

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
LAKES AT RUSHVILLE-GRANDVIEW VILLAGE  
(ALSO KNOWN AS  
BOULDERS AT RUSHVILLE)**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF** Lakes at Rushville-Grandview Village (also known as Boulders at Rushville) Subdivision (“Subdivision”) is made this \_\_\_\_ day of \_\_\_\_\_, 2021 by the City of Rushville, Indiana, (the "Declarant");

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property, located in Rushville, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as “Exhibit A” (the "Real Estate"); and

**WHEREAS**, the word “Property” as used throughout this Declaration shall mean the Real Estate as may be made subject to this Declaration per the terms of Article III below;

**WHEREAS**, Declarant desires to subdivide and develop the Property and in connection therewith, to impose certain covenants, conditions and restrictions on the Property.

**NOW, THEREFORE**, the Declarant hereby declares that all of the Lots (defined below) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following covenants, conditions, and restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. This Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and upon the parties having or acquiring any interest in the Property or any part or parts thereof.

**ARTICLE I  
DEFINITIONS**

The following are the definitions of the terms as they are used in this Declaration:

Section 1.1. “Additional Covenants” means the Covenants included in the Plat, which said Covenants are attached hereto, made a part hereof, and marked “Exhibit B”. The Additional Covenants shall be part of this Declaration. In the event of any conflict between the Declaration

and the Additional Covenants, the Additional Covenants shall control unless otherwise stated herein.

Section 1.2. "Additional Real Estate" means such other real estate which the Declarant shall designate as Additional Real Estate which has not been subjected to this Declaration. Declarant shall have the right and power to subject all or any part of the Additional Real Estate to this Declaration in the future. Declarant explicitly reserves the right to add parcels of real estate to the Additional Real Estate. Further, the Declarant shall have the right to disengage any portion of the Additional Real Estate from this Declaration.

Section 1.3. "Applicable Laws" means all federal, state and local laws, statutes, regulations and ordinances that are applicable to the Property.

Section 1.4. "Architectural Control Committee" shall mean, as more fully described in Article IX of this Declaration, either the Grandview Village Architectural Control Committee, if referring to the Grandview Village Section or a Grandview Village Lot or a Grandview Village Owner, or the Lakes at Rushville Architectural Control Committee, if referring to the Lakes at Rushville Section or a Lakes at Rushville Lot or a Lakes at Rushville Owner.

Section 1.5. "Association" shall mean the Lakes at Rushville-Grandview Village Homeowners Association, Inc., a not-for-profit corporation, the membership, and power of which are more fully described in Article XII of this Declaration.

Section 1.6. "Board" or "Board of Directors" shall mean the Board of Directors of the Lakes at Rushville-Grandview Village Homeowners Association, Inc. and "Director" shall mean any member of the Board of Directors.

Section 1.7. "Builder" means a person or entity (i) regularly engaged in the business of constructing single-family residences for sale and responsible for the original construction of a residence on a Lot and (ii) deemed by the Declarant, in its sole discretion, to be a Builder.

Section 1.8. "Common Area" shall mean those areas (i) designated on current or future Plats as a "Block", "Common Area", "C.A" and (ii) any other areas designated by the Declarant for the common use and enjoyment of the residents of the Property.

Section 1.9. "Community" shall mean "Lakes at Rushville-Grandview Village Subdivision".

Section 1.10. "Declarant" shall mean the City of Rushville, Indiana, and any successors and assigns of it that it designates in one or more written recorded instruments to have the rights of Declarant under the Declaration.

Section 1.11. "Declaration" shall mean this Declaration, as from time to time amended.

Section 1.12. "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending on the termination of the Class B Membership in the manner set forth in Subsection 12.3(B) below.

Section 1.13. "Grandview Village Section" shall mean Lots One (1) through Thirty-One (31) of the Property as shown on the applicable secondary plat.

Section 1.14. "Grandview Village Lot" shall mean any Lot located in the Grandview Village Section of the Property.

Section 1.15. "Grandview Village Owner" shall mean an Owner of a Grandview Village Lot.

Section 1.16. "Guidelines" shall mean any standards or restrictions pertaining to various Lot Improvements that have been established by the Architectural Control Committee.

Section 1.17. "Landscape or Landscaping" shall mean any design element (whether structural, floral, or earthen) that modifies the visible features of the Lot, and which may or may not be physically connected to a Residence.

Section 1.18. "Lakes at Rushville Section" shall mean Lots Thirty-Two (32) through Sixty-Four (64) of the Property as shown on the applicable secondary plat.

Section 1.19. "Lakes at Rushville Lot" shall mean any Lot located in the Lakes at Rushville Section of the Property.

Section 1.20. "Lakes at Rushville Owner" shall mean an Owner of a Lakes at Rushville Lot.

Section 1.21. "Lot" shall mean any home site, for the construction of a Residence, identified on a Plat that is recorded in the Office of the Recorder of Rush County, Indiana. "Lot" shall include any and all Lots, including both Lakes at Rushville Lots and Grandview Village Lots, unless provided otherwise herein.

Section 1.22. "Lot Improvement" shall mean any addition to or modification of any part of the Lot, including the exterior of the Residence.

Section 1.23. "Official Zoning Ordinance" shall mean the Rushville Villas Planned Unit Development and the Zoning Ordinance of Rushville, Indiana, as amended from time to time.

Section 1.24. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. "Owner" shall include any and all Owners, including both Lakes at Rushville Owners and Grandview Village Owners, unless provided otherwise herein. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 1.25. "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 1.26. "Plat" shall mean the subdivision plats of the Property which are called "Boulders at Rushville" and are recorded with the Recorder of Rush County, Indiana as Instrument Number \_\_\_\_\_.

Section 1.27. "Pond Area or Dry Retention Area" means any Common Area, or portion thereof, on which a Pond or Dry Retention Area now exists or is later constructed by Declarant and "Pond" means a body of water and "Dry Retention Area" means an area designed to retain water but may be dry at times of the year which now exists or is later constructed by Declarant in a Pond Area or Dry Retention Area.

Section 1.28. "Residence" shall mean any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single-family residential lot.

Section 1.29. "Special Use" shall mean any use defined or identified in any applicable zoning ordinance as a "Special Use", a "Conditional Use" or "Special Exception".

## **ARTICLE II** **CHARACTER OF THE DEVELOPMENT**

Section 2.1. Property Sections; Applicability. The Property consists of the Lakes at Rushville Section and the Grandview Village Section. All covenants, conditions, and restrictions imposed on the Property under this Declaration shall be applicable to both the Lakes at Rushville Section and the Grandview Village Section equally unless provided otherwise herein.

Section 2.2. In General. Lots may be used only for residential purposes. All Property located within a Plat that has not been designated by numbering shall be used in a manner determined by the Declarant. Lots may be used only for single-family residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Property than the number of Lots depicted on the Plat. Notwithstanding any provision in the Official Zoning Ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 2.3. Other Restrictions. All Property shall be subject to the easements, restrictions, and limitations of record and rights-of-way, and also to all Applicable Laws.

### **ARTICLE III** **ADDITIONS TO THE PROPERTY**

Section 3.1 Additions. As of the date of the execution of this Declaration, the Property consists solely of the Real Estate. Declarant shall have the right, and hereby reserves on to itself the unilateral right, at any time, and from time to time, at any time prior to the end of the Development Period, to add to the Property and subject to this Declaration all or any part of the Additional Real Estate; provided, however, that the addition of any parts of the Additional Real Estate not owned by the Declarant at the time the same are subjected to this Declaration shall require the written consent of such Owner. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Declarant places of record in Rush County, Indiana, a written instrument or written statement so declaring the same to be part of the Property, which written instrument or written statement may be contained in a Plat, or an amendment or supplement to this Declaration. Any such written instrument or written instrument may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate.

Upon recording of any such instrument on or before the end of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the end of the Development Period. Such

expansion of the Property shall not require the consent of any Person other than the Owner(s) of the property to be added, if not the Declarant and is entirely at the sole discretion of the Declarant, and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate, which Declarant may voluntarily in its sole discretion from time to time subject to this Declaration.

#### **ARTICLE IV** **EASEMENTS AND RESTRICTED AREAS**

Section 4.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a Plat:

(A) Designated Drainage and Utility Easements. There are strips of ground designated on the Plat as drainage and utility easements (“D.&U.E.” or “D.E.”) which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, electric lines, gas lines, telephone lines, fiber optic cable, high speed internet lines, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved by any entity to which the easement is dedicated, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such drainage easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage. Further, there are hereby created

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

(B) No Plantings in Right-of-Way. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association or as approved by the Architectural Control Committee.

(C) Easement Work. Notwithstanding any architectural approval under Article IX below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and any governmental entity shall have the right and the authority, without any obligation, liability or obligation of replacement, whatsoever to any Owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Subsection 4.1(A) above.

Section 4.2 General Drainage, Utility, Sewer and other Development Easements. The following rights reserved in this Section 4.2 shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Residence or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 4.2 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association upon the expiration of any Development Period.

(A) General Easement. Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("General Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit the installation and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Residence. Any General Drainage, Utility and Sewer Easement include all areas of the Property outside any Residence. By virtue hereof, Declarant reserves the right to install a Pond(s)

on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement identified upon a Plat as a drainage and utility easement or similar type easement.

(B) Pond Easement. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Pond Easement") and right-of-way in and to any Pond Area(s) or areas now or hereafter shown on the Plat as a "Common Area", "Variable Drainage Easement", or "Pond" or any other Common Area within the Property used as a water retention or detention area, or on which a Pond now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and establishing and maintaining proper surface water drainage throughout the Property, including dewatering or aquatic maintenance, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or Ponds in accordance with all Applicable Laws.

(C) Sign and Facility Easement. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, a general sign and facilities easement ("Sign and Facilities Easement") giving it the right to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising and/or identifying the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs and other improvements shall comply with any Applicable Laws and all such signs and other improvements shall be maintained by the Association as a part of its Common Area maintenance obligations.

(D) Additional Authority. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

- (i) Relocate, alter or otherwise change the location of any Drainage, Utility and Sewer Easement, Pond Easement, and/or Sign and Facilities Easement, or any facility or infrastructure at any time located therein or thereon;



(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or change the description of any Drainage and Utility Easement and any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Rush County, Indiana.

(E) The title of (i) the Declarant or the Association to the Common Area owned during the Development Period and (ii) any Owner of any Lot, shall be subject to the rights and easements reserved herein.

**ARTICLE V**  
**ADDITIONAL PROVISIONS RESPECTING**  
**SANITARY SEWER UTILITY**

Section 5.1 Easements. Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and also give utility companies, whether public or private, as well as any governmental authorities, the right of ingress/egress.

Section 5.2 Trees. No trees shall be planted directly over building sewers or laterals. Any landscaping placed within easements or right-of-ways may be removed, damaged, or destroyed by the applicable utilities without any obligation of repair or replacement.

Section 5.3 Other Obstructions. No mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, or other improvements shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of these which are placed within easements or right-of-ways may be removed by the applicable utilities without any obligation of repair or replacement.

Section 5.4 Owner's Responsibility. All Owners are responsible for all maintenance, repair and replacement of gravity laterals from the Residence to its connection to the sanitary sewer main.

Section 5.5 Discharge. The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains into the sanitary sewers is prohibited.

Section 5.6 Grade Changes. Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities, and must comply with Applicable Laws.

## **ARTICLE VI**

### **COVENANTS AND RESTRICTIONS**

Section 6.1 Land Use. Lots may be used only for single-family residential purposes and only one Residence, not to exceed the maximum height permitted by and measured pursuant to the Applicable Laws, may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences, located in any particular platted area, than the number of Lots depicted on the Plat of such area. Notwithstanding any provision in the Official Zoning Ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 6.2 Lot Improvements. No Lot Improvement of any type or kind shall be constructed or placed on any Lot without the prior approval of the Architectural Control Committee. In addition, all improvements including exempted improvements must comply with all municipal codes and easement restrictions. The Architectural Control Committee's determination may be obtained only after the Owner of the Lot requesting authorization from the Architectural Control Committee has made written application to the Committee. Such written application shall include (i) a completed Architectural Approval Request Form (ii) a copy of the Plot Plan or Surveyor Location Report prepared for the Lot by a professional Engineer or Land Surveyor (iii) any combination of representative pictures, digital renderings, architectural drawings, or scaled sketches sufficient enough to articulate the intent of the proposed improvement(s) and (iv) any other clarifying document that may be required by the Architectural Control Committee. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the Architectural Control Committee in the Architectural Control Committee's sole and absolute discretion, the Architectural Control Committee may pre-approve a Builder's plans and specifications for the original construction of a Residence and, in the event of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots without further approvals from the Architectural Control Committee. While not strictly required, it is the Architectural Review Committee's preference that all approval requests be submitted digitally and in PDF format. An approval shall neither be considered obtained nor binding without a signature of one of the Architectural Control Committee members. Prior to installation of approved improvements, it will be each Owner's responsibility to verify the boundaries of their Lot by obtaining a staked survey. It will also be each Owner's responsibility to verify where easements may encumber their Lot (while identified on the Plot Plan, a governing agency will often physically locate their easement on a Lot if requested) and obtain any necessary permissions or permits to encroach upon such easements regardless of the

Association approving improvements that may be located there. Furthermore, the Association will not be responsible for any encroachments that may be committed by an Owner or Person acting on behalf of an Owner. The terms and conditions of this Section 6.2 are not applicable to Joyner Homes, LLC which will be the primary builder in the Subdivision, and the building plans of said builder are hereby deemed "Approved" so long as all approval requirements between Developer and Joyner Homes, LLC have been satisfied.

Section 6.3 Address Identification. The numbers representing the address of each Residence will be of a uniform appearance and will be displayed in a uniform location and manner on a decorative street address plate on the front elevation, as approved by the Architectural Control Committee.

Section 6.4 Lighting. The Community's streetscape shall feature decorative streetlights placed at interior intersections and throughout the Community. The streetlights shall be controlled and maintained by the Architectural Control Committee provided that the Developer may select such street lights at its discretion. In the Declarant's sole discretion, street lights may be installed by Declarant in the drainage and utility easements on Lots, in the Common Areas, and in public rights-of-way.

Section 6.5 Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling or Residence, temporary or permanent, nor may any structure of a temporary character be used as a dwelling or Residence. No temporary structure, trailer, or other outbuilding shall be placed or erected on any Lot, except by Declarant or a Builder. Any such temporary structure, trailer, garage, or other outbuilding shall be removed immediately upon completion of the primary Residence.

Section 6.6 Driveways. All driveways in the Property shall be concrete in material, unless otherwise approved by the Architectural Control Committee.

Section 6.7 Water Systems. Each Owner shall connect to the water main maintained by a public water utility to provide water for domestic use on the Lot and shall pay all connection, or other charges lawfully established with respect to connections thereto.

Section 6.8 Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the municipality or local governmental board having jurisdiction, "Drainage Easements" shall exist in drainage swales and shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. The elevation of a

Lot shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems.

Section 6.9 Signs. Except for such signs as Declarant or Builder may in its sole discretion display in connection with the identification of development of the Property and the sale of Lots therein, no sign of any kind shall be displayed to the public view of any Lot except that one (1) sign of not more than four (4) square feet may be displayed by an Owner at any time for the purpose of advertising a Lot or Residence thereon for sale. Except on Lots on which there is maintained a model home by the Declarant or a Builder, no business signs, flags, banners or similar items advertising or providing directional information shall be erected by any Owner. Political signs are allowed thirty (30) days before and five (5) days after the date of the election to which the sign relates (pursuant to Indiana Code section 32-21-13-4).

Section 6.10 Fencing. No fence may be erected on a Lot without prior written approval of the Architectural Control Committee. Please see Additional Covenants for additional fence requirements. Owners shall be responsible for obtaining any and all required building permits. Prior to fence construction Owners shall be responsible for determining the location of their property lines by having their property corners staked by a Professional Engineer or Land Surveyor or by physically locating previously installed lot corner monuments. Neither the Committee nor the Board shall be responsible for mediating property disputes between residents. All fences shall be of professional quality construction and kept in good repair.

Section 6.11 Nuisances. If the Board determines that a noxious or offensive activity is carried on upon any Lot that the Board deems to be an unreasonable annoyance or nuisance to any other Owners, then the Owner of the Lot causing the annoyance or nuisance shall immediately discontinue such noxious or offensive activity.

Section 6.12 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view from the street (either within the garage or behind a Committee-approved fence or screen as may be further defined in the Guidelines), except for a period of time not more than 24 hours prior to, and 12 hours after the removal thereof, when it may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 6.13 Pets, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall keep them in accordance with all municipal codes and

ordinances. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, and so on) shall be permitted to exist in a Residence or on a Lot without the unanimous consent of the Board of Directors; provided, however, that the decision of the Board of Directors to permit such animal or animals may be overturned by a majority vote of the members of the Association at any meeting. No pet shall be allowed to spend the night outside the dwelling unit on a Lot. Owners of dogs and cats shall so control or confine them so as to avoid barking and/or roaming which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors, no Owner shall maintain more than two (2) of the same type (dog, cat, bird) of pet nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction.

Section 6.14 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot unless it is in compliance with all Applicable Laws for outside burning.

Section 6.15 Antennae Systems. To the extent not inconsistent with federal law, exterior television and other antennae, including satellite dishes, are prohibited, unless approved in writing by the Architectural Control Committee and placed out of view from the street. There may be only one (1) satellite dish which shall not exceed 24 inches in diameter per home. The Architectural Control Committee may adopt rules for the installation of such antennae and/or satellite systems, which rules shall require that antennae and satellite dishes be placed as inconspicuously as possible from public view from the street. It is the intent of this provision that the Architectural Control Committee shall be able to strictly regulate exterior antennae and satellite dishes to the fullest extent of the law and should any regulations adopted herein or by the Architectural Control Committee conflict with federal law, such rules as do not conflict with federal law shall remain in full force and effect.

Section 6.16 Exterior Lights. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no permanent exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

Section 6.17 Common Areas Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the Architectural Control Committee: (i) any landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, landscape easement or sign easement, (ii) any entrance monument or signage identifying the Property or any section thereof and (iii) street signage.

Section 6.18 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, or as approved by the Architectural Control

Committee, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers are permitted anywhere on the Property. Pergolas may contain such materials if approved by the Architectural Control Committee.

Section 6.19 Diligence in Construction. Subject to inclement weather, every Residence shall be completed within nine (9) months after the commencement of the construction thereof. For cause shown, this nine (9) month period may be extended by the Architectural Control Committee. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months after the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming.

Section 6.20 HVAC Units. No heat pumps, air conditioning units or gas meters shall be installed in the front of the Residence. Window units are prohibited.

Section 6.21 Pond and Pond Area(s); Maintenance. Except as otherwise provided, no individual using a Pond, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Pond, diversion of water, elevation of any Pond level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Pond management, except as provided in this Declaration. A Pond may not be used for swimming, ice skating, boating, or for any other purpose, except for (i) drainage of the Property and (ii) fishing from the shoreline of the Pond by Owners and their family members and guests, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Ponds and Pond Areas may or may not exist on the Property, and the reference throughout this Declaration to Ponds and Pond Areas is made in order to address Ponds and Pond Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Pond or Pond Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Pond or Pond Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area including, without limitation, Common Areas on which a Pond exists. There shall be professional maintenance of all ponds.

Section 6.22 Mailboxes. All mailboxes and posts must be approved by the Architectural Control Committee and shall be standard as to size, location, post, design, height, material, composition and colors. The Builder shall install the initial mailbox for each Lot, meeting the above criteria, at the Lot Owner's expense. The Owner shall, at the Owner's expense, maintain, repair, replace and paint said mailbox and post in conformance with all other mailboxes.

Section 6.23 Clothes Lines. No clotheslines may be erected on any Lot.

Section 6.24 Outbuildings and Dog Houses. Any and all forms of outbuildings, including but not limited to, sheds, storage sheds, mini barns, and dog houses, which are not directly connected to the main house on any Lot are prohibited, unless the same are necessary or incident to the Declarant's, Builder's or Association's business or activities upon the Property; provided, however, that permanent structures such as a pool house which is used for changing and/or showering, a gazebo or an architectural pavilion not used as sleeping quarters, which (i) is constructed on a foundation with footers, (ii) is architecturally consistent with and uses the same exterior building materials as the Residence, and (iii) is approved by the Architectural Control Committee, shall be allowed. All Structures that are connected to the Residence must be approved by the Architectural Control Committee, shall share at least one wall with the Residence, and have visual and construction quality that matches or compliments that of the Residence.

Section 6.25 Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, and swing and slide sets shall not require approval by the Architectural Control Committee, provided that (i) such equipment is not more than eight (8) feet high (to the highest point of the structure) and properly painted and maintained by the Owner in good repair, (ii) such equipment is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the residence into the rear yard of the Lot, and (iii) any swing and slide sets are constructed of wood. Metal play equipment of any size must be approved by the Architectural Control Committee. Prior approval by the Architectural Control Committee of the design, location, color, material and use of any equipment greater than eight (8) feet in height shall be required. Trampolines are prohibited.

Section 6.26 Flues and Plumbing. All homes built in the Community shall be designed to obscure the view of flues and plumbing and other equipment vents from the public streets internal to the Development when possible.

Section 6.27 Subsurface Drains and Sump Pump Discharges. Subsurface drains may have been provided in certain areas within drainage easements as additional storm and ground water drainage sources and are part of the public storm drainage system. Subsurface drain laterals have been provided on specific Lots, and the Builder on such Lots shall connect all sump pump discharge lines to such laterals. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Lot Owner in accordance with the following:

- (A) The areas of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the home and

the connection with the publicly maintained storm sewer or subsurface drain within the drainage easement.

(B) In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered.

(C) Any Owner or Builder damaging, changing, or altering these subsurface drains or common subsurface drain laterals shall be responsible for such action and will be given ten (10) days' notice, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association may cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owner(s) and/or Builder(s) for immediate payment. If immediate payment is not received, the amount owed shall be a lien on the subject Lot and Residence and the Declarant and/or the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XIII of this Declaration.

Section 6.28 Swimming Pools and Hot Tubs. Only permanent, in-ground, professionally constructed pools, which are approved by the Architectural Control Committee, shall be permitted upon a Lot. All submittals to the Architectural Control Committee shall include landscape plans. All backyard pools shall be oriented to minimize the potential effect on neighboring Lots, shall be enclosed by a fence which obstructs unauthorized access or shall have an automatic pool cover, and shall comply with all other Applicable Laws. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Architectural Control Committee approvals. Hot Tubs must also be approved by the Architectural Control Committee, and should include plans for screening hot tubs from public view.

Section 6.29 Tennis Courts, Racquetball Courts, Paddleball Courts and so on. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities are not permitted; provided, however, that basketball goals may be installed on a Lot adjacent to driveway without Architectural Control Committee approval so long as they are permanent and have clear fiberglass or glass backboards supported by black posts. No basketball goal or backboard shall be permitted to hang from or be affixed to the Residence or garage. Temporary or portable basketball goals and courts are not permitted.

Section 6.30 Windows-Doors. If storm doors are installed, they must be painted to match or compliment the exterior of the Residence, and must be approved by the Architectural Control Committee. No unfinished aluminum doors or windows are allowed. All curtains, blinds or



other window coverings shall be tasteful and commensurate with the architecture, design and appearance of Residences on the Property.

Section 6.31 Street Signs. Decorative street signs that do not conform to applicable municipal standards may be installed by Declarant in the Declarant's sole discretion. Such decorative street signs, if any, shall be maintained by the Association, and shall be repaired or replaced by the Association, if damaged, in accordance with Applicable Laws.

Section 6.32 Fuel Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, are prohibited.

Section 6.33 Garbage and Other Refuse. No Lot Owner in the Property shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse, including compost, on such Owner's Lot.

Section 6.34 Home Occupations. No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, for any purpose other than as a single-family residence, except that a home occupation, that satisfies all requirements of all Applicable Laws, may be permitted provided that, in addition to the requirements of Applicable Laws, any such Owner's use is conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, and is clearly incidental and secondary to the use of the Residence for dwelling purposes and does not change the character thereof and in connection with which there is (i) no sign or display that will indicate from the exterior that the Residence is being utilized in whole or in part for any purpose other than that of a dwelling; (ii) no commodity sold upon the premises; (iii) no person is employed other than a member of the immediate family residing in the Residence; and (iv) no manufacture or assembly operations are conducted. Provided, however, that in no event shall a child day care, barber shop, styling salon, animal hospital, any form of animal care or treatment such as dog trimming, or any other similar activities be permitted as a home occupation. The foregoing notwithstanding, the Declarant and Builders shall be permitted to operate sales and construction trailers, model homes, and sales offices.

Section 6.35 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales (ditches) along dedicated roadways or within rights of way or established drainage easements:

(A) Drainage swales (ditches) along dedicated roadways or within rights-of-way or established drainage easements, shall not be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Association. Owners must maintain these swales as grass ways or other

non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Owner causing such damages.

(B) Any Owner or Builder altering, changing, or damaging such drainage swales or ditches shall be responsible for such action. The appropriate jurisdictional agency, the Declarant or the Association may cause said repairs to be accomplished and the invoice for such repairs shall be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the amount owed, together with reasonable attorney's fees, shall be a lien on the subject Lot and the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XIII of this Declaration.

Section 6.36 Roof and Roofing Materials. The roof and roofing materials on all Residences shall be of a quality, style and composition acceptable to the Architectural Control Committee, and shall comply with the Additional Covenants.

Section 6.37 Solar Panels. Solar panels shall not be permitted on any Residence unless the solar panel is approved by the Architectural Control Committee. The Architectural Control Committee, in reviewing a request for a solar panel, shall consider landscaping, location, size, aesthetics, and the visibility of the solar panel.

Section 6.38 Parking of Vehicles. Commercial vehicles and trucks are prohibited, unless such commercial vehicles or trucks are kept in the garage and completely out of view. No trucks three-quarters ton or larger in size, campers, trailers, motor homes, boats, snowmobiles, wave runners, junk or inoperable cars, fuel tanks or similar vehicles shall be parked or stored on any street or Lot in the Property except within a closed garage. No vehicle shall be regularly parked upon unpaved areas. At no time shall any vehicle be parked in such a way as to block pedestrian access along the public sidewalk adjacent to the street, or prevent mail delivery, or prevent access to any driveway. Each Owner shall be responsible for his or her own vehicles as well as those vehicles belonging to the Owner's guests. In order to facilitate the free movement of vehicles, no vehicles belonging to Owners shall be parked on the paved portions of any street, public or private, except during bona fide temporary emergencies. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed. The Architectural Control Committee may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

No Owners or other occupants of any portion of the Community shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within the enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Property except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Property during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas, and boats, boat trailers, campers and motor homes may be parked for a maximum of 48 hours at one time for the purpose of preparation or loading. Any vehicles parked in violation of this Section 6.38 or parking rules promulgated by the Board or the Architectural Control Committee may be towed.

Section 6.39 Irrigation Systems and Invisible Fences. Irrigation systems and invisible fences are permitted, except within any Common Areas or Easements.

Section 6.40 Occupancy or Residential Use of Partially Completed Residence Prohibited. No Residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy therefore has been issued.

Section 6.41 Sidewalks. Each Builder or Owner, at their expense, shall be responsible for installing sidewalks along and within the segment of the Street adjacent to their Lot.

Section 6.42 Construction and Landscaping; Time Requirements; Divestiture; Penalties. All construction upon, landscaping of, and other improvements to a Lot shall be completed strictly in accordance with a Lot development plan approved by the Committee. All landscaping specified on the landscaping plan approved by the Committee shall be installed on the Lot strictly in accordance with such approved plan within one hundred eighty (180) days following substantial completion of the Residence, unless delayed due to adverse weather conditions. Please see Additional Covenants.

Section 6.43 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system shall be installed or maintained on any Lot.

Section 6.44 Electric Bug Killers. Electric Bug Killers, "zappers", and other similar devices shall be prohibited.

Section 6.45 Garage and Yard Sales; Holiday Lights. There shall be no more than one (1) garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period. Christmas lights and other holiday or occasion-themed decorations may be erected no sooner than five (5) weeks prior to, and removed not later than two (2) weeks after, such holiday or occasion.

Section 6.46 Gardens. Vegetable, wild flower, and other gardens may be located only in the rear yard of a Lot and may not exceed one hundred (100) square feet in size. Vegetation within the garden area may not exceed three feet (3') in height.

Section 6.47 Window Coverings. All interior window coverings shall be specifically designed as window treatments, including but not limited to: blinds, shutters, or drapes. No sheets, towels, paper or other similar items, not expressly designed as window treatments, shall be used to cover a window.

Section 6.48 Permitted Building Materials. Permitted building materials are those as provided in the Official Zoning Ordinance.

Section 6.49 Garages. All homes built in the Community shall include at least two-car garage with raised panel garage doors and a driveway, paved with concrete that is designed to provide at least two off-street parking spaces. The Developer/Builder shall offer third-car garage as an option.

## **ARTICLE VII** **MAINTENANCE OF GRANDVIEW VILLAGE LOTS**

Section 7.1 Applicability. All covenants, conditions, and restrictions imposed under this Article VII apply only to Grandview Village Lots and Grandview Village Owners.

Section 7.2 Association Maintenance of Lots. The Association shall at all times during the Development Period and perpetually thereafter maintain or cause to be maintained any and every Grandview Village Lot in the Development in accordance with the terms of this Article VII. The Association's duties under this Article VII shall include:

(A) Mowing, fertilizing, and otherwise maintaining any Grandview Village Lot as necessary to maintain a pleasing aesthetic appearance, except that lawn mowing will not be included inside fenced in areas; and

(B) Removing snow from residential sidewalks and residential driveways located in the Grandview Village Section of the Property from driveway to front door where there has been a two-inch (2") or greater snow event.

Section 7.3 Discretionary Landscaping. A Grandview Village Owner may, in their discretion, plant and maintain any perennial or annual flowers of their choosing or otherwise

landscape such Owner's Grandview Village Lot subject to and in conformity with the prior written approval of the Architectural Control Committee. If an Owner chooses not to plant or maintain any flowers or otherwise landscape such Owner's Grandview Village Lot, the Association shall have the right to landscape such Grandview Village Lot.

Section 7.4 Maintenance Easement. There is hereby created a blanket easement over, across, through and under any Grandview Village Lot in the Development for ingress, egress, installation, landscaping, replacement, repair and maintenance of any Grandview Village Lot, the exterior of any Residence situated thereon or any improvement thereon as necessary to complete any work to be performed by the Association or its agent under this Article VII. By virtue of this easement, it shall be expressly permissible for Declarant, the Association, or any agent thereof to perform the services outlined in this Article VII for any Lot located in the Grandview Village Section of the Property. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvement as originally constructed, and shall not cover any portion of a Grandview Village Lot upon which a Residence has been constructed.

Section 7.5 Exclusive Maintenance Right of Association. Except as otherwise provided in Sections 7.3, the Association and its agents, employees, and contractors shall have the exclusive right to perform or cause to be performed any landscaping, maintenance or other work under this Article VII.

Section 7.6 Maintenance Costs. The cost of any such work to be performed by the Association or its agents, employees, or contractors under this Article VII shall be added to and included in the Annual Assessment against such Grandview Village Lots and the Owners thereof, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

Section 7.7 Non-Liability. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any work performed hereunder.

Section 7.8 Rules and Regulations. The Board of Directors has the right to adopt such rules and regulations concerning the landscaping, maintenance and other work performed under this Article VII as it deems appropriate, including the appointment of committees to oversee the same.

Section 7.9 Maintenance and Repairs. In the event of damage to or destruction of any

improvements which the Association is required to maintain hereunder, the Association shall repair or replace the same to the extent of the availability of any insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damage or destroyed, the Association shall make a Special Assessment against all Grandview Village Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds (if any) or against such Grandview Village Owners who benefit from such improvement, if less than all benefit. If, due to the willful, intentional, or negligent acts or omissions of any Grandview Village Owner (including any builder) or a member of the Grandview Village Owner's family, or of a guest, contractor, purchaser, tenant, invitee or other occupant or visitor of such Grandview Village Owner, damage shall be caused to a Lot located in the Grandview Village Section of the Property, improvement thereon or to the exterior of a Residence situated thereon, and if maintenance, repairs or replacements shall be required thereby which would otherwise be a common expense, then the Association shall cause such repairs to be made and such Grandview Village Owner shall pay for such damage and such maintenance, repairs and replacements, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Grandview Village Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitutes a Special Assessment against such Grandview Village Owner, whether or not a builder, and its Residence and Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Maintenance, repairs, and replacements to a Lot located in the Grandview Village Section of the Property, improvement thereon or to the exterior of a Residence situated thereon shall be subject to the rules and regulations adopted from time to time by the Board of Directors.

## **ARTICLE VIII**

### **MAINTENANCE OF LAKES AT RUSHVILLE LOTS**

Section 8.1 Applicability. All covenants, conditions, and restrictions imposed under this Article VIII apply only to Lakes at Rushville Lots and Lakes at Rushville Owners.

Section 8.2 Maintenance of Lots and Improvements. Each Lakes at Rushville Owner shall at all times maintain their Lakes at Rushville Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

(A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. The maximum height for grass shall be 6 inches. Additionally, all Lots shall be free of weeds and properly irrigated in order to maintain a good and healthy appearance;

(B) Remove all debris or rubbish from the Lot;

(C) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;

(D) Cut down and remove dead trees from the Lot; and,

(E) Within one hundred and twenty (120) days following completion of a Residence, or an alternative date approved by the Architectural Control Committee in writing, or unless delayed by adverse weather conditions, the Owner shall landscape the Lot in accordance with the provisions set forth in this Declaration and the Owner's lot development plan approved by the Architectural Control Committee.

Section 8.3 Association's Right to Perform Certain Maintenance. In the event that the Lakes at Rushville Owner of any Lakes at Rushville Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The corresponding costs incurred by the Association shall be assessed to the Owner and shall constitute a lien on such Owner's Lot. The Owner of such Lot shall reimburse the Association within thirty (30) days of the date on which the Owner is invoiced by the Association. The Association shall have the right to collect any amounts due and owing under this Section 8.3 in the same manner as assessments are collected per the terms of Article XIII below, together with reasonable attorney's fees and costs of collection, together with the right to obtain injunctive relief. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

## **ARTICLE IX**

### **ARCHITECTURAL CONTROL COMMITTEE**

Section 9.1 Architectural Control Committees. There shall be two (2) separate Architectural Control Committees: a Grandview Village Architectural Control Committee, and a Lakes at Rushville Architectural Control Committee. "Architectural Control Committee", as used throughout this Declaration, the Association's Articles of Incorporation, and the Association's Bylaws, shall mean either the Grandview Village Architectural Control Committee, if referring to the Grandview Village Section or a Grandview Village Lot or a Grandview Village Owner, or the Lakes at Rushville Architectural Control Committee, if referring to the Lakes at Rushville Section or a Lakes at Rushville Lot or a Lakes at Rushville

Owner. All covenants, conditions, and restrictions imposed on “the Architectural Control Committee” under this Declaration shall be applicable to both the Grandview Village Architectural Control Committee and the Lakes at Rushville Section Architectural Control Committee equally unless provided otherwise herein. Except as otherwise provided in Section 9.2 herein, the Grandview Village Architectural Control Committee shall govern all approvals, determinations, permissions, or consents required by this Declaration for any Grandview Village Lot or Grandview Village Owner, and the Lakes at Rushville Architectural Control Committee shall govern all approvals, determinations, permissions, or consents required by this Declaration for any Lakes at Rushville Lot or Lakes at Rushville Owner. Unless provided otherwise, any rights granted to or duties imposed upon “the Architectural Control Committee” under this Declaration or the Association’s Articles of Incorporation or Bylaws shall be granted to or imposed upon the Grandview Village Architectural Control Committee only with respect to the Grandview Village Section and any Grandview Village Lot or Grandview Village Owner, and shall be granted to or imposed upon the Lakes at Rushville Architectural Control Committee only with respect to the Lakes at Rushville Section and any Lakes at Rushville Lot or Lakes at Rushville Owner.

Section 9.2 Approvals. Approvals, determinations, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, by an authorized member of the Declarant with respect to approvals to be obtained from the Declarant, by an officer of the Association with respect to approvals to be obtained from the Association and by a member of the respective Architectural Control Committee with respect to approvals to be obtained from the Architectural Control Committee. The Architectural Control Committee may, in its discretion, unilaterally promulgate written architectural and design standards or guidelines (the “Guidelines”) which shall be binding upon the Owners.

Section 9.3 Architectural Control Committee Appointments. Each Architectural Control Committee, each composed of at least two (2) members as provided herein, shall be appointed by the Declarant until the end of the Development Period, and appointed by the Board of Directors thereafter. During the Development Period, members of either Architectural Control Committee need not be members of the Association. After the end of the Development Period, members of the Grandview Village Architectural Control Committee shall be members of the Association who are Grandview Village Owners, and members of the Lakes at Rushville Architectural Control Committee shall be members of the Association who are Lakes at Rushville Owners. Members of the Architectural Control Committee shall be subject to removal by the Declarant at any time, with or without cause, until the end of the Development Period, and subject to removal by the Board of Directors at any time, with or without cause, thereafter. Any vacancies from time to time shall be filled by appointment by the Declarant until the end of the Development Period, and by appointment by the Board of Directors thereafter.



Section 9.4 Duties of Architectural Control Committee. The Architectural Control Committee shall approve or disapprove proposed improvements within fifteen (15) days after all required information has been submitted to the Architectural Control Committee. The Architectural Control Committee, for its permanent files, shall retain one copy of submitted material. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If, however, approval has not been received by the applicant in writing within fifteen (15) days, then said request shall be deemed denied.

Section 9.5 Exercise of Discretion. Declarant intends that the members of the Architectural Control Committee shall exercise discretion in the performance of their duties consistent with the provisions of this Declaration, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members of the Architectural Control Committee. In any judicial proceeding challenging a determination by the Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Control Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Control Committee, could only conclude that such determination constituted an abuse of discretion.

Section 9.6 Inspection. The Architectural Control Committee may inspect work being performed without the Owner's permission to verify compliance with the Declaration.

Section 9.7 Liability of Architectural Control Committee, Declarant and Association. Neither the Architectural Control Committee nor any agent thereof, nor the Declarant, or the Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Control Committee, Declarant or Association be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Architectural Control Committee, Declarant and Association make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, whether the improvements result in any encroachments, the compliance of proposed plans with Applicable Laws, or the materials to be used. All parties should seek professional construction advice, engineering, and inspections of each Lot prior to purchasing the Lot, commencing original construction on said Lot or installing any fences, landscaping, additions, remodeling or other improvements on said Lot.

Section 9.8 Power of Disapproval. The Architectural Control Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. By way of example only, common grounds for denial include, but are not limited to, a deficiency in or absence of the following:

(A) The plans, and specifications, required to be submitted; and

(B) The consistency of the design, color scheme, and square footage of a proposed improvement with the general surroundings of the Lot or with adjacent buildings or structures.

Section 9.9 Power to Grant Variances. The Architectural Control Committee may allow reasonable variances or adjustments of this Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Declaration, no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots, and any such variance granted shall not be considered as precedent setting.

Section 9.10 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the Architectural Control Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography.

Section 9.11 Non-Applicability to Joyner Homes, LLC. The provisions of this Article IX are not applicable to Joyner Homes, LLC which will be the primary builder in the Subdivision, and the building plans thereof are hereby deemed “Approved” so long as such building plans are in compliance with the Official Zoning Ordinance.

## **ARTICLE X** **CONTIGUOUS LOTS**

Section 10.1 Rules Governing Building on Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same person, such Owner may not use two or more of said Lots as a site for one, single Residence. If permission for such a use shall be granted, the Lots constituting the site for such one, single Residence shall be treated as a single Lot for the purpose of applying this Declaration to said Lots, so long as the Lots remain improved with only one, single Residence; provided, however, that with respect to the combined Lots, the Owner of the combined Lots shall be obligated to pay Annual Assessments, Working Capital Assessments, and Special Assessments for each originally platted Lot constituting the combined Lots, and such Annual Assessments, Working Capital Assessments, and Special Assessments shall be a lien on the combined Lots, all per the terms and conditions of Article XIII below. The Owner of the combined Lots shall be obligated to construct the sidewalk across all of the combined Lots. In addition, the Owner must obtain all requisite and necessary permits and approvals required pursuant to Applicable Laws.

**ARTICLE XI**  
**USE AND OWNERSHIP OF COMMON AREA**

Section 11.1 Ownership. A license, upon such terms, conditions, rules and regulations as the Board of Directors, shall from time to time promulgate, for the use and enjoyment of the Common Areas, is hereby granted to the Owners and their family, guests, tenants or contract purchasers. Every Owner shall have a nonexclusive right and easement of enjoyment in common with all other Owners, in and to the Common Areas, which nonexclusive right and easement of enjoyment shall be appurtenant to and pass with the title to every Lot.

Section 11.2 Use and Maintenance. All Common Areas shall be used for such purposes deemed appropriate by the Declarant until the end of the Development Period and following the end of the Development Period, all Common Areas shall be used for such purposes as deemed appropriate by the Association. There shall be professional maintenance of Common Areas and recreational amenities contained therein.

Section 11.3 Non-dedication. Neither the Declarant's execution nor recording of the Plats nor the doing of any other act by the Declarant is, or is intended to become or shall be construed as, a dedication to the public of any Common Area.

**ARTICLE XII**  
**LAKES AT RUSHVILLE-GRANDVIEW VILLAGE HOMEOWNERS ASSOCIATION,**  
**INC.**

Section 12.1 Association Duties. The duties of the Association shall include, but not be limited to, the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the Property, (ii) the maintenance and repair of the Common Areas including, but not limited to, any and all lighting, landscaping, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments, water features, ponds, signage, and the landscaping surrounding such entrances monuments and signage, and (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and any sign landscape easement. The foregoing provisions of this Section 12.1 notwithstanding, an Owner shall be responsible and liable for any damage to any Common Areas or improvements thereon caused by such Owner or such Owner's agent, contractor, or guest, and the costs of repair or replacement necessitated by such damage shall be immediately paid by the Owner to the Association and may be assessed as a Violation Assessment and enforced per the terms of Article XIII below.

Section 12.2 Board of Directors. Prior to the end of the Development Period, members of the Board of Directors shall be appointed by the Declarant, vacancies in the Board of Directors

shall be filled by the Declarant, and members of the Board of Directors may be removed and replaced by the Declarant, at any time and for any reason; provided, however, that a representative or designee of Joyner Homes, LLC (or an affiliated entity) shall be a member of the Board of Directors until the end of the Development Period. After the end of the Development Period, the Owners shall elect a Board of Directors as prescribed by the Association's Articles of Incorporation, and the Association's Bylaws. The Board of Directors shall manage the affairs of the Association. During the Development Period, Directors need not be members of the Association.

Section 12.3 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

(A) Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

(B) Class B. The Class B member shall be the Declarant. At all times prior to expiration of the Class B Membership, as provided below in this Subsection 12.3(B), the Class B member shall have the same number of votes at any meeting in which votes are to be taken as is held collectively by all Class A members, plus one hundred (100) additional votes. The Class B Membership shall terminate and be converted to Class A Membership and the Development Period shall expire upon the happening of the earlier of the following:

(i) When the Class B member no longer owns any portion of the Property or the Additional Real Estate;

(ii) December 31, 2050; or

(iii) When, in its sole discretion, the Declarant expressly specifically terminates and waives in writing its right to Class B Membership. The Declarant reserves the right to assign some of its rights and obligations under this Declaration without terminating the Development Period and without terminating or waiving its right to Class B Membership.

Section 12.4 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) of the Association (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of

Incorporation are accepted by the Indiana Secretary of State, at which time the Initial member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot shall be a member of the Association. Apart from the Initial member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 12.5 Professional Management. No contract or agreement for professional management of the Association, nor any other contract to which the Association is a party, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 12.6 Declarant's Rights. Notwithstanding anything in this Declaration, until such time as Declarant has conveyed all of the acreage of the Real Estate and Additional Real Estate to other Owners, Declarant shall have the right and authority to act on behalf of (and in lieu of) the Association; provided, however, such shall not eliminate the requirements of the Declarant to account for the funds. Meeting of the members shall not be required until the Development Period has ended.

Section 12.7 Managing Agent. The Association may elect to delegate any such duties under this Declaration to a Managing Agent and may enter into a management contract for such purpose, provided that such agent and the terms of such contract are approved by a majority of the vote present or represented at any meeting of the Association. Declarant or an entity affiliated with Declarant may serve as the Managing Agent for the Association so long as Declarant retains control of the Association, and may perform all property management functions on behalf of the Association. Any management contract made or which is deemed to arise between the Association and Declarant (or any affiliate) shall be terminable by the Association without cause and without penalty upon thirty (30) days' written notice at any time after Declarant relinquishes control of the Association.

### **ARTICLE XIII** **ASSESSMENTS**

Section 13.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant or a Builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following (collectively the "Assessments"):

- (A) Annual Assessments (hereafter defined);
- (B) Working Capital Assessment (hereafter defined);

- (C) Special Assessments (hereafter defined); and
- (D) Violation Assessments (hereafter defined) levied for a violation of this Declaration.

Section 13.2 Annual Budget. By majority vote of the Board of Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration (the “Annual Budget”).

Section 13.3 Annual Assessment.

(A) Amount and Due Dates. The Annual Assessment provided for herein shall commence for each Lot on the date of closing of the sale of such Lot to an Owner other than the Declarant or a Builder. The Annual Assessment shall be Nine Hundred Dollars (\$900.00) or the then prevailing amount of the Annual Assessment, per Lot, payable in two (2) semi-annual installments of Four Hundred Fifty Dollars (\$450.00) each and shall be pro-rated to year-end. In addition, as provided in Section 7.6 herein, Annual Assessments assessed to Grandview Village Owners shall include an additional \_\_\_\_\_ Dollars (\$\_\_\_\_) or the then prevailing amount as determined by the Board of Directors, per Grandview Village Lot, payable in two (2) semi-annual installments of \_\_\_\_\_ Dollars (\$\_\_\_\_) each and shall be pro-rated to year-end in order to cover any costs incurred by the Association in providing maintenance services to Grandview Village Lots pursuant to Article VII herein. The Board of Directors shall fix any increase in the amount of the Annual Assessment at least thirty (30) days in advance of the effective date of such increase. Unless pro-rated as set forth above for the first Annual Assessment due with respect to the sale of a Lot to an Owner other than the Declarant or a Builder, the due date for Annual Assessments shall be February, and such Assessment shall be subject to collection and late charges after being delinquent for thirty (30) days.

(B) Purpose of Assessments. The Annual Assessment levied by the Association shall be used in the reasonable discretion of the Board of Directors to fulfill the duties and obligations of the Association specified in this Declaration including, without limitation, (i) the obligation to maintain and repair all Common Areas and all improvements located therein, (ii) the establishment of a reserve for replacement, to be separately maintained in an FDIC insured account with a financial institution, to fund significant capital expenditures, maintenance, repair and replacement of all Common Areas, including, without limitation, all water features, landscaping, signs, lighting and other improvements within the Common Areas, (iii) to pay insurance premiums for liability insurance, property insurance insuring the improvements in the Common Area, and for any other insurance applicable to the Association deemed necessary by the

Board of Directors, (iv) the costs of professional management to manage the Association, if engaged, and (v) the costs incurred by the Association in providing maintenance services to Grandview Village Lots pursuant to Article VII herein.

(C) Method of Assessment. Prior to the end of the Development Period, the Board shall, by a vote of a majority of the Board without notice to or approval or a vote by the members of the Association, and on the basis specified above, fix the Annual Assessment for each assessment year of the Association at an amount sufficient to meet the Annual Budget. The Board shall establish the date the Annual Assessment shall become due, and the manner in which it shall be paid. Initial Annual Assessments shall be in the amounts set forth above in Subsection 13.3(A) and the Annual Assessment may increase or decrease each year in order to satisfy the Annual Budget as determined by the Board of Directors in its sole discretion.

After the end of the Development Period, the Annual Budget must reflect the estimated revenues and expenses for the budget year, and the estimated surplus or deficit as of the end of the current budget year. The Association shall provide each Owner with: (1) a copy of the proposed Annual Budget; or (2) written notice that a copy of the proposed Annual Budget is available upon request at no charge to the Owner. At the same time, the Association shall provide each Owner with a written notice of the amount of any increase or decrease in the Annual Assessment paid by the Owners that would occur if the proposed Annual Budget is approved. After all of the foregoing take place, the Association shall hold a meeting pursuant to the following subparagraph (i) and (ii):

(i) After the end of the Development Period, and subject to subparagraph (ii) below, the Annual Budget must be approved at a meeting of the members of the Association by a majority of the members of the Association in attendance at a meeting called and conducted in accordance with the requirements of this Declaration, the Association's Articles of Incorporation and the Association's Bylaws. For purposes of this meeting, a member of the Association is considered to be in attendance at the meeting if such member attends: (1) in person; (2) by proxy; or (3) by any other means allowed under Indiana law or under this Declaration, the Association's Articles of Incorporation or the Association's Bylaws.

(ii) If the number of members of the Association in attendance at the meeting held under subparagraph (i) above does not constitute a quorum as defined in the Association's Bylaws, the Board may adopt an Annual Budget for the Association for the ensuing year in an amount that does not exceed one

hundred ten percent (110%) of the amount of the last approved annual budget last approved by the Association.

Provision for Declarant to cover budget shortfalls during build out (typically not balanced budget until 60-70% built out...)

Section 13.4 Working Capital Assessment. At the closing of every transfer of title to other than the Declarant or a Builder, the purchaser of such Lot and/or Residence shall pay to the Association, in addition to any other amounts then owed or due to the Association, a one-time contribution to its working capital, the sum of Six Hundred Dollars (\$600.00), which payment shall be non-refundable 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 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, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

Section 13.5 Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, for the costs of undertaking other activity that is the responsibility of an Owner hereunder but which such Owner has not undertaken as required hereunder, for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain and for operating deficits which the Association may from time to time incur.

Section 13.6 Basis for Assessment.

(A) Lots Generally. Each Lot owned by a Person other than Declarant or a Builder shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot, except as provided in Subsection 13.6(C) herein.

(B) Lots Owned by Declarant. Neither the Declarant nor any Builder shall be required to pay any Annual Assessments, Working Capital Assessments or Special Assessments so long as any Residence constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Residence as a residence or leased to an individual or an entity for use as a Residence.

(C) Model Home Lots Owned by Builder. Each Lot owned by the Builder on which there is maintained a model home shall be assessed an Annual Assessment at a uniform rate in accordance with Subsection 13.6(A) herein upon receipt of a certificate of occupancy.



Section 13.7 Notice and Due Date. Written notice of Special Assessments and such other Assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject to such Assessment. The due dates for all Assessments shall be established by the Board of Directors.

Section 13.8 Assessment Liens. All Assessments, together with interest thereon, attorney's fees, and other costs of collection permitted by this Declaration to be collected, shall be a charge on the land and shall be a continuing lien, until paid in full, upon the Lot against which each Assessment is made. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Owner of the Lot at the time when the Assessment became due.

Section 13.9 Failure of Owner to Pay Assessments. No Owner, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Residence belonging to such Owner, may exempt himself or herself from paying Annual Assessments, Working Capital Assessments, Special Assessments, or Violation Assessments, or from contributing toward the expenses of administration or maintenance and repair of the Common Areas, or from any other expense lawfully agreed upon. Each Owner shall be personally liable for the payment of all Annual Assessments, Working Capital Assessments, Special Assessments, Violation Assessments and all other charges applicable to such Owner and such Owner's Lot. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Annual Assessments, Working Capital Assessments, Special Assessments, or Violation Assessments when due, the lien for such Assessment on the Owner's Residence may be foreclosed by the Association in the same manner as mortgages are foreclosed in the State of Indiana or as otherwise specified under the Applicable Laws. Upon the failure of an Owner to make payments of any Annual Assessments, Working Capital Assessments, Special Assessments, or Violation Assessments within ten (10) days after such are due, the Board of Directors, in its sole discretion and regardless of whether litigation is commenced, may:

(A) impose a uniform late charge, which will be considered an addition to the Assessment, in an amount to be determined by the Board of Directors of up to twenty-five percent (25%) of the amount of the Assessment;

(B) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;

(C) require that, in addition to the delinquent Assessment and any applicable late charge, the Owner of the respective Residence also pay (i) any attorney's fees incurred

incident to the collection of the delinquent Assessment and (ii) collection costs incurred by the Association to the managing agent for processing delinquent Owners' accounts;

(D) suspend such Owner's right to use the Common Areas as provided in the Indiana Nonprofit Association Act of 1991, as amended; and

(E) suspend an Owner's right to vote if such Owner is more than six (6) months delinquent.

In any action to foreclose the lien for any Assessments, the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to any unpaid Annual Assessments, Working Capital Assessments, Special Assessments, or Violation Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Annual Assessments, Working Capital Assessments, Special Assessments, or Violation Assessments without foreclosing or waiving the lien securing the same. In any action to recover an Annual Assessment, Working Capital Assessment, Special Assessment, and Violation Assessment, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to collection costs incurred by the Association to the managing agent for processing delinquent Owners' accounts and reasonable attorney's fees, from the Owner of the respective Residence.

Section 13.10 Certificates. The Association shall, upon reasonable request by an Owner, at any time, furnish a letter in writing signed by an officer of the Association or its managing agent for the purpose of property transfer letters indicating the accounting status of Assessments on a Lot, and showing the balance due the Association, if any. The managing agent will charge a fee not to exceed the state allowable amount of Two Hundred Fifty Dollars (\$250.00) for the work provided.

Section 13.11 Subordination of the Lien to Mortgages. The sale or transfer of any Lot shall not affect the lien of Assessments levied under this Article XIII; provided, however, (i) that the lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded, first mortgage covering such Lot and (ii) that the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding or deed in lieu thereof, while not relieving the Owner at the time the Assessment was due of personal liability therefore, shall extinguish the lien of such Assessments which became due or are attributable to the period of time prior to such sale or transfer. No such sale or transfer, however, shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

## ARTICLE XIV

## **REMEDIES**

Section 14.1 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of covenants, conditions, and restrictions in this Declaration shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration.

Section 14.2 In General. The Association, the Declarant and/or any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to compel compliance with these restrictions and covenants, and shall be entitled to recover costs of collection and reasonable attorney's fees when requested; however, neither the Declarant, nor the Association, shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any terms, conditions, or restrictions contained in this Declaration.

## **ARTICLE XV** **EFFECT ON BECOMING AN OWNER**

Section 15.1 The Owner(s) of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restriction contained in this Declaration. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of the Declarant, the Architectural Control Committee, and the Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, the Architectural Control Committee, and the Association to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

## **ARTICLE XVI** **TITLES**

Section 16.1 The titles preceding the various Sections and paragraphs of this Declaration are for convenience of reference only and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

## **ARTICLE XVII**

## **MISCELLANEOUS**

Section 17.1 Severability. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 17.2 Duration. This Declaration and its covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2070, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless changed per the terms of Article XIX below.

## **ARTICLE XVIII DECLARANT'S RIGHTS**

Section 18.1 Any and all of the rights and obligations of the Declarant set forth in this Declaration may be transferred, in whole or in part, to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded with the Recorder of Rush County, Indiana.

Section 18.2 Nothing in this Declaration shall be construed or applied in a manner that limits or restricts the Declarant or the Builder in the development of the Property or the construction of Residences within the Property. Therefore, notwithstanding anything in this Declaration to the contrary, the Declarant and Builder may maintain and carry out upon any portion of the Property, including any Common Area, Lot, and/or such facilities and activities as, in the opinion of the Declarant or Builder, may be reasonably required, convenient, or incidental to the development of the Property and the construction or sale of Residences including, without limitation, business offices, signs, model units, sales offices, and sales and construction trailers.

## **ARTICLE XIX AMENDMENT TO THIS DECLARATION**

Section 19.1 Except as expressly prohibited in this Declaration, this Declaration may be amended or modified from time to time and at any time by an instrument recorded in the Office

of the Recorder of Rush County, Indiana, approved and signed by at least sixty-seven percent (67%) of the then Owners. Provided, however, that so long as the Declarant owns one (1) or more Lots and not more than seven (7) years have passed since the original governing documents were first recorded, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Until the end of the Development Period, this Declaration may also be amended unilaterally, from time to time and at any time, without notice or vote, by Declarant in the Declarant's sole discretion.

*(signature page follows)*

**IN TESTIMONY WHEREOF**, witness the signature of the Declarant of this Declaration as of the date first above written.

**DECLARANT:**  
The City of Rushville, Indiana

\_\_\_\_\_

By: Michael P. Pavey\_\_\_\_\_

Its: Mayor\_\_\_\_\_

STATE OF INDIANA        )  
  )  
COUNTY OF \_\_\_\_\_)

SS:

Before me, a Notary Public, in and for said County and State, personally appeared Michael P. Pavey, Mayor of the City of Rushville, Indiana, who acknowledged the execution of the foregoing Declaration, and who, having been duly sworn, stated that they represent and certify that they have been fully empowered by proper resolution to execute and deliver this Declaration and that the representations therein contained are true.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Commission No: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
County of Residence: \_\_\_\_\_

This instrument was prepared by Russell L. Brown, Attorney at Law.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. \_\_\_\_\_

J:\WPDATA\OAH\RLB Projects\City of Rushville\Single Family\HOA\CCR\_May 28, 2021.docx