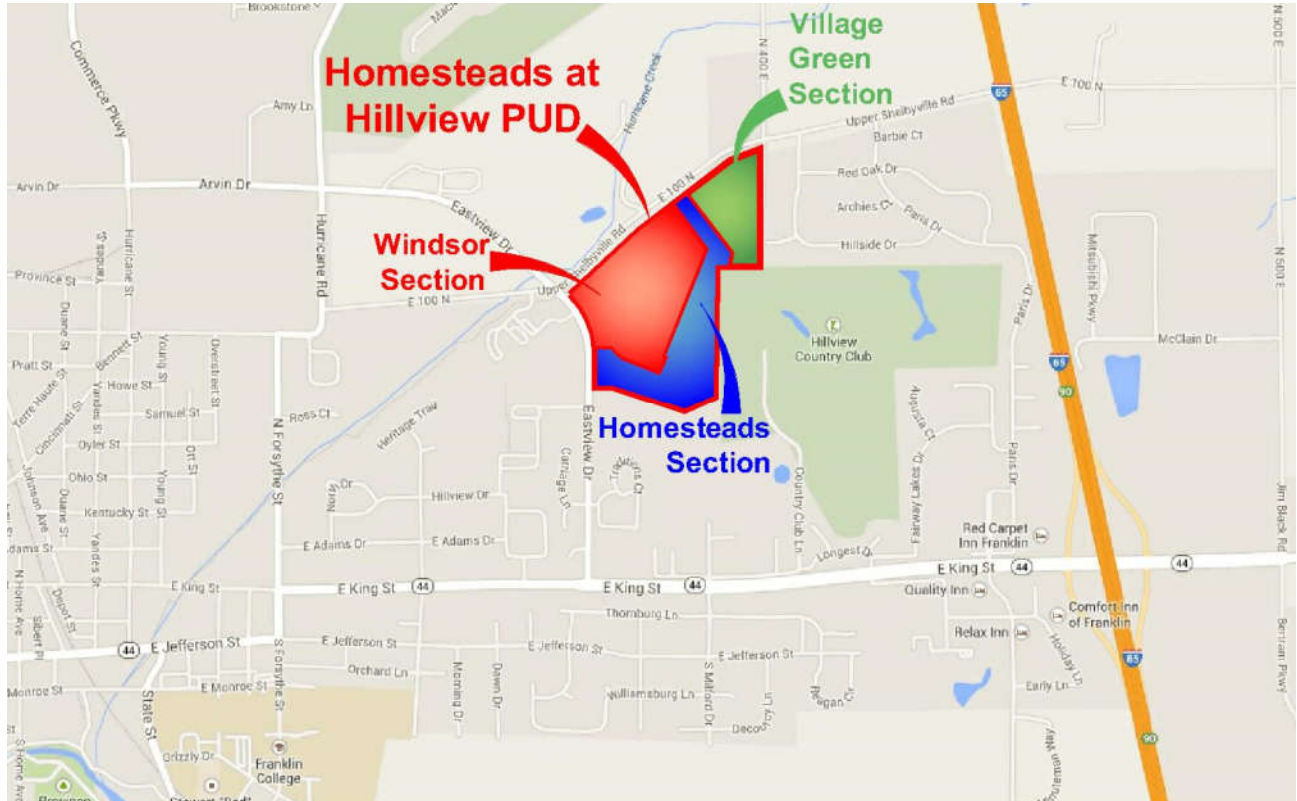


# *HOMESTEADS AT HILLVIEW*

HILLVIEW PROPERTIES, LLC & JP REAL ESTATE I, LLC

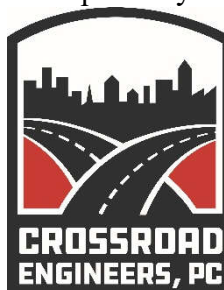
CITY OF FRANKLIN, INDIANA

DETAILED PUD PLAN – SUPPORTING INFORMATION



SUBMITTAL DATE: March 11, 2021

Prepared by:



3417 Sherman Drive  
Beech Grove, Indiana 46107  
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# HOMESTEADS AT HILLVIEW – DETAILED PUD PLAN

## SUPPORTING INFORMATION

March 11, 2021

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## **PLANNED UNIT DEVELOPMENT DESCRIPTION**

### ***DEVELOPMENT SUMMARY***

Hillview Properties, LLC and JP Real Estate I, LLC are proposing to modify the single-family residential development previously created by Homestead Developers, LLC with companion golf course use at the southeast corner of Eastview Drive and Upper Shelbyville Road in the City of Franklin, Indiana. The development is known as Homesteads at Hillview and will be comprised of three sections: Village Green, Homesteads and Windsor. The three sections will differ in lot sizes and densities. The Village Green Section will constitute approximately 20.04% of the land area of the development and will feature 33 residential lots that will be the smallest lot sizes within the development. The Homesteads Section will constitute approximately 36.21% of the land area of the development and will feature 31 larger residential lots approximately 1-1/2 times the size of the lots within Village Green. The Windsor Section will constitute the remaining 43.75% of land area of the development and will consist of 66 residential lots with a mixture of lot sizes similar to both Village Green and Homesteads lots. The proposed development and existing site conditions are discussed in detail herein.

### ***DEVELOPERS***

#### **Co-DEVELOPERS**

Hillview Properties, LLC  
JP Real Estate I, LLC  
Contact: Peter L. Grimmer, Manager  
317-339-9729

#### **ENGINEER**

CrossRoad Engineers, P.C  
3417 Sherman Drive  
Beech Grove, IN 46107  
Phone: (317) 780-1555  
Contact: Gregory J. Ilko

#### **ATTORNEY**

James R. Admire, Esq.  
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98 N. Jackson Street  
Franklin, Indiana 46131  
Phone: (317)736-7146

#### **LANDSCAPE CONSULTANT**

Designscape Horticultural Services  
Gabriel Gluesenkamp  
2877 TC Steele Road  
Nashville, Indiana 47448  
(812) 988-8900

### ***GENERAL HOLDINGS MAP***

There are currently five (5) lots and a common area adjacent to the Homesteads at Hillview that are owned by the applicant / owner of record.

### ***SEWER VERIFICATION***

The following page contains a Sewer Verification Letter from Sally K. Brown, Superintendent, City of Franklin DPW verifying that the adjacent public sanitary sewer on the south side of Upper Shelbyville Road has sufficient capacity to serve the proposed development.



## CITY OF FRANKLIN

Department of Public Works

Sally Brown  
Superintendent

March 11, 2021

Mr. Dustin Myers  
Crossroad Engineers, PC  
3417 Sherman Drive  
Beech Grove, Indiana 46107  
317-780-1555 x 122

RE: Intent to Provide Utility Service  
Section 3, Hillview Subdivision  
Upper Shelbyville Road  
Franklin, IN 46131  
Johnson County

Dear Sir:

Please be advised that the City of Franklin has adequate capacity at its wastewater treatment plant and collection system to provide service to this proposed project, subject to our standard specifications and applicable fees for connecting to the sanitary sewer system.

This shall not be construed as approval of plans for said project, but rather a statement that the capacity and facilities to provide service are available.

Sincerely,

*Sally K. Brown*

Sally K. Brown, Superintendent  
City of Franklin DPW

## EXISTING SITE CONDITIONS

Homesteads at Hillview-Section 1 and Homesteads at Hillview-Section 2 were previously platted. At the time of this submittal, 9 single-family residences have been constructed within the Village Green Section and 14 single-family residences have been constructed in the Homesteads Section. The proposed Section 3 is proposed to be known as “Windsor.” The following subsections provide additional information on the existing conditions of the site. Refer to Exhibit A for a Topographic Survey of the project site.

### A. BUILT FEATURES

Refer to Exhibit A – Topographic Survey.

The project site currently has 65 platted single-family residential lots along with a street network with connections to both Upper Shelbyville Road and Eastview Drive. Additionally, all utility infrastructure needed for the existing residential lots has been installed and these utilities will be discussed in more detail in Item E (Utilities) of this section.

### B. EASEMENTS

Refer to Exhibit B – ALTA / ACSM Survey

The following existing easements are located on the site:

1. 25 feet wide Sewer Easement – There is a 25 feet wide sewer easement located across the frontage of the site on the south side of Upper Shelbyville Road. The purpose of this easement is to contain and protect the existing sanitary sewer main and is granted to the City of Franklin.
2. 20 feet wide Water Line Easement – There is a 20 feet wide water line easement located across the frontage of site on the east side of Eastview Drive. The purpose of this easement is to contain and protect the existing water main and is granted to Indiana American Water Company.
3. Electric Boxes Utility Easement – There is a utility easement located on the east side of Eastview Drive. The purpose of this easement is to contain and protect the existing electric boxes, and is granted to Hoosier Energy Rural Electric Cooperative, Inc.

It is anticipated that all existing easements shall remain intact and no alterations / modifications to those improvements are expected.

## C. TOPOGRAPHY

Refer to Exhibit A – Topographic Survey.

The project site currently has 65 platted single-family residential lots along with a street network with connections to both Upper Shelbyville Road and Eastview Drive. Additionally, all utility infrastructure needed for the existing residential lots has been installed along with three (3) detention facilities that ultimately discharge into two (2) 30-inch diameter CMP twin culverts at the intersection of Eastview Drive and Upper Shelbyville Road. The entire property is located within the Hurricane Creek watershed.

## D. NATURAL FEATURES

Refer to Exhibit A – Topographic Survey.

According to the U.S. Fish and Wildlife Service - National Wetlands Inventory, there are no wetlands present on the site. Also, the vast majority of the property lies within Zone 'X', areas outside of the 0.2% annual chance floodplain, as shown on the Flood Insurance Rate Map (FIRM) for Johnson County, Indiana, Community Panel No. 18081 C 0231D and 18081 C 0231E, dated January 29, 2021. A small portion of the site at the southeast corner of the Eastview Drive and Upper Shelbyville Road intersection does lay within Zone 'AE', special flood hazard areas subject to inundation by the 1% annual chance flood, with base flood elevations (BFE) determined. The BFE within this area is approximately 729.50.

## E. UTILITIES

The following utilities are located on, or adjacent to, the site:

1. Water – There is an existing 16-inch ductile iron water main across the entire western frontage of the property along the east side of Eastview Drive. There is also a 24-inch / 20-inch ductile iron water main across the entire northern frontage of the property along the north side of Upper Shelbyville Road. The 24-inch main extends from the intersection to the access road for the Webb Water Treatment Plant, and the 20-inch main extends from the access road to the east. Furthermore, there are existing 8" PVC water mains within the subdivision. The water utility provider within the project vicinity is Indiana American Water Company.
2. Sanitary – There are existing 8-inch diameter sanitary sewer mains within the subdivision that are connected to an existing 15-inch diameter sanitary main along the south side of Upper Shelbyville Road. Therefore, there is sanitary sewer service readily

available to serve the development. The wastewater utility within the project vicinity is the City of Franklin.

3. Electric – There are existing underground electric facilities within the subdivision that are fed by the overhead electric facilities across both northern and western frontages of the site, along the east side of Eastview Drive and the north side of Upper Shelbyville Road. There is also an underground facility identified along the west side of Eastview Drive. Therefore, there are sufficient electric facilities readily available to serve the development. The electric utility provider within the project vicinity is Duke Energy.
4. Gas – There are existing gas mains within the subdivision that are connected to an existing 4-inch plastic gas main across the northern frontage of the property on the north side of the Upper Shelbyville Road. Therefore, there are sufficient gas facilities readily available to serve the development. The natural gas provider within the project vicinity is Vectren Energy.

## **F. HISTORIC FEATURES**

The project site does not contain any known historic features and is not included on the Indiana Historic Sites and Structures Inventory – Johnson County Interim Report.

## **G. OTHER FEATURES**

The design of the development will be influenced by the site being directly adjacent to the Hillview Country Club. Street layout will be accomplished in a manner to provide access to the existing golf course facilities. In addition, common areas will be provided to allow future pedestrian access to the golf course, and ponds will be designed to function with the existing golf course use.

## **PROPOSED DEVELOPMENT**

The proposed development is to include 130 single-family homes with all necessary street, drainage and utility infrastructure. The development will include three (3) separate sections: Village Green, Homesteads, and Windsor. There will be a total of 33 lots within the Village Green section at a density of approximately 2.60 units/acre; 31 larger-sized lots are proposed within the Homesteads section at a density of approximately 1.35 units/acre; and 66 of the proposed lots are within the Windsor section at a density of approximately 2.38 units/acre. The overall density of the entire PUD is approximately 2.05 units/acre. Refer to Exhibit C – Detailed PUD Plan.

## **A. STREET SYSTEMS**

Refer to Exhibit C – Detailed PUD Plan

The proposed internal subdivision street system will include all local classification streets with two (2) entrances. One entrance will be a boulevard entrance connecting to Eastview Drive, and the other entrance will be a boulevard entrance from Upper Shelbyville Road. A street extension into the existing golf course property will always be provided. All local streets will consist of bituminous pavement with a minimum pavement width of twenty-four (24) feet, and two (2) feet wide concrete roll curbs on each side. All proposed local streets will be contained within a minimum fifty (50) feet wide right-of-way, and will be in conformance with the City of Franklin – Parking on 1-Side Typical Street Detail.

## **B. LAND USES**

The land use of the development will be mostly single-family residential, with a companion golf course use. The Village Green section will be of the highest density and feature smaller lots for no/low maintenance residences. The minimum lot area within the Village Green section will be 8,420 sq.ft (0.193 Ac), with a maximum impervious lot coverage percentage of 67%. There will be a total of 33 lots within the Village Green section at a density of approximately 2.6 units/acre. The Homesteads and Windsor sections will be of lesser density and feature larger estate-sized lots. The minimum lot area within the Homesteads section will be 13,000 sq.ft. (0.298 Ac), with a maximum lot coverage percentage of 60%. There will be a total of 31 lots within the Homesteads section at a density of approximately 1.35 units/acre. The minimum lot area within the Windsor section will be 9,100 sq.ft. (.209 Ac), with a maximum lot coverage percentage of 67%. There will be a total of 66 lots within the Windsor section at a density of approximately 2.38 units/acre. The overall density of the entire PUD is approximately 2.05 units/acre.

## **C. OPEN SPACE**

Refer to Exhibit D – Open Space Exhibit.

The Homesteads at Hillview development will include 16.129 Ac (25.5% of the total development) of open space / common areas. These areas are spread throughout the development and can be seen on the enclosed Open Space Exhibit.

## D. LANDSCAPING

Refer to Exhibit E – Conceptual PUD Landscape Plan.

Landscaping for the development will consist of bufferyard landscaping, boulevard street landscaping, and landscaping at the entrances to the subdivision. The following landscaped areas will be provided:

- 15 ft. bufferyard with Type 1 plantings (one (1) broad-leaf deciduous canopy tree per thirty (30) feet of boundary) will be provided in a common area behind the double frontage lots on the south side of Upper Shelbyville Road.
- Landscape fencing / screening consisting of evergreen, deciduous hardwood and ornamental trees and a decorative wood panel fencing built on a post frame with a total footprint of approximately 5' wide and 6' tall, approximately 60' on center and as approved by the City of Franklin to be installed along Upper Shelbyville Road in the Common Area 8 at the back of lots 82 – 91 in Windsor, in the Common Area 8 in the back of lot 34 in Homesteads and in the Common Area behind lots 1 – 10 in Village Green.
- 15 ft. bufferyard with Type 2 plantings (one (1) broad-leaf deciduous canopy tree per twenty-five (25) feet of boundary) will be provided in a common area behind the double frontage lots on the east side of Eastview Drive, that are also north of Homestead Boulevard.
- 30 ft. bufferyard with a four (4) feet tall undulating earthen mound and a row of evergreen conifers at one (1) evergreen tree per ten (10) feet of boundary will be provided in common areas behind the double frontage lots on northside of Homestead Boulevard.
- 20 ft. bufferyard with a three (3) feet tall undulating earthen mound and a row of evergreen conifers at one (1) evergreen tree per ten (10) feet of boundary will be provided in the common area behind the double frontage lots within the Village Green section of the development (Lots 26-33).
- The medians of both boulevard entrances into the development will be landscaped with one (1) non-fruit bearing, ornamental canopy tree per fifty (50) feet of median.
- Both entrances will also include additional landscaping around the proposed development signage.
- Street tree landscaping requirements for all internal streets within the development will be satisfied by the following individual lot landscaping requirements that will be completed as the development is built out. No street tree plantings will be required along Eastview Drive and Upper Shelbyville Road. Each lot is required to have a minimum planting requirement of the following:

- Front and Side Yard\*\*

2 Deciduous Shade Trees

2 – 2-1/2" caliper

1 Flowering Tree	1 – 1-1/2” caliper
3 Conifer Trees	6 – 8’ height
6 Shrubs	3 – 4’ height
10 Shrubs	18 – 24” spread

\*\* Two (2) of the required deciduous tree plantings above shall be located in the front yard of each lot, at a maximum distance of ten (10) feet from the Right-of-Way.

- Landscaping will also be provided by existing trees, as healthy, mature trees within common areas on both sides of the northern boulevard entrance from Upper Shelbyville Road, and within the common area at the southeast corner of the Eastview Drive and Upper Shelbyville Road intersection that can be preserved by the project, will be preserved.
- Landscape fencing / screening consisting of evergreen, deciduous hardwood and ornamental trees and a decorative wood panel fencing built on a post frame with a total footprint of approximately 5’ wide and 6’ tall, approximately 60’ on center, to be installed on both sides of the walkway in the easement connecting the Windsor Section and the Franklin Greenway Trails between lots 77 and 78.
- All landscaping, including tree/shrub plantings and berms/mounding, will be installed in compliance with Chapter 7 of the City of Franklin Zoning Ordinance. Tree selection shall be in conformance with the “Qualifying Broad Leaf / Deciduous Trees List” and “Non-Qualifying Trees List” within Section 7.16 of the City of Franklin Zoning Ordinance.

## **E. NATURAL FEATURES**

As discussed in the existing site conditions section, a small portion of the site at the southeast corner of the Eastview Drive and Upper Shelbyville Road intersection lies within Zone ‘AE’, special flood hazard areas subject to inundation by the 1% annual chance flood, with base flood elevations determined. This area of the site will be maintained and the contours will be unaltered. Any asphalt path installation in this area will be constructed to not negatively impact the 100-year flood elevation. Any off-site drainage areas will be managed by the development’s proposed drainage facilities. Lastly, common areas will be provided to protect all possible existing trees.

## **F. HISTORIC FEATURES**

The existing project site does not contain any historic features, and is not included on the Indiana Historic Sites and Structures Inventory – Johnson County Interim Report; therefore, no accommodations are required for the proposed development.

## **G. DEVELOPMENT REQUIREMENTS**

### **LOT STANDARDS:**

#### **VILLAGE GREEN**

Min. Lot Area = 8,420 sq.ft.

Max. Lot Area = N/A (same as RS-1 standards)

Min. Lot Width (*measured at front setback line*) = 57.66' = 57'

Max. Lot Depth = N/A (same as RS-1 standards)

Max. Lot Coverage = 67%

Min. Front Yard Setback = 20' when adjacent to a Local Street (same as RS-1 standards)

Min. Side Yard Setback = 5' (primary structure) / 5' (accessory structure)

Min. Rear Yard Setback = 15' (primary structure) / 5' (accessory structure)

Min. Living Area per Dwelling = 1,700 sq.ft.

Max. Primary Structures per Lot = 1 (same as RS-1 standards)

Max. Height for Primary Structures = 48' (same as RS-1 standards)

#### **HOMESTEAD**

Min. Lot Area = 13,000 sq.ft.

Max. Lot Area = N/A (same as RS-1 standards)

Min. Lot Width (*measured at front setback line*) = 63.81' = 63'

Max. Lot Depth = N/A (same as RS-1 standards)

Max. Lot Coverage = 60% (Calculations shown below)

Min. Front Yard Setback = 20' when adjacent to a Local Street (same as RS-1 standards)

Min. Side Yard Setback = 10' (primary structure) / 5' (accessory structure)

Min. Rear Yard Setback = 25' (primary structure) / 5' (accessory structure)

Min. Living Area per Dwelling = 1,800 sq.ft.

Max. Primary Structures per Lot = 1 (same as RS-1 standards)

Max. Height for Primary Structures = 48' (same as RS-1 standards)

#### **WINDSOR**

Min. Lot Area = 9,100 sq.ft.

Max. Lot Area = N/A (same as RS-1 standards)

Min. Lot Width (*measured at front setback line*) = 70'

Max. Lot Depth = N/A (same as RS-1 standards)

Max. Lot Coverage = 67% (Calculations shown below)

Min. Front Yard Setback = 20' when adjacent to a Local Street (same as RS-1 standards)

Min. Side Yard Setback = 7.5' (primary structure) / 5' (accessory structure)

Min. Rear Yard Setback = 20' (primary structure) / 5' (accessory structure)

Min. Living Area per Dwelling = 1,700 sq.ft.

Max. Primary Structures per Lot = 1 (same as RS-1 standards)

Max. Height for Primary Structures = 48' (same as RS-1 standards)

## **LIGHTING STANDARDS:**

Street lighting for the development shall be in accordance with Section 7.18 of the City of Franklin Zoning Ordinance, the Homesteads at Hillview Rules and Regulations, and the Guidelines for Architectural Approval and Construction. Refer to Exhibit C – Detailed PUD Plan for a typical layout of street lighting throughout the development. Actual locations of street lighting may be revised as detailed construction plans for the developed are completed. Refer to Exhibit F – Street Lighting Examples for typical street lights for the development.

## **SIGNAGE STANDARDS:**

Signage for the development shall be in accordance with the PUD Ordinance 2014-\_\_\_\_, Homesteads at Hillview Rules and Regulations, the Guidelines for Architectural Approval and Construction, and if not covered within these documents, Article 8 of the City of Franklin Zoning Ordinance . Signage for the development shall consist of entry signage for the development on the northside of Homestead Boulevard at the intersection of Eastview Drive and on both sides of Meadowbrook Lane at the intersection of Upper Shelbyville Road. The signs may be a maximum of eight (8) feet in height and a maximum of forty-eight (48) square feet per entry sign. Also, there will be neighborhood marker posts for signage of the three (3) sections of the development, and street signage throughout the development. Refer to Exhibit C – Detailed PUD Plan for a typical layout of signage throughout the development. Actual signage locations and quantities may be revised as detailed construction plans for the developed are completed. Refer to Exhibit G – Signage Examples for typical entry signs, neighborhood marker posts, and street signage for the development.

## **H. WRITTEN COMMITMENTS**

Copies of the recorded Declaration of Covenants and Restrictions of Homesteads at Hillview Subdivision, First Amendment to Declaration of Covenants and Restrictions of Homesteads at Hillview Subdivision and the draft copy of the Second Amendment of Declaration of Covenants and Strictions of Homesteads at Hillview Subdivision are included within Exhibit H.

## **I. COVENANTS**

See Paragraph H, above, and the attachment at Exhibit H.

## **J. DRAINAGE**

Stormwater quantity and quality requirements of Section 6.19 of the City of Franklin Subdivision Control Ordinance will be satisfied by the installation of three (3) on-site wet detention ponds with restrictive outlet control measures. All on-site impervious areas will

be routed to, and treated by, the proposed ponds. All ponds will have an ultimate discharge into existing, working outlet points, including two (2) existing road culverts and an existing roadside ditch. To achieve water quantity detention standards, the pond and associated outlet structure will be sized to restrict the peak discharge rate of the 10-year post-developed storm to the peak 2-year pre-developed rate, and the peak discharge rate of the 100-year post-developed storm to the peak 10-year pre-developed rate. In addition, to achieve water quality standards, the ponds will also be designed to detain, for over 24 hours after the peak runoff from a 24-hour storm, at least 20% of the runoff from either a 1-1/4 inch rainfall depth storm or 1/2 inch direct runoff, whichever is greater. Please refer to the Preliminary Stormwater Calculations included within the Primary Plat submittal for all detention and water quality modeling and calculations. The wet detention ponds have been preliminarily designed to meet all requirements of Section 6.19, G and H of the Franklin SCO. Additionally, the on-site storm sewer will be designed in accordance with Section 6.19, A, C, E and F. The following is a summary indicating that the post-developed discharge rates from the development will be less than the allowable release rates, per the Franklin SCO:

**ALLOWABLE DISCHARGE RATE**

Allowable Discharge Rate for the 10-year post-development storm = **25.97 cfs**

Allowable Discharge Rate for the 100-year post-development storm = **76.39 cfs**

**TOTAL POST-DEVELOPED DISCHARGE RATE**

Post-Developed 10-Year Discharge Rate = **22.80 cfs** < 25.97 cfs (allowable)

Post-Developed 100-Year Discharge Rate = **57.94 cfs** < 76.39 cfs (allowable)

**K. PROJECT PHASING**

Refer to Exhibit J – Preliminary Phasing Plan.

Market conditions at the time of construction commencement of the Homesteads at Hillview development will dictate the order of development. However, it is anticipated that Phase #1 of the development will include the entire Village Green section (Lots 1-33); a portion of the Homesteads section (Lots 34 – 49); the connection of Meadowbrook Lane to Upper Shelbyville, Road, Detention Pond #1; and all associated street and utility infrastructure. Next, it is anticipated that Phase #2 of the development will include the remainder of the lots within the Homesteads section (Lots 50 – 64); the connection of Homestead Boulevard to Eastview Drive; Detention Ponds #2 & #3; and all associated street and utility infrastructure. Lastly, it is anticipated that Phase #3 will include the entire Windsor section and all associated street and utility infrastructure.

## **SUPPLEMENTAL INFORMATION**

### **A. TREE PRESERVATION**

All existing, healthy, mature trees that can be preserved by the project will be preserved. Specifically, tree preservation limits will be provided on both sides of the proposed entrance from Upper Shelbyville Road. There are multiple mature trees that are located within this area that previously surrounded the former residences. Also, tree preservation limits will be provided at the southeast corner of the Eastview Drive and Upper Shelbyville Road intersection. These preservation limits will be protected by platted common areas.

### **B. FLOOD HAZARDS**

As discussed in the existing site conditions section, a small portion of the site at the southeast corner of the Eastview Drive and Upper Shelbyville Road intersection lies within Zone 'AE', special flood hazard areas subject to inundation by the 1% annual chance flood, with base flood elevations determined. The site will be designed so that the existing contours will be unaltered within the floodplain area, or the storage volume within the floodplain will be maintained. Any filling necessary to install the required asphalt path in this area will be accomplished without raising the regulatory flood elevation by more than 0.1 feet.

### **C. ARCHITECTURAL DESIGN STANDARDS**

Proposed architectural design standards for the Homesteads at Hillview development are as follows:

#### Residential Features and Standards

- Minimum Living Area per Unit:

#### **VILLAGE GREEN –**

1700 square feet for a ranch style

2000 square feet in the aggregate for a multi-story residence but no less than 1200 square foot on the ground floor

#### **HOMESTEAD –**

1800 square feet for a ranch style

2200 square feet in the aggregate for a multi-story residence but no less than 1400 square feet on the ground floor

**WINDSOR–**

1700 square feet for a ranch style

2000 square feet in the aggregate for a multi-story residence but no less than 1200 square feet on the ground floor

- Fence, Hedge & Wall Standards

Except for the landscape fencing / screening provided for in the common area Landscape Plan (Exhibit E), all fence, hedge and wall standards shall be in accordance with Section II.1 – FENCES, WALLS, and SCREENING of Exhibit K - Guidelines for Architectural Approval and Construction, and all Homesteads at Hillview Rules and Regulations

- Garage:

No less than a two-car garage.

All garages with vehicle entrances (garage doors) that face a public street on which the lot has frontage shall not be required to have a minimum or maximum distance offset behind the setback provided by the living area of the residence. Garages will be permitted to be offset either in front of, or behind, the living area of the residence.

- Entry Porches:

There shall be no required minimum or maximum length or depth of entry porch for all dwelling units within the development.

- Primary Roof Pitch for New Residences –

8/12 minimum for traditional architectural styles; 4/12 minimum for modern architectural styles which requires approval of the ACC.

- Exterior Materials –

Brick, stone, cedar, EIFs, hardy plank and dimensional fiberglass shingles consistent in earthen tone coloration and otherwise with the projects interior theme of a custom themed community.

Refer to Exhibit K - Guidelines for Architectural Approval and Construction for additional architectural requirements for the development.

## **EXHIBIT SCHEDULE**

- **EXHIBIT A** – Topographic Survey
- **EXHIBIT B** – ALTA / ACSM Survey
- **EXHIBIT C** – Detailed PUD Plan
- **EXHIBIT D** – Open Space Exhibit
- **EXHIBIT E** – Detailed PUD Landscape Plan
- **EXHIBIT F** – Street Lighting Examples
- **EXHIBIT G** – Signage Examples
- **EXHIBIT H** – Homesteads at Hillview Declaration of Covenants and Restrictions, First Amendment to Declaration of Covenants and Restrictions and draft of Second Amendment to Declaration of Covenants and Restrictions.
- **EXHIBIT I** – **DELETED**
- **EXHIBIT J** – Preliminary Phasing Plan
- **EXHIBIT K** – Guidelines for Architectural Approval and Construction
- **EXHIBIT L** – **DELETED**

➤ **EXHIBIT A** – Topographic Survey

TOPOGRAPHICAL NOTES	
1.	CONTRACTOR SHALL DISPOSE OF ALL MATERIALS IN ACCORDANCE WITH FEDERAL, STATE, AND LOCAL REGULATIONS.
2.	UTILITIES PROVIDE GRAPHIC REPRESENTATION FOR SURVEY AND MAPPING. CONTRACTOR SHALL FIELD VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION.
3.	ALL UTILITIES AND SEWER SYSTEMS SHALL BE ABANDONED FOR ALL FEDERAL, STATE, AND LOCAL REGULATIONS. A REPRESENTATIVE FROM THE ARIZONA COUNTY HEALTH DEPARTMENT SHALL BE PRESENT DURING REMOVAL OPERATIONS. CONTRACTOR SHALL BE RESPONSIBLE FOR ALL HAZARDOUS MATERIAL TESTING AND REMOVAL (IF DEEMED NECESSARY) FOR THE EXISTING STRUCTURES.
4.	CONTRACTOR SHALL COORDINATE WITH APPLICABLE UTILITY COMPANIES FOR SERVICE DIS-CONNECTIONS.

**FLOODPLAIN INFORMATION**

THE PROPERTY PLOTS BY SCALE AS BEING IN ZONE "A" & "X" OF THE FLOOD INSURANCE RATE MAP (FIRM) FOR JOHNSON COUNTY, INDIANA, COMMUNITY PANEL NO. 15001 C 02320 AND 02320, DATED AUGUST 2, 2007. THE ACCURACY OF ALL FLOOD HAZARD DATA SHOWN ON THIS PROJECT IS SUBJECT TO MAP SCALE UNCERTAINTY AND TO ANY OTHER UNCERTAINTY IN LOCATION OF ELEVATION ON THE RECORDED FLOOD INSURANCE RATE MAP.

## BENCHMARK INFORMATION

**REMARKS** - ON 4" BURNING ALUMINUM PLATE (SEE ELEVATION 7260000) AT  
 14 JOHNSON COUNTRY, FARMINGTON QUADRANGLE, IN THE SOUTHWEST QUARTER OF SECTION 14,  
 TOWNSHIP 12 NORTH, RANGE 6 EAST, SEVENTH PRINCIPAL MERIDIAN; AT FARMHOUSE, 0.25 NORTH ALONG FORESTY STREET FROM ITS  
 INTERSECTION WITH STATE ROAD A-10 (SEE ELEVATION 7260000) ON THE SOUTHWEST CORNER  
 SUPPORT OF THE ELECTRIC POWER LINE OFF TOWER, 0.62 NORTH EAST OF THE CENTERLINE OF FORESTY STREET,  
 50 FEET SOUTH OF HUMPHRIS CREEK, 1.6 FEET NORTH THE GROUND, AN IRON PLAIN FLOOD CONTROL, AND WATER  
 RESISTANCE COMBINED BRASS CONTROL, SECTION TABLE, SHIPPED "ON 4"

**UTM**  
 10E 490K 561 IN SOUTH SIDE OF PORTERVILLE 40E (990600) ELEV=744.30

**UTM**

NW SPICE SET IN SOUTHWEST SIDE OF POWERPOLE UP  $\pm 1.0'$  SQUARE METAL TAG SAYS "PUBLIC SERVICE CO. OF  
 MD." (PP#220876) ELEV.=728.18  
 TMA#202  
 NW SPICE SET IN NORTH SIDE OF POWERPOLE UP  $\pm 1.0'$  TAG SAYS "HE NEEDHAM JCT #2" (PP#225408)  
 ELEV.=738.65

[illegible][illegible]

Curve #	Length	Radius	Chord Direction	Chord Len
C1	83.24'	259.85'	N60°W32°W	82.86'
C2	482.02'	865.07'	N19°24'35"W	458.55'
C3	370.48'	2138.38'	N48°36'22"E	370.02'

[illegible]

THESE PLANS ARE BASED UPON INFORMATION FROM AN ALTA/ACSM LAND TITLE SURVEY PERFORMED BY COW LAND SURVEYING, INC. WITH WORK ORDER NO. 130100 AND DATED JUNE 7, 2013 AND SURVEY INFORMATION PROVIDED BY JERRY WIGGINS SURVEYING.

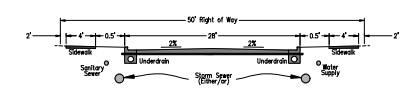
EXISTING UTILITY SIZE AND MATERIAL INFORMATION SHOWN ON THESE PLANS ARE, PER THE BEST GRAPHICAL AND VISIBLE INFORMATION AVAILABLE. CONFLICTS MAY EXIST AND IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO FIELD VERIFY ALL SIZING AND MATERIAL INFORMATION PROVIDED. IF ACTUAL CONDITIONS DIFFER FROM THAT INFORMATION SHOWN ON THE PLANS, THE CONTRACTOR SHALL, PRIOR TO THE INSTALLATION

**"IT'S THE LAW"**  
CALL 2 WORKING DAYS BEFORE YOU SEE  
1-800-382-5544 or 811  
CALL TOLL FREE  
FOR INDIANA STATE LAW IS 45-1001. IT IS AGAINST THE LAW  
TO EXERCISE WITHOUT NOTIFYING THE UNDERGROUND LOCATIONS  
SERVICE TWO (2) WORKING DAYS BEFORE COMMENCING WORK.

➤ **EXHIBIT B – ALTA / ACSM Survey**



➤ **EXHIBIT C** – Detailed PUD Plan



PARKING 1-SIDE DETAIL		
NOT TO SCALE		
Pavement Requirements	Local Street	Collector Street
	Residential	Primary
Asphalt		
HMA Surface	1.5 Inches	1 inch
HMA Binder	3.5 Inches	2 Inches
HMA Base		6 inches
Compacted Aggregate #5.3 Base	8 Inches	8 Inches
Total Thickness	13 Inches	17 Inches

**FUNCTIONAL CLASSES**

Collector Streets : Eastview Drive  
Upper Shelbyville Road

Local Streets : Foxberry Court  
Meadow Pond Court  
Homestead Boulevard  
Mill Pond Lane  
Meadowbrook Lane  
Evergreen Lane  
Beechtree Lane  
Mill Pond Court  
Fairview Court

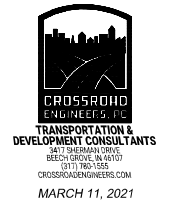
A PART OF THE SOUTHEAST QUARTER OF SECTION 12,  
AND A PART OF THE NORTHEAST QUARTER OF  
SECTION 13, ALL IN TOWNSHIP 12 NORTH, RANGE 4  
EAST OF THE SECOND PRINCIPAL MERIDIAN, IN  
JOHNSON COUNTY, INDIANA

[illegible]

**TREE PRESERVATION NOTE**  
ALL EXISTING, HEALTHY, MATURE TREES LOCATED WITHIN  
COMMON AREA THAT CAN BE PRESERVED BY THE PROJECT  
SHALL BE PRESERVED.

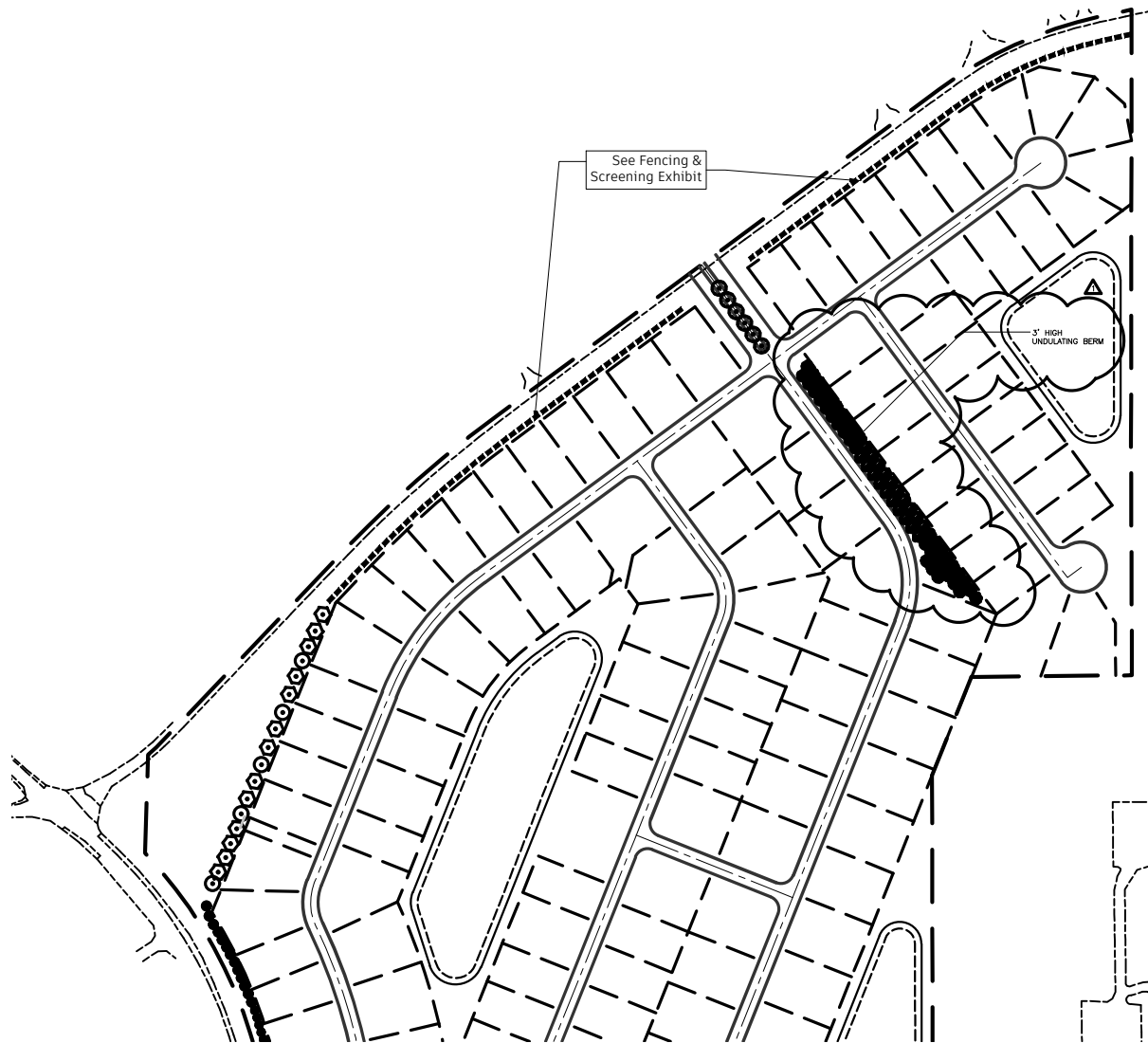
Curve #	Length	Radius	Chord Direction	Chord Length
C1	462.02'	865.00'	N19°24'35"W	456.55'
C2	370.48'	2136.39'	N48°36'22"E	370.02'
C3	323.40'	772.90'	N65°33'41"E	321.05'
C4	65.96'	850.00'	N01°57'25"W	65.96'

PREPARED BY:



➤ **EXHIBIT D – Open Space Exhibit**

➤ **EXHIBIT E** – Detailed PUD Landscape Plan



#### LANDSCAPE NOTES:

1. THE GENERAL CONTRACTOR IS RESPONSIBLE FOR REMOVING ALL VEGETATION AND LEAVING ALL LANDSCAPE AREAS AT TWO INCHES BELOW FINAL GRADE, EXCEPT FOR THE DETENTION POND AREA. GENERAL CONTRACTOR IS RESPONSIBLE FOR BRINGING THE POND AREA TO FINAL GRADE. THE LANDSCAPE CONTRACTOR WILL PROVIDE AND SPREAD A COMPACTED TWO INCH DEPTH OF LOAMY TOPSOIL IN ALL TURF AREAS - BRINGING THESE AREAS TO TOP OF CURB/FINAL GRADE (COMPACTED). THE LANDSCAPE CONTRACTOR WILL PROVIDE AND INSTALL A FOUR INCH DEPTH OF PLANTING MIX TO ALL PLANTING BEDS - CROWNING FOR PROPER DRAINAGE. (SEE SPECIFICATIONS FOR MORE DETAILED INSTRUCTION ON TURF AREA AND PLANTING BED PREPARATION.)
2. A THREE INCH DEPTH OF SHREDED HARDWOOD BARK MULCH WILL BE USED AS A TOPDRESSING FOR ALL PLANTING BEDS AND TREE RINGS.
3. LANDSCAPE CONTRACTOR SHALL MAKE OWN PLANT QUANTITY TAKEOFFS USING DRAWINGS, SPECIFICATIONS AND PLANT SCHEDULE. PLANT SCHEDULE REQUIREMENTS (I.E. SPACING) DICTATE, UNLESS OTHERWISE DIRECTED BY THE LANDSCAPE DESIGNER. LANDSCAPE CONTRACTOR TO VERIFY BED MEASUREMENTS AND INSTALL APPROPRIATE QUANTITIES AS GOVERNED BY THE PLANT SPACING PER THE SCHEDULE. ENSURE ALL MINIMUM REQUIREMENTS OF THE LOCAL GOVERNING AUTHORITY ARE MET (I.E. MINIMUM PLANT QUANTITIES).
4. NO SUBSTITUTIONS OF PLANT MATERIALS WILL BE ALLOWED. IF PLANTS ARE NOT AVAILABLE, THE LANDSCAPE CONTRACTOR SHALL NOTIFY THE LANDSCAPE DESIGNER IN WRITING (VIA PROPER CHANNELS). PLANTS MAY BE INSPECTED AND APPROVED OR REJECTED ON THE JOBSITE BY THE OWNER OR THE OWNER'S REPRESENTATIVE.
5. LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR THE LANDSCAPE MAINTENANCE OF THIS PROJECT UNTIL FINAL ACCEPTANCE. TURF AREAS WILL NOT BE ACCEPTED UNTIL THEY ARE AT A MINIMUM OF 1-1/2 INCHES TALL, AND NO BARE AREAS LARGER THAN 12 SQUARE INCHES.

#### LANDSCAPE LEGEND

##### SMALL TREES

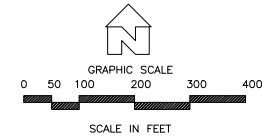
- SNOWDRIFT CRABAPPLE
- MALUS 'SNOWDRIFT'
- 2-1/2" CALIPER
- EASTERN REDBUD
- CERCIS CANADENSIS
- 2-1/2" CALIPER

##### EVERGREEN TREES

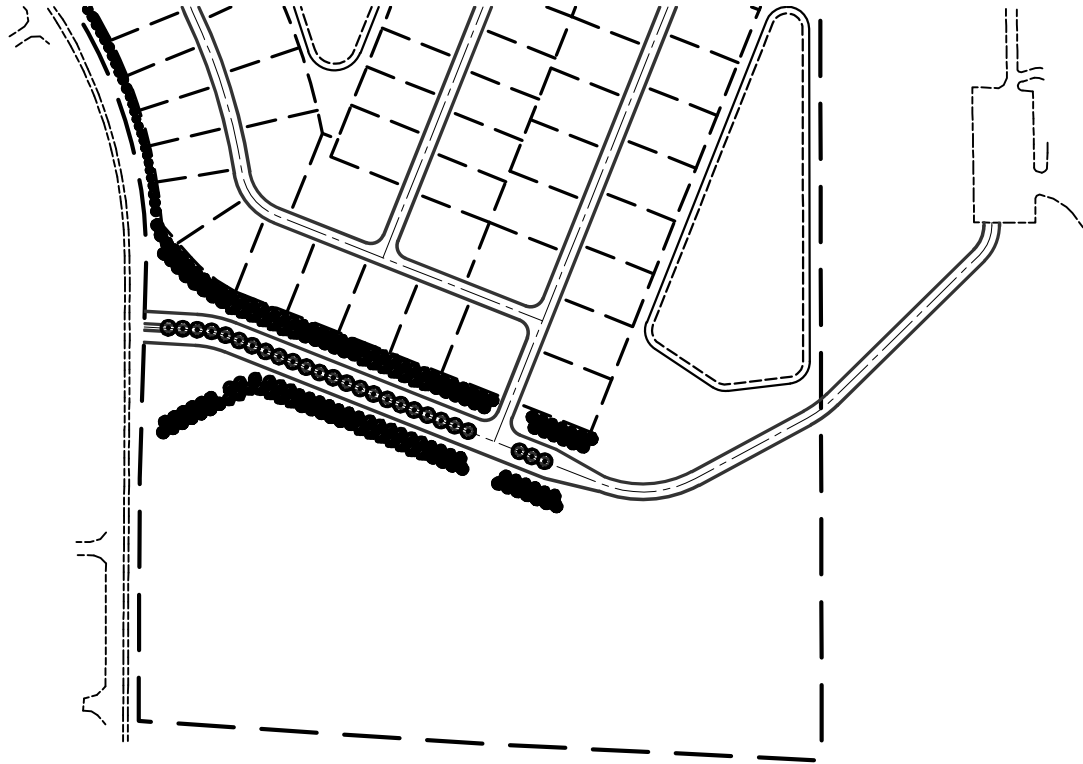
- ▲ LACEBARK PINE
- ▲ PINUS BUNGEANA
- ▲ 5' HEIGHT
- ▲ BLACK HILLS SPRUCE
- ▲ PICEA GLAUCA VAR. DENSATA
- ▲ 5' HEIGHT

##### LARGE TREES

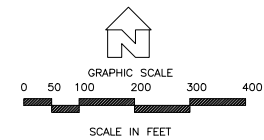
- 'RED SUNSET' RED MAPLE
- ACER RUBRUM 'RED SUNSET'
- 2-1/2" CALIPER
- 'ACCOLADE' ELM
- ULMUS JAPONICA X WILSONIANA 'MORTON'
- 2-1/2" CALIPER
- LAUREL OAK
- QUERCUS HEMISPHERICA
- 2-1/2" CALIPER



		<b>CONCEPTUAL PUD LANDSCAPE PLAN</b>		<b>HOMESTEADS AT HILLVIEW</b>	
		JOB No. _____		DATE/OCTOBER 14, 2013	
PREP THE COMMENTS - ADDED LANDSCAPE TREES AND BERM REVISIONS		DESIGNED CJ	CHECKED LUC	APRR. CJ	EIR CJ
12/2/13 DATE		DESIGNED CJ	CHECKED LUC	APRR. CJ	EIR CJ
SHEET 701					



- LANDSCAPE LEGEND**
- SMALL TREES**
- SNOWDRIFT CRABAPPLE
  - MALUS 'SNOWDRIFT'
  - 2-1/2" CALIPER
  - EASTERN REDBUD
  - CERCIS CANADENSIS
  - 2-1/2" CALIPER
- EVERGREEN TREES**
- LACEBARK PINE
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  - 5' HEIGHT
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  - 2-1/2" CALIPER
  - LAUREL OAK
  - QUERCUS HEMISPHERICA
  - 2-1/2" CALIPER





**CONCEPTUAL PUD  
LANDSCAPE PLAN**

**HOMESTEADS AT HILL VIEW**

JOB No.	DATE/NOVEMBER 14, 2013	DRAWN	CHECKED	APP. C.J.	DESIGNED	BY

**EVERGREEN  
DESIGN GROUP**

Landscape Designers & Consultants

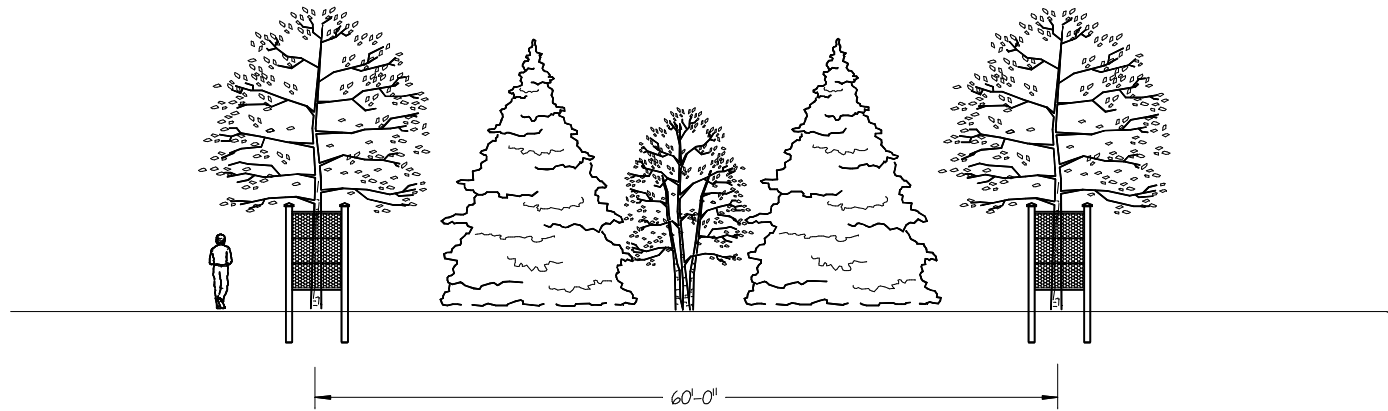
1 (800) 681-6630  
519 881-9010, Ste. 124  
Rockville, TN 37087  
www.evergreendesigngroup.net

REV	BY	DATE	DESCRIPTION
1	ADP	12/2/13	FOR THE COMMENTS - ADDED LANDSCAPE TREES AND SEW
2	ADP	12/2/13	REVISED
3	ADP	12/2/13	REVISED
4	ADP	12/2/13	REVISED
5	ADP	12/2/13	REVISED
6	ADP	12/2/13	REVISED
7	ADP	12/2/13	REVISED
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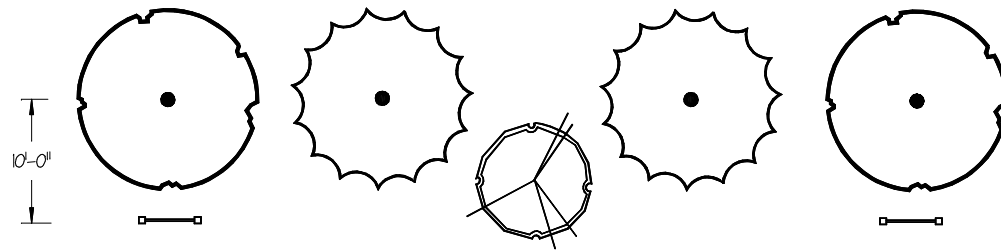
SHEET 702



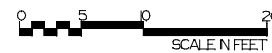
ELEVATION




PLAN



FENCING SCREENING AREA



NOTE: THIS DRAWING IS A GRAPHICAL REPRESENTATION OF THE DESIGN AND LOCATION OF MATERIALS AND MAY NOT REPRESENT ACTUAL SIZE OF MATERIALS USED

 <b>DESIGNSCAPE</b>		HILLVIEW	
		client: scale: 1"=10' drawn by: DJW	date: 3-10-21 checked by:

➤ **EXHIBIT F** – Street Lighting Examples

# Post Top Luminaire – Acorn Shaped

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This luminaire is referred to as an acorn because it is shaped similar to the small acorn that is produced by the oak tree.

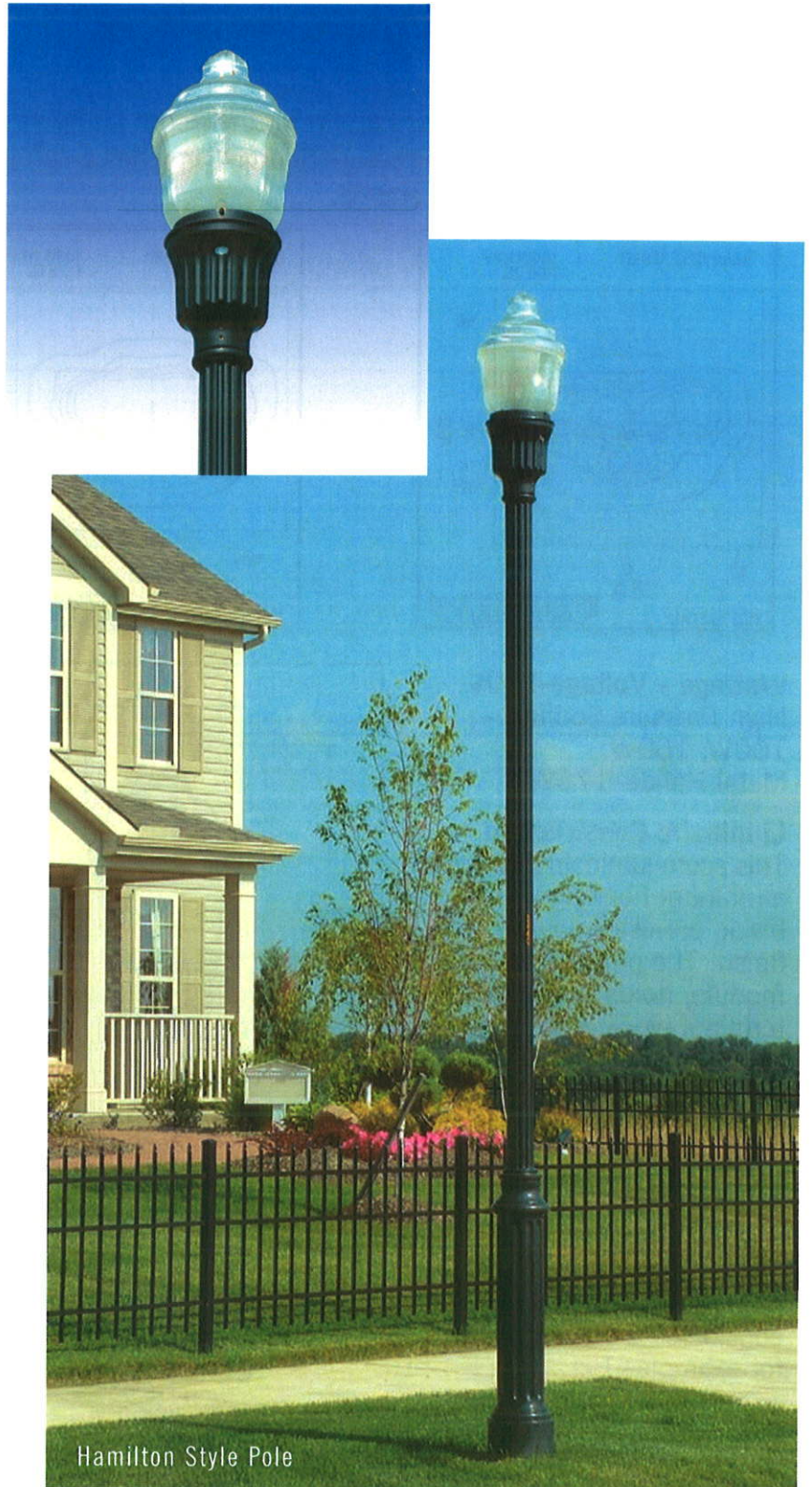
This acorn shaped luminaire features a glass globe with prismatic ridges for precision photometrics and efficient lighting pattern output .

When this luminaire is mounted on a decorative pole it suggests an elegant and historical era that enhances the theme of a lighting area during both the daytime and nighttime hours.

Today this bygone era can be recaptured with the convenience of electricity and automatic controls for the lighting hours. Current technology allows the lighting output to be more energy efficient, reliable and effective than it has ever been.

The poles used for mounting this luminaire resemble the styles of the past...while producing an aesthetic appearance with practicality and durability.

Two different anchor base, foundation mounted, decorative aluminum poles are being offered for this luminaire. Both poles have fluted shafts but each has a unique shape on the lower portion. They each have a 12 foot shaft length which results in a 13 foot luminaire mounting height from ground level.



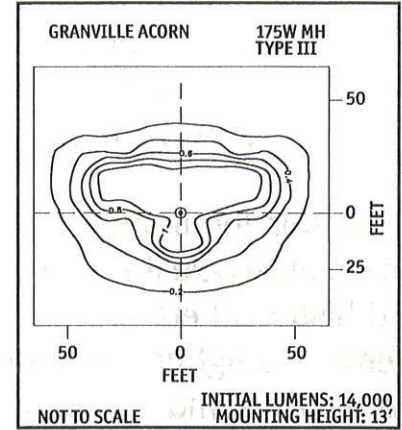
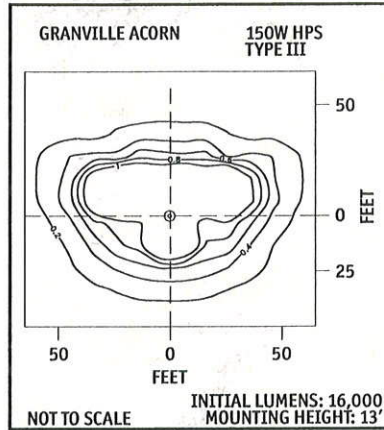
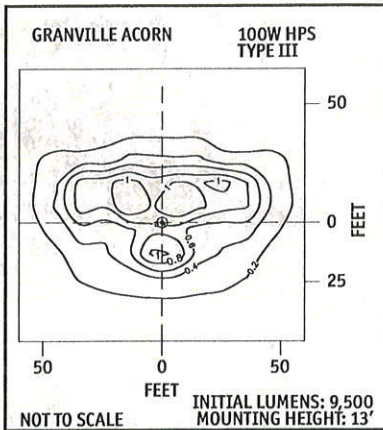
# Post Top Luminaire – Acorn Shaped

## Application

This post top mounted luminaire is used in residential subdivisions, apartment or condominium complexes, downtown pedestrian areas, city parks, river walks, etc.

## Photometrics

Lighting Output Distribution or Pattern for the Acorn Luminaire- The pole is located where the two center lines intersect. HPS or High Pressure Sodium provides a soft golden yellow light while the MH or Metal Halide provides a white light source.



## Wattage – Voltage-120V

High Pressure Sodium – 100W, 150W  
Metal Halide–175W

## Luminaire Construction

This acorn luminaire has cast aluminum housing with black, polyester, powder coat finish. The pull out power module, holds the ballast, terminal block, and plug-in starter, along with the hidden twistlock photocontrol, which uses a small window to measure outside light for off and on control.

## Photometrics

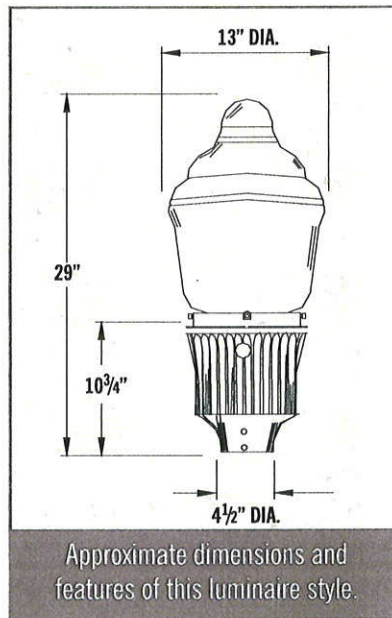
The most common photometric pattern for this luminaire is Type III and this is considered a semi-cutoff off. (See above photometric patterns for examples.)

## Mounting

This luminaire mounts directly onto a three- inch diameter tenon at the top of the pole.

## Installation

This lighting equipment is installed with underground conductor and electrical facilities.



➤ **EXHIBIT G** – Signage Examples













- **EXHIBIT H** – Homesteads at Hillview Declaration of Covenants and Restrictions, First Amendment to Declaration of Covenants and Restrictions and draft of Second Amendment to Declaration of Covenants and Restrictions.



Doc ID: 007281930041 Type: MIS  
Kind: DECLARE COVENANT RESTRICT  
Recorded: 06/12/2015 at 12:43:50 PM  
Fee Amt: \$93.00 Page 1 of 41  
Workflow# 0000106113-0001  
Johnson County-Recorded as Presented  
Jill L. Jackson County Recorder

File **2015-013029**

41

**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
HOMESTEADS AT HILLVIEW SUBDIVISION  
(Village Green, Homestead and Preserve)**

This Declaration of Covenants and Restrictions of Homesteads at Hillview "Community" ("Declaration") is made this 10 day of June, 2015, by John E. Grimmer Living Trust dated September 10, 2006, by John E. Grimmer, Trustee, and Homestead Developers, LLC, by John E. Grimmer, Member (collectively "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the Owner of real estate in City of Franklin, Johnson County, State of Indiana, which is more particularly described in **Exhibit "A"** attached hereto and hereby incorporated herein by reference (hereinafter referred to as the "Real Estate" or the Homesteads at Hillview Subdivision); and

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with public streets, drainage retention areas (either by Common Areas or easement), a landscaped area and identification signage fronting Eastview Drive and Upper Shelbyville Roads, and landscaping appointments within the right-of-way of the splitter island design at the entrances of Homesteads at Hillview for the benefit of such residential community, to be known as "Homesteads at Hillview Subdivision";

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values in such community and the Common Areas and common maintenance areas therein contained, and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, restrictions, easements according to the procedure set out in Article XII, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each Owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values in said community, to create an agency to which shall be delegated and assigned the powers of supervising, maintaining and administering any Common Areas and common maintenance areas located on the Real Estate, administering and enforcing the covenants and restrictions contained

in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the Owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the Indiana Code 23-17-1, et seq., under the name "Homesteads at Hillview Homeowners Association, Inc." or a similar name, such as agency for the purpose of exercising such functions:

NOW, THEREFORE, Declarant as owner of the Real Estate and any Additional Property which is hereafter made subject to this Declaration hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

## **RECITALS**

The Recitals are incorporated herein as if set out in full.

## **ARTICLE I DEFINITIONS**

**Section 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:

- (a) "Act" shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended;
- (b) "Applicable Date" shall mean and refer to the date determined pursuant to Article VI, Section 2(b) of this Declaration;
- (c) "Applicable Date or Declarant Turnover Date" refers to the time at which the Declarant relinquishes control of the governance of the Association as detailed on Article VI.
- (d) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time;
- (e) "Association" shall mean and refer to Homesteads at Hillview Homeowners Association, Inc., an Indiana corporation organized under Indiana Code 23-17-1, et seq., which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns;

- (f) "Board" or "Board of Directors" shall mean and refer to the governing body of the Association elected, selected or appointed as provided for the Articles, Bylaws and this Declaration.
- (g) "Bylaws" shall mean and refer to the Code of Bylaws of the Association, as the same may be amended from time to time;
- (h) "Committee" shall mean and refer to the "Homesteads at Hillview Architectural Control Committee", the same being the committee or entity established pursuant to Article XI of this Declaration for the purposes herein stated;
- (i) "Common Areas" – reference is made to the Preliminary Plat which is attached hereto as **Exhibit "B"** and Detailed PUD Plan for the Homesteads at Hillview project, which is attached hereto as **Exhibit C** and made a part hereof.

At Homestead Common Area #6 and Pond are interior to Lots 44-46 and Hillview Country Club Golf Course; Village Green Common Area #2 and Pond, are interior to Lots 11-23 are inclusive and are not general Common Areas but limited area for the use of the Lot Owners and guests and invitees of these specific lots that surround these noted ponds, and which are a part of the drainage system of the entire subdivision.

As respects the Ponds herein detailed are located in an easement as hereafter detailed, "NEITHER THE DECLARANT OR THE ASSOCIATION MAKE ANY REPRESENTATION THAT ANY CERTAIN LEVEL OF WATER WILL BE MAINTAINED IN THE PONDS." The exclusive use of the designated Pond by the designated owners, their guests and invitees is, however, subject to Association rules, regulations and restrictions and subject to access by the Declarant, the Association and authorities who oversee surface water drainage, with the former requiring access to comply with their obligation of upkeep, maintenance and repair.

Homestead Boulevard runs through The Homesteads and into the Hillview Country Club. Homestead Boulevard may be used by Owners and their guests for ingress/egress, as well as visitors and members of the Hillview Country Club as an entrance to the Country Club. In addition, there shall be a cross walk and/or cross path allowing golf carts ingress/egress and/or pedestrian traffic to cross the road for access to Hillview Country Club golf course hole #11.

Homestead Common Area #6 contains a tee box, pond and golf cart drive which the members and guests of Hillview Country Club are permitted to use for ingress/egress to adjacent golf course hole #11 pursuant to that certain easement as (or to be) recorded with the Recorder of Johnson County, Indiana.

- (j) "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of the Common Areas [subsection (i)] and the Common Maintenance Areas [subsection (k)], and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses now declared by this Declaration to be Common Expenses. The Common Expenses arise out of and concern, but are not limited to the following:
- (k) "Common Maintenance Areas" This definition refers to easement areas within the subdivision, some of which are within or outside platted lot, with others located within dedicated street right-of-way by virtue of encroachment permits.

Reference is made to the Conceptual Plan. **Exhibit B**, for the details of these areas.

Ponds – The Ponds are within an easement that is also part of the surface water drainage system of the entire subdivision. The use of these Ponds is limited to the owners and guests and invitees of these specific lots noted but subject in like manner to rules, regulations, restrictions, access and maintenance as detailed above for the Ponds.

Landscape, Easement, Utility Easement and Sign Easement Area Parallel/Angled to Eastview Drive and Upper Shelbyville Roads and Entrances from – Entrance identification signage and complementary landscaping at the entrance to Meadowbrook Lane will be provided by the Declarant along with mounding and landscape materials parallel to Eastview Drive and Upper Shelbyville Road which blends into the natural foliage within the easement areas. The Declarant/Association reserves the right, without the obligation, to electrify the identification sign and to irrigate the complementary landscaping of the sign and any other landscaping within the easements of Lot #1 and Lot #34.

The maintenance of grass once installed shall be the obligation of the Lot owner within these easement areas within the maintenance and/or replacement of landscaping shrubs and trees being the obligation of the Association, unless otherwise notified.

Landscaping Appointments within Dedicated Rights-of-Way (by Encroachment Permits) – The island at the entranceway median and common areas at the intersection of Meadowbrook Lane and Mill Pond Court (and along Meadowbrook Lane) shall have landscaping installed by the Declarant and thereafter maintained by the Association.

Street lights (if any) – If the Declarant or the Association should enter into a lease for subdivision street lighting, the lease payments occasioned thereby shall be an obligation of the Association.

Utility Fees – All utility user fees to serve the Common Areas and Common Maintenance Areas.

Fifty percent (50%) of the cost of counsel expenses to create this Declaration and Homesteads at Hillview Homeowners Association, including, but not limited to, Articles of Incorporation, By-Laws, Secretary of State file fee and initial members.

- (l) "Community or Project or Subdivision" refers to the Homesteads at Hillview project as it is developed and as it continues to exist after the Applicable Date which consists generally of three (3) geographical areas within the subdivision consisting of lots with varying minimum building square footage requirements (ie. Village Green [Lots 1 – 33], Homestead [Lots 34 – 49] and Preserve).
- (m) "Declarant"/"Developer" shall mean and refer to John E. Grimmer Living Trust dated September 10, 2006, by John E. Grimmer, Trustee, and Homestead Developers, LLC, an Indiana-limited liability company, and any successors and assigns of John E. Grimmer Living Trust dated September 10, 2006, by John E. Grimmer, Trustee, and Homestead Developers, LLC whom they designate in one or more written records instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgage acquiring title, to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;
- (n) "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 by one (1) single family;
- (o) "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), as designated by Declarant by its deed of the same to another Person. 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, a "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, or (iv) parts or all of two (2) or more of such numbered parcels of land combined. 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 conveyed by Declarant to another Person 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). Notwithstanding the foregoing, if after the initial conveyance of a portion of the Real Estate by Declarant to another Person it is agreed between Declarant and such Person to enlarge or reduce or otherwise change the portion of the Real Estate so originally conveyed to such Person as a "Lot", then the determination of what portion of the Real Estate constitutes such "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, such "Lot" initially so conveyed by Declarant, as the same has been adjusted or changed at any time by conveyances by and between Declarant and such Person. Any

deed or other instrument or conveyance so adjusting or changing the description of a "Lot" shall state on its face that it is made for such purpose. Any part of a "Lot" re-conveyed to Declarant shall upon such re-conveyance, lose its character as part of a "Lot" and may thereafter be conveyed by Declarant as part of another "Lot". The foregoing procedures may be used to correct errors in descriptions, to adjust boundary lines of "Lots" or for any other reason;

- (p) "Member" means a member of the Association.
- (q) "Mortgage" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (r) "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 mortgage or tenant unless and until such mortgage or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgage or tenant shall be an Owner;
- (s) "Persons" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (t) "Properties" shall mean and refer to the real property described in **Exhibit "A"** attached hereto;
- (u) "The Real Estate" shall mean and refer to the parcel of real estate in Johnson County, Indiana, described in **Exhibit "A"** attached to this Declaration, as referred to in the first recital clause of this Declaration, and defined therein as the Real Estate;
- (v) "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;
- (w) "Rules and Regulations" – rules and regulations relative to the use, occupancy, operation and enjoyment of the Real Estate and the Common Areas as authorized under Article V, Section 7(g).

**Section 2.** Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

## **ARTICLE II**

### **APPLICATION OF COVENANTS AND RESTRICTIONS**

**Section 1. Residential and Golf Course Use.** The Properties shall be used for single family residential purposes and a golf course in Homestead Common Area #6; provided, however, that such restriction shall not apply to any Lot or part thereof or any other part of the Properties at any time owned by the Association which constitutes a part of the Common Areas and upon which no Dwelling Unit is located.

**Section 2. Occupants Bound.** All provisions of the Declaration, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Owner. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Association cause by such occupants, notwithstanding the fact that such occupants of a Lot are fully reliable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations adopted pursuant thereto.

### **ARTICLE III OWNERS DUTIES AS TO LOT MAINTENANCE**

**Section 1. Sidewalks.** Sidewalks shall be constructed as required by the sidewalk plan approved by the City of Franklin Plan Commission, which construction shall be the responsibility of the Lot owner upon whose lot the sidewalk is to be constructed; provided, however, that any Common Area sidewalk shall be constructed by the Developer as designated on the final development sidewalk plan. 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. In the event any Owner, or parties within whom Owner contracts for work on the Owner's Lot, causes damage to a sidewalk or street curb, such Owner shall be responsible for repairing said damages.

**Section 2. Sign Distances at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

**Section 3. Ground Elevations and Erosion Control.** It shall be the lot Owner's responsibility to maintain and comply with all building and site finish ground elevations and erosion control finally required and approved by the City of Franklin Drainage Board and the Department of Planning and Zoning as evidenced upon the final construction plans for the development of this Subdivision.

**Section 4. Ditches and Swales and Erosion Control.** 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 pollution 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 Lots as may be reasonably necessary. It shall be the duty of the Owner of any Lot to establish as needed and to maintain all erosion control on his or her respective Lot.

**ARTICLE IV**  
**DECLARATION: COMMON AREAS AND RIGHTS THEREIN**

**Section 1. Declaration.** Declarant hereby expressly declares that the Properties shall be held, transferred and occupied subject to the Restrictions as Covenants running with the Real Estate. 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, whether from Declarant or a subsequent Owner of such Lot, 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 Declarant, the Committee and of the Association with respect to these Restrictions, and also for itself; its heirs, personal representative, successors and assigns, covenants, agree and consent to and with Declarant, the Committee, the Association, 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. Easement to Owner.** Declarant hereby grants a non-exclusive easement in favor of the Owners of Lots noted in Article 1, Section (i) for the use, enjoyment and benefit of the single Common Areas herein referred to as Ponds. This use, enjoyment and benefit is limited to the Owners of these 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 3. Landscape Easement.** There are strips and areas of ground shown titled as various easements on the Final Plat for the Real Estate which are hereby reserved for the use of owners of Lots to the extent and limited for the purposes set forth in the Declaration and for the use of Declarant and Association for the installation, maintenance, repair and replacement of the matters detailed in the Declaration requiring maintenance. Except as installed and maintained by Lot owners, pursuant to the requirements of the Declarations, or by Declarant and the Association, no permanent or other structure (except walls, sidewalks and fences otherwise permitted hereby or by the Declarant and approved by the Committee) shall be erected or maintained on said strips and areas by the owner of any Lot subject to any such "Landscape Easement", and the owners of such Lots affected by any such "Landscape Easement" shall take and hold title to their Lots subject to the foregoing rights of the Declarant and the Association and shall not do or permit to be done anything which will obstruct or interfere with or remove any installations or landscaping made by the Declarant or Association in any such "Landscape Easement". The foregoing grant of rights to the Declarant shall not impose an obligation on the Declarant to undertake such maintenance unless it elects to do so.

**Section 4. Sales Office.** To the extent deemed necessary or desirable by Developer, Developer shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the Subdivision on any unsold Lot in the Subdivision until 180 days following the sale, closing and deed transfer to a Lot owner other than Developer of the last Lot in the Subdivision.

## **ARTICLE V**

### **OBLIGATIONS OF DECLARANT AS TO COMMON AREAS**

**Section 1. Agreement to Construct and Convey Other Common Areas.** Declarant has constructed or provided for, or will prior to the Applicable Date construct or provide for, Common Areas consisting of the following items:

- (a) a storm drainage system for the Real Estate which may include Ponds, inlet pipes, open ditches, swales, pipes and other structures and drainage courses.
- (b) the installation in the landscape easements of landscaping;
- (c) the installation of identification signage and complementary landscaping in the landscape easements;
- (d) the installation of landscaping, within the street rights-of-way areas for the entrance island and interior splinter islands;
- (e) the installation of such utilities as Declarant, in its discretion, chooses to install to serve (a), (b), (c) or (d) above.

Upon substantial completion of what is described in this Section 1, or earlier if the Association and the Declarant are willing to convey and accept same subject to agreed conditions when Owner Board Members (excluding Declarant) are at least equal to Declarant Board Members (non-owners, including Declarant). In no event will the single Common Areas be conveyed lien free and completely constructed later than the Applicable Date. Declarant covenants to convey by quitclaim deed all of its rights, title and interest in and to said Common Areas to the Association and all Declarant's rights, title and interest in and to said items (whether owned in fee or by easements) which thereafter shall be the property of the Association, whether or not the same may be located entirely or partially on any one or more of the Lots.

**Section 2. Additional Common Areas at Declarant's Option.** Declarant may, at its option but without obligation to do so, construct, install or provide for other items for or on, or service to serve, the Real Estate as amenities for, the mutual benefit, use or enjoyment of the Owners.

## **ARTICLE VI**

### **ASSOCIATION; MEMBERSHIP; VOTING; FUNCTIONS**

**Section 1. Membership in Association.** Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Association 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 membership 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 Association.

**Section 2. Voting Rights.** The Association shall have the following classes of membership, with the following voting rights:

(a) Class A. Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A 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 Association, 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.

(b) Class B. Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled to four (4) votes for each Lot of which it is the Owner on the recorded subdivision plat of the Real Estate, on all matters requiring a vote of the members of the Association. THE CLASS B MEMBERSHIP SHALL CEASE AND TERMINATE UPON THE FIRST TO OCCUR OF:

- (i) THIRTY (30) DAYS AFTER THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS IS DELIVERED TO THE RESIDENT AGENT OF THE ASSOCIATION, OR
- (ii) THIRTY (30) DAYS AFTER THE DATE WHEN THE CLASS A VOTES EQUAL THE CLASS B VOTES.
- (iii) TEN (10) YEARS AFTER THE DATE OF RECORDATION OF THIS DECLARATION.

The Date applicable to the above is hereinafter referred to as the Applicable Date.

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) Class A membership for each Lot owned.

**Section 3. Functions.** The Association has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, or operation and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to these Common Areas, to pay any other necessary expenses and costs in connection with these Common Areas, and to perform such other functions as may be designated for it to perform under this Declaration.

## ARTICLE VII BOARD OF DIRECTORS

**Section 1. Management.** The business and affairs of the Association 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, or a person appointed by Declarant as provided in Section 2 of this Article V.

**Section 2. Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles, to-wit: Gene Perkins, Director, and John E. Grimmer, Sr. (herein referred to as the "Initial Directors"), who have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws or the Act (a) the Initial Board shall hold office until the first annual meeting of the members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any **reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date** determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Special member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a member of the Association nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Association).

**Section 3. 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. Term of Office, Vacancy and Number of Directors after the Applicable Date.**

(a) Term. Subject to the provisions of Section 2 of this Article V, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date, 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.

(b) Number of Directors after Applicable Date. The number of Directors to serve on the Board after the Applicable Date shall be a minimum of three (3) with a maximum of five (5) Directors.

(c) Vacancies. Subject to the provisions of Section 2 of this Article V as to the Initial Board, 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 vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. 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 Director so removed or in respect to whom there has otherwise been a vacancy.

**Section 5. Removal of Directors.** A Director or Directors, except the members of the Initial Board may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners 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 6. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas and Common Maintenance Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, 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 and surveillance of the Common Areas and Common Maintenance 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 Association, 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 utilities used in connection with the Lots. Dwelling Units and Commons Areas and Common Maintenance Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);
- (c) landscaping, maintenance and upkeep of the Common Areas and the Common Maintenance 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 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 Common Maintenance Areas and the business and affairs of the Association, 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 by reasonable pre-arrangement.
- (h) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverage's required under this Declaration and such other insurance coverage's as the Board, in its sole discretion, may deem necessary or advisable;
- (i) paying taxes and assessments assessed against payable with respect to the Common Areas and Common Maintenance Areas and paying any other necessary expenses and costs in connection with the Common Areas and the Common Maintenance Areas; and
- (j) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the Bylaws or the Act.

**Section 7. 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 Association 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 Association;
- (d) to employ, designate, discharge or 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 Common Maintenance Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association 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 Association;
- (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, 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 and Common Maintenance 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 coextensive 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 the subdivision plat of the Real Estate.
- (i) to borrow funds to perform its duties for the benefit of the Association and Owners and use the assessments as collateral, if collateral is required, to secure such financing.

**Section 8. Limitation on Board Action.** After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$10,000.00 per year 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 or Common Maintenance Areas damages 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 contract and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting;
- (c) expenditures necessary to deal with the emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

**Section 9. 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 10. 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 Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising of contracts made by the Board on behalf of the Association, 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 Association.

**Section 11. Additional Indemnity of Directors.** The Association 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 Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal herein, 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 misconduct in the performance of his duties. The Association 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 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 Association 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 Association 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 12. Bond.** The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as they Board deems necessary, to provide surety bonds, indemnifying the Association 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 or any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

**Section 13. Initial Management.** Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself; the exclusive right to manage or designate a Managing Agent for the Real Estate, Common Areas and Common Maintenance Areas, and to perform all the functions of the Association, until the Applicable Date. Declarant may, at its option, engage a Managing Agent affiliated with it to perform such functions

and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

## **ARTICLE VIII REAL ESTATE TAXES; UTILITIES**

**Section 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 Association and treated as a Common Expense.

**Section 2. Utilities.** Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association. Utility expenses, if any, associated with the Common Areas and/or the Common Maintenance Areas shall be common expenses of the Association.

## **ARTICLE IX MAINTENANCE, REPAIR AND REPLACEMENT**

**Section 1. By the Owner.** Each Owner shall be responsible for, if the need therefore arises, all maintenance, repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, 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 or any part of the enhancement of values in the Homesteads at Hillview Community. Such maintenance and repairs include but are not limited 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.

**Section 2. By the Association.** Subject to the following, maintenance, repairs, replacement and upkeep of the Common Areas and the Common Maintenance Areas shall (except to the extent provided herein as the obligation of Owners) be furnished by the Association, as part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

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

Notwithstanding any obligations or duty of the Association to repair or maintain any of the Common Areas and Common Maintenance Areas, 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 the Common Maintenance Areas, or if maintenance, repairs or replaces shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in the connection with maintenance, repairs or replacements of or the Common Areas or the Common Maintenance Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by the Homesteads at Hillview subdivision plat.

**Section 3. Declarant's and the Association's Right to Perform Certain Maintenance and Removal.** In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements, or remove any unauthorized item or structure, situated thereon in the accordance with the provisions of these Restrictions and the provisions of any recorded plat of the Real Estate, the Declarant, until the Applicable Date, and thereafter, the Association through its agents and employees or contractors, should have the right to enter upon said Lot and repair, mow, clean, remove 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 to the Declarant or the Association shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the Declarant nor the Association, nor any of its agents, employees or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

## **ARTICLE X POND COVENANTS**

**Section 1. Ownership of Ponds.** The Ponds are noted in the Common Areas in the Homesteads at Hillview project and are limited in use. Homestead Common Area #6 and Pond is subject to that certain easement in favor of Hillview Country Club as part of golfing hole #11 and fairway use.

**Section 2. Limitations on Use of Ponds.** No person shall do or permit to be done any action or activity which could result in pollution of the Ponds, diversion of water, elevation of Ponds levels, earth disturbance resulting in silting or any conduct which could result in an adverse effect upon water quality, drainage of the subdivision or proper pond management.

The Ponds 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 Ponds which in any way interfere with their proper functioning as part of such storm water drainage system.

The Ponds shall be kept free and clean of rubbish, debris and other unsightly materials. No structure of any kind shall be placed in the Ponds or on the Pond property without the prior written approval of the Committee or Hillview Country Club (but only as it pertains to Homestead Common Area #6 Pond).

No boating, swimming, diving, skiing or ice skating shall be permitted in or on said Ponds except permitted by the Board of Directors and Hillview Country Club (but only as it pertains to Homestead Common Area #6 Pond and per that certain easement in favor of Hillview Country Club) and under written and promulgated Rules and Regulations which may be amended from time to time.

No sewage, garbage, refuse or other solid, liquid, or gaseous or other materials or items (other than storm and surface water drainage) shall be put into said ponds, except the Board of Directors 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.

Other than Homestead Common Area #6 Pond, fishing from the shores of such ponds shall be permitted subject to abeyance and compliance with all applicable fishing and game laws, ordinances, Rules and Regulations.

**Section 6. Costs of Maintenance.** Other than as set forth below, the estimated costs of maintenance and repair of the Pond property related to the storm water drainage system shall be included in the Common Expenses subject to general assessment for all Lots in the Homesteads at Hillview Project. However, per the easement in favor of Hillview Country Club, the reasonable costs of general maintenance (non-structural) of Common Area #6 and Pond shall be at the expense of Hillview Country Club for the duration of the easement.

## **ARTICLE XI ARCHITECTURAL STANDARDS**

Nothing, including any fence, deck, recreational equipment (including basketball goals), or any structure, storage shed, doghouse or other improvements, shall be erected on any Lot, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alterations or modification of existing improvements and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the Committee has been obtained pursuant to Section 1 below.

THIS ARTICLE SHALL NOT APPLY TO THE ACTIVITIES OF THE DECLARANT, NOR FOR CONSTRUCTION OR IMPROVEMENTS OR MODIFICATIONS TO THE COMMON AREAS AND THE COMMON MAINTENANCE AREAS BY OR ON BEHALF OF THE ASSOCIATION.

THIS ARTICLE MAY NOT BE AMENDED WITHOUT THE DECLARANT'S WRITTEN CONSENT SO LONG AS THE DECLARANT OWNS ANY LAND SUBJECT TO THIS DECLARATION.

**Section 1. Architectural Control Committee.** There shall be and hereby is, created and established the "Homesteads at Hillview Architectural Control Committee" ("Committee") which shall have exclusive jurisdiction over all construction on any portion of the Properties. UNTIL 100% OF THE PROPERTIES HAVE BEEN DEVELOPED AND CONVEYED TO PURCHASERS in the normal course of development and sale, the DECLARANT, or not more than five, nor less than three persons designated by it, SHALL CONSTITUTE THE COMMITTEE AND SHALL SERVE AT THE DISCRETION OF THE DECLARANT. THERE SHALL BE NO SURRENDER OF THIS RIGHT PRIOR TO THAT TIME EXCEPT IN A WRITTEN INSTRUMENT IN RECORDABLE FORM EXECUTED BY THE DECLARANT. After the sale of 100% of the Properties, the Committee shall be a standing committee of the Association, consisting of not more than five, nor less than three persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the Committee, then the Board shall be and constitute the Committee.

**Section 2. Approval Process.** The Committee has prepared and promulgated, on behalf of the Board of Directors, design and development guidelines and application and review procedures. Copies are on file in the office of the Declarant (or the Association, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Association, and the Committee shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Properties and such Owners and builders shall conduct their operations strictly in accordance therewith. The Committee, or its designee, must give written approval for any building contractor selected by the Lot Owner for construction.

Prior to any construction on any Lot, the approval of the Committee must be obtained after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be made in the manner and form prescribed from time to time by the Committee in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the Committee.

**Section 3. Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make the requested improvement when:

- (a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete or show the proposed improvements to be in violation of these Declarations, the plat restrictions or any rules, regulations or guidelines adopted by the Committee;

- (b) the design or color scheme of a proposed improvement or the materials proposed to be used are 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 all or part of other Owners.

**Section 4. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within fourteen (14) calendar 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. In the event that the Committee fails to approve or disapprove such plans or to request additional information reasonably required within 45 days after submission of all required or requested information, the plans shall be deemed approved.

**Section 5. No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

**Section 6. Variance.** The Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the Committee shall not be considered hardships warranting a variance.

**Section 7. Compliance with Guidelines.** Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the Committee may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by the Declarant or the Association.

**Section 8. Non-Liability of Declarant, Committee.** Neither the Declarant nor the Committee shall 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 or the Declarant 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 advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded plat governing the Real Estate or any applicable code, regulation or law.

**Section 9. Inspection.** The Committee and the Declarant may inspect work being performed to assure compliance with these restrictions, the plat restrictions and applicable regulations. However, neither the Committee, nor any member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or Declarant, 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 or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

**Section 10. No Compensation.** Neither the Committee nor any of its members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

**Section 11. Rules Governing Building on Several Contiguous Lots Having One Owner.** 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; provided, however, that any dues, fees or other charges shall be assessed against each Lot individually.

## **ARTICLE XII USE RESTRICTIONS**

The following covenants and restrictions concerning the use and enjoyment of the Lots, Dwelling Units, Common Areas and Common Maintenance Areas (Article I, Section 1(i) and 1(k)) are in addition to any other covenants or restrictions contained herein and in the Final Plat of Homesteads at Hillview. 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 are enforceable by an Owner or by the Association. Present or future Owners or the Association 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 including reasonable attorney fees, but there shall be no right of reversion or forfeiture resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein otherwise, Declarant shall have the right to see and maintain any Lots and Dwelling Units owned by Declarant in and on the Real Estate and the Additional Property (other than individual Dwelling Units and Lots

owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same time to time as it desires. Declarant shall have the right to remove the same from the Real Estate and Additional Property at any time.

**Section 1. Quite Enjoyment.** No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal or offensive activity shall be carried on upon any portion of the Properties. For clarification, no Owner shall knowingly or willfully make or create an unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners or allow any such noise or disturbance to be made on his or her Lot, including any noise by the use of musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other machines or equipment. There shall not be maintained, plants or animals or devices or things of any sort whose activities or existence is in any way obnoxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties. Also, excessive grass clippings from the mowing of lawns or other lawn/tree rubbish will not be allowed to be left on any street within the development.

**Section 2. Business Use or Trade.** No garage sale, moving sale or rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except an Owner or occupant of a Lot may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation on the residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant

or a builder approved by the Declarant within respect to its development and sale of or use of any Lots which such entity owns within the Subdivision.

**Section 3. 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 be permitted upon or in any Lot. No derrick or other structures designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted on any Lot.

**Section 4. Occupancy and Residential Use of Partially Completed Residence Prohibited.** No Residence 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 Residence has been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

### **ARTICLE XIII ASSESSMENTS**

**Section 1. Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association 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 Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 2. Proposed Annual Budget.** Annually, on or before the date of the annual meeting or special meeting of the Association 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 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 Association 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 (i.e. majority of a quorum as defined in the By-Laws); 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 proposal annual budget as amended. The annual budget, Regular Assessments and all sums assessed by the Association 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 and Common Maintenance Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas and Common Maintenance Areas. Such replacement reserve fund for capital expenditures and replacement repair of the Common Areas shall be maintained by the Association 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 and 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 Association 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 upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

**Section 3. Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement of 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, provided, 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 Assessment 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 which 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 equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and 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 Association 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 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) above or (b) shall be made by a cash payment by, or refund to, the Owner on 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 Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, 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 transfer 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 Association prior to the final determination and adoption 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 Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same. The initial Regular Assessment is \$900 per year (based on and pro-ratable at \$75 per month).

- (c) Notwithstanding anything to the contrary above concerning Declarant not being obligated for Regular Assessment, the Declarant after the Applicable Date will contribute twenty-five percent (25%) of the Regular Assessment for unimproved Lots in Declarant's name, but only if the Applicable Date is not earlier than when Declarant has conveyed eighty percent (80%) of the Lots on Exhibit B to others or ten (10) years after the date this Declaration has been recorded, whichever first occurs.

**Section 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 Bylaws 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, but not on Lots owned by Declarant, prorated in equal shares (herein called "Special Assessments"). 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 and 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. THE DECLARANT SHALL ONLY BE RESPONSIBLE FOR SPECIAL ASSESSMENTS AFTER THE "APPLICABLE DATE" OCCASIONED BY EXTRAORDINARY REPAIRS TO

ORIGINALLY INSTALLED INFRASTRUCTURE, BUT SHALL NOT BE RESPONSIBLE FOR NEW INFRASTRUCTURE OR AMENITIES DESIRED BY OTHER OWNERS UNLESS DECLARANT SPECIFICALLY AGREES OTHERWISE IN WRITING.

**Section 5. 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 Common Maintenance 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 should constitute a lien against the Lots and Dwelling Units thereon. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or 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 Association as a mechanic's lien 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. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment and 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 Association, whether by foreclosure or otherwise, the Board for and on behalf of the Association shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly announced or published by Mutual Savings Bank or its successors (or if said Bank is no longer in existence, then such rate charged by another national bank in Johnson or Marion County, Indiana selected by the Board) plus 4% but in no event more than the maximum rate allowable under applicable usury laws.
- (b) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot or 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 installments which become due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not 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 and Special Assessments or other charges thereafter becoming due or from the lien therefore. 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 party acquiring the subject Lot and Dwelling Unit from which it arose).

- (c) In addition to the remedies above stated for failure to pay assessments, the Association may disqualify a delinquent Owner from his right to vote and to hold office or committee membership in the Association while Assessment are delinquent in addition to charging a late fee of \$25.00 per day of delinquency to among other things, cover the administrative expense of addressing the delinquency.

**Section 6. Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Articles, in the Bylaws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owned or payable by Declarant with respect to any Lot or other portion of the Real Estate owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or Charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant, except as specifically detailed in the last paragraph of subsection 3 herein. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Declarant to another Person, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Association against each Lot so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

**Section 7. Initial Working Capital and Start-Up Fund.** Upon the closing of the initial conveyance of each Lot by Declarant to another Person, the purchaser of such Lot shall pay to the Association, in addition to any other amount then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount equal to one-sixth (1/6<sup>th</sup>) of the then current annual Regular Assessment against such Lot, which payment shall be nonrefundable and shall not be considered as an advance payment of any Assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay expenses of the Association for its early period of operation of the Real Estate, to enable the equipment or services deemed necessary by the Board.

## **ARTICLE XIV MORTGAGES**

**Section 1. Notice to Association.** Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, may notify the Secretary of the Association 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 Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record or in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgage as may be otherwise required by this Declaration, the Bylaws 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 Bylaws, a proxy granted to such Mortgage in connection with the mortgage, or otherwise.

The Association shall, upon written request of a Mortgagee, who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

**Section 2. Notice of Unpaid Assessments.** The Association 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 Association 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 Section 3 of Article IV hereof.

## **ARTICLE XV INSURANCE**

### **Preface**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARTICLE (INSURANCE), THE ASSOCIATION WILL SEEK TO OBTAIN THE COVERAGES INDICATED SUBJECT HOWEVER TO THE LIMITATION OF WHAT'S AVAILABLE FROM INSURANCE CARRIERS FOR HOMESTEADS AT HILLVIEW COUPLES WITH CONSIDERATION AS

TO EXCEPTIONS AND EXCLUSIONS OF COVERAGE, AND DEDUCTIBLES TO MAINTIN CONTROL OF THIS ITEM OF COMMON EXPENSE.

THE ASSOCIATION WELCOMES THE OWNERS' INPUT REGARDING THE BEST COVERAGE FOR THE BEST PRICE AND WILL SUPPLY OWNERS WITH A SUMMARY FROM THE ASSOCIATION'S INSURANCE PROFESSIONAL WHICH WE URGE OWNERS TO SHARE AND CHALLENGE THEIR OWN INSURANCE PROFESSIONAL FOR RECOMMENDATIONS AS TO THEIR REQUIRED INSURANCE AND ANY ADVISABLE ADDITIONAL COVERAGE (GAP OR OTHERWISE) FOR DIRECT PURCHASE BY OTHERS.

**Section 1. Casualty Insurance.** The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring only the Common Areas in the Homesteads at Hillview Subdivision Ponds and the Common Maintenance Areas in an amount consistent with the full replacement value of the improvements, if any, which, in whole or in part, comprise said Common Areas and Common Maintenance Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also 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 Association 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 Association 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 or Common Maintenance 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 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 sued or distributed by the Association 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 Association, 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 which may be purchased by the 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 Association does not elect to restore.

**Section 2. Public Liability Insurance.** The Association 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 \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover the Common Areas and Common Maintenance Areas and shall insure the Association, the Board of Directors, Officers, and committee or organization of the Association or Board, any Managing Agent appointed or employed by the Association, the Declarant and 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 Association or other Owners.

**Section 3. Other Insurance.** The Association 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 Association 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 Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed 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 of the Association.

**Section 4. General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. Upon request of any Owner or Mortgagee whose interest may be affected thereby, the Association shall provide such Owner of Mortgagee with a description of the insurance coverage maintained by the Association.

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 the Common Areas or the Association's interest in Common Maintenance Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Ac or if the same would constitute a distribution of earnings, profits or pecuniary gain to the Members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

**Section 5. Insurance Impact.** Nothing shall be done or kept by any Owner in any Residence, or on any Lot, which will cause an increase to the Association in the rate of its insurance. No Owner shall permit anything to be done or kept in his Residence or on his Lot which will result in a cancellation of insurance to the Association, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

**Section 6. 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 personal 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 Association.

## **ARTICLE XVI CASUALTY AND RESTORATION**

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

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Areas and/or the Common Maintenance Areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Areas and/or Common Maintenance Areas so damaged or destroyed (or the costs thereof in excess of