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Reference Plat 2020078058

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Jennifer Hayden  
HAMILTON County Recorder IN  
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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR KIMBLEWICK BY DEL WEBB**

THIS DECLARATION (hereafter "Declaration") made this 2A day of November, 2020, by PULTE HOMES OF INDIANA, LLC, an Indiana limited liability company (hereafter "Declarant");

WITNESSETH, that the following facts are true:

Declarant is the owner of certain real estate, located in Hamilton County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "X" (hereafter "Real Estate"), upon which a residential subdivision known as Kimblewick by Del Webb (hereafter "Development") will be developed; and

The real estate described in what is attached hereto and incorporated herein by reference as Exhibit "Y" shall hereafter be referred to as the "Additional Real Estate"; and

Declarant desires to subdivide and develop the Real Estate and Declarant may, in the future, desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided; and

The term "Property" and "Kimblewick by Del Webb" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to this Declaration; and

Declarant desires that Kimblewick by Del Webb shall be an AGE RESTRICTED COMMUNITY IN CONFORMANCE WITH THE SAFE HARBOR PROVISIONS OF THE HOUSING FOR OLDER PERSONS ACT OF 1995 (PUBL. 104-76) AND THE REGULATIONS PROMULGATED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN FUTHERANCE OF THE GOALS OF THAT ACT, 24 CFR PART 100, SECTIONS 100.304-100.308 (collectively "HOPA").

NOW, THEREFORE, the Declarant hereby declares that the Property and all of the Lots (hereafter defined) 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 restrictions, easements, covenants and servitudes, 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 the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these

restrictions. The restrictions shall inure to the benefit of the Declarant and its successors in title to the Property or any part or parts thereof.

As of the date of execution hereof, the Property consists solely of the Real Estate. The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained. ALL OWNERS ARE HEREBY ADVISED THAT LAKE AREAS ARE UNDER BEST MANAGEMENT PRACTICES, and OWNERS AND THEIR GUESTS AND INVITEES SHALL NOT ENTER UPON OR DISTURB ANY LAKE AREAS, INCLUDING THE VEGETATION PLANTED AND MAINTAINED AROUND THEM. BMPs are structural, vegetative or managerial practices used to treat storm-water and prevent or reduce water pollution.

Declarant shall have the right, and hereby reserves unto itself the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. 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 Hamilton County, Indiana an instrument so declaring the same to be part of the Property, which supplementary Declaration (hereafter "**Supplementary Declaration**") may be as part of a subdivision Plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Such Supplementary Declaration 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 or improvements to be located thereon.

Declarant shall also have the right, and hereby reserves unto itself the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to reduce or withdraw land from the Property, and remove and exclude from the burden of this Declaration and the jurisdiction of the Association any portion of the Property. Upon any such withdrawal and removal this Declaration and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Property withdrawn. To withdraw lands from the Property hereunder, Declarant will be required only to record a notice of withdrawal of land containing the following provisions: (a) a reference to this Declaration, which reference will state the document number or volume and initial page number where this Declaration is recorded; (b) a statement that the provisions of this Declaration will no longer apply to the withdrawn land; and (c) a legal description of the withdrawn land.

Upon recording of any Supplementary Declaration on or before the expiration 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 expiration of the Development Period. Such expansion of the Property 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 and in its sole discretion from time to time subject to this Declaration.

## ARTICLE 1 DEFINITIONS

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

Section 1.1 “**Activity Cards**” shall mean those certain cards which are issued by the Association in accordance with the terms and conditions set forth in Section 8.5 and which confer upon the holder rights of access to and use of recreational facilities and other Common Areas within the Properties.

Section 1.2 “**Age-Qualified Occupant**” shall mean any individual (i) who is fifty (50) years of age or older and who owns and occupies a Residence and was the original purchaser of the Residence from the Declarant; or (ii) who is fifty-five (55) years of age or older and who occupies a Residence. The terms “**occupy**”, “**occupies**”, or “**occupancy**” shall mean staying overnight in a particular Residence for at least ninety (90) days in a consecutive twelve (12) month period.

Section 1.3 “**Association**” shall mean shall mean and refer to the Kimblewick by Del Webb Homeowners Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

Section 1.4 “**Board**” shall mean the board of directors, or governing body, of the Association.

Section 1.5 “**Builder**” means a Person or entity engaged in the business of constructing single family residences for sale and engaged in and responsible for the original construction of a Residence on a Lot.

Section 1.6 “**City**” means the City of Westfield, Indiana.

Section 1.7 “**Committee**” shall mean the Architectural Control Committee, as more fully described in Article 6 of this Declaration.

Section 1.8 “**Common Area**” shall mean any Common Area designated on current and future Plats as a “Common Area”, or “C.A.”

Section 1.9 “**Conceptual Plans**” shall mean all master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property, the Development or the Common Area.

Section 1.10 “**Design Guidelines**” shall mean such documents (if any) adopted by the Declarant and/or the Committee, from time to time, that establish minimum standards of design, construction and maintenance, which are consistent with the level of quality and character desired for the Development and the provisions in this Declaration and to assist Builders and Owners in the planning, design, maintenance, and construction of residences and all site improvements.

Section 1.11 “**Development Period**” means the period of time commencing with Declarant’s acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property or Additional Real Estate. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Real Estate. The Development Period is the period during which, among other things, Declarant reserves the right to facilitate the development, construction and marketing of the Property, and the right to direct the size, shape and composition of the Property and the Development known as Kimblewick by Del Webb.

Section 1.12 “**Drainage Board**” means the Hamilton County Drainage Board.

Section 1.13 “**Governing Documents**” means this Declaration, the By-Laws of the Association, the articles of incorporation of the Association, the Design Guidelines, and any other rules, regulations or policies adopted from time to time by the Association, as any such documents may be amended, modified, or otherwise supplemented from time to time.

Section 1.14 “**Lake Area**” means any portion of Common Area on which a lake or pond now exists or is later constructed by Declarant and “**Lake**” means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 1.15 “**Lot**” shall mean and refer to a discreet lot or building parcel for a Residence, as reflected on a Plat.

Section 1.16 “**Mortgage**” shall mean a first mortgage, deed of trust, deed to secure debt, or any other form of security instrument affecting title to any Residence. A “**Mortgagee**” shall refer to a beneficiary or holder of a Mortgage.

Section 1.17 “**Net Annual Assessment Rate**” shall mean the Annual Assessment set by the Board, net of any budgeted costs allocated to Association duties and maintenance of a Lot that are not performed on a Lot that has not been improved with a Residence, including, without limitation, lawn maintenance and snow removal costs.

Section 1.18 “**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. Unless specifically indicated to the contrary, the term “**Owner**” shall include the Declarant and a Builder.

Section 1.19 “**Person**” shall mean an individual, firm, corporation, partnership, trust or other legal entity or any combination thereof.

Section 1.20 “**Plat**” shall mean the subdivision plats of the Property which are or will be recorded with the Recorder of Hamilton County, Indiana.

Section 1.21 “**PUD Ordinance**” means and refers to the “Claiborne Farms PUD District Planned Unit Development Ordinance Number 19-46” as adopted by the Common Council of the City of Westfield, Indiana on November 25, 2019, approved by the Mayor of the City of Westfield on November 27, 2019, and recorded in the Hamilton County, Indiana Recorder’s Office on December 5, 2019 as Document No. 2019061623, as it may be amended from time to time. The PUD Ordinance, together with all amendments thereto, is incorporated herein by reference as if fully set forth herein.

Section 1.22 “**Qualified Resident**” means any of the following Persons occupying a Residence:

- (a) Any Age-Qualified Occupant;
- (b) Any Person 19 years of age or older occupying a Residence with an Age-Qualified Occupant; and
- (c) Any Person nineteen (19) years of age or older who occupied a Residence with an Age-Qualified Occupant and who continues, without interruption, to occupy the same Residence after termination of the Age-Qualified Occupant’s occupancy thereof.

The term “occupy” or “occupancy” shall have the same meaning as set forth in Section 1.2 above. An individual who occupies a Residence but does not satisfy the criteria of (a), (b) or (c) above shall not be deemed to be a resident or a member of the Association and shall not be entitled to any rights or privileges granted to a resident or member of the Association hereunder.

Section 1.23 “**Refuse Collection**” shall mean the collection, from each Residence, of charges for trash and garbage removal, for which the Association contracts, unless the municipality provides such service.

Section 1.24 “**Residence**” shall mean a residential dwelling unit situated upon a Lot, together with any approved improvements.

Section 1.25 “**Special Use**” shall mean any use defined or identified in any applicable zoning ordinance as a “Special Use”, “Use Variance” or “Special Exception”.

## ARTICLE 2 CHARACTER OF THE DEVELOPMENT

Section 2.1 In General. No structure shall be erected, placed or permitted to remain upon any Lot except a Residence. All Property located within a Plat which has not been designated by numbering shall be used in a manner determined by the Declarant or as specified herein or in a Plat. Lots may be used only for 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 Kimblewick by Del Webb than the number of Lots depicted on a Plat. Notwithstanding any provision in the applicable 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 2.2 Age Restriction. Kimblewick by Del Webb is intended to provide housing primarily for Persons fifty-five (55) years of age or older, subject to the rights reserved to Declarant in Section 16.3. The Property shall be operated as an age restricted community in compliance with all applicable state and federal laws. No individual under nineteen (19) years of age shall stay overnight in any Residence for more than ninety (90) days in any consecutive twelve (12) month period. Subject to Section 16.3, each Residence, if occupied, shall be occupied by at least one (1) individual fifty-five (55) years of age or older; provided, however, that once a Residence is occupied by an Age-Qualified Occupant, other Qualified Residents of that Residence may continue to occupy the Residence, regardless of the termination of the Age-Qualified Occupant's occupancy. Notwithstanding the above, at all times, at least eighty percent (80%) of the Residences within the Property shall be occupied by at least one (1) individual that is fifty-five (55) years of age or older. The Board shall establish, and may amend or revise, policies and procedures, from time to time, as necessary to maintain its status as an age restricted community under state or federal law. The provisions of this Section 2.2 may be enforced by the Association by an action in law or in equity, including, without limitation, an injunction requiring specific performance hereunder. Notwithstanding the foregoing, Declarant, until the Applicable Date (defined below), or thereafter the Board, may make exceptions to the Age Restrictions set forth in this Section 2.2 if it is determined upon consultation with legal counsel for the Declarant or the Board that such exception can be granted without jeopardizing any exemption or benefits granted to the Declarant, the Association or the Property under the federal Houses for Older Persons Act.

The characterization of the Kimblewick by Del Webb as a housing "community of persons 55 and older" or "community of persons 55+" shall be posted publicly in common areas and in all advertisements about the Development; provided, however, that phrases such as "adult living", "adult community" shall not be used.

Section 2.3 Other Restrictions. All Property shall be subject to the easements, restrictions, and limitations of record appearing on a Plat and amendments thereto, on recorded easements, and rights-of-way, and also to all governmental zoning authority and regulation affecting the Property, all of which are incorporated herein by reference.

Section 2.4 Conceptual Plans. All of the Conceptual Plans are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and improvements, including but not limited to any amenity centers and open spaces, reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property or the Common Area or outside of the Property may include uses which are not shown on the Conceptual Plans. Neither Declarant nor any Builder or other developer of any portion of the Property or the Common Area makes any representation or warranty concerning such land uses and improvements shown on the Conceptual Plans or otherwise planned for the Property or the Common Area and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans or any statements made by the

Declarant or any of Declarant's representatives regarding any existing or proposed land uses, or proposed or planned improvements in making the decision to purchase any land or improvements within the Property. Each Owner who acquires a Lot within the Property acknowledges that development of the Property and/or the Common Area will likely extend over many years, and agrees that the Association may not engage in, or use Association funds to support, any protest or challenge, or make any form of objection to, development of the Property or the Common Area or changes in the Conceptual Plans as they may be amended or modified from time to time.

Section 2.5 Adjacent Land Use. Although this Declaration may contain disclosures about the Property or its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective owner or resident must make his own inspection of the Property, its location and nearby land uses, and make inquiries to the applicable local governmental units of anything that concerns her or him. Declarant makes no representation of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property, regardless of what any Plat, plan or drawing shows as potential uses of adjoining land. Declarant and the Association cannot and do not guaranty scenic views, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water or air. No sales agent, realtor or other party has the authority to make any representation on behalf of Declarant.

### **ARTICLE 3 EASEMENTS**

Section 3.1 Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a Plat:

(a) Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and perpetual stormwater easements, or any combination thereof which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved by any entity to which the easement is dedicated and pursuant to Section 5.8 below, 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 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 applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release 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 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. Each Owner, as it pertains to their Lot or Lots, shall maintain surface drainage systems and open swales, as well as all basement sump drains and swale sub-surface drains.

(b) Designated Landscaping, and Screening and Sign Easements. Any strips of ground shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, and/or landscape maintenance access easements are hereby reserved unto Declarant, during the Development Period, and, thereafter, unto the Association, for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing directories, landscaping, mounding, lighting, irrigation systems, walking trails, screening and other improvements. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install, maintain and replace landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association. Finally, no Owner shall be permitted to remove anything within any of the easements described in this subparagraph (b) without the prior written approval of the Declarant during the Development Period, and thereafter by the Association.

(c) Designated Non Access Easements. Any strips of ground shown or designated on the Plat for the specific purpose of restricting access to residential Lots from existing public streets. No driveway or access, either permanent or temporary will be permitted across designated non access easements.

(d) Designated Sight Line Easements. Any strips of ground shown or designated on the Plat for the specific purpose of maintaining vision clearance. No fence, wall, hedge, tree, shrub, planting or any other object which obstructs sight lines and elevations between two (2) and eight (8) feet above the street level shall be placed or permitted to remain (i) within designated sight line easements, or (ii) on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting points twenty-five (25) feet from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet of the intersection of a street right-of-way line with the edge of the driveway pavement or alley line. No driveway shall be located within twenty-five (25) feet of the intersection of two street lines.

(e) Easement Work. Notwithstanding any architectural approval under Article 6 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/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any Owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.1(a) above and without any obligation of replacement.

Section 3.2 General Drainage, Utility, Sewer and other Development Easements. The following rights reserved in this Section 3.2 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 3.2 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(a) Drainage, Utility and Sewer Easement. Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("**Drainage, Utility and Sewer Easement**") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install 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 Drainage, Utility, Sewer and other Development easement shall include all areas of the Property outside any Residence, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or 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

defined upon a Plat as a drainage, sewer, utility, cable, transmission, flowage or similar type easement.

(b) Drainage Easement. Declarant reserves unto itself and any Builder during the Development Period, and thereafter unto the Association, a blanket easement on, ("**Drainage Easement**") over and under the ground within the Property (excluding the area where a Residence is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

(c) Lake Easement. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("**Lake Easement**") and right-of-way in and to any Lake Area(s) now or hereafter shown on the Plat as a "Block", "Common Area", "C.A.", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, including dewatering 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 Board of the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

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

(e) Temporary Construction Easement. During the Development Period, all Lots will be subject to an easement ("**Temporary Construction Easement**") for the benefit of Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Residences and landscaping upon adjacent Lots,

provided that such easement will terminate as to any Lot two years after the date such Lot is conveyed to an Owner other than a Builder. Any damage to a Lot caused by Declarant due to exercise of the foregoing completion easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

(f) Mailboxes. Mailboxes will be located and constructed within the Development as determined by the U.S. Postal Service (the "USPS"). Declarant hereby reserves for the benefit of the USPS, Declarant and the Association an easement over those portions of each Lot and Common Area as may be designated for the installation of a mailbox, together with space reasonably necessary for the installation and maintenance of same (each, a "Mailbox Easement Area"). No Owner may disturb the mailbox improvements within the Mailbox Easement Area, obstruct access to the Mailbox Easement Area or construct improvements within the Mailbox Easement Area without the prior written consent of the Declarant, during the Development Period, or thereafter without the prior written consent of the Association. The Association shall have the right to adopt reasonable rules and regulations governing the use of each Mailbox Easement Area. Mailboxes may be individual with one or two mailboxes per post serving the Residences on individual Lots, group or clustered mailboxes on Lots or Common Areas serving multiple Residences, or as otherwise determined by the USPS. For cluster mailboxes, the Association shall be responsible for all maintenance and replacement. For individual mailboxes with one or two mailboxes per post, the Association will be responsible for routine maintenance and occasional replacement due to age. For damage to individual mailboxes with one or two mailboxes per post, the Owner of the Lot shall have responsibility of repair and replacement; provided, however, that the Association shall have the right to repair or replace any damaged mailbox and assess the cost to the Owner.

(g) Easement to Inspect and Right to Correct. During the Development Period and for a period of ten years thereafter, Declarant reserves for itself, its assigns and for the Declarant's architect, engineer, other design professionals, builder and contractors the right, but not the duty, to inspect, monitor, test, redesign, repair, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. This Section 3.2(g) may not be construed to create a duty for Declarant, the Association, or any architect, engineer, design professional, builder or contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Areas and the Owner's Lot and all improvements thereon for the purposes contained in this Section 3.2(g).

(h) Additional Easements and Relocation. 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, surface water runoff, utility, sewer and lake, sign and facilities, temporary construction, mailbox or any other easement granted in this Declaration, or any facility 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 to change the description of any drainage, surface water runoff, utility, sewer, lake, sign and facilities easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hamilton County, Indiana.

#### **ARTICLE 4 ADDITIONAL PROVISIONS RESPECTING OF SANITARY SEWER UTILITY**

Section 4.1 In General. Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and give utility companies the right of ingress/egress.

Section 4.2 Landscaping and Trees. No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or right-of-ways is at risk of being removed, damaged, or destroyed by the applicable utilities without the obligation of replacement.

Section 4.3 No Improvements. 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 is at risk of being removed by the applicable utilities without the obligation of replacement.

Section 4.4 No Discharge. The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains, to the sanitary sewers, is prohibited.

Section 4.5 Grade Change Approval. Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

#### **ARTICLE 5 COVENANTS AND RESTRICTIONS**

Section 5.1 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 PUD Ordinance 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 Kimblewick by Del Webb than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable 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 5.2 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, as determined by the Committee.

Section 5.3 Lighting. All homes will have two dusk to dawn lights that each operate on a photo cell located on the sides of the garage doors and installed by the Builder, regardless of the number of garage doors. In the interests of safety and aesthetics of the neighborhood, the Owner of each Lot shall maintain the appearance and working condition of their garage lights. Such lights must be illuminated during nighttime hours (i.e., immediately following dusk and preceding dawn).

Section 5.4 Temporary Structures. No trailer, recreational vehicle (RV), shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

Section 5.5 Garages. All Residences must have a minimum of a two (2) car attached garage.

Section 5.6 Driveways. All driveways shall be concrete in material unless otherwise approved by the Committee. All driveways, including location and materials, shall be subject to the Design Guidelines and the advance written approval of the Declarant or the Committee.

Section 5.7 Water Systems. Each Owner shall connect to the water main maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability, or other charges lawfully established with respect to connections thereto.

Section 5.8 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 Drainage Board, "Drainage Easements" reserved as drainage swales 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. Lots may be included in a legal drain established by the Drainage Board. In such event, each Lot will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the drainage system and the lake control structures included in such legal drain, which assessment will be a lien against the Lot in favor of the Drainage Board. 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. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

Section 5.9 Signs. Unless otherwise permitted by the Declarant prior to the end of the Development Period, and thereafter by the Board of the Association, 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 at any time for the purpose of advertising the Property for sale, or may be displayed by a builder to advertise the Property during construction and sale.

Section 5.10 Fencing. This subsection is applicable to all Lots except those Lots which are used for a sales office or model home by the Declarant or a Builder. This subsection does not apply to fencing approved by the Board and the Committee and erected in Common Areas. Generally, fences are not allowed, and no fence shall be erected on any Lot in this Development by an Owner. Notwithstanding the foregoing, exceptions may be made upon the prior written approval of the Committee. Any fence approved by the Committee shall comply with the following standards:

Generally, no fences shall be constructed forward of the rear building line of the Residence on any Lot without the approval of the Committee.

Wood fences are prohibited. All fencing must be black wrought iron, its aluminum equivalent or like material, and be of such style designated by the Committee in the current Design Guidelines. Generally, fences shall not be higher than forty-eight inches (48") from ground level.

No fence shall be erected or maintained on or within any Landscaping Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence. No fence may be erected on a Lot without prior approval of the Committee, which shall approve or disapprove the location of all fences; provided, however, that all fencing erected on a Lot must be erected either (i) within six (6) inches of the property line of such Lot, or (ii) more than ten (10) feet from the property line of such Lot, unless otherwise approved by the Committee. Notwithstanding anything to the contrary herein, fences meeting the height restriction provided in the paragraph above may be erected around the Builder-constructed patio, with prior approval of the Committee. Owners of Lots adjoining Lots on which a fence is erected within six (6) inches of the property line shall have the right to connect a fence to the fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Committee.

In instances where privacy screening is necessary or desirable, exceptions to the above material or height restrictions may be approved by the Committee on a case by case basis. Opaque privacy screens up to six feet (6') in height shall be permitted around patio areas so long as they do not extend more than seventeen feet (17') from the back of the home. For such privacy screens, the Committee encourages the use of materials that will not fade or warp (such as vinyl or composite material), but the Committee may approve the use of wood material for a privacy screen so long as the Owner treats the wood every two years as necessary to maintain an attractive appearance.

The Committee may impose a landscaping component as part of any request to install a fence. Fencing in rear or side yard areas of Lake Lots should generally not be taller than forty-eight inches (48") nor located within ten feet (10') of the high water mark. Fencing shall be placed within areas permitted in the Design Guidelines. No rear yard fence shall be allowed within any landscape easement. Gates and monumentation for an individual Lot may be approved by the Developer or Committee on a case by case basis.

The Committee may establish further restrictions with respect to fences, including limitations on the installation of fences in the rear yard of a Lot abutting a Lake and Design Guidelines for fences. All fences shall be kept in good repair.

No fence, wall, hedge, or shrub planting, or tree foliage which obstructs sight lines at elevations between two (2) and eight (8) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Lot lines at the streets and a line connecting points 25 feet from the intersection of said street Lot lines; and, the same rule shall apply to the intersection of a driveway with a street, in which case the edge of the driveway pavement shall be substituted for one of the street Lot lines.

Section 5.11 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant, and/or the Association, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance. In the event of successful enforcement by an Owner, the Declarant, or the Association of the provisions thereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

Section 5.12 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 inside the garage of the Residence except not more than 24 hours prior to or after its removal thereof, when it may be placed at the curb of the Lot. An Owner may keep their containers outside the garage, but only if the containers are out of public view and the Owner receives the prior approval from the Committee. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 5.13 Animals, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that (i) dogs, cats or other customary household pets in accordance with all requirements of the City may be kept subject to rules and regulations adopted by the Board; provided that (i) they are not kept, bred, or maintained for any commercial purpose; and (ii) they are limited in number to three (3) per Lot. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. There shall be no "tie outs", exterior dog runs, crates, houses or cages for pets of any kind allowed on the Lot. An Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by his or her pet. All pets not confined by fences (or approved invisible pet containment) within the Lot, shall be on leashes when walked. The Owner

shall be responsible for the cleaning of any Common Area or within the Lot made dirty by his or her pet's excrement, and shall be fully liable for the expenses of any cleaning not performed by the Owner. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon ten (10) days' written notice from the Board to the respective Owner. The appropriate governmental authorities shall have an easement across the Property to enforce local animal control laws and ordinances.

Section 5.14 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot. Owners shall at all times be in compliance with all applicable legal requirements for outside burning.

Section 5.15 Antennas and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any part of the Property, including Lots, without the written approval of the Committee, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from the neighboring Lots, streets or Common Area; or (b) the device is virtually indistinguishable from structures, devices, or improvements, such as heat pumps, air-conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or the rules and regulations of the Association, or (c) it is a satellite dish one (1) meter (approximately 39") or less in diameter and not affixed to the roof, front or front corner of a Residence; or (d) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority.

Section 5.16 Exterior Lights. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no 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 5.17 Electric Bug Killers. Electric bug killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities that require the use thereof and not continuously.

Section 5.18 Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereof. Declarant and the Association shall have the right, but not the duty, to enter upon each vacant Lot and to maintain the appearance thereof by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances. The Owner shall be responsible for payment of all such expenses upon demand and the Declarant or the Association, as the case may be, shall have a lien on such Lot for the payment of such expenses, together with attorney's fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith.

Section 5.19 Association's Right to Perform Certain Maintenance. In the event that the Owner of any 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 cost incurred by the Association shall be assessed to the Owner. The Owner 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 outstanding maintenance assessments in the manner described in Article 10. 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. The Association shall provide written notice to the Owner that he or she has failed to properly maintain his or her Lot and that the Association intends to do so at the Owner's expense at least ten (10) days prior to exercising any powers granted by this Section 5.19.

Section 5.20 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no awnings or patio covers will be permitted on the front façade of a Residence, or anywhere else on the Property unless approved in advance by the Committee or in compliance with the Design Guidelines. All approved awnings and patio covers must be kept in good repair and attractive in appearance.

Section 5.21 Diligence in Construction. Subject to inclement weather or other Acts of God, every Residence shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming.

Section 5.22 HVAC Units. No heat pumps, generators, air conditioning units, fans, or gas meters will be installed in windows or the front of the Residence. Window air conditioning units and window fans are prohibited.

Section 5.23 Lake and Lake Area(s). Except as otherwise provided, no individual using a Lake, 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 Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, ice fishing, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area unless required by the applicable municipality. Only the Declarant and the Association (after conveyance of the Common Area to the Association) shall have the right

to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 5.24 Mailboxes. All mailboxes and posts will initially be installed by the Declarant or a Builder. Mailboxes shall be standard as to size, location, post, design, height, material, composition and colors. After initial installation, the Association shall maintain, repair and replace the mailboxes and posts as part of the common expenses of the Association. No Owner shall be permitted to remove or alter the mailbox and post associated with such Owner's Lot.

Notwithstanding the above, if a "cluster" mailbox or mail station is required by applicable regulatory authorities, such system shall negate the above paragraph and the Association shall perform the necessary maintenance, repair and replacement as part of the common expenses of the Association.

Section 5.25 Maintenance of Lots and Improvements. Each Owner shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, in addition to and specifically, such Owner shall:

- (a) Remove all debris or rubbish from the Lot;
- (b) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;
- (c) Comply with all applicable requirements of the City or Hamilton County regarding the maintenance of the Lot and any improvements thereon;
- (d) Cut down and remove dead, dying or diseased trees and shrubs from the Lot and replace with the same species or similar species approved by the Committee; and,
- (e) Within sixty (60) days following completion of a Residence, the Owner shall landscape the lot in accordance with the provisions set forth in this Declaration, weather permitting.

Section 5.26 Landscaping and Irrigation Systems.

The Builder will install on all Lots an initial landscape package that meets the requirements set forth in the Design Guidelines. The initial landscaping package installed by the Builder shall include an in-ground irrigation system and sod or hydro-seed or equivalents for the front and side yards. All Lot Owners will be required to maintain the landscaping after initial installation in accordance with the Design Guidelines. All plantings shall be maintained in an appropriate manner and any trees and bushes that die shall be replaced. For any additions or changes to landscaping, a plan of the landscaping shall be submitted to the Declarant or Committee and approved by the same prior to installation.

Section 5.27 Maintenance by Owners of Utility and Irrigation Systems. Each Owner of a Lot shall (i) maintain and repair the portions of any utility systems that are located entirely on, and that serve exclusively, that Owner's Lot, or that are located entirely on, and serve exclusively,

two or more adjacent Lots owned by the same Owner; and (ii) replace, in whole or in part, such portions of the utility systems when replacement is necessary to satisfy the obligations of the Owner under this Declaration. Notwithstanding any covenant, condition, term, or provision to the contrary in this Section 5.27, to the extent that any third party utility provider or municipality has the obligation to maintain and repair the utility systems or to bear the expense of maintaining and repairing the utility systems, no provision of this Declaration shall obligate Declarant or the Owners to maintain or repair the utility systems or to bear the expense of maintaining or repairing the utility systems. Each Owner of a Lot shall (i) maintain and repair the portions of any irrigation systems that are located entirely on, and that serve exclusively, that Owner's Lot, or that are located entirely on, and serve exclusively, two or more adjacent Lots owned by the same Owner; and (ii) replace, in whole or in part, such portions of the irrigation systems when replacement is necessary to satisfy the obligations of the Owner under this Declaration. Notwithstanding the foregoing, the Declarant, prior to the end of the Development Period, or the Association thereafter shall have the obligation of opening the irrigation systems in the spring and closing and winterizing the irrigation systems before winter each year. Owners will cooperate in providing access to irrigation system controls to contractors hired by the Association to open and close the irrigations systems. Neither the Association nor the Declarant shall have any other responsibilities related to the maintenance or repair of any irrigation system located on a Lot.

Section 5.28 Clotheslines. No clotheslines may be erected on any Lot unless approved in writing by the Committee.

Section 5.29 Outbuildings. Any and all forms of detached outbuildings or accessory buildings, including but not limited to, mini-barns, sheds, storage sheds, animal quarters, and play houses on any Lot, are prohibited, unless the same are necessary or incident to the Declarant's or Builder's business or activities upon the Property.

Section 5.30 Plumbing. All plumbing vent stacks are to be located on the rear of the Residence.

Section 5.31 Sidewalks. Each Residence shall have a continuous 5-foot wide by a minimum of four (4) inches thick concrete sidewalk adjacent to all interior dedicated street frontages. Sidewalks shall be installed by the Declarant or Builder and included in the purchase price of the Residence. Sidewalks will be dedicated to and repaired and maintained by the City. Neither the Declarant nor the Association shall have any obligation to repair or maintain sidewalks. Owners shall be responsible for the removal of any debris or other obstructions that might impede pedestrian usage of the sidewalk adjacent to or on such Owner's Lot. The Association, or its agents or third party contractors, shall plow and/or remove snow on the driveways, front walkways, and sidewalks adjacent to, or upon, Lots and Common Areas and other community walkways located within Common Areas. Initially, the snow removal standard shall require snow plowing and/or removal within twenty-four (24) hours after a snow event of at least three (3) inches of accumulation; provided, however, that after the Development Period, the Board of the Association may from time to time, without amending this Declaration, adopt resolutions or standards for snow removal that are more or less stringent than the standard established herein. The costs for snow plowing and removal shall be included in the Annual Assessment. Owners shall be responsible for removal of snow which has accumulated on the front porch, patio or stoop of a Residence.

Section 5.32 Subsurface Drains and Sump Pump Discharges. Subsurface drains 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 limits 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 and/or common subsurface drain laterals will be held responsible for such action and will be given ten (10) days' notice, by registered mail or other verifiable method of delivery, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owners (and/or Builders) for immediate payment. If immediate payment is not received, the Declarant and/or the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article 10 of this Declaration.

(d) In no case will maintenance and repair of sump pump discharge lines and subsurface drain laterals be the responsibility of the City.

Section 5.33 Swimming Pools and Hot Tubs. Except for children's unfiltered splash pools, generally no pool, including plunge pools, shall be permitted on any Lot. Above ground hot tubs and swim spas shall be allowed, provided that prior written approval is obtained from the Committee. Any hot tub or swim spa approved by the Committee must comply with the standards set forth in this paragraph. All submittals to the Committee shall include landscape plans. All hot tubs and swim spas should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Committee approvals.

Section 5.34 Recreational Equipment and Sports Courts. Recreational equipment such as swing and slide sets, playground equipment, basketball goals (including portable basketball goals), sandboxes, and trampolines are not permitted. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities are not permitted. This Section 5.34 shall not apply to recreational facilities constructed by Declarant or a Builder authorized by Declarant during the Development Period, or thereafter by the Association.

Section 5.35 Vents. All metal and PVC roof or range vents must be painted to blend with roof color.

Section 5.36 Windows and Doors. Installation of storm doors requires the prior written approval of the Committee. If storm doors are installed pursuant to Committee approval, they must be painted or finished to match the exterior of the Residence. No unfinished aluminum doors or windows or security doors will be allowed.

Section 5.37 Street Signs. Decorative street signs that do not conform to the City's standards nevertheless may be installed by Declarant in the Development. Any such decorative street signs shall be maintained by the Association, and shall be repaired or replaced by the Association if damaged in accordance with applicable rules and regulations of the City. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs and agrees to hold the City harmless related thereto.

Section 5.38 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, shall be and hereby are prohibited.

Section 5.39 Garbage and Other Refuse. No Lot Owner in the Development 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 his or her Lot, unless otherwise approved by the Committee.

Section 5.40 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, which satisfies the following definition as well as all requirements of the applicable zoning ordinance, may be permitted: any use conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, which use 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: (a) 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; (b) no commodity sold upon the premises; (c) no Person is employed other than a member of the immediate family residing in the Residence; (d) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board) by clients, customers or other persons related to the business; and (e) no manufacture or assembly operations are conducted. Provided however, that in no event shall the following or similar activities be conducted or considered to be a permitted Home Occupation: child day care, barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog grooming, or any other similar activities. The foregoing notwithstanding, the Declarant and Builders shall be permitted to operate sales trailers, model homes, and sales offices.

Section 5.41 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales:

- (a) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled,

or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant or, after the Development Period, by the Association. Lot Owners must maintain these swales as grassways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Lot Owner.

(b) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days' notice, by registered mail or other verifiable method of delivery, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article 10 of this Declaration.

Section 5.42 Roofing Materials. The roofing materials on all Residences shall be similar in color and material, and shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Committee. No Owner shall be permitted to change or replace the shingles or other roofing materials without obtaining the prior written approval of the Committee unless the change or replacement is identical to what was originally in place.

Section 5.43 Vehicles and Parking. Only normal passenger vehicles are permitted to be parked within the Property. Normal passenger vehicles include automobiles, vans, motorcycles, mini-bikes, sport utility vehicles, and trucks with a maximum load capacity of one ton or less. Boats or other watercraft, campers, recreational vehicles, trailers of any kind, temporary storage units, dumpsters, buses, mobile homes, commercial or business trucks or vans, or any other vehicles other than normal passenger vehicles shall not be permitted to be parked or stored anywhere within the Property, unless they are:

- (a) parked or stored completely enclosed within the Owner's garage; or
- (b) parked or stored upon the Owner's Lot for no more than two (2) weeks per year total; or
- (c) approved by the Board upon a showing of extenuating circumstances. The Board's approval may include such conditions as deemed appropriate by the Board.

Commercial vehicles are vehicles, regardless of size, on which commercial lettering or equipment is visible and is being used for commercial purposes. No junk or disabled vehicle or other vehicle on which current registration plates are not displayed shall be kept in the Property, except as may be completely enclosed within a garage. No repair work shall be done within the Property on any vehicles, including passenger vehicles, except as may be completely enclosed within a garage.

Section 5.44 Golf Carts.

- (a) Generally. Golf carts may be used and stored on the Lots, subject to the restrictions on use, storage and operation of vehicles set forth in Section 5.43 above.

(b) Authorized Golf Carts. All golf carts maintained and used in the Property must be registered with and approved for use by the Declarant until the end of the Development Period, and thereafter by the Association. The only golf carts that shall be permitted to be operated within the Property shall be electric powered golf carts. All golf carts powered by a source other than electricity are prohibited. All golf carts must be maintained in a first class condition by the Owner.

(c) Operation of Golf Carts on Streets within the Properties. Owners of Residences may maintain golf carts at their Residence and operate such vehicles on streets within the Property to the full extent permitted by law, subject to rules and regulations established by the Declarant until the end of the Development Period, and thereafter by the Association, and as amended from time to time. All golf carts must have working headlights, taillights, brake lights, turn signals, and can only be operated by persons over the age of sixteen (16) who have a valid automobile driver's license. The operation of golf carts within the Property is a privilege and not a right that can be suspended at any time by the Association. All golf carts shall be stored inside when not in use. Outside storage of golf carts is prohibited.

(d) Liability. Each owner of a golf cart accepts and assumes all responsibility for liability connected with the operation of the golf cart, and expressly indemnifies and agrees to hold harmless the Declarant and the Association, and their partners, members, officers, directors, employees, affiliates, representatives and agents, from any and all damages, whether direct or consequential arising from or related to the use and operation of the golf cart.

Section 5.45 Wells. Water wells shall not be drilled on any of the Lots.

Section 5.46 Streets, Sidewalks, and Street Landscaping.

(a) Maintenance. Declarant shall maintain all streets, sidewalks and curbs in a good condition satisfactory for the purpose for which they were constructed until they have been accepted by the public authority. However, prior to such acceptance, the Association will be responsible for general maintenance and upkeep of the streets and curbs such as street sweeping or cleaning and minor repairs. As soon as practicable, the sidewalks shall be dedicated to the City. After dedication and acceptance by the City, it shall be the City's responsibility to maintain and repair the sidewalks at its cost. Neither the Declarant nor the Association shall have any obligation to repair, maintain or replace sidewalks that have been dedicated to the City of Westfield. Notwithstanding the foregoing, if the City fails to maintain, repair or replace sidewalks, the Association may, in its sole discretion, apply for appropriate permits from the City to make repairs if the Board determines such repairs are necessary or desirable to maintain the community standards and if permitted by applicable law, with the cost to be a common expense of the Association; provided, however, that such voluntary repair shall not create any obligation on the part of the Association to make any other repairs or conduct any other maintenance with respect to the sidewalks. Any walkways in Common Areas that are not dedicated to the City shall be maintained by the Association.

Declarant's maintenance shall not include snow removal. Snow removal for sidewalks shall be provided by the Association as set forth in Section 5.31 above.

(b) Landscaping. All landscaping within the street rights-of-way is subject to the approval of the appropriate governmental authority. The Association will be responsible for regular and customary grass cutting and lawn fertilizing, and mulching of all landscape beds once per year; provided, however, that the Association shall not be required to maintain or fertilize flowers, plants, trees or shrubs. Each Owner shall immediately replace any street trees and lighting required by this Declaration, the Plat, or any other document controlling maintenance of Lots. Owners shall maintain landscaping after initial installation as required by Section 5.26 above.

(c) Street Lights and Decorative Street Signs. All street lights and decorative street signs located within the right-of-way of any street shall be maintained by the Association.

Section 5.47 Construction and Landscaping. 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, including time limitations.

Section 5.48 Tree Preservation Areas. The Association and all Owners shall preserve trees within the tree preservation areas marked on the PUD Ordinance exhibits in the manner specified in the PUD Ordinance and applicable zoning ordinances and regulations.

Section 5.49 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by a public agency or public or private utility) shall be installed or maintained on any Lot.

Section 5.50 Rules and Regulations; Availability of Other Governing Documents. The Board from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Areas. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Development as well as its own books, records, financial statements and meeting minutes available for inspection by Owners or by holders, insurers and guarantors of first Mortgages, that are secured by Lots in the Development. These documents shall be available during normal business hours or under other reasonable circumstances. Costs to reproduce copies other than by electronic delivery shall be at the cost of the requesting Owner.

Section 5.51 Notice of PUD Ordinance. Notice is hereby given of the PUD Ordinance and other laws or codes that may be relevant to the Association's operations and administration which are deemed to be incorporated herein by this reference. Each Owner shall comply with any and all development and design standards and other regulations set forth in the PUD Ordinance and other laws or codes as they may pertain to any Lot owned by such Owner.

Section 5.52 Declarant and Builder Sales, Development and Construction. Notwithstanding any provision in this Declaration to the contrary, Declarant, and its successors

and assigns, and any Builders, shall be entitled to conduct on the Property all activities normally associated with, and convenient to, the development of the Property and the construction and sale of Residences on the Property. Until the expiration or termination of the Development Period, Declarant and/or its licensees may construct and maintain upon portions of the Common Area and any Lot owned by the Declarant such facilities and may conduct such events and other activities which, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of single-family residences constructed upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its licensees have an easement over and across the Common Area for access and use of such facilities at no charge.

Section 5.53 Declarant's Development Rights. It is contemplated that the Property will be developed pursuant to a plan, which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, or the right to direct the size, shape, and composition of the Property, and the right to create and/or designate Lots, Common Area or to subdivide all or any portion of the Property, subject to any limitations imposed on portions of the Property by any applicable Plat. Without limiting the preceding sentence, Declarant reserves the right, at any time and in Declarant's sole discretion, to (a) plat any unplatted land within the Property, in whole or in part and in phases, (b) replat any platted land within the Property, in whole or in part, and (c) convert residential lots to Common Areas, (d) convert Common Areas to residential lots, (e) impose or remove easements, and (f) effect any other land use or change in land use which is conducive to the completion of the development of the community or the sale of land owned by Declarant within the Property. Collectively, the rights reserved to the Declarant as set forth in this Declaration shall be known as the "**Development Rights**", and Declarant hereby reserves the right and privilege for itself, and/or its assigns, to exercise the Development Rights, and any other rights reserved on behalf of the Declarant as set forth in this Declaration until twenty-four (24) months after the expiration or termination of the Development Period, except the right to appoint and remove Board members and officers of the Association which shall be governed by the provisions otherwise set forth in this Declaration. These rights may be exercised with respect to any portions of the Property or the Common Area. As each portion of the Property is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for such Property.

Section 5.54 Remonstrance. Every Person that acquires any interest in a Lot at Kimblewick by Del Webb acknowledges that Kimblewick by Del Webb is a planned community, the development of which is likely to extend over many years, and that changes in the plans for the Development and surrounding area will likely occur as the Development proceeds and time passes. Each such Person that has acquired any real property interest in a Lot therefore agrees not to protest, challenge, remonstrate against or otherwise object to changes made, supported or proposed by Declarant in any plans, documents, permits or approvals for Kimblewick by Del Webb. Each such Person that has acquired any real property interest in a Lot also therefore agrees not to protest, challenge, remonstrate against or otherwise object to changes made or proposed with respect to the uses or density of property adjoining or in the vicinity of, but beyond the boundaries, of Kimblewick by Del Webb for a period of twenty (25) years commencing on the date the Declaration is recorded in the Hamilton County, Indiana Recorder's Office, and so long as such proposed uses are commercial, including retail, or residential in nature. Notwithstanding

the forgoing to the contrary, the following uses as defined in the City's UDO as of the date hereof shall be excluded from the provisions of this Section 5.54: Heavy Industry, Medium Industry, Adult Entertainment Establishments, Airports, Amusement Park, Outdoor Racetrack, Camp, Landfill, and Material Recycling Facility.

Section 5.55 Age Verification. Upon the request of Declarant or the Association, all Owners and residents are required to promptly provide documentation for age verification to the Association upon occupancy. Any of the following documents will be accepted for age verification purposes:

- (a) Driver's license;
- (b) Birth certificate;
- (c) Passport;
- (d) Immigration card;
- (e) Military identification;
- (f) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or
- (g) A certification in a lease, application, affidavit or other document signed by any member of the household age eighteen (18) or older asserting that at least one individual residing in the unit is fifty-five (55) years of age or older.

Should the Board or Declarant become concerned about misrepresentation of the age of the occupants, the Board may require that affidavits from occupants about the ages of persons in their households be signed under the penalty of perjury. All leases and tenants are also subject to the age verification process, as required by this Section 5.55.

Section 5.56 Leasing. Leasing of a Residence is allowed so long as the lease meets the following requirements: (a) each of the prospective tenants must be age-verified as provided in Section 5.55 prior to entering into the lease; (b) the lease must be for a term of at least three (3) months; and (c) the Owner must have the prior written approval of the Board or Declarant, as applicable, prior to entering into the lease with a prospective tenant. The Declarant, prior to expiration of the Development Period, and the Board, after the expiration of the Development Period may adopt additional rules and regulations on leasing, in addition to those provided herein.

## ARTICLE 6 ARCHITECTURAL CONTROLS

Section 6.1 Approvals. Approvals, determinations, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant during the Development Period, by an authorized representative thereof, or with respect to the Association after the Development Period, by an officer thereof; and with respect to the Committee, by one (1) member thereof as included in the meeting minutes of such Committee and submitted to the Board as needed for approval.

Section 6.2 Architectural Control Committee. An Architectural Control Committee (as defined as the "**Committee**" in Section 1.7) shall be created, composed of at least three (3) members. During the Development Period, Declarant may serve as the Committee or may appoint the members of the Committee. Members appointed to the Committee during the Development Period shall be subject to removal by the Declarant at any time, with or without cause, and any vacancies from time to time shall be filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, (i) relinquish for a period of time to the Association the power to appoint and remove one or more members of the Committee; provided, however, that any such relinquishment must be in writing and shall be only on the terms and conditions expressed in such writing, or (ii) discontinue the Committee by providing written notice to the Association.

Section 6.3 Continuation of Committee. Upon expiration of the Development Period, the Committee shall continue to be a standing committee of the Association with like powers, consisting of a minimum of three (3) persons, appointed by a majority vote of the Board. The persons appointed by the Board to the Committee shall consist of Owners of Lots and may be, but need not be, members of the Board. The exception to this is that the Chair of the Committee must be a Board member. The Board may at any time remove any member of the Committee upon a majority vote by the members of the Board. At the Board's discretion, the Board may serve as the Architectural Review Board.

Section 6.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to and actually received by it. The 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, it shall specify the reason(s) for disapproval and the requesting applicant may re-apply with changes. If, however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered DENIED.

Section 6.5 Exercise of Discretion. Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the 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 Committee, could only conclude that such determination constituted an abuse of discretion.

Section 6.6 Inspection. The Owner, by submission for the approval of any alteration or addition, approves the Architectural Control Committee, Board or their appointed management agent to inspect the construction and or completed project and grants them access to the Lot to do so.

Section 6.7 Liability. Neither the Committee nor any agent thereof, nor the Declarant, nor 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 Committee, Association or Declarant 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 Committee, Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used. All parties should seek professional construction advice, engineering, and required municipal permits and inspections on each Lot prior to proposing construction.

Furthermore, the Committee shall review the elevations ONLY of any proposed Residence or other improvements such that the Committee shall not be liable for any alleged deficiencies concerning the height or placement of any improvements. Thus, neither the Declarant nor the Committee shall be responsible for anything related to height, setbacks, grade, finished floor or other elevations, drainage, or home position upon a Lot. The City and applicable building ordinances shall control such matters.

Section 6.8 Lot Improvements. No dwelling, building structure, fence, deck, driveway, swimming pool, or improvement of any type or kind (including significant landscaping or stacking of wood) shall be constructed or placed on any Lot, nor shall any of the same be modified or altered, without the prior approval of the Committee. However, Committee approval is not required for any improvements constructed, erected, altered, added onto or repaired by Declarant, or a Builder designated in writing by Declarant during the Development Period to be exempt from the Committee approval requirements. Any change in the appearance or the color of any part of the exterior of a Residence or the Lot shall be deemed a change thereto and shall also require the prior approval of the Committee. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed construction, alteration or modification. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated; and (ii) all easements, setbacks, and rights-of-way; and (iii) any landscape plans required by the Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $\frac{1}{4}'' = 1'$  and all plot plans shall be drawn by a professional to a scale of  $1'' = 30'$ , or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to insure that a resident is not encroaching on an adjacent Lot or in a Common Area. If Owner has encroached on an adjacent

Owner's property or in a Common Area, the encroaching Owner will, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the Committee in the Committee's sole and absolute discretion, the 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 Committee.

No fence or screen of any kind will be permitted if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties shall be considered by the Committee when reviewing applications for approval.

Section 6.9 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

- (a) The plans, specifications, drawings or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of this Declaration, the Design Guidelines, the Plats, or the rules and regulations adopted by the Board;
- (b) The design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures; and
- (c) The proposal should preserve or enhance the value and desirability of the Property and be consistent with the interests, welfare or rights of the Declarant, the Association and any other Owner.

Section 6.10 Power to Grant Variances. The 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 or to comply with written request of municipality in charge of applicable permits. No variance or adjustment shall be granted which is knowingly materially detrimental or injurious to other Lots in the Development, and any such variance granted shall not be considered as precedent setting. Under no circumstances shall variances or adjustments be made to this Declaration that would cause or create a violation of HOPA or any other law.

Section 6.11 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the 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, and in keeping with the intent of the Declarant.

Section 6.12 Design Guidelines. The Declarant and, after the Applicable Date, the Committee, may adopt Design Guidelines. The Declarant and the Committee reserve the right to make any amendments, repeals, or modifications to the Design Guidelines that they deem necessary or appropriate at any time and without advance notice. The Design Guidelines are incorporated into this Declaration by reference.

Section 6.13 Non-Applicability to Declarant. Declarant and its designees, including, without limitation, any Builder designated as exempt by Declarant during the Development Period, shall have no obligation to submit plans to, or receive approval from, the Committee. The Declarant shall have exclusive control of new construction within the Development. No provision of this Declaration, as the same relates to new construction, may be modified without Declarant's consent. Additionally, notwithstanding any provisions contained in this Declaration to the contrary, to the extent that any improvements constructed or modified by the Declarant on the Property do not comply with a restriction or requirement contained in this Declaration, the Committee shall be deemed to have granted Declarant a variance from such restriction or requirement and such improvements shall not be considered to violate any restriction or requirement in this Declaration or any of the other Governing Documents.

Section 6.14 Non-Applicability to Residences to be Newly Constructed. The Declarant shall always have the sole authority to approve the original Residence and landscaping on any Lot within the Development even after the Declarant no longer serves as or appoints the Committee. The Declarant intends to build all of the Residences within Kimblewick by Del Webb. However, that is not a requirement. Thus, the Declarant may choose to sell Lots to one or more Builders who would then build Residences. The architectural control provisions and requirements set forth above in this Article 6 shall not be applicable to any new, originally constructed Residences and related structures, improvements and landscaping to be constructed on unimproved Lots. However, after such original construction, the provisions of this Article 6 shall be applicable.

Section 6.15 Liability of Declarant and the Architectural Committee; Indemnity.

(a) Decisions of Declarant and Architectural Committee. Declarant and the members of the Architectural Committee shall have no liability for decisions made by them so long as such decisions are not discriminatory, arbitrary or capricious. Any errors in or omissions from the documents submitted to Declarant or the Architectural Committee shall be the responsibility of the entity or Person submitting the documents, and neither Declarant nor the Architectural Committee shall have any obligation to check for errors in or omissions from any such documents, or to check for such documents' compliance with the general provisions of this Declaration, City codes and other regulations, state statutes or the common law, whether the same relate to Lot lines, building lines, easements, building standards or any other issue.

(b) NO LIABILITY OF DECLARANT OR ARCHITECTURAL COMMITTEE. DECLARANT SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR (I) THE CREATION, SELECTION, MANAGEMENT OR OPERATION OF THE ARCHITECTURAL COMMITTEE, (II) ANY ACTIONS TAKEN OR OMITTED TO BE TAKEN BY OR ON BEHALF OF THE ARCHITECTURAL COMMITTEE IN CONNECTION WITH THIS DECLARATION OR THE PROPERTY, OR (III) ANY LIABILITIES, OBLIGATIONS, DEBTS, ACTIONS, CAUSES OF ACTION, CLAIMS, DEBTS, SUITS OR DAMAGES INCURRED BY OR ON BEHALF OF OR ARISING IN CONNECTION WITH THE ARCHITECTURAL COMMITTEE, THE PROPERTY OR THE DUTIES AND OBLIGATIONS OF THE ARCHITECTURAL COMMITTEE PURSUANT TO THIS DECLARATION. FURTHERMORE, NEITHER DECLARANT, THE ASSOCIATION, MEMBERS OF THE ARCHITECTURAL COMMITTEE, THE

BOARD NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL COMMITTEE, THE BOARD OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS OF ANY OF THEM, TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES AND QUITCLAIMS ALL CLAIMS, DEMANDS AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN. PLANS AND SPECIFICATIONS ARE NOT REVIEWED, APPROVED AND/OR REJECTED FOR ENGINEERING OR STRUCTURAL DESIGN, ADEQUACY OF MATERIALS OR ADEQUACY OF SOILS OR DRAINAGE, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS, NEITHER DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL COMMITTEE, THE BOARD NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS.

(c) INDEMNIFICATION OF DECLARANT AND ARCHITECTURAL COMMITTEE. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION, SUBJECT TO ANY LIMITATIONS IMPOSED UNDER STATE LAW OR IN THE BY-LAWS, THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE ARCHITECTURAL COMMITTEE AND DECLARANT PARTIES FROM AND AGAINST ALL DAMAGES, CLAIMS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, REASONABLY INCURRED IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED ACTION, SUIT OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY SUIT OR PROCEEDING, IF APPROVED BY THE THEN BOARD) TO WHICH ANY MEMBER OF THE ARCHITECTURAL COMMITTEE OR ANY OF THE DECLARANT PARTIES MAY BECOME A PARTY BY REASON OF ITS ACTIVITIES UNDER OR IN CONNECTION WITH THIS DECLARATION.

## ARTICLE 7 CONTIGUOUS LOTS

Section 7.1 Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, such Owner must apply

in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying this Declaration to said Lots (including the obligation to pay Assessments to the Association), so long as the Lots remain improved with one single-dwelling house. In addition, the Owner must obtain from the City all requisite and necessary permits and approvals.

## ARTICLE 8 USE AND OWNERSHIP OF COMMON AREA; PUBLIC STREETS

Section 8.1 Ownership. The Association may acquire, hold and dispose of any interest in tangible and intangible personal property and real property. Initially, the Common Areas are owned by Declarant. The Common Areas shall be conveyed by quitclaim deed to the Association. Additionally, Declarant or its assignees may also at any time assign, transfer or convey to the Association interests in other real or personal property within or for the benefit of the Property, the general public, local governmental entities or districts, or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof without consent or action by the Association upon the recording of a deed or deeds conveying such Common Area to the Association, and shall be considered Common Area without regard to whether such real or personal property is designated by the Declarant as Common Area. If requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. **ALL PROPERTY CONVEYED TO THE ASSOCIATION WILL BE DEEMED CONVEYED IN ITS THEN "AS-IS" CONDITION, WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, EXCEPT TO THE EXTENT DECLARANT OR ASSIGNEE PROVIDES AN EXPRESS, WRITTEN WARRANTY IN THE DEED OR OTHER DOCUMENT MAKING SUCH CONVEYANCE. TO THE FULLEST EXTENT PERMITTED BY LAW, ALL WARRANTIES PERTAINING TO COMMON AREAS, INCLUDING BUT NOT LIMITED TO STATUTORY AND IMPLIED WARRANTIES (INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS FOR A PARTICULAR PURPOSE), ARE HEREBY DISCLAIMED BY DECLARANT AND WAIVED BY THE ASSOCIATION AND EACH OWNER.** Upon Declarant's written request, the Association will re-convey to Declarant for no charge or consideration any unimproved real property that Declarant originally conveyed to the Association for no payment.

Section 8.2 No Partition. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof. This Section 8.2 shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real estate, which may or may not be subject to this Declaration.

Section 8.3 Use. The Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end of the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Board of the Association. Any Common Area depicted on the recorded Plats of the Development or designated by the Declarant as a Common Area shall remain for the exclusive use of the Owner(s), and their family members, guests, tenants, or contract purchaser who reside on the Lot(s). Neither the Declarant's execution or recording of the Plats nor the doing of any other act by the Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area.

Section 8.4 Owner License for Use. Subject to the Declarant's rights hereunder, A license upon such terms, conditions, rules and regulations as the Declarant, and successor, assigns or licensees of the Declarant, shall from time to time grant, for the use and enjoyment of the Common Area, is granted to the persons who are from time to time members of the Association; provided, however, that no residential development shall occur in the Common Area. Subject to the Declarant's rights, the Association's rights and Section 8.5 below, 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 8.5 Activity Cards.

(a) Issuance by the Board. One (1) Activity Card shall be allocated to each Qualified Resident of a Residence, up to a maximum of two (2) Activity Cards per Residence. No Activity Cards shall be allocated to any Residence which is not occupied by a Qualified Resident. The Board shall determine entitlement to Activity Cards on an annual basis. Activity Cards shall be renewed annually, without charge, provided that the Residence continues to be occupied by a Qualified Resident and all applicable assessments and other charges pertaining to the Residence have been paid. The Board may establish policies, limits and charges with regard to the issuance of additional cards and guest privilege cards. The Board may issue Activity Cards to persons who have signed binding contracts to purchase a Residence, subject to such policies as the Board may determine from time to time.

(b) Assignment of Rights. The right to an Activity Card is based upon occupancy of a Residence. Any Owner who leases or otherwise transfers occupancy of his or her Residence shall be deemed to have assigned his or her rights to an Activity Card to the Qualified Residents of such Residence. Any Owner who leases or otherwise transfers the right to occupy his or her Residence shall provide the Association with immediate written notice thereof and shall surrender to the Association his or her previously issued Activity Card. Activity Cards shall be surrendered by any holder who ceases to occupy a

Residence, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

(c) Issuance to Declarant. During the Development Period, the Association shall provide the Declarant, free of charge, with as many Activity Cards as the Declarant, in its sole discretion, deems necessary for the purpose of marketing the Property or the Development for use by its employees. The Declarant may transfer the Activity Cards to prospective purchasers of Residences subject to such terms and conditions as it, in its sole discretion, may determine. Activity Cards provided to the Declarant shall entitle the bearer to use all Common Areas, subject to the payment of admission fees or other use fees charged to Qualified Residents holding Activity Cards.

Section 8.6 Certain Obligation and Access Rights to the Common Area.

(a) Maintenance of Common Areas. Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the maintenance, management and control, for the exclusive benefit of the Owners and the Development, as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair. The Association shall also be responsible for the maintenance, management and control of the reforestation/prairie planting areas and tree preservation areas required by the PUD Ordinance.

(b) Easement to Maintain. The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration.

(c) Declarant Access. During the Development Period and for a period of ten years thereafter, or for so long as Declarant may be liable under any builder's warranty, Declarant and its licensees shall have the right, but not the obligation, to enter upon the Common Area for purposes of inspecting, improving, modifying and repairing the Common Area and/or any improvements thereon; provided, however, that nothing contained herein shall obligate Declarant to make any such inspections, improvements or repairs.

(d) Annual Inspection of Common Area – Budget. From the period commencing on the expiration of the Development Period until ten (10) years thereafter, the Association shall at least annually examine the condition of the Common Areas to evaluate the quality, frequency and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer or professional contractors such as landscapers and brick masons. Within fifteen (15) days after performing the inspection, the expert should submit to the Board a written report with findings and

recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. Any expert's report shall be a record of the Association that is available to Owners for inspection and copying.

Section 8.7 Public Right-of-Way. The rights-of-way of the streets and sidewalks as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way. All parking and egress shall be regulated by the authorities responsible for public streets. The Association does not have any obligation to regulate such parking.

Section 8.8 No Representations or Warranties Regarding Lakes, Lake Areas or other Drainage Areas. Any Lake Areas, creeks or other drainage areas and drainage facilities located within or adjacent to the Property (the "**Drainage Areas**") are intended primarily for drainage purposes and are not intended as a recreational feature or an amenity with specific aesthetic qualities. DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE DRAINAGE AREAS AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THE DRAINAGE AREAS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE ASSOCIATION AND EACH OWNER ACCEPTS THE DRAINAGE AREAS IN THEIR "AS-IS" CONDITION.

Section 8.9 No Representations or Warranties Regarding Natural Areas. Declarant has informed and hereby informs the Association that certain Common Area or portions thereof, such as existing wetlands, creeks and waterways, drainage areas, water detention facilities and open spaces, may be intended to be unimproved open space to be left or maintained in a natural or semi-natural condition ("**Natural Areas**") and are not necessarily intended to be a recreational feature or an amenity with specific aesthetic qualities. Except for the requirements regarding the reforestation/prairie planting areas required by the PUD Ordinance, neither Declarant nor the Association shall have any obligation to landscape, repair or otherwise improve any Natural Area. DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE NATURAL AREAS AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THE NATURAL AREAS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE ASSOCIATION AND EACH OWNER ACCEPTS THE NATURAL AREAS IN THEIR "AS-IS" CONDITION.

Section 8.10 Wildlife Control. Declarant and the Association reserve the right to undertake such measures as may be appropriate to control wildlife within the Property, including, but not limited to, the taking of deer and large birds so long as such measures are consistent with all applicable legal requirements. Without limiting the foregoing, Declarant or the Association may, in their discretion, establish regular control programs such as, for example, the use of dogs to prevent non-migratory geese and other species from nesting within and/or causing damage to the Property or otherwise becoming a nuisance.

**ARTICLE 9**  
**THE ASSOCIATION**

Section 9.1 Association Duties. The duties of the Association shall include 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, amenity areas, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments and signage, and the landscaping surrounding such entrance monuments and signage, (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any Common Areas, (v) the adoption and maintenance of policies and procedures, from time to time, as necessary to maintain the Property's status as an age restricted community under state or federal law, and (vi) the performance of any other obligations and duties of the Association specified or reasonably inferred herein.

If during the Development Period the Association fails to properly perform its maintenance responsibilities hereunder, the Declarant may, upon not less than ten (10) days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, the Association shall reimburse Declarant for all costs incurred.

Section 9.2 Board of Directors. During the Development Period, the Declarant shall appoint all directors to the Board. After the Development Period, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors shall manage the affairs of the Association. During the Development Period, directors need not be members of the Association. However, thereafter, all directors must be Owners and members of the Association. During the Development Period there shall be three (3) Directors; provided, however, the Declarant may, but shall not be obligated to, appoint two (2) additional Directors. If the Declarant, in its sole discretion, determines to appoint an Owner to the Board during the Developer Period, the Declarant shall determine whether such Owner shall be a voting or non-voting member of the Board.

Section 9.3 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. The Declarant shall be entitled to five (5) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. It shall also be assumed that the number of Lots in the Property shall be the maximum number allowed by the applicable zoning approval which shall include the current extent of the Property plus the potential number of lots in the Additional Real Estate. The Class B membership shall cease and be converted to Class A

membership on the happening of either of the following events, whichever occurs earlier (hereafter "**Applicable Date**"):

(i) December 31, 2050; or

(ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership; provided, however, that the Class B Membership shall recommence in the event that the Declarant records a Plat of part of or all of the Additional Real Estate and, by virtue thereof, total number of votes outstanding in the Class A Membership is no longer equal to the total number of votes outstanding in the Class B Membership.

Section 9.4 Membership. Initially, the Person(s) who serve as incorporator(s) of the Association shall be the members (the "**Initial Member(s)**"). The Initial Member(s) shall remain members of the Association until the Association's Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be members, unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association ("**Member**"). 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 9.5 Professional Management. At all times, the Association shall employ the services of a professional manager or management company to assist the Board in the management and administration of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, 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 sixty (60) days or less. Also, no such management agreement or contract shall contain an automatic renewal provision; any such a provision shall be deemed null and void.

Section 9.6 Association Insurance. The Association shall purchase the following coverage:

(a) Liability Insurance. The Association shall purchase and pay the costs of the policy or policies of insurance in the form generally known as public liability and/or owners policies insuring the Association against any and all claims and demands made by any Person or persons whomsoever for injuries received in connection with the fulfillment by the Association of its obligations specified in this Declaration, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against, including, without limitation, claims arising out of the Common Areas. Each policy purchased by the Association shall have limits of not less than Two Million Dollars (\$2,000,000.00) covering all claims for personal injury and Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage arising out of a single occurrence. The coverage of the liability insurance policies purchased by the Association shall include protection against liability for property damage, bodily injuries and deaths of persons in connection with the fulfillment by the Association of its obligations specified in this Declaration,

liability for non-owned and hired automobiles, liability for property of others and liability arising out of the Common Areas. All such policies will name the Association as the insured under such policy or policies. The insurance purchased shall contain a "severability of interest endorsement", or equivalent coverage, which would preclude the insurer from (i) denying the claims of an Owner because of the negligent acts of either the Association, the Declarant or any other Owners or (ii) denying the claims of either the Declarant or the Association because of the negligent acts of an Owner.

(b) Casualty Insurance. The Association shall purchase and pay the costs of a policy or policies of casualty insurance to allow the Association to insure for the fulfillment by the Association of its obligations specified in this Declaration. Such casualty insurance shall insure, without limitation, any improvements located within the Common Areas at full replacement value.

(i) Damage and Destruction to Common Areas. Any damage to or destruction of the improvements located within the Common Areas shall be repaired or reconstructed unless (i) at least eighty percent (80%) of the total vote in the Association, and (ii) the Declarant, during the Development Period, decide within sixty (60) days after the loss not to repair or reconstruct. However, if either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available, not to exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent Design Guidelines.

(ii) Insurance Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed among all Owners, if such proceeds are for Common Area. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against the Owners.

(c) Fidelity Coverage. The Association shall purchase adequate (i) errors and omissions insurance protecting and insuring the Association and its officers and directors against liability for negligence in the fulfillment of their obligations and duties, and (ii) fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all others who handle and are responsible for handling funds of the Association (including, if practicable, the Association's property manager and property management company), such coverage to be in the form of fidelity bonds which meet the following requirements unless one or more of such requirements are waived by the Board.

- (i) Such bonds shall name the Association as an obligee;
- (ii) Such bonds shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual budget of the Association; and;
- (iii) Such amounts shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 9.7 Limitations on Rights of the Association. As long as there is a Class B Member, the Association may not use its resources, nor take a public position in opposition to future phases of Kimblewick by Del Webb or any other neighborhood covered by the PUD Ordinance proposed by the Declarant or changes to current phases of Kimblewick by Del Webb or any other neighborhood covered by the PUD Ordinance proposed by the Declarant. Except as set forth in Section 5.53, nothing in this paragraph shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name, or on the behalf of the Association.

Section 9.8 Other Matters Concerning the Association. The Articles of Incorporation as filed with the Indiana Secretary of State and the By-Laws of the Association, both as amended, are incorporated herein by reference.

Section 9.9 Means of Communication. To avoid the costs of paper, postage and handling that would otherwise be incurred when distributing documents or information to Owners by regular mail, and also to be more efficient in transmitting information that Owners can receive even when out of town, the Association will, to the extent possible, make Association matters available online through the Association's website and/or via email or similar means, including but not limited to:

- (a) Notices of Annual or Special Meetings;
- (b) Proxies and Ballots;
- (c) Proposed and finalized Annual Budgets;
- (d) Nominees for the Board for an upcoming election;
- (e) List of current members of the Board;
- (f) Recorded copy of this Declaration and all amendments thereto;
- (g) The By-Laws and Articles of Incorporation and all amendments thereto;
- (h) The Design Guidelines;
- (i) Architectural Control Request for Change form;
- (j) Rules and Regulations adopted by the Board;
- (k) Name of the Association's property management company;
- (l) Invoices, statements or coupon booklets for payment of Assessments;

- (m) Voting through a secure website or equivalent; and
- (n) Payment of assessments through a secure website or equivalent.

In lieu of the above, any Owner can choose to receive documents by regular mail by notifying the Association in writing.

Section 9.10 Manner of Voting and Meeting Participation. Voting and meeting participation may be held or performed in any manner set forth in the Act as well as any manner that is not prohibited by the Act, or deemed acceptable by the Courts as a practical way to collect votes and allow Members to participate in Association actions. The Board shall have discretion to provide for such procedures and to set the terms of use.

Specifically, the Board shall have the power to authorize voting by the Members through a secure, internet-based online voting system (“**electronic voting**”). The Board can adopt rules and regulations concerning the use of acceptable, verifiable means of technology, including electronic means for Lot Owner notice, voting, signatures, consents and approvals. A verifiable electronic signature satisfies any requirements for signatures on documents. If an Owner either does not have the capability or desire to conduct business electronically, the Association shall make reasonable accommodation, at its expense, for the Person to conduct business without the use of electronic or other similar means.

Section 9.11 Management of Age Verification Process. The Board of the Association, itself or through a professional management company employed under Section 9.5, shall be responsible for age verification of residents of Kimblewick by Del Webb, which shall include verification upon sale to the initial Owner (other than Declarant or a Builder) of a Residence or Lot as well as regular updates, through surveys or other means of the initial information supplied by the Owners or occupants of Residences. More specifically, the Association Board will maintain a residency list properly documenting residence age and a residency age verification form, which shall be distributed to new Kimblewick by Del Webb residents upon occupancy. Regular updates of age verification records must take place at least once every two (2) years; provided, however, that the Association may conduct more frequent updates at its discretion. A summary of occupancy and age verification surveys shall be available for inspection upon reasonable notice and request by any Person. The Association shall retain all age verification records for so long as the Property seeks to qualify as an age restricted community under applicable state and federal law.

## **ARTICLE 10 ASSESSMENTS**

Section 10.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant and any 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:

- (a) Annual Assessments (hereafter defined);
- (b) Initial Reserve Fund Assessment (hereafter defined);
- (c) Initial Capital Assessment (hereafter defined);

- (d) Transfer Assessment (hereafter defined);
- (e) Special Assessments (hereafter defined) for costs of enforcement of this Declaration, capital improvements and operating deficits, copies of Association documents if requested by a member, and such assessments to be established and collected as hereinafter provided or established by the Board; and
- (f) Violation Assessments (hereafter defined) levied for a violation of this Declaration.

The Assessments above, together with interest, costs, late charges, and reasonable attorneys' fees, shall be a charge on the land until paid in full and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment was due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hamilton County, Indiana. No charge, lien, or assessment shall ever be levied by the Association or individual Lot Owners against the Declarant. The Declarant shall not be liable for paying any Annual Assessments to the Association for any Lots owned by it or its designated successor developer. Any Property dedicated to and accepted by any governmental authority or public utility shall be exempted from the payment of Assessments.

The Association and/or Declarant are hereby empowered to cause a lien to be filed with the County Recorder against any Lot for the purposes of (1) recovering any funds due for any of the Assessments set forth in this Article 10, or recovering any funds expended by the Declarant or the Association in maintaining any Lot in a neat and attractive condition as contemplated by this Declaration, and (2) recovering any attorneys' fees and related costs and expenses incurred by either the Declarant or the Association in any proceeding initiated pursuant to the collection of the above funds or any proceeding initiated pursuant to this Declaration.

Section 10.2 Annual Budget. The Board shall prepare an annual budget for the subsequent fiscal year which shall be the basis for the Annual Assessment, which shall provide for the allocation of expenses in such a manner that the obligations imposed by this Declaration and all Supplemental Declarations can effectively be met. The annual budget shall include a snow reserve line item in an amount set by the Board to be factored into the Annual Assessment and to fund a snow reserve account that shall be utilized exclusively for payments of unusual costs related to snow removal from the community due to exceptionally high snow volume in any given year.

Section 10.3 Annual Assessment.

(a) Amount. The Annual Assessment provided for herein shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an Owner other than Declarant or a Builder. The obligation to pay the Annual Assessment shall commence for each Lot on the date it is conveyed to an Owner other than the Declarant or a Builder. The Annual Assessment for the calendar year shall be pro-rated to year-end. The Board 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. One-twelfth (1/12) of the

Annual Assessment shall be collected each month, due on the first (1<sup>st</sup>) day of each month. Unpaid monthly Annual Assessment payments shall be subject to collection and late charges beginning on the fifth (5<sup>th</sup>) day of each month.

(b) Purpose of Assessments. The Annual Assessment levied by the Association shall be used in the reasonable discretion of the Board to fulfill the duties and obligations of the Association specified in or reasonably inferred by this Declaration, including, without limitation, the cost of maintaining and repairing Common Areas, as well as the cost of insurance, Refuse Collection and professional property management.

(c) Method of Adoption of the Annual Budget and Annual Assessment. Prior to the Applicable Date, without any approval or vote by the Owners, the Board shall fix the amount of the Annual Assessment in advance of the effective date of such assessment. Written notice of Annual Assessments and such other assessments as the Board shall deem appropriate shall be sent to every Owner subject thereto. The Board during any calendar year prior to the Applicable Date shall be entitled to increase the Annual Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners.

After the Applicable Date, 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 subsection (d).

(d) Association Meeting to Approve the Budget. After the Applicable Date, and subject to subsection (e) below, the Association budget must be approved at a meeting of the members 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 Articles of Incorporation and the By-Laws. For purposes of this meeting, a member is considered to be in attendance at the meeting if the member attends: (1) in person; (2) by proxy; or (3) by any other means allowed under Indiana law or under this Declaration, the Articles of Incorporation or the By-Laws.

(e) Power of the Board to Adopt a Budget in the Absence of a Quorum. If the number of members in attendance at the meeting held under subsection (d) above does not constitute a quorum as defined in the By-Laws of the Association, 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 Association annual budget.

Section 10.4 Initial Reserve Fund Assessment. Upon the closing of the initial conveyance of each Lot to the initial Owner of that Lot, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as an advance contribution

to the Association's reserve fund, an amount of Seven Hundred Fifty and 00/100 Dollars (\$750.00) against such Lot (the "**Initial Reserve Fund Assessment**"), which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed to the Association with respect to such Lot. The Initial Reserve Fund Assessments shall be used by the Association to make capital and non-capital repairs to the common areas, including all improvements and infrastructure thereon, when control of the Association transfers at the end of the Development Period, with any remaining funds in such initial reserve fund being used for the Association's general reserve fund or operating fund.

Additional funding of the reserve fund may thereafter be charged as part of the Annual Assessments in an amount determined by the Declarant or Board.

Section 10.5 Initial Capital Assessment. Upon the initial conveyance of each Lot to the initial Owner of that Lot from Declarant or a Builder, and then upon each subsequent conveyance, each Person who purchases a Lot shall pay a one-time initial capital assessment to the Association in the amount of One Thousand Two Hundred Fifty and 00/100 Dollars (the "**Initial Capital Assessment**"), which amount shall be due immediately upon the transfer of title to the Lot, and which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed to the Association with respect to such Lot. The Initial Capital Assessment may be used by the Association for the Association's general reserve fund or operating fund and all expenses thereunder. During the Development Period, the Declarant, and thereafter, the Board, will have the power to waive the payment of any Initial Capital Assessment attributable to a Lot.

Section 10.6 Transfer Assessment. Upon each conveyance subsequent to the initial conveyance from Declarant or a Builder to an Owner, each Person who purchases a Lot shall pay a one-time initial contribution to the Association (the "**Transfer Assessment**"), which amount shall be due immediately upon the transfer of title to the Lot. The Transfer Assessment shall be one percent of the Selling Price of the Lot. The "**Selling Price**" of a Lot shall be the total price paid to purchase the Lot, including any residential dwelling and other improvements on the Lot, and excluding any governmental transfer fees or taxes imposed on the transfer. Notwithstanding the foregoing, the following transfers will not be subject to the requirement to pay the Transfer Assessment: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; or (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child or parent. In the event of any dispute regarding the application of the Transfer Assessment to a particular Owner, the Board' determination regarding application of the exemption will be binding and conclusive without regard to any contrary interpretation of this Section 10.6. The Transfer Assessment will be in addition to, not in lieu of, any other assessments or other charges levied in accordance with this Article 10 and will not be considered an advance payment of such assessments. During the Development Period, the Declarant, and, thereafter, the Board, will have the power to waive the payment of any Initial Contribution attributable to a Lot.

Section 10.7 Special Assessment. In addition to the annual operating assessment, the Board or Declarant may levy a special assessment for the purpose of 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 or for operating deficits which the Association may

from time to time incur. Except with respect to shortfalls of casualty insurance proceeds in Section 9.6(b)(ii), after the Applicable Date such special assessment shall require the approval of a majority of the votes that are cast by members of the Association, including both Class A members and Class B members. The votes shall be cast either in proxy or in person at a meeting duly called for such purpose. Written notices for such meetings shall be sent and voting quorums required as set forth in the By-Laws of the Association. The Declarant shall not be liable for paying any special assessments under this Section 10.7.

Section 10.8 Violation Assessment. In addition to all other assessments as may be authorized herein, the Board may levy a Violation Assessment to an Owner: (i) unless prohibited by law, for a violation against this Declaration, the Plats or rules and regulations adopted by the Board or (ii) for damages if any portion of the Common Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee, or (iii) for any additional costs incurred by the Association as a result of the Owner's actions or omissions, including but not limited to, insurance or administrative costs or fees. In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair or replacement is in the sole discretion of the Board.

Section 10.9 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.

(b) Lots Owned by Declarant or Builder. Declarant and any Builder shall not pay the Annual Assessment and Special Assessment 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.

Section 10.10 Notice and Due Date. Written notice of special assessments and such other assessment notices as the Board shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all assessments shall be established by the Board.

Section 10.11 Collection. All Assessments, together with interest thereon, late charges, attorneys' fees, and other costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon, late charges and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

Section 10.12 Effect of Nonpayment of Assessments; Remedies of the Association. Except for Declarant and its designated successors or any Builder, no Owner may exempt himself or herself from paying Annual or Special Assessments or any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Lot belonging to such Owner. Except for Declarant and its designated successors or any Builder, each Owner shall be personally liable for the payment of all applicable Assessments. Where the Owner

constitutes more than one Person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Assessments when due, the lien for such assessment on the Owner's Lot may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (a) Impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board;
- (b) Suspend such Owner's right to use the Common Areas within the Development;
- (c) Suspend such Owner's right to vote if the Owner is more than six (6) months delinquent; and
- (d) Suspend such Owner's right to request architectural approval from the Committee over any matter for which the Committee's approval is required under Article 6.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessments without foreclosing or waiving the lien securing the same. In connection with any effort to collect or in any action to recover an Assessment, regardless of whether litigation is initiated, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the Lot, not only the delinquent Assessments, but also all late charges imposed, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to a managing agent (if any) for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees. The Association need not accept any tender or a partial payment of an Assessment, or any installment of an Assessment, and all costs, expenses, charges and attorney fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter. In addition, the Board shall have the power to adopt by Board resolution additional rules and regulations or delinquency procedures.

Section 10.13 Certificates. The Association shall, at any time and for a reasonable fee of up to and including \$250.00, furnish a certificate in writing signed by an officer or managing agent of the Association stating that the Assessments on a specific Lot have been paid or that certain Assessments or other charges against said Lot have not been paid, as the case may be.

Section 10.14 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein against a Lot shall be subordinate to the lien or any recorded first Mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any

governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of assessments levied under this Article 10. The sale or transfer of any Lot pursuant to Mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessments which became due or are attributable to the period of time prior to such sale or transfer. No sale transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10.15 Approval of Certain Contracts; Meeting; Vote by the Members. The Board may not enter into any contract that would result in a Special Assessment or the increase in the existing Annual Assessment payable by the affected Owner in the amount of more than five hundred dollars (\$500) per year for each affected Owner unless: (1) the Board holds at least two (2) Association meetings of the Owners concerning the contract; and (2) the contract is approved by the affirmative vote of at least two-thirds (2/3) of the affected Owners. The Board shall give notice of the first such Association meeting to each member of the Association at least ten (10) calendar days before the date the meeting occurs.

The provisions in this Section 10.15 do not apply to a contract entered into by a Board that would resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law.

Section 10.16 Borrowing Money; Approval by the Members. The Association may not borrow money during any calendar year on behalf of the Association in an amount that exceeds the greater of:

- (a) five thousand dollars (\$5,000) during any calendar year; or
- (b) if the Association operated under an annual budget in the previous calendar year, an amount equal to at least ten percent (10%) of the previous annual budget of the Association;

unless borrowing the money is approved by the affirmative vote of a majority of the members of the Association voting under this provision. A vote held under this provision must be conducted by paper ballot. The Association shall distribute paper ballots to persons eligible to vote at least thirty (30) days before the date the votes are to be opened and counted. Votes cast under this provision shall be opened and counted at a public meeting held by the Association. None of the provisions and requirements in this Section 10.16 shall apply to money borrowed by the Association that is needed to: (a) resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law; or (b) address an emergency that affects the public health, safety, or welfare.

Section 10.17 Retention of Financial Records. The Association shall retain for at least two (2) years after receipt, and during that period shall make available for inspection by Owners, any written or electronic communication received by the Association or a Board Member that relates to a financial transaction of the Association and that is not otherwise exempted from disclosure under the Act or other applicable law.

Section 10.18 Lots and Land Owned by Declarant – Exempt. Except as otherwise provided in this Declaration, all Lots owned by Declarant shall be exempt from all assessments

(annual, special, and/or specific), and Declarant shall not be obligated to pay any assessments for the Lots. Notwithstanding anything contained herein to the contrary, Declarant shall never be obligated to pay assessments for any land owned by Declarant within the Property that is not part of a Lot.

Section 10.19 Declarant's Obligation to Pay Budget Deficits. If at any time during the Development Period the Association's operating expenses exceed the assessments received by the Association from the Owners (a "**Budget Deficit**"), Declarant shall fund the amount of such deficit to the Association; provided, however, that in no event shall Declarant be obligated to pay more than an amount equal to the Net Assessment Rate applicable to the Lots Declarant owns (but not land owned by Declarant within the Property that is not part of a Lot) to make up such Budget Deficit. For purposes hereof, a Budget Deficit shall be the difference between:

- (a) The amount of all income and revenue of any kind received by the Association, including but not limited to, assessments collected on all Lots, use fees, advances made by Declarant, and income from all other sources; and
- (b) The amount of all actual expenditures incurred by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds (other than expenditures from reserve funds made to cover a Budget Deficit pursuant to this Section).

Declarant may utilize (i) any Association reserve fund, to the extent funds are available, or (ii) the power to levy special assessments on Owners pursuant to Section 10.7 above, or both (i) and (ii), to satisfy Declarant's obligation to pay a Budget Deficit. Calculation of any Budget Deficit shall be performed based on cash basis accounting; provided, however, that this provision shall not prohibit the Association from using the accrual accounting method for its financial statements and other operations. If at any time there is more than one Declarant, the amount of such deficit to be paid by each Declarant shall be equal to the amount of such deficit multiplied by a fraction, the numerator of which is the number of Lots then owned by that Declarant and the denominator is the total number of Lots then owned by all Declarants; provided, however, if all Declarants agree, then the amount of the deficit to be paid by each Declarant shall be equal to the Net Assessment Rate applicable to improved Lots for all Lots (but not land owned by Declarant within the Property that is not part of a Lot) then owned by such Declarant. Notwithstanding the foregoing, if the Budget Deficit is the result of the failure or refusal of an Owner or Owners to pay their annual, special or specific assessments, the Association will diligently pursue (and Declarant may also pursue at its option) all available remedies against such defaulting Owners and will promptly reimburse Declarant for any Budget Deficit funded by Declarant from any amounts collected from such Owner or Owners. In no event shall Declarant be obligated to pay any Budget Deficit attributable to the period of time after the Development Period. Furthermore, nothing in this Section 10.19 shall in any way eliminate or diminish Declarant's exemption from all assessments when no Budget Deficit exists.

## ARTICLE 11 REMEDIES

Section 11.1 Delay or Failure to Enforce. No delay or failure on the part of the Declarant, the Association, an Owner or any other 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 or of the rules and regulations of the Association 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 or the rules and shall in no event give rise to any claim or liability against the Declarant, the Association, an Owner or any other aggrieved party. EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE PROPERTY, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS, OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE GOVERNING DOCUMENTS.

Section 11.2 Enforcement in General; Costs and Attorneys' Fees. Subject to the requirements and provisions of the By-Laws concerning "**Grievance Resolution Procedures**", the Declarant, Association, and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Plats, and any rules and regulations adopted by the Board of the Association.

If the Declarant, Association, or any Owner is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien or charge now or hereinafter imposed by the provisions of this Declaration, the rules and regulations, the limitations, easements and approvals appended to and made a part of the plats of the Development, it shall be entitled to recover from the party against whom the proceeding was brought all of the reasonable attorneys' fees and related costs and expenses it incurred in such proceeding.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, any structure or part thereof erected without proper approval or maintained in violation hereof, is hereby reserved to the Declarant, the Association and to the Owners of the Lots in this Development and to their heirs, successors, and assigns.

Notwithstanding the above, no Owner may claim, collect, or recover attorney fees against the Declarant, the Association, the Committee, or from any officer, director, employee, agent, or other authorized agent of the Declarant, arising from any failure or alleged failure to comply with any provision of this Declaration, or of the covenants on the Plat, or of any action taken or omission of any alleged duty or responsibility of any of the above with regard to the planning, development or operation of Kimblewick by Del Webb, or the operation of the Association prior to the Applicable Date.

Section 11.3 Indemnification.

(a) Indemnification of Association and Declarant. Further, in the event that an action or omission of any Owner, or of any home builder, or other contractor or agent or any other Person coming onto the Property (referred to herein as an “**Indemnifying Party**”), results in a claim against the Declarant, the Association, the Committee, or from any officer, director, employee, agent, or other authorized agent of Declarant, the Association or the Committee (collectively referred to herein as the “**Indemnified Parties**”) results in any suit or claim against any of the Indemnified Parties, the Indemnifying Party shall indemnify and hold the Indemnified Parties harmless from any action or omission, whether based on contract, tort, or any other claim, theory or basis of recovery, including attorney fees, costs for expert witnesses and consultants, and other costs of litigation; and whether such Indemnifying Party is wholly or partially at fault.

(b) Indemnification of Officers, Directors and Committee Members of Association. Subject to the limitations of state law and the By-Laws of the Association, the Association shall indemnify, defend and hold harmless every officer, director and committee member against all damages and expenses, including, without limitation, attorneys’ fees, reasonably incurred in connection with any threatened, initiated or filed action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The Association shall maintain adequate officers’ and directors’ liability insurance to fund this obligation, if such insurance is available at a commercially reasonable cost. Additionally, subject to the limitations of state law and the By-Laws of the Association, the Association may voluntarily indemnify, defend and hold harmless a Person who is or was an employee, trustee, agent or attorney of the Association, against any liability asserted against such Person or party in that capacity and arising out of that capacity.

(c) Indemnification of Declarant for Association Operations. **THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT AND ITS PARTNERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AND DECLARANT’S SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “DECLARANT PARTIES”) FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, DAMAGES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES AND COSTS, IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING) ASSERTED AGAINST ANY OF THE DECLARANT PARTIES OR TO WHICH ANY OF THEM MAY BECOME A PARTY ARISING OUT OF OR RELATED TO THE MANAGEMENT OR OPERATION OF THE ASSOCIATION, INCLUDING WITHOUT LIMITATION, THE ENFORCMENT OF THE GOVERNING DOCUMENTS, THE COLLECTION OF ASSESSMENTS, AND THE OPERATION, MAINTENANCE AND REPAIR (OR FAILURE TO OPERATE, MAINTAIN OR REPAIR) THE COMMON AREAS.**

Section 11.4 No Right of Action or Intervention. The Association shall not have the power to institute, pursue, join, intervene in, settle or compromise litigation, arbitration or other

proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a claim relating to the design, construction or repair of a Residence, a Lot or any improvements on a Lot (other than common improvements, if any, that the Association is required by this Declaration to maintain and repair). Owners shall not have the power to institute, pursue, join, intervene in, settle or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of the Association (other than as an officer or other authorized representative of the Board); or (ii) pertaining to a claim relating to the design, construction or repair of the Common Areas or any improvements on the Common Areas. This Section 11.4 may not be amended or modified without (i) the consent of Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, and (ii) during the Development Period, Declarant's written and acknowledged consent, both of which must be part of the recorded amendment instrument.

## ARTICLE 12 OTHER HOMEOWNERS ASSOCIATIONS

Section 12.1 In General. Declarant may determine, in its sole discretion, that it is necessary or appropriate to have part or all of the Additional Real Estate administered by a homeowners association which is separate and apart from the Association hereunder. For example, the Declarant may record a part of all of the declaration with respect to a part or all of the Additional Real Estate, which may provide for the creation of an additional, separate not-for-profit corporation to administer and maintain such portions of the Additional Real Estate. An example of a situation where the Declarant may create a separate homeowners association to administer a portion of the Additional Real Estate is where the Residences, which are made part of the Additional Real Estate, will require services which are quantitatively or qualitatively different than those which will be furnished by the Association under this Declaration with respect to the Residences located within the Real Estate. For purposes hereof, any separate declaration which is recorded against a portion of the Additional Real Estate, shall be referred to herein as a "**Local Area Declaration**," and the association which administers the real estate which is subject to the Local Area Declaration, shall be referred to herein as a "**Local Area Association**."

Section 12.2 Relationship of the Association and the Local Area Associations. It is intended that each Local Area Association shall operate independent of the Association hereunder. Thus, to the extent that a Local Area Association is granted the power and authority to maintain Residences or portions of the Property which serve Residences, the Association hereunder shall not be obligated to maintain such areas or furnish such services. However, nothing herein shall be deemed to restrict or limit the right of the Declarant to approve work within a Lot or Common Area as provided in this Declaration.

## ARTICLE 13 EFFECT ON BECOMING AN OWNER

Section 13.1 Title Subject to Declaration. The Owner(s) of any Lot, 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 restrictions contained in this Declaration. By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of the Declarant, Committee, and 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, Committee and the Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

## **ARTICLE 14 TITLES AND INTERPRETATION**

Section 14.1 Titles, Headings and Subheadings. The titles preceding the various sections and subsections 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.

Section 14.2 Controlling Document. If there is any conflict between the provisions of this Declaration and any Plat of a part of the Development, the terms and provisions of this Declaration shall be controlling. If there is any conflict between the provisions of this Declaration and Articles of Incorporation or By-Laws of the Association, the terms and provisions of this Declaration shall be controlling. Conflict, as used herein, shall mean a situation where the application of the language in one document contradicts the language in another document. Conflict does not occur where language in one document is simply more restrictive than language in another document.

## **ARTICLE 15 SEVERABILITY**

Section 15.1 Generally. 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.

## **ARTICLE 16 DECLARANT'S RIGHTS**

Section 16.1 Assignment of Declarant's Rights. 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 Hamilton County, Indiana. There may be more than one Declarant, if Declarant makes a partial assignment of Declarant status. If at any time there is more than one Declarant, a Declarant may not assign its rights as a Declarant in whole to a single Person or entity unless otherwise approved by the other Declarants. Without limiting other provisions of this Declaration, upon a Declarant's assignment of any or all of its rights as Declarant under this Declaration, the assigning Declarant shall automatically, without further acknowledgment or consent of any other party, be fully released and discharged from any obligations accruing under this Declaration after the date of such assignment, including, without limitation, the obligation of such assigning Declarant to fund Budget Deficits arising after such assignment. If at any time there is more than one Declarant and a Declarant no longer owns any real property within the Property, then such Declarant's rights that apply or are exercisable only during the Development Period automatically shall be deemed to have been assigned to the remaining Declarant(s).

Section 16.2 Activities of Declarant. Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant and/or any Builders in their development of the Property and construction of residences thereon. Therefore, notwithstanding anything herein to the contrary, the Declarant and/or any Builders authorized by Declarant may maintain and carry upon any portion of the Common Area, and other portions of the Property owned by the Declarant, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Residences. Furthermore, notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots in the Property; (ii) to maintain improvements upon Lots as sales, model, management, business and construction offices; or (iii) to maintain and locate construction trailers and construction tools and equipment within the Property or the Common Area. The construction, placement or maintenance of improvements and signage by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this Section 16.2 until twenty-four (24) months after expiration or termination of the Development Period.

Section 16.3 Sales by Declarant. Notwithstanding the restriction set forth in Section 2.2, Declarant reserves the right to sell Residences to Persons between the ages of 50 and 55, inclusive of years of age; provided, such sales shall not affect Kimblewick by Del Webb's compliance with all applicable state and federal laws under which the Property may be developed and operated as an age-restricted community.

Section 16.4 Pulte Homes Marks. Any use by the Association of names, marks or symbols of Pulte Homes, Inc. or any of its affiliates (collectively, "**Pulte Homes Marks**") shall inure to the benefit of Pulte Homes, Inc. and shall be subject to the periodic approval of Pulte Homes, Inc., terminable with or without cause and in a form specified by Pulte Homes, Inc. in its sole discretion, with respect to permissive use of certain Pulte Homes Marks. The Association shall not use any Pulte Homes Mark without the prior written consent of Pulte Homes, Inc.

## ARTICLE 17 DISPUTE RESOLUTION PROCEDURES

Section 17.1 Dispute Resolution.

(a) Introduction. This Article is intended to encourage the resolution of certain disputes that may involve or affect the Association, its Members and/or the Property. Such disputes may create significant financial exposure for the Association and its Members, affect each Member's use and enjoyment of their Lot and the Common Areas, interfere with the resale and refinancing of Lots, and cause strife and tension among Members, the Board and the Association's management. Accordingly, this Article requires transparency and, in certain circumstances, Owner participation. Transparency means that inspection reports concerning Common Areas related to a dispute are prepared by an independent, professional engineer free from improper influence, and Owners are informed in advance about certain disputes and proposed arrangements between the Association and a law firm or attorney who may represent the Association in the dispute. Owner participation means that in certain situations Owners will have an opportunity to participate in the decision-making process regarding whether the Association should pursue a claim and engage an attorney or law firm for that purpose.

(b) Agreement to Resolve Disputes; Application; Definitions. The Association, Owners, the Declarant, the Board, members of the Board, all persons subject to this Declaration, and each Person not otherwise subject to this Declaration who agrees to submit to this Article by written instrument delivered to a Claimant (defined below), which may include, but is not limited to, a Builder, a general contractor, sub-contractor, or design professional (individually, a "**Party**" and collectively, the "**Parties**"), agree to encourage the amicable resolution of disputes covered by this Article to avoid the costs of litigation and arbitration if at all possible. Accordingly, to the extent not inconsistent with state and federal laws, rules and regulations, each Party agrees to be subject to the requirements of this Article and agrees this Article applies to all Claims (as defined below). In the event that these dispute resolution provisions directly conflict with applicable state or federal laws, rules or regulations, such state or federal laws, rules or regulations shall control as to the matters set forth in this Article. The following words, when capitalized, have the following meanings:

(c) "**Claim**" means any claim, cause of action, grievance or dispute:

(i) relating to the rights and/or duties of the Association, the Board, the Committee or the Declarant under the Governing Documents;

(ii) relating to the interpretation, application or enforcement of the Governing Documents;

(iii) relating to the acts or omissions of the Association, the Board, any Board member, any officer of the Association, or the Committee; any acts or omissions of the Declarant during the Declarant's control and administration of the Board or the Committee; or any exercise by Declarant of any rights of Declarant under the Governing Documents, including but not limited to relating to budgets, reserves, assessments, contributions, deficit funding, expenditures, claims of financial guarantees and other financial and accounting matters; or

(iv) relating to the design, construction, repair, alteration or maintenance, or warranty with respect thereto, of the Common Area or any improvements located thereon (a “**Common Area Claim**”;

(v) relating to any other maintenance of the Property; or

(vi) any other claim, grievance, or dispute among the Parties involving the Property or the Association.

(d) “**Claim**” excludes Exempt Claims and Home Construction Claims.

(e) “**Claimant**” means any Party having a Claim against any other Party.

(f) “**Exempt Claim**” means any of the following claims or actions:

(i) A claim by the Association for Assessments or dues and any action by the Association to collect Assessments or dues.

(ii) An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief:

(A) to maintain the status quo and preserve the Party's ability to enforce the Governing Documents; or

(B) when an emergency condition exists that jeopardizes the health or safety of any of the residents within the Property.

(iii) A suit to which an applicable statute of limitations would expire within the notice period required under Indiana Code § 32-25.5-5. This subdivision does not apply if a Party against which the claim is made agrees to toll the statute of limitations as to the claim for the period reasonably necessary to comply.

(iv) A dispute that is subject to mediation, arbitration, or other alternate dispute resolution under applicable law, contract, warranty agreement, or other instrument.

(v) A claim that is substantively identical to a claim:

(A) that was previously addressed by the Parties; or

(B) that was resolved by a judicial determination in favor of one (1) of the Parties.

(g) “**Respondent**” means any Party against which a Claim has been or may be asserted by a Claimant.

Notwithstanding anything contained in this Article, any claim brought by an Owner related to the design or construction of a Residence, a Lot or an improvement on a Lot (“**Home Construction Claim**”) will not be subject to this Article, but will be governed exclusively by Article 18 and by the express or implied warranty provided by the Builder or contractor which constructed such Residence or improvement and any other agreements between the Owner of such Lot (or its predecessor in title) and such Builder or contractor.

Section 17.2 Mandatory Procedures. A Claimant may not initiate, participate in or maintain any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal

seeking redress or resolution of a Claim until the Claimant has complied with the applicable procedures of this Article and Indiana Code § 32-25.5. As provided in Section 17.3 below, a Claimant shall give a Respondent notice of any Claims as required by Indiana Code § 32-25.5-5-10. As provided in Section 17.5 below, Claims not resolved through negotiation must be submitted to mediation. As provided in Section 17.6 below, all Claims not resolved through negotiation or mediation must be resolved by binding arbitration.

**Notice and Informal Resolution of Claims**

The Parties are encouraged to informally communicate to amicably and efficiently resolve disputes. Notice of any Claim must be given in accordance with Indiana Code § 32-25.5-5-10. A Claimant is not required to follow the mandatory procedures in this Article unless a Claim is not resolved and an impasse is reached as defined in Indiana Code § 32-25.5-5-12, and the Claimant desires to pursue a Claim and initiate a proceeding.

**Common Areas**

Prior to pursuing a Common Area Claim, the Association (or an Owner if determined allowed by the jurisdiction) must comply with the requirements of Section 17.9 below.

Section 17.3      Notice of Claim. To pursue a Claim, a Claimant must send each Respondent written notice of the Claim (the “**Notice**”) that complies with Indiana Code § 32-25.5-5-10 and stating plainly: (i) the nature of the Claim, including date, time, location, persons involved and Respondent’s role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Governing Documents or other authority from which the Claim arises or which supports the Claim); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; (iv) that the Respondent has a right to meet with the Claimant, if the Respondent makes a written request for a meeting; (v) the name and address of the Person from whom the Respondent must request a meeting under subsection (iv); and (vi) that the Notice is given pursuant to this Section 17.3 of this Declaration. If the Claim is a Common Area Claim, the Notice must also include a signed resolution of the Board confirming that Members holding a majority of the total votes in the Association approved pursuing the Claim in accordance with Section 17.9 below. The Notice must be sent to each Respondent via certified mail, return receipt requested.

Section 17.4      Negotiation. Within sixty (60) days after Respondent’s receipt of the Notice and Claimant’s receipt of Respondent’s request for a meeting, Respondent and Claimant will meet at a mutually acceptable place and time in an effort to resolve the Claim by good faith negotiation. If the Claim involves or may affect any portion of the Property, then at such meeting or another mutually-agreeable time, Respondent and its representatives will be given access to, and the opportunity to inspect, such portions of the Property.

Section 17.5      Mediation. If the Parties do not resolve the Claim through negotiation within one-hundred twenty (120) days after the date of the Notice (or within such other period as may be agreed on by the Parties), either Claimant or a Respondent may submit the Claim to mediation with the assistance of a mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and with

expertise appropriate to the subject matter of the Claim. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, either Respondent or Claimant may initiate arbitration proceedings in accordance with Section 17.6.

Section 17.6      Arbitration. All Claims not resolved through negotiation and mediation must be resolved by binding arbitration as provided below. However, Claimant or Respondent may bring an action in court seeking injunctive relief to preserve the status quo and prevent irreparable harm, seeking relief that would otherwise be unavailable in arbitration, or to compel arbitration of any Claim not referred to arbitration as required by this Section 17.6.

(a)      Governing Rules. If a Claim has not been resolved after mediation in accordance with Section 17.5, the Claim will be resolved by binding arbitration pursuant to the Federal Arbitration Act (“FAA”) conducted in accordance with the applicable rules of the American Arbitration Association (“AAA”). If the Claim is a Common Area Claim, then those rules shall be the AAA’s Construction Industry Arbitration Rules and Mediation Procedures. The periods of limitation under applicable law shall apply to any Claim and arbitration proceeding under this Article. In the event of any inconsistency between the applicable AAA rules and this Section 17.6, this Section will control. The decision rendered by the arbitrator shall be binding and, except as provided below, not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction.

(b)      Award. To resolve Claims, the arbitrator may grant any remedy or relief the arbitrator deems just and equitable; provided, however, the arbitrator’s decision and award must be in accordance with applicable law and may not violate this Section 17.6 or Section 17.7 below. In each proceeding, the arbitrator shall make specific, written findings of fact and conclusions of law. **In no event may an arbitrator award speculative, consequential, indirect, special, exemplary, treble or punitive damages for any Claim.** In addition, in no event shall the arbitrator award damages which exceed the damages a Claimant would be entitled to under the laws of the State of Indiana, or applicable federal law. In addition to any right of appeal or review under the FAA or applicable AAA rules, any Party may appeal or seek vacation or modification of an award that is based in whole or in part on: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined under applicable law; (ii) conclusions of law that are erroneous; (iii) an error of applicable law; or (iv) a cause of action or remedy not expressly provided under applicable law.

(c)      Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days after the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Hamilton County. Any Party to a Claim shall have the right to join in the proceedings any contractor, subcontractor, supplier or design professional involved in the design or construction of improvements that are the subject of the Claim. Except as otherwise provided by this Section 17.6 or Section 17.7 (regarding costs), the arbitrator may impose sanctions and take other actions as the arbitrator deems necessary to the same extent a judge could do so pursuant to applicable law. Claimant and each Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the Parties or by applicable law.

In no event shall a Party discuss a Claim with the news media or issue a press release regarding a Claim without the written consent of all other Parties to the Claim.

Section 17.7 Costs. Except as provided in the following sentence, each Party shall bear all of its own costs incurred in bringing or responding to a Claim or otherwise complying with the dispute resolution process contained in this Article, including without limitation its attorney's fees and costs, and none of such costs may be allocated or awarded to either Party by an arbitrator. If Claimant files an action in a court of law prior to complying with the applicable dispute resolution procedures in this Article, then Claimant shall reimburse the other Parties for the costs, including attorneys' fees, of dismissing or staying such action. Claimant and each Respondent will equally divide all expenses and fees charged by the mediator and arbitrator.

Section 17.8 Funding Association Claims. If the Association intends to pursue a Claim and a reasonable estimate of the attorneys' fees, inspection costs, consultant and expert fees, arbitration fees and other costs that may be incurred as a result of prosecuting the Claim (whether incurred by the Association directly or for which the Association may be liable) exceeds \$10,000, then the Association must levy a special assessment to fund the estimated costs to pursue and resolve such Claim in accordance with this Article. The Association may not use its annual operating income or reserve funds to fund the costs to pursue and resolve a Claim, but the Association may use a previously established and funded dispute resolution fund.

Section 17.9 Claims Relating to Common Areas. As stated in Section 11.4 above, the Association does not have the power or right to institute, pursue, join, defend, intervene in or settle litigation, arbitration or other proceedings (i) in the name of or on behalf of an Owner (whether one or more) or (ii) pertaining to a Claim relating to the design or construction of a Residence, a Lot, or any improvements on a Lot. Each Owner, by accepting an interest in or title to a Lot, grants and assigns to the Association the exclusive right to institute, pursue, join, defend, intervene in and settle litigation, arbitration or other proceedings relating to Common Area Claims. If the Association desires to assert a Common Area Claim, as a precondition to providing the Notice required by Section 17.3 and initiating the mandatory dispute resolution procedures set forth in this Article, the Association must comply with subsections (a), (b) and (c) below:

(a) Obtain a Common Area Report. The Association must obtain a written report (the "**Common Area Report**") prepared by an independent professional engineer licensed by the state in which the Property is located with an office located in the county in which the Property is located (the "**Inspection Company**") assessing the condition of the Common Areas the subject of the Claim. *The requirements for the Common Area Report are intended to provide assurance to the Association, Owners and Respondents that the report was prepared by an independent professional and the substance, conclusions and recommendations contained in the report have not been affected by improper influences or influences that could have compromised the professional judgment of the party preparing the report.* The Common Area Report must include: (i) a description and photographs of the Common Area the subject of the Claim and its present condition; (ii) a description of any modifications, maintenance, or repairs to same performed by any party; and (iii) if the report identifies deficient or defective conditions, a detailed description of any recommended repairs, including the specific process,

procedures and materials required to repair such deficient or defective conditions, and the estimated costs to effect such repairs. Such estimated repair costs shall be obtained from independent, third-party contractors, each with an office located in the County and holding all licenses required by applicable law to perform the recommended repair work. The Common Area Report must be an "independent" report obtained directly by the Association, which means: (i) the Inspection Company may not have an arrangement or agreement to provide consulting and/or engineering services with a law firm or attorney that presently represents or proposes to represent the Association; (ii) the costs to prepare the Common Area Report must be paid directly by the Association to the Inspection Company at the time the Common Area Report is completed and delivered to the Association; and (iii) a law firm or attorney that presently represents or proposes to represent the Association may not have agreed, conditionally or unconditionally, to reimburse the Association for the cost of the Common Area Report.

(b) Provide Notice of the Defective Condition and Opportunity to Inspect and Repair. Within thirty (30) days after the Association receives the Common Area Report, the Association must send each Respondent a written Notice of the Common Area Claim identifying in reasonable detail each deficient or defective condition in the Common Area that is the subject of the Claim, together with a complete copy of the Common Area Report and any other report, study, analysis and recommendation obtained by the Association relating to the Common Areas the subject of the Claim. Such Notice must be sent to each Respondent via certified mail, return receipt requested, or via overnight delivery service with proof of delivery. From the date of receipt of such Notice and for ninety (90) days thereafter, each Respondent shall have the right to: (a) inspect any condition identified in the Common Area Report as defective or deficient; (b) contact the Inspection Company for additional information needed to clarify any finding or statement in the Common Area Report; and (c) repair or correct any one or more of the conditions identified as being defective or deficient (if a Respondent commences the repair or correction of one or more conditions identified as being defective or deficient, the Respondent shall have the time reasonably necessary to complete such repair or correction). As provided in Article 3 above, the Declarant has an easement throughout the Property for itself, its successors, assigns, architects, engineers, design professionals, each Builder and their contractors that may be utilized to correct any such conditions identified in the Common Area Report.

(c) Obtain Approval of Owners to Pursue Claim. The requirements related to Owner approval are intended to ensure the Owners are fully informed of and approve the potential costs the Association and Owners may incur in prosecuting a Common Area Claim, the time that prosecuting such a Claim may take, and the financial and other effects that prosecuting such a Claim may have on the Association and its Owners. Accordingly, the Association must obtain the approval of Members holding a majority of the total number of votes entitled to be cast by all Members of the Association at a meeting of the Members called in accordance with the Association's By-Laws to provide the Notice described in Section 17.3, initiate the mandatory dispute resolution procedures set forth in this Article, or take any other action to prosecute a Common Area Claim. The Notice of such meeting must include (in addition to any requirements set forth in the Association's By-Laws): (i) a description of the Common Area Claim, the relief sought, an estimate of the time it will take to prosecute the Claim and the likelihood of success; (ii) a copy of the

Common Area Report; (iii) an estimate of the attorney fees, consultant fees, expert fees, arbitration fees and other costs that may be incurred as a result of prosecuting the Claim, whether incurred by the Association directly or for which the Association may be liable; (iv) a summary of the steps previously taken by the Association to resolve the Claim; (v) a statement that initiating arbitration or any legal action to resolve the Claim may affect the market value, marketability, or refinancing of a Lot while the Claim is being prosecuted; and (vi) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The Notice required by this paragraph must be prepared and signed by a Person who is not the attorney or member of the law firm who represents or is proposed to represent the Association with respect to the Claim, or retained or employed by or otherwise affiliated with the law firm of the attorney who represents or is proposed to represent the Association with respect to the Claim. If the Members so approve pursuing the Common Area Claim, Members holding a majority of the votes in the Association, at a special meeting called in accordance with the Association's By-Laws, may elect to discontinue pursuit of the Claim.

If the Association desires to engage or execute an agreement with a law firm or attorney to investigate or prosecute a Common Area Claim, then the Members should be informed of, and have the opportunity to approve, the financial arrangements between the Association and the law firm or attorney proposed to be engaged. Among other financial arrangements, the engagement agreement between the Association and the law firm or attorney could require the Association to pay fees and expenses to the law firm or attorney which will be paid through assessments levied against Owners, or may require the Association to pay fees and expenses if the relationship between the Association and the law firm or attorney is terminated, if the Association elects not to engage the law firm or attorney to prosecute the Claim, or if the Association agrees to settle the Claim. Such financial obligations could have a significant effect on the Association and its Members. Accordingly, before the Association engages or executes an agreement with a law firm or attorney to investigate or prosecute a Common Area Claim, the law firm or attorney and the financial arrangements and agreements between the Association and the law firm or attorney (collectively, an "**Engagement Agreement**") must be approved by Members holding a majority of the total number of votes entitled to be cast by all members of the Association at the meeting of the Members described in the preceding paragraph. In that case, the meeting notice to the Members must also include: (a) the name of the law firm and attorney; (b) a copy of the Engagement Agreement; (c) an estimate of the fees and expenses that may be required to be paid by the Association under the Engagement Agreement; (d) the conditions upon which such fees and expenses may be required to be paid by the Association; and (e) a description of the process the law firm or attorney will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of portions of the Common Area or improvements on the Property). If destructive testing will be required or is likely to occur, the notice shall contain (i) a description of the destructive testing, (ii) the likely locations of the destructive testing, (iii) whether the Owners' use of their Lots or any Common Area will be interrupted or affected by such testing, (iv) the means or methods the Association will use to repair the Common Area or improvements affected by such testing, and (v) the estimated costs for such testing and repairs, along with an estimate of the assessments that may be levied against the Owners to pay for the costs of such testing and repairs. Unless approved by the Members as provided above, the Association shall not have the authority to enter into, and shall not enter into, an Engagement Agreement with a law firm or attorney to investigate or prosecute a Common Area Claim. All Engagement Agreements must be in writing.

Neither the Board nor any officer of the Association shall have the authority to pay any fees, expenses or other charges to a law firm or attorney relating to evaluating, investigating or asserting a Common Area Claim unless same is pursuant to a written Engagement Agreement approved by the Owners in accordance with this Section.

Section 17.10 Claims by Owner(s) Relating to Common Areas. Pursuant to Section 11.4 above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Areas. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Areas, since a Claim affecting the Common Areas could affect all Owners, such Owner shall be required, as a precondition to providing the Notice defined in Section 17.3, initiating the mandatory dispute resolution procedures set forth in this Article, or taking any other action to prosecute such a Claim, to comply with the requirements of Section 17.9 (a) – (c). Additionally, class action proceedings are prohibited, and no Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration.

## ARTICLE 18 HOME CONSTRUCTION CLAIMS

Section 18.1 Disputes Governed by Warranty. **EACH OWNER (WHICH INCLUDES WITHOUT LIMITATION EACH SUBSEQUENT PURCHASER OF A LOT), BY ACCEPTING AN INTEREST IN OR TITLE TO A LOT, AGREES THAT ALL CLAIMS AND CAUSES OF ACTION THAT SUCH OWNER MAY HAVE RELATING TO THE ORIGINAL DESIGN OR CONSTRUCTION OF SUCH OWNER'S RESIDENCE, LOT, OR ANY IMPROVEMENT ON SUCH OWNER'S LOT, INCLUDING WITHOUT LIMITATION CLAIMS BASED ON ANY EXPRESS OR IMPLIED WARRANTIES (COLLECTIVELY, "HOME CONSTRUCTION CLAIMS"), WILL BE GOVERNED EXCLUSIVELY BY THE TERMS AND CONDITIONS OF THE EXPRESS OR IMPLIED WARRANTY PROVIDED BY THE BUILDER OR CONTRACTOR WHICH CONSTRUCTED SUCH RESIDENCE OR IMPROVEMENT AND ANY OTHER AGREEMENTS BETWEEN THE INITIAL PURCHASER OF SUCH RESIDENCE AND SUCH BUILDER OR CONTRACTOR, INCLUDING WITHOUT LIMITATION ALL PROCEDURES AND AGREEMENTS CONTAINED THEREIN PERTAINING TO THE RESOLUTION OF DISPUTES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH OWNER (WHICH INCLUDES WITHOUT LIMITATION EACH SUBSEQUENT PURCHASER OF A LOT), BY ACCEPTING AN INTEREST IN OR TITLE TO A LOT, ASSUMES THE TERMS AND CONDITIONS OF THE EXPRESS OR IMPLIED WARRANTY PROVIDED BY THE BUILDER OR CONTRACTOR WHICH CONSTRUCTED THE RESIDENCE OR IMPROVEMENT, AND, UNLESS THE EXPRESS WARRANTY OR CONTRACT PROVIDED BY SUCH BUILDER OR CONTRACTOR CONTAINS OTHER PROCEDURES TO RESOLVE HOME CONSTRUCTION CLAIMS, SPECIFICALLY AGREES TO THE FOLLOWING:**

(a) Agreement to Arbitrate Home Construction Claims. **ALL HOME CONSTRUCTION CLAIMS SHALL BE RESOLVED BY BINDING ARBITRATION.** This means each Owner (which includes without limitation each subsequent purchaser of a Lot) and the other parties involved in the Home Construction Claim GIVE UP THE RIGHT TO GO TO COURT OR TO A JURY to assert or defend Home Construction Claims (EXCEPT for matters that may be taken to SMALL CLAIMS COURT as provided below). Home Construction Claims will be determined by a NEUTRAL ARBITRATOR and NOT by a judge or jury. The parties to each Home Construction Claim will be entitled to a FAIR HEARING, but the arbitration procedures are simpler and more limited than the rules applicable in a court. The arbitrator's decision will be final and binding, subject to appeal as described below. Arbitrator decisions are as enforceable as any court order and are subject to very limited review by a court. For more information, read the provisions regarding arbitration below, review the American Arbitration Association's Home Construction Arbitration Rules and related information at [www.adr.org](http://www.adr.org), call the American Arbitration Association at 1-800-778-7879, and consult an attorney if you so choose. Alternatively, if the Home Construction Claim does not exceed the maximum jurisdictional amount for a small claims court in the state where the Lot is located, a party involved in a Home Construction Claim may elect to have the Claim resolved in a small claims court rather than by binding arbitration (however, any appeal of a small claims court judgment must be resolved through arbitration in accordance with this Article).

(b) Applicable Law. The original construction and sale of each Residence was a transaction involving interstate commerce. The FAA shall govern the interpretation and enforcement of this agreement to arbitrate Home Construction Claims. Even if a part of these arbitration provisions is determined to be unenforceable under applicable law, the remainder shall survive, and the parties shall remain obligated to resolve Home Construction Claims through binding arbitration as set forth herein.

(c) Arbitrator – American Arbitration Association. The arbitration shall be conducted before an arbitrator appointed by the AAA. If the AAA declines to arbitrate a Home Construction Claim, or if the AAA is not available, the parties will agree to an alternative arbitrator, or have a court appoint a new arbitrator who meets the qualification criteria of an AAA-trained arbitrator and has at least ten years of construction arbitration experience.

(d) Arbitration Rules. The arbitration shall proceed in accordance with the AAA's Home Construction Arbitration Rules. If those rules have been repealed or replaced at the time the arbitration claim is filed, the AAA's rules then most applicable to residential construction shall apply. However, each builder or contractor will be entitled to visually inspect and perform testing as to any component claimed to have a construction defect and no AAA rule shall apply if it is inconsistent with the provisions of this agreement.

(e) Additional Parties or Claims. Each party to a Home Construction Claim may join as a party to the arbitration any third party consultant, contractor, supplier, manufacturer, engineer, architect or other professional involved in the manufacture, design or construction of any part of the Residence, Lot or improvement on the Lot. Except as

provided above, each Home Construction Claim shall be between only the then Owner of a Residence or Lot and the Builder, Contractor and other parties involved in manufacture, design or construction of any part of such Residence or improvements on such Lot and shall not be joined or consolidated with the claims or arbitration of any other party, and the arbitrator is not authorized to permit any consolidation or joinder with any other party. Each Owner and subsequent purchaser of a Lot waives the right to institute or participate in a class or any other type of representative arbitration or any type of legal action as a member or representative of a class for any Home Construction Claim and agrees the arbitrator is not authorized to permit any class or representative arbitration.

(f) Arbitration Process. A party seeking to resolve a Home Construction Claim shall begin the arbitration process by filing a demand for arbitration with the AAA and serving a copy of the demand on the other party. The failure to initiate arbitration at any particular time shall not be considered a waiver of the right to compel arbitration of a Home Construction Claim. The only way this right to arbitrate claims may be waived is by a written agreement among the parties. To the extent not inconsistent with the FAA, all provisions of this paragraph are subject to the general qualification that state laws, requirements and rules, including, but not limited to, state filing limitations (such as statute of limitations and statutes of repose), may affect how and when arbitration may be initiated and administered. The following is a brief description of the steps to initiate arbitration and the arbitration process:

(i) Step 1 – Filing a Request. The party initiating arbitration must notify the AAA in writing of the request for arbitration under the terms of this Agreement. If a builder or contractor initiates arbitration, such builder or contractor will pay the AAA's filing fee. If an Owner (including a subsequent purchaser of a Lot) initiates arbitration, such Owner will pay the lesser of 1/2 of the AAA filing fee or the amount provided by the AAA rules and the builder or contractor will pay the other 1/2 or remainder. All other AAA arbitration fees and costs shall be paid in accordance with the applicable AAA fee schedule.

(ii) Step 2 - Hearing. The arbitration will be held at a location agreed to by the parties, usually in the metropolitan area where the Property is located. The hearing typically will be scheduled by the arbitrator at a time mutually agreeable to all parties. At the hearing, the arbitrator will hear and consider evidence presented by all parties. If a party timely notifies the AAA of a request for a record of the hearing prior to the earlier of the hearing date or the date in the AAA's rules, if specified, the arbitrator will preserve all evidence presented at the arbitration. Oral evidence will be preserved in a manner that it can be converted into a written transcript. The costs of the record will be paid by the party requesting the record or shared equally among the parties requesting a copy.

(iii) Step 3 - Award. The arbitrator's award will decide the relief to be awarded and, if requested by a party, the scope and manner of correction. The arbitrator's award shall be consistent with this agreement, based on applicable law (except to the extent the FAA overrides and preempts state, local or other law), and shall include findings of fact and conclusions of law. If permitted by the AAA rules,

either party may request a written explanation of the award. Each party shall bear its own attorney's fees and expenses (including without limitation the costs and fees of any expert witnesses) in the arbitration, any confirmation proceeding and any appeal. Arbitrator compensation, expenses, and administrative fees (which include filing and hearing fees) shall not be subject to reallocation.

(A) Appeal. Each party shall have the right to appeal the arbitrator's award to the AAA by filing a written notice with the AAA (with a copy to the other party) within 30 days of the date of the arbitrator's award. The party appealing the award shall pay the fees necessary to initiate the appeal. If both sides appeal, the fees shall be split 50/50. The notice of appeal must include the specific items the party seeks to change in the award and the supporting facts and law. The appeal shall be heard by a panel of three arbitrators from the AAA. The appeal shall be conducted in accordance with the applicable rules of the AAA and this agreement as if the Claim was being initially filed with the AAA, except that: (i) the only issues to be determined on appeal are the issues described in the notice of appeal and any issues raised by the non-appealing party in response to the issues in the notice of appeal, (ii) the arbitrators' award on appeal shall be final, binding and non-appealable, and (iii) no new evidence shall be accepted or considered by the arbitrators.

(B) Award after Appeal. The award of the arbitrator shall be final, subject to appeal as provided above. If a notice of appeal from the initial hearing is not received by the AAA within 30 days after the date of the initial award, then the initial award shall be final. Once the award is final, it will be binding on and enforceable against the parties, except as modified, corrected, or vacated according to the applicable arbitration rules and procedures or to the extent not inconsistent with the FAA or applicable state law. Either party may present the final award to any court having jurisdiction over the Home Construction Claim to enter that award as a judgment of the court.

(iv) Step 4 - Repairs. Unless designated otherwise in the award (and unless appealed), any party ordered to perform a correction to the Residence or Lot will, within 10 days after a final award, elect to either perform the correction awarded by the arbitrator or, at such party's option, pay the Owner of the Residence or Lot the reasonable cost of such correction. If such party elects to perform a correction under an award, such party will complete the correction within 60 days after a final award or as may be specified by the arbitrator. If the correction cannot be completed in that time, the arbitrator must grant reasonable additional time to make the correction. If the Owner believes that the correction was not performed satisfactorily or in a timely manner, such Owner may have those issues determined in a later arbitration. If the cost of correction is not specified in the award and the party ordered to perform a correction elects to pay the Owner the reasonable cost of the correction, such Owner may have the amount of that payment reviewed in a later arbitration.

(A) Expenses. Except as stated above, each party shall bear its own attorney's fees and other expenses incurred in connection with a Home Construction Claim. However, if a party to such a Claim files a court action in violation of this Article and the other party is required to compel arbitration by filing a motion with the court, the court shall award the moving party its court costs and reasonable attorneys' fees incurred in connection with the motion.

**LIKE ALL COVENANTS CONTAINED IN THIS DECLARATION, THE AGREEMENTS CONTAINED IN THIS ARTICLE ARE COVENANTS RUNNING WITH TITLE TO EACH LOT, CONCERN EACH LOT AND THE RESIDENCE AND OTHER IMPROVEMENTS ON SUCH LOT, AND SHALL BE BINDING UPON EACH SUCCESSIVE OWNER OF A LOT (WHICH INCLUDES WITHOUT LIMITATION EACH SUBSEQUENT PURCHASER OF A LOT).**

## **ARTICLE 19 SECURITY AND PRIVACY**

Section 19.1 Security. Each Owner and resident of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property and the Common Area. The Association may, but shall not be obligated to, maintain or support certain activities within the Property or the Common Area designed to promote or enhance the level of safety or security which each Person provides for himself or herself and his or her property. HOWEVER, NEITHER THE ASSOCIATION NOR THE DECLARANT NOR THE DIRECTORS, EMPLOYEES, OR AGENTS OF SUCH ENTITIES SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PROPERTY OR THE COMMON AREAS, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM OR RELATED TO AN OWNER'S OR RESIDENT'S, OR THEIR RESPECTIVE GUEST'S AND INVITEE'S, PRESENCE IN OR USE OF ANY IMPROVEMENTS ON THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY OF THE COMMON AREA OR IMPROVEMENTS THEREIN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING SECURITY MONITORING SYSTEMS, WALLS AND GATES CANNOT BE COMPROMISED OR CIRCUMVENTED; OR THAT ANY SUCH SYSTEM OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND SHALL BE RESPONSIBLE FOR INFORMING ANY RESIDENTS OF SUCH OWNER'S LOT THAT NEITHER THE ASSOCIATION, NOR THE DECLARANT, NOR THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND COMMITTEES OF SUCH ENTITIES, ARE INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PROPERTY ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY RESULTING FROM ACTS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO ANY DAMAGE OR LOSS TO ANY RESIDENCES OR IMPROVEMENTS CONSTRUCTED UPON ANY LOT AND THE CONTENTS LOCATED THEREIN.

Section 19.2 Privacy. While the Association may adopt policies or procedures designed, directly or indirectly, to support the privacy of persons, property and/or data, the Association shall have no obligation to do so, and each Owner, resident and occupant agrees and accepts that the Association does not guarantee the privacy of any Person or his or her property or data. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL HAVE ANY DUTY OF ANY KIND, EXPRESS OR IMPLIED, TO PROTECT THE PRIVACY OF ANY OWNER, RESIDENT OR OCCUPANT, INCLUDING WITHOUT LIMITATION THE PRIVACY OF HIS OR HER PERSON, PROPERTY OR DATA, AND EACH OWNER, RESIDENT AND OCCUPANT RELEASES THE ASSOCIATION AND DECLARANT AND THEIR RESPECTIVE BOARD MEMBERS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY LIABILITY, RESPONSIBILITY AND DAMAGE OF EVERY KIND RELATING TO PRIVACY OR A BREACH, LOSS OR INVASION OF PRIVACY.

## **ARTICLE 20 MORTGAGE PROVISIONS**

Section 20.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Residence to which its Mortgage relates, thereby becoming an “**Eligible Holder**”), will be entitled to timely written notice of any delinquency in the payment of assessments or charges owed by a Residence subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration relating to such Residence or Owner or Resident which is not cured within sixty (60) days.

## **ARTICLE 21 TERM AND AMENDMENTS TO THIS DECLARATION**

Section 21.1 The foregoing Declaration is to run with the land and shall be binding on all parties and all Persons claiming under them for a period of twenty-five (25) years from the date of recording with the Hamilton County Recorder, at which time said Declaration shall be automatically extended for successive periods of ten (10) years unless changed by vote of a majority of the then Owners of the Lots in whole or in part. The Declarant may amend this Declaration for any purpose, from time to time, prior to the Applicable Date, without any vote or approval by the Lot Owners or the consent of any other party by the recording of an instrument executed by Declarant. Specifically, and without limiting the preceding sentence, Declarant may unilaterally amend this Declaration: (i) to bring any provision into compliance with applicable law; (ii) to resolve conflicts, clarify ambiguities and to correct misstatements, errors or omissions in this Declaration; (iii) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (iv) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (v) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development. After the Applicable Date, this Declaration may be amended by the approval of the Owners of at least two-thirds (2/3) of the total number of Lots. Notwithstanding the foregoing, whether during or after the Applicable Date, and so long as (i) the Declarant owns one (1) or more Lots within the Property, and (ii) not more than seven (7)

years have passed since this Declaration was first recorded, the Association shall be required to obtain Declarant's written consent to (A) any amendment that would affect any right, easement, liability or obligation of Declarant under this Declaration; and (B) any amendment that would affect a Claim or the process of resolving a Claim against Declarant, such amendment may not apply retroactively to a Claim based on acts or omissions alleged to have occurred prior to the date of the amendment. Any and all amendments to this Declaration must be filed with the Hamilton County Recorder.

Section 21.2 If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth II, Queen of England.

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This Declaration of Covenants, Conditions and Restrictions for Kimblewick by Del Webb was made as of this 24th day of November, 2020.

**“DECLARANT”**

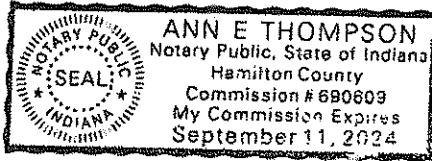
PULTE HOMES OF INDIANA, LLC, an  
Indiana limited liability company

By: [Signature]  
David Compton  
Vice President of Land Acquisition

STATE OF INDIANA        )  
                                          ) SS:  
COUNTY OF HAMILTON )

Before me, a notary public, in and for said County and State, personally appeared David Compton, the Vice President of Land Acquisition for PULTE HOMES OF INDIANA, LLC, who acknowledged execution of the within and foregoing for and on behalf of said limited liability company.

Witness my hand and notarial seal this 24th day of November, 2020.



[Signature]  
Notary Public - Signature

ann thompson  
Printed

My Commission Expires:  
9/11/24

Residence County: Hamilton

CERTIFICATE OF PROOF

WITNESS to the signature(s) on the foregoing instrument to which this Proof is attached:

[Handwritten Signature]  
Witness Signature

Printed Name NEIL WELDERHAFT

PROOF:

State of Indiana

County of Hamilton

Before me, a Notary Public in and for said County and State, on this 24<sup>th</sup> day of November, 2020, personally appeared the above named WITNESS to the foregoing instrument, who, being by me duly sworn, did depose and say that he/she knows David Compton to be the individual(s) described in and who executed the foregoing instrument on behalf of PULTE HOMES OF INDIANA, LLC; that said WITNESS was present and saw said David Compton execute the same; and that said WITNESS at the same time subscribed his/her name as a witness thereto.

Witness my hand and Notarial Seal this 24<sup>th</sup> day of November, 2020

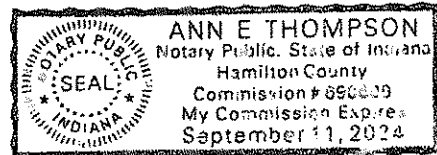
Signature: [Handwritten Signature]

Printed: Ann Thompson

Resident of: Hamilton County

State of: Indiana

My Commission expires: 9/11/2024



"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." Amanda C. Redick, Esq.

This instrument prepared by, and should be returned to, Amanda C. Redick, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282, Telephone (317) 236-2398.

## EXHIBIT X

### **Legal Description of "Real Estate" *Kimblewick by Del Webb, Section 1A***

The real property depicted and as recorded on that certain Kimblewick by Del Webb Section 1A Secondary Plat a Re-Plat of Blocks "A" and "B" of Saddle Ridge North by Del Webb at Minor Plat filed in the Office of the Recorder of Hamilton County, Indiana on October 29, 2020 as Instrument No. 2020078058 and more particularly described as follows, together with the easements created by said Plat:

Block "A" and Block "B" in Saddle Ridge North by Del Webb Minor Plat, per plat recorded in Plat Cabinet 5, Slide 1140 as Instrument Number 2020038381 in the Office of the Recorder of Hamilton County, Indiana, being part of the Northeast Quarter of Section 17, Township 18 North, Range 3 East of the Second Principal Meridian, in the City of Westfield, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the southeast corner of said Northeast Quarter; thence North 00 degrees 14 minutes 27 seconds East (assumed bearing) along the east line of said Northeast Quarter a distance of 1024.69 feet; thence North 90 degrees 00 minutes 00 seconds West a distance of 75.00 feet to the southeast corner of said Block "A", being a point on the west right-of-way of Towne Road and the POINT OF BEGINNING, the following twelve (12) courses being along the southerly lines of said Block "A"; (1) thence South 90 degrees 00 minutes 00 seconds West a distance of 639.84 feet; (2) thence South 22 degrees 45 minutes 46 seconds West a distance of 310.33 feet; (3) thence South 27 degrees 48 minutes 18 seconds West a distance of 60.44 feet; (4) thence South 35 degrees 15 minutes 15 seconds West a distance of 60.43 feet; (5) thence South 44 degrees 11 minutes 03 seconds West a distance of 82.64 feet; (6) thence North 40 degrees 39 minutes 23 seconds West a distance of 189.00 feet to a point on a non-tangent curve to the left having a radius of 270.50 feet; (7) thence northeasterly along said curve an arc distance of 12.51 feet, said curve being subtended by a chord bearing North 48 degrees 01 minutes 06 seconds East, a chord distance of 12.51 feet; (8) thence North 43 degrees 18 minutes 26 seconds West a distance of 135.00 feet; (9) thence South 56 degrees 15 minutes 55 seconds West a distance of 45.07 feet; (10) thence North 39 degrees 38 minutes 31 seconds West a distance of 35.29 feet; (11) thence North 67 degrees 14 minutes 14 seconds West a distance of 65.00 feet; (12) thence North 76 degrees 32 minutes 35 seconds West a distance of 56.69 feet (crossing the east line of said Block "B" at 40.54 feet) to a south corner of said Block "B", the following seven (7) courses being along the southerly, westerly, and northerly lines of said Block; (1) thence South 83 degrees 22 minutes 10 seconds West a distance of 61.54 feet; (2) thence South 80 degrees 58 minutes 32 seconds West a distance of 130.00 feet; (3) thence North 09 degrees 01 minutes 28 seconds West a distance of 189.00 feet; (4) thence North 80 degrees 58 minutes 32 seconds East a distance of 144.76 feet; (5) thence North 09 degrees 01 minutes 28 seconds West a distance of 130.00 feet; (6) thence North 80 degrees 58 minutes 32 seconds East a distance of 79.59 feet; (7) thence North 87 degrees 22 minutes 19 seconds East a distance of 35.60 feet to a west line of said Block "A", the following seventeen (17) courses being along the westerly, northerly, and easterly lines of said Block; (1) thence North 00 degrees 19 minutes 45 seconds East a distance of 110.48 feet; (2) thence South 67 degrees 14 minutes 14 seconds East a distance of 365.42 feet; (3) thence North 22 degrees 45 minutes 46 seconds East a distance of 189.98 feet; (4) thence South 83 degrees 24 minutes 03 seconds East a distance of 186.27 feet; (5) thence North 89 degrees 04 minutes 09 seconds East a distance of 183.67 feet;

(6) thence North 68 degrees 28 minutes 55 seconds East a distance of 103.36 feet; (7) thence North 53 degrees 32 minutes 52 seconds East a distance of 80.44 feet; (8) thence North 38 degrees 36 minutes 49 seconds East a distance of 80.44 feet; (9) thence North 23 degrees 40 minutes 46 seconds East a distance of 80.44 feet; (10) thence North 07 degrees 21 minutes 39 seconds East a distance of 95.35 feet; (11) thence North 04 degrees 38 minutes 56 seconds West a distance of 83.52 feet; (12) thence North 19 degrees 07 minutes 58 seconds West a distance of 80.44 feet; (13) thence North 34 degrees 04 minutes 01 seconds West a distance of 80.44 feet; (14) thence North 49 degrees 00 minutes 04 seconds West a distance of 80.44 feet; (15) thence North 00 degrees 55 minutes 51 seconds West a distance of 94.32 feet; (16) thence North 89 degrees 04 minutes 09 seconds East a distance of 353.77 feet to the west right-of-way of Towne Road; (17) thence South 00 degrees 14 minutes 27 seconds West along said west right-of-way a distance of 987.99 feet to the POINT OF BEGINNING, containing 16.968 acres, more or less.

## EXHIBIT Y

### Legal Description of the

#### **“Additional Real Estate” for Kimblewick by Del Webb**

A part of the Southwest and Southeast Quarter of Section 17, Township 18 North, Range 3 East, in Washington Township, Hamilton County, Indiana, also referred to as “Phase II” as described on a survey by COOR Consulting & Land Services Corporation, Job Number 2016-050-S\_2019, dated December 20, 2019 and being more particularly described as follows:

COMMENCING at the Southwest corner of the Southeast Quarter of said Section 17; thence North 00 degrees 00 minutes 30 seconds West (bearings based on the Indiana State Plane Coordinate System, East Zone, NAD 83, CORS 96) along the West line of said quarter Section a distance of 248.71 feet to a point on the North line of a tract of land described in Instrument Number 2018034767 as recorded in the Office of the Recorder for Hamilton County, Indiana, said point being the POINT OF BEGINNING; thence South 89 degrees 36 minutes 46 seconds West along said North line a distance of 1324.96 feet to a point on the West line of said Southwest Quarter Section; thence North 00 degrees 02 minutes 10 seconds East along the West line thereof a distance of 32.61 feet to a point on the East line of a tract of land described in Instrument Number 200500074587 in said Recorder’s Office; thence North 00 degrees 11 minutes 51 seconds East along said East line and the East line of a tract of land described in Instrument Number 200400083420 in said Recorder’s Office a distance of 1360.05 feet to the Northeast corner of said Instrument Number 200400083420; thence South 89 degrees 35 minutes 51 seconds West along the North line thereof a distance of 334.70 feet; thence North 00 degrees 02 minutes 10 seconds East a distance of 984.63 feet to the Northwest corner of a tract of land described in Instrument Number 199909955060 in said Recorder’s Office, said point being on the North line of said Southwest Quarter Section; thence North 89 degrees 31 minutes 59 seconds East a distance of 237.57 feet to the Northwest corner of a tract of land described in Instrument Number 2018010770 in said Recorder’s Office (the next seven courses being along the South lines of said tract); 1) thence South 00 degrees 28 minutes 01 seconds East a distance of 20.00 feet; 2) thence North 89 degrees 31 minutes 59 seconds East a distance of 27.43 feet; 3) thence North 78 degrees 47 minutes 19 seconds West a distance of 74.10 feet; 4) thence North 89 degrees 31 minutes 59 seconds East a distance of 50.00 feet; 5) thence North 74 degrees 08 minutes 40 seconds East a distance of 56.53 feet; 6) thence North 89 degrees 31 minutes 59 seconds East a distance of 45.50 feet; 7) thence North 00 degrees 28 minutes 01 seconds West a distance of 20.00 feet to a point on the North line of said Southwest Quarter Section; thence North 89 degrees 31 minutes 59 seconds East along the North line thereof a distant of 1166.43 feet to a stone marking the Northwest corner of said Southeast Quarter; thence North 89 degrees 26 minutes 39 seconds East along the North line thereof a distance of 768.45 feet; thence south 00 degrees 03 minutes 15 seconds East passing along the West lines of tracts of land described in Instrument Numbers 9709730812 and 9809873905 in said Recorder’s Office a distance of 2381.52 feet to a point on the North line of said tract of land described in Instrument Number 2018034767 (the next four courses being along said North lines); 1) thence North 33 degrees 43 minutes 25 seconds West a distance of 90.98 feet; 2) thence South 89 degrees 35 minutes 51 seconds West a distance of 138.87 feet; 3) thence South 01 degrees 06 minutes 40 seconds East a

distance of 76.01 feet; 4) thence South 89 degrees 35 minute 51 seconds West a distance of 582.43 feet to the POINT OF BEGINNING. Containing 121.322 acres, more or less.

**AND**

Blocks "C", "D", "E", "F", "G" of Saddle Ridge North by Del Webb Minor Plat recorded as Instrument Number 2020038381, Plat Cabinet 5, Slide 1140 in the Office of the Recorder, Hamilton County, Indiana.

Block "C" contains 21.566 acres. Block "D" contains 25.480 acres. Block "E" contains 2.791 acres. Block "F" contains 11.519 acres. Block "G" contains 38.565 acres.

**The "Additional Real Estate" described above, in all, contains 221.243 acres, more or less.**