICLE XV

### Amendments; Acceptance and Ratification of Declaration

**Section 15.1. Amendments.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner;

- (a) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors, or by Owners having in the aggregate at least a majority of the votes of all Owners.
- (c) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the By-Laws.
- (d) **Adoption.** Any proposed amendment to the Declaration must be approved by a vote of not less than fifty percent (50%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- (e) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Article XIV of this Declaration with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Article XV of this Declaration with respect to reconstruction or repair of Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each or any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the Declaration.
- (f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Johnson County, Indiana, and such amendment shall not become effective until so recorded.

**Section 15.2. Effect on Easements.** Notwithstanding any contrary provision herein, no change or amendment to this Declaration or termination thereof, whether by adoption of a resolution as provided herein or by termination of the Corporation for any reason, shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto in writing.

**Section 15.3. Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance of the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules, regulations and guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in an Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

## **ARTICLE XVI**

### **Benefit and Enforcement**

**Section 16.1. Binding of Real Estate.** This Declaration and the Restrictions shall bind the Real Estate, and shall be binding on all Owners of a Lot within the Eagle Trace subdivision. This Declaration shall be automatically renewed from year to year, unless it is amended or terminated by the Owners in accordance with the Amendment provisions set in Section 15.1, or unless the Corporation is terminated in accordance with the Act and Indiana law.

**Section 16.2. Right to Seek Enforcement.** In the event of a violation, or threatened violation, by an Owner of any of the covenants, conditions, restrictions or other requirements set forth in this Declaration, or of any provision in the By-Laws or rules and regulations promulgated by the Corporation, the Board or any Owner shall have the right to seek enforcement by pursuing 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, By-Laws or rules and regulations, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result of such enforcement action.

**Section 16.3. No Waiver.** The failure or delay at any time of the Corporation, the Owners, the Committee, or any other Persons entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the same, or the

right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof. Notwithstanding the foregoing, any violation of this Declaration may be waived by a majority of then Owners of the Lots.

## ARTICLE XVII

### Miscellaneous

Section 17.1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 17.2. Owner's Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use of his enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.

Section 17.3. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforce-ability or effect of the rest of this Declaration, the Articles or the By-Laws, and each shall be enforceable to the greatest extent permitted by law.

Section 17.4. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 17.5. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

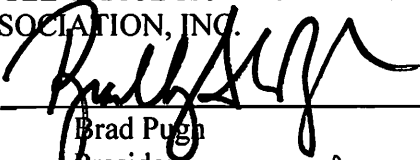
Section 17.6. Dedication. The streets and sidewalks, if not heretofore dedicated, are hereby dedicated to public use.

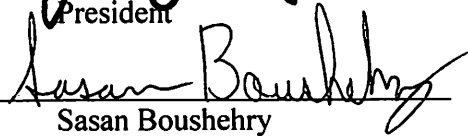
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Certification. The undersigned officers of Eagle Trace Homeowners Association, Inc. hereby represent and certify that all requirements for and conditions precedent to the foregoing Amendments have been fulfilled and satisfied, and that the attached homeowner approval signatures are true and accurate copies of the originals that are part of the records of Eagle Trace Homeowners Association, Inc.

In witness whereof, EAGLE TRACE HOMEOWNERS ASSOCIATION, INC., has caused this document to be executed by one of its officers.

EAGLE TRACE HOMEOWNERS  
ASSOCIATION, INC.

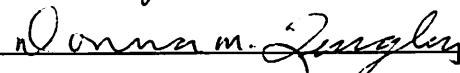
BY   
Brad Pugh  
President

BY   
Sasan Boushehry  
Secretary

STATE OF INDIANA        )  
  )SS:  
COUNTY OF JOHNSON    )

Before me, a notary public in and for said County and State, this day personally appeared Brad Pugh and Sasan Boushehry, President and Secretary of Eagle Trace Homeowners Association, Inc., respectively, and acknowledged the execution of the foregoing Amended and Restated Declaration of Covenants and Restrictions of Eagle Trace Subdivision, for and on behalf of Eagle Trace Homeowners Association, Inc.

WITNESS my hand and Notarial Seal this 13<sup>th</sup> day of September, 2013.

  
Donna M. Ziegler Notary Public

My commission expires: 10-25-17

"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., Attorneys at Law, 9515 E. 59<sup>th</sup> Street, Suite B, Indianapolis, IN 46216. (317) 536-2565.

