

STATE OF INDIANA
LAKE COUNTY
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2007 OCT -5 PH 2:35

MICHAEL A. BROWN
RECORDER

THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING, RETURN TO: 2007-480171

Providence Homes at Stonegate, Inc.
900 Woodlands Parkway
Vernon Hills, IL 60061

FILED

OCT - 5 2007

PEGGY HOLINGA KATONA
LAKE COUNTY AUDITOR

**DECLARATION OF MASTER COVENANTS, DEDICATIONS, RESTRICTIONS, AND
EASEMENTS FOR THE STONEGATE COMONS SUBDIVISION**

THIS DECLARATION OF MASTER COVENANTS, DEDICATIONS, RESTRICTIONS, AND
EASEMENTS ("Declaration") for the Stonegate Commons Subdivision ("Subdivision"), is made this ___
4th day of October, 2007 by Providence Homes at Stonegate ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of and holds legal title to the parcel of real estate situated in the City of Winfield, Lake County, Indiana ("Parcel") and legally described in Exhibit A, Plat of Subdivision, attached hereto and is incorporated by reference and made a part of this Declaration, and desires to create thereon a subdivision ("Subdivision") with permanent common areas, as shown in Exhibit B, for the benefit of said subdivision; and,

WHEREAS, Declarant desires to provide for the preservation of the value, attractiveness and desirability of the lots or tracts constituting the Subdivision, Declarant states that all of the Parcel and each part of it will be held, sold, and conveyed only subject to the following easements, covenants, conditions, and restrictions, which will constitute covenants running with the land and will be binding on all parties having any right, title, or interest in the Parcel or any part of it, their heirs, successors, and assigns, and will inure to the benefit of each owner; and,

WHEREAS, Declarant has deemed it desirable for this efficient preservation of the values and amenities in said Subdivision, to create a Master Property Owner Association to which should be delegated and assigned the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Declarant has incorporated, or will incorporate, under the laws of the State of Indiana, as a nonprofit corporation, the Stonegate Commons Master Association, for the purpose of exercising the function aforesaid;

WHEREAS, the legal description and Key Number of the real property are as follows:

Legal Description: See Exhibit A
Location: City of Winfield, County of Lake, State of Indiana
Key Number: 54-0138-0001 to 54-0138-0200

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A of this Declaration is and shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as covenants and restrictions) hereinafter set forth.

ARTICLE I
Definitions

- 1.1 **Board:** The Board of Directors of the Master Association, as constituted at any time or from time to time in accordance with the applicable provisions of Article III.
- 1.2 **Commercial Lot:** Lots 74, 75, 76, and 77 as depicted in the Plat.
- 1.3 **Commercial Member:** The Fee Simple Owners of Lots 74, 75, 76, and 77 as depicted in the Plat.
- 1.4 **Common Area:** Those portions of the Parcel and Lots, as denoted in Exhibit B, intended to be devoted to the common use and enjoyment of the Members and other persons described herein which portions are either owned by the Association or to which easements are reserved for the use and benefit of the Members.
- 1.5 **Common Facilities:** All Common Area and all streets curbs and gutters, lawns, walkways, sewers, traps; catch basins, stormwater management easements, water lines, street lights, (except those facilities dedicated to the Town) signs, cable television systems (serving more than, one Dwelling Unit) located in the Common Area.
- 1.6 **Declarant:** Providence Homes at Stonegate, Inc., an Indiana Limited Liability Company.
- 1.7 **Dwelling Unit:** A residential housing unit including an attached garage located on a Lot and intended for use exclusively as residential living quarters.
- 1.8 **Lot:** Any Residential Lot and Commercial Lot within the Parcel.
- 1.9 **Master Association:** The Stonegate Commons Master Association, an Indiana nonprofit corporation, its successors and assigns.
- 1.10 **Member:** Each Member Association and Commercial Member. Each Member Association and Commercial Member shall be a Member of the Master Association.
- 1.11 **Member Association:** The following homeowners associations are a Member Associations:
 - 1.11.1 The Estates at Stonegate Commons Homeowners Association, Inc., ("Estate Homes"); and,
 - 1.11.2 The Townes at Stonegate Commons Subdivision Homeowners Association, Inc., ("Townes Homes").
- 1.12 **Member Declaration:** Any Member Association's recorded declaration governing the lots of said Member Association. The following Member Associations' declarations are incorporated by reference and made a part of this Master Declaration:

- 1.12.1 Estate Homes; and,
- 1.12.2 Townes Homes.

For the purpose of this Declaration, wherever there is a conflict between this Declaration and a Member's Declaration, this Declaration, in all instance, shall control and govern.

1.13 **Owner:** The person or persons whose estates or interest, individually or collectively, aggregate fee simple absolute ownership of a Lot. For the purposes hereof; unless otherwise specifically provided herein, the word "Owner" shall include any beneficiary of a trust, shareholders of a corporation or partner of a partnership holding title to a Lot or purchasing a Lot as aforesaid.

1.14 **Parcel:** The real estate legally described as follows:

THE SOUTH ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 8,
TOWNSHIP 34 NORTH, RANGE 7 WEST OF THE SECOND PRINCIPAL MERIDIAN, IN
LAKE COUNTY, INDIANA.

1.15 **Person:** A natural individual, corporation, partnership, trust or other legal entity capable of holding title to real property.

1.16 **Plat:** The Plat of Subdivision attached hereto as Exhibit A. Exhibit A is incorporated by reference and made a part of this Declaration.

1.17 **Residential Lot:** Any individual parcel of real estate included within the Parcel upon which a Dwelling Unit is situated or to be situated and which is or hereafter may be made subject to this Declaration.

1.18 **Town:** The Town of Winfield, Indiana, a political subdivision of the state of Indiana located in Lake County.

ARTICLE III **Administration**

2.1 **Master Association:** The Master Association has been, or will be, formed as an Indiana Nonprofit corporation under the Indiana Nonprofit Corporation Act of 1991 having the name "The Stonegate Commons Master Association" (or one similar thereto) and shall, to the extent hereafter provided and subject to the limitations hereafter contained, be the governing body of the use maintenance and repair of the Common Facilities.

2.2 **Members:** Each Commercial Member and Member Association shall be a Member of the Master Association. In the event that a Member Association shall cease to exist, then all Lot Owners under the Member Association shall become members of this Master Association, and shall have voting rights equivalent to the portion of such Lot Owners' voting rights in the Member Association. *(As way of example, if a Lot Owner in the Estate Homes has a one vote out of twenty-seven votes (4% of the vote), then, in the event the Estate Homes Association ceased to exist, said Lot Owner would have 4% of 40% of the vote in the Master Association or 1.6% of the vote in the Master Association.)* Master Association is appurtenant to and shall not be separated from ownership of a Lot. Each Owner by acceptance of a deed or other conveyance of a Lot thereby becomes subject to this declaration whether or not this Declaration or the Member Association declaration is made a part of, incorporated by reference or expressed in said deed or conveyance. There shall be one person with respect to every Member Association and Commercial Lot Owner who shall be entitled to vote at any meeting of the Master Association. Such person shall be known as a "voting member." Such voting member may be the President of the respective Member Association, or may be some person designated by the Member Association or Commercial Lot Owner to act as proxy on behalf of such Member Association or

Commercial Lot Owner and who need not be the President of the respective Member Association and/or Owner of the Commercial Lot. Such designation shall be made in writing and shall be revocable at any time by actual notice to the Board by the Member Association.

2.3 Voting Rights: The Association shall have two classes of voting members.

Class A: Class A Members shall be each Member, and the Members shall be entitled to the following number of votes:

<u>Member Association</u>	<u>Number of Votes in Master Association</u>
Estate Homes	40
Townes Homes	45
Lot 74	3
Lot 75	4
Lot 76	4
Lot 77	4

Class B: The Class B Member shall be the Declarant who shall at any given time be entitled to 110 votes. The Declarant shall cease to be Class B Member upon the first to occur of any of the following dates:

- (a) The date upon which the Declarant shall no longer own title to any Lot, or
- (b) On December 31, 2012.

2.4 Election of Board: For a period commencing on the date this Declaration is executed and ending upon the election of the directors at the initial meeting of voting members, the Declarant shall have the right to exercise the powers of the Board as provided herein. Except for directors so designated by Declarant, each member of the Board shall be one of the Owners and shall reside in a Dwelling Unit; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any person designated by such corporation, partnership, trust, or other legal entity, shall be eligible to serve as a member of the Board, so long as any such designee (other than a person designated by Declarant) resides in a Dwelling Unit.

2.5 Election of Directors:

2.5.1 The initial Board of Directors designated by the Declarant shall consist of three (3) directors who shall serve without compensation. Such initial Board shall serve for a period commencing on a date the Association is formed by the filing of the Articles of Incorporation therefore in the office of the Secretary of State of Indiana and ending upon the qualification of the directors elected at the initial meeting of voting members held as provided in Section 3.6 hereof. At the initial meeting held as provided in Section 3.6 hereof, the voting members shall elect five (5) directors who shall serve until the first annual meeting. In all elections for members of the Board, each voting member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Each voting member shall be entitled to cast the number of votes specified in Section 3.3 hereof. At the first annual meeting five (5) Board members shall be elected. The three (3) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years, and the two (2) persons receiving the next highest number of votes, shall be elected to the Board for a term of one (1) year. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Upon the expiration of the terms of office of

the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. The voting members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease the number of Board members at any annual or special meeting, provided that such number shall not be less than three (3). Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board shall be filled by the majority vote of all remaining Board members. The Board shall act by majority vote of those present at its meeting when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of members on the Board shall constitute a quorum.

2.5.2 The Board shall elect from among its members a President who shall preside over both its meetings and those of the voting members and who shall be the chief executive officer of the Association, a Secretary who shall keep minutes of all meetings, a Treasurer and such other officers as the Board shall see fit. Except for Directors designated by the Declarant any Board member may be removed from office by the affirmative vote of voting members holding two-thirds (2/3) of the total votes.

2.6 Meetings of Voting Members:

2.6.1 Meetings of the voting members shall be held at such places and times as shall be designated in any notice of a meeting by the Board. The presence in person or by proxy at any meeting of the voting members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting. In the event that a quorum is not present at any meeting of the voting members, another meeting may be called by notice from the Board and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

2.6.2 The initial meeting of voting members shall be held upon not less than ten (10) days written notice from the Declarant. Such notice must be given no later than the earlier of (i) thirty (30) days after notice had been provided to the voting members of the Member Associations, and (ii) December 31, 2012, but such notice may, at the discretion of the Declarant, be given earlier. Thereafter, there shall be an annual meeting of the voting members on or about the second Tuesday of October following such initial meeting and on or about the second Tuesday of November of each succeeding year thereafter, or at such other reasonable date and at such time, and at such place, as may be designated by written notice from the Board, provided however that no meeting may be held outside the Lake County, Indiana.

2.6.3 Special meetings of the voting members may be called at any time for any reasonable purpose on not less than ten (10) days notice from a majority of the Board or the voting members holding at least one-third (1/3) of the total votes.

2.6.4 Notices of meetings may be delivered personally or by mail to the voting members, addressed to each such voting member at the address given by such voting member to the Board, or if no address shall be given, addressed to such voting member to the address of the Dwelling Unit owned by such voting member.

2.7 General Powers of the Board: The Board shall have the following powers:

- (a) To adopt rules and regulations governing the use, maintenance and administration of the Common Facilities as it relates to the health, comfort, safety and general welfare of the Owners.
- (b) To provide for maintenance, repair and replacement with respect to the Common Facilities as required by the provisions provided for in Article V hereof.
- (c) To enter into contracts on behalf of, and to purchase or secure in the name of, the Master

Association any materials, supplies, insurance (including directors and officers liability insurance), equipment, fixtures, labor, services (including the services of accountants and attorneys) required by the terms of this Declaration or the bylaws of the Master Association, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Master Association and its members and for the enforcement of the provisions of this Master Declaration.

- (d) To enter upon, and to have its contractors, subcontractors and agents enter upon any Common Facility and/or Common Area as may be required to exercise any of the rights and obligations granted to or imposed upon it pursuant to this Master Declaration or to correct any condition that in the Board's judgment is a nuisance or is damaging to any Owner or occupant.
- (e) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to draw upon such accounts), and generally, to have all the powers necessary and incidental to the operation and management of the Master Association.
- (f) To adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property, and if proceeds are insufficient to repair damaged or replace lost property, to assess the appropriate Members in proportionate amounts to cover the deficiency.
- (g) To take such action as may be required to enforce the provisions of this Declaration and the rules and regulations made hereunder.
- (h) To grant non-exclusive easements in respect to, and to dedicate to or as directed by governmental authorities, portions of the Common Facilities and to execute and cause to be recorded such instruments as may be required in respect thereto.
- (i) To borrow money in the name of the Association to provide for the maintenance, repair or replacement of the Common Facilities; provided, however, that the Board shall not secure any such borrowings by encumbering the Common Facilities for a mortgage or trust deed. The Board shall, however, have the power to secure such borrowings by pledging and granting a security interest in the assessments due the Association hereunder.
- (j) To enter into a contract for the management of the Parcel with a professional manager or management company on such reasonable terms as the Board shall determine; provided that, any such contract shall be cancelable by the Master Association at the end of three (3) years from the date of recording of this Declaration.
- (k) To exercise any and all powers, rights and authorities provided in the Indiana Nonprofit Corporation Act, as amended from time to time.

Notwithstanding anything aforesaid to the contrary subject to the initial meeting of Members, except for (i) litigation seeking to enforce any remedy available to the Master Association at law or in equity in the case of a violation of any provision of this Declaration or the rules and regulations of the Master Association, including by way of example and not limitation, failure by a Member to pay their assessments; (ii) litigation in connection with real estate tax assessments on the Lots; (iii) litigation against a contractor by reason of the claimed breach of a contract entered into by the Board, or (iv) litigation against an insurance carrier arising out of a claim of the Master Association under any policy of insurance wherein the Master Association is a named insured, the Board shall have no authority to commence any litigation without the prior consent of not less than three-fourths (3/4) of the voting Members.

2.8 Insurance on Common Facilities: The Board shall have the authority to and shall obtain insurance for the Common Facilities as follows:

- (a) Comprehensive General Liability insurance covering bodily injury and property damage insuring against hazards of premises/operation, death, personal injury liability (with exclusions (a) and (c) deleted), independent contractors and other extensions as deemed necessary by the Board. Such insurance shall name the Association and managing agent as insured, provide limits of liability as deemed desirable by the Board, but in no event for less than One Million Dollars (\$1,000,000.00) with respect to each occurrence. Such policy shall be endorsed to cover cross-liability claims of one insured against the other;
- (b) Worker's Compensation and Employer Liability (minimum amount \$100,000.00) as necessary to comply with applicable laws.
- (c) Fidelity bond insurance covering any officer, director, managing agent or other person who handles or are responsible for funds of the Association, in an amount necessary to comply with the insurance requirements of the Federal National Mortgage Association; and
- (d) Such other insurance, which may include, without limitation, any or all of the following, in such amount as the Board shall deem desirable: directors and officers liability insurance for the officers and members of the Board; and medical payments coverage for members of the public (not Owners) injured on the Common Facilities, without regard to liability of the Board or the Association.

The premium for the above-described insurance shall be paid from the assessments described in Article IV.

All insurance provided for in this Section 3.8 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Indiana.

2.9 Liability of the Board: Neither members of the Board nor the officers of the Master Association shall be liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or, omissions found by a court to constitute gross negligence or fraud. The Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Owners or arising out of their status as Board members or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement), reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any member of the Board or officers of the Association may be involved by virtue of such persons being or having been such member or officer; provided however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matters settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer.

2.10 Books and Records: The books and records of the Master Association may be examined by any Owner and any holder of a first mortgage on a Lot at the office where such books and records are maintained, during normal business hours for any proper purpose upon prior, written notice to the Board.

ARTICLE III

Assessments

3.1 **Personal Obligation:** Each Owner (except for the Declarant) by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed, or other conveyance for such Lot, does hereby covenants and agrees to pay to the Master Association such assessments and fees as are levied pursuant to the provisions of this Declaration and the bylaws of the Master Association and the assessments and fees levied pursuant to the Member Association Declaration said owner is subject to. Such assessments and fees, whether special or otherwise, not paid when due, together with interest thereon at the rate of ten percent (10%) per annum, late fees of \$25.00 per month (or such other amount as the Board shall from time to time determine) and costs of collection, including attorneys fees incurred in respect thereto whether or not suit shall be instituted, shall be a charge and a continuing lien upon the Lot against which such assessment is made. Furthermore, each such assessment, together with such interest, costs, late fees and other fees, shall be the personal obligation of each person who was an Owner of such Lot on the date upon which such assessment became due. The Declarant, to the extent that it shall be an Owner of a Lot which is leased to any person, shall, as to each such leased Lot, be subject to the provisions of this Article from and after the first day of the month in which the Declarant first receives rent for such Lot. Except as provided in the preceding sentence, the Declarant shall not be liable for the payment of assessments hereunder and portions of the Parcel owned by the Declarant shall not be subject to liens hereunder; provided, however, that the Declarant shall pay the actual costs incurred by the Association attributable to the maintenance and repair of those portions of the Parcel owned by the Declarant.

3.2 **Purpose of Assessments:** The assessments and fees levied by the Master Association shall be used for the purpose of promoting the health, safety and welfare of the Members and, in particular, or (a) paying the cost of maintenance and repair of the Common Facilities, including the cost of labor, equipment, services (including utilities and security services, accountants', attorneys' and other professional fees, licenses and permits); and the materials in connection therewith; (b) the establishment of such reasonable reserves, if any, as the Board deems appropriate, (c) the performance of the duties of the Board as set forth in this Declaration and the bylaws of the Master Association, including the enforcement of the provisions thereof, (d) in general, carrying out the purposes of the Master Association as stated herein and in the Articles of Incorporation of the Association.

3.3 **Annual Assessments:** Each year on or before December 1, the Board shall estimate the total amount (the "Aggregate Annual Assessment") necessary to provide the materials and services which will be required for the ensuing calendar year in the operation of the Master Association (which estimate shall include a reasonable amount considered by the Board to be desirable for contingencies and reserves) and shall notify each Member in writing as to the amount of the Aggregate Annual Assessment, with a reasonable itemization thereof and of the amount thereof allocable to such Member. Each Member shall be allocated the following portion of the Aggregate Annual Assessment:

<u>Member Association</u>	<u>Portion of Aggregate Annual Assessment</u>
Estate Homes	40.5% (1.5% per unit)
Townes Homes	44.5% (0.28% per unit)
Lot 74	3%
Lot 75	4%
Lot 76	4%
Lot 77	4%

On or before January 15 of the ensuing year, and on the first day of each and every month of said year, each Member shall be liable for and obligated to the Aggregate Annual Assessment allocated to such Member. On or before April of each calendar year following the initial meeting of voting members, the Board shall furnish each Member with an itemized accounting of the expenses for the preceding calendar year and the amount collected from the Member.

3.4 Special Assessments: In addition to the annual assessments authorized pursuant to Section 3.3, the Board may at any time or from time to time levy special assessments. Special assessments shall be levied for the purpose of defraying, in whole or in part, the cost incurred by the Master Association for any repair, replacement, maintenance, service, labor or materials not provided for in the Aggregate Annual Assessment for the then current calendar year. Except for special assessments which shall not exceed in any one twelve month period the sum \$200 per assessed Lot, any such special assessment shall first be approved by the affirmative votes of not less than three-fourths (3/4) of the votes cast at the annual or a special meeting of the Members called and held in accordance with the provisions of Section 3.5 hereof. Special assessments shall be allocated to each Member in the same manner as such Member's respective share of the Aggregate Annual Assessment.

3.5 Notice and Quorum: Written notice of any meeting called for the purpose of authorizing any special assessment requiring approval pursuant to Section 3.4 hereof shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence in person or by proxy of Members entitled to cast three-fourth (3/4) of all votes shall constitute a quorum.

3.6 Proof of Payment: Upon written demand of an Owners or mortgagee at any time, the Master Association shall furnish such Owner or mortgagee a written certificate signed by an officer of the Master Association setting forth whether there are any unpaid special assessments levied against such Owner's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

3.7 Nonpayment of Assessments: Any assessment which is not paid when due shall be deemed delinquent. If an assessment is not paid within ten (10) days after the delinquency date, such assessment shall bear interest at the rate provided in Section 3.1 from the delinquency date and the Board may impose a late fee as provided in Section 3.1. In the event of the failure of any Member to pay any assessment, maintenance charge, interest charge, late fee or other fees or costs of collection, when due, the amount thereof shall constitute a lien on the Lots governed by the respective Member Association or the Lot owned by the respective Commercial Member. The Board shall, in the name of and on behalf of the Master Association, have all rights and remedies to enforce such collections as shall from time to time be permitted by law, including bringing an action at law or in equity against such Member Association and/or against Lot Owners that are members of such Member Association and/or the Commercial Members, and foreclosing the aforesaid lien. All expenses of the Master Association in connection with such action or proceedings, whether or not suit shall be instituted, including reasonable attorneys' fees and court costs and other fees and expenses shall be charged to and assessed against such Member Association and/or such Owners that are members of such Member Association and/or such Commercial Member (and shall constitute a personal liability of Such Owner and such Commercial Member) and shall be added to and deemed part of the assessment attributable to the Lot of such Owner and/or such Commercial Member and the Master Association shall have a lien for all of the same upon the Lot of such Owner and/or Commercial Member.

3.8 Subordination of Lien to Mortgagee: The lien of the assessments provided for herein shall be subordinate to the lien of any prior, recorded first mortgage or trust deed on a Lot made to any bank, savings and loan association or other institutional lender except for the amount of any assessment which becomes due and payable from and after the date such lender obtains title to such Lot pursuant to a judgment of foreclosure of any other proceeding in lieu of foreclosure. Such transfer of title shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

3.9 Exemption from Assessment on Lots Owned by Declarant: In order that those Lots which are improved with Dwelling Units and conveyed or leased by Declarant may, with reasonable promptness, receive the benefits of maintenance by the Master Association for the enjoyment of the residents of the Parcel, and also be subject to assessments therefor, and so as not to discourage the Declarant from voting for such assessments at such times as the Declarant may still own a substantially number of unoccupied Lots, and inasmuch as assessments levied against such Lots impose a burden on the Declarant without the Declarant desiring, or receiving the benefits of maintenance upon such Lots as may from time to time be provided by the Master

Association, it is therefore expressly provided that no Lot owned by the Declarant shall be subject to the assessments, charges and liens provided for herein until the date upon which such Lot shall be conveyed to a bona fide purchaser or leased to any person who shall have commenced to pay rental therefor or sold pursuant to installment contract or articles of agreement for deed; provided, however, that each year, until the initial meeting of the Board of Directors pursuant to Section 3.5, the Declarant shall contribute to the Master Association the amount, if any, by which the operating expenses of the Master Association incurred or paid during such year (exclusive of any amounts allocated to reserves) exceed the gross revenues of the Master Association during such year. Upon the conveyance or leasing by Declarant of a Lot which was theretofore entitled to the foregoing exemption from assessments, such Lot and the Owner thereof shall immediately become subject to the payment of all assessments and other charges and the liens provided for herein.

3.10 **Initial Assessments:** The Declarant shall, on behalf of the Master Association, collect from each purchaser of a Unit, at the time of closing of the purchase thereof, an amount equal to 12 times the monthly assessment initially allocable to such Dwelling Unit by the Member Association. The amounts so collected shall be utilized to fund an operating reserve for the Master Association and shall not be refundable or applied as a credit against the Owners monthly assessment. The initial assessment of a Unit, from the time of conveyance from or leasing by the Declarant to an Owner and until said assessment of a Unit is increased or decreased as provide for in the respective Member Association Declaration, shall be ten and 00/100 dollars (\$10.00) for each 1% of allocation. See Section 3.3 for allocations. Said assessment shall be in addition to any amounts owed under the respective Member Association Declaration.

ARTICLE IV

Reserved for future use

ARTICLE V

Maintenance

5.1 **Maintenance by Association:** The Association shall be responsible for maintenance, repairs and replacement of the Common Facilities, specifically Outlots A,C,FI and K and the entrance median and monument at Randolph Street, and to the extent not maintained by any utility company and/or governmental entity, the maintenance, repair and replacement of all sewer and water liens up to the point of entry to a Dwelling Unit.

ARTICLE VI

Rights Reserved to Declarant

6.1 **Declarant's Promotional Rights:** The right is reserved to the Declarant to place and maintain on any area of the Parcel with the exception of a Lot which has been sold and conveyed or sold on contract, or sold pursuant to an installment contract or articles of agreement for deed, to an Owner, model Dwelling Units, construction trailers, sales offices, fencing, flag poles, advertising signs, banners and lighting in connection therewith and other promotional facilities at such locations and in such forms as shall be determined by Declarant for construction, sales and leasing purposes.

There is also reserved to the Declarant, its agents, employees and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Parcel for such sales and leasing purposes. The Declarant also reserves the right to maintain on the Parcel without charge (a) a general construction office for Declarant's contractors and subcontractors and (b) appropriate parking facilities for the employees of Declarant's agents and contractors. Declarant's aforesaid reserved rights shall continue for so long as Declarant is engaged in the construction, sale or leasing of Dwelling Units on any portion of the Parcel.

6.2 Declarant's Easements: The Declarant reserves unto itself a non-exclusive easement through, over, under and across the Parcel and all portions thereof for the purpose of exercising the rights reserved to the Declarant pursuant to this Declaration, and for the purpose of implementing the overall development of the Parcel including, without limitation, the planning, construction, marketing, leasing, management and maintenance of improvements in any portion of the Parcel for so long as Declarant is engaged in the construction, sale or leasing of Dwelling Units on any portion of the Parcel. All rights and easements in favor of the Owners created by this Declaration shall be subject and subordinate to the aforescribed development rights and easements of Declarant, whether or not inconvenience to any Owner shall result therefrom. The rights and easements reserved pursuant to this Section 6.2 and Section 6.3 shall inure to the benefit of the Declarant, its respective successors and assigns including any successor to or assignee of the Declarant's rights under this Declaration.

6.3 Rights of Declarant to Make Dedications to Grant Utility Easements: As used in this Section 6.3, the term "utilities" means all public and private utility conduits, wires, ducts, pipes, cables and other lines, and all associated equipment, which serve the Parcel, including without limitation, those for the transmission and/or distribution of water, electricity, gas, telephone, sewage, drainage and television and other electronic signals. Said term also includes all standpipes, hydrants, pumps, equipment vaults and other structures and facilities for the provision of fire protection services.

Declarant hereby reserve the following rights and easements:

- (a) to add additional Lots to this Master Association by December 31, 2012.
- (b) to dedicate streets and street lights, walks, malls, parkways, parkland, drives, open space and water rights to any governmental authority and to make such other dedications as may be required to implement the ordinances of any governmental authority from time to time applicable to the Parcel and to the public improvements therein.
- (c) to dedicate space in the Parcel or any portion thereof to any public or quasi-public utility or to any governmental authority for the location of utilities serving any portion of the Parcel.
- (d) to reserve or grant easements in, over, under, to and across the Parcel or any portion thereof or ingress and egress to, and for installation, construction and maintenance of, any or all of the utilities.
- (e) to record plats of subdivision and resubdivision of portion of the Parcel.
- (f) to Amend this Declaration to the extent not inconsistent with the intent and purpose thereof.

Any rights hereby reserved to the Declarant, to the extent affecting the Common Facilities, may be assigned and transferred by the Declarant to any successor Declarant or to the Association by an instrument in writing, executed by the Declarant and recorded in the office of the Lake County Recorder of Deeds, following which the rights so assigned and transferred shall be exercised by such successor Declarant or the Master Association as the case may be. Until Declarant's rights under Section 6.3 hereof are terminated, Declarant shall have the right to tap into utilities for the purpose of exercising all such rights.

Notwithstanding anything aforesaid to the contrary none of the rights of the Declarant set forth in this Section 6.3 shall exist so as to alter or amend the legal description of any Lot previously conveyed by Declarant. All said rights shall terminate upon conveyance of all the real estate described in Exhibit A to Owners.

6.4 **Contracts:** The Declarant shall have the right to enter into contracts on behalf of the Master Association prior to the date of the initial meeting of Members; provided, however, that with the exception of contracts for cable television service and security system, any such contracts shall be terminable by the Master Association without penalty on not less than ninety (90) days prior notice.

ARTICLE VI

General

- 7.1 **Amendment:** This Declaration may be amended by recording an instrument executed and acknowledged by not less than three-quarters of the voting members.
- 7.2 **Severability:** Invalidation of all or any portion of any of the covenants, restrictions, easements, conditions, reservations, liens and charges imposed by this Declaration, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration, all of which shall remain in full force and effect.
- 7.3 **Enforcement:** Enforcement by the Master Association or any Member Association or any member of a Member Association of the covenants and restrictions contained in this Declaration shall be had by any proceeding at law or in equity against any person or persons violating or attempting to violate any such covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Master Association or any Member Association or any member of a Member Association to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.
- 7.4 **Notices:** Any notice required to be sent to any Member Association of the Master Association or to any member or Owner of a Member Association as provided under this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last know address of such Member or Owner as it appears on the records of the Member Association and/or Master Association at the time of such mailing.
- 7.5 **Titleholding Land Trust:** In the event title to any Lot is conveyed to a title holding trust, under the terms of which all power of management, operation and control of such Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Lot. No claim shall be made against any such title holding trustee personally for payment of any lien or obligations hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon such Lot and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Lot.
- 7.6 **Duration:** The covenants, restrictions, conditions, reservations, liens and charges imposed or established by or created under this Declaration shall run with and bind the land for a period of forty (40) years from the date of the recording of this Declaration and may be enforced by the Master Association or any Member Association or any member of any Member Association through any proceeding in law or in equity. Failure by the Master Association or any Member Association or any member of any Member Association to so enforce shall in no event be deemed a waiver of the right to do so thereafter. After the expiration of said forty (40) year period, all of such covenants, restrictions, conditions, reservations, liens and charges shall continue to run with and bind the land for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part, by an instrument in writing which is executed by the Owners of not less than two-thirds of the Lots and recorded in the Office of the Recorder of Deeds for Lake County, Indiana. Except in case of condemnation or destruction of a substantial portion of the Dwelling Units, the legal status of the Association shall not be terminated without the affirmative vote of not less than sixty six and two thirds percent (66 2/3%) of the Owners.

7.7 Captions: The Articles and Section headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Declarant hereto has caused these presents to be signed by its proper officers and its corporate seal to be hereunto affixed as of the date first above written.

Providence Homes at Stonegate, Inc., an Indiana Limited Liability Company

By: [Signature]

Name: John Borucki

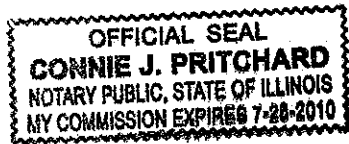
Its: Authorized Representative

STATE OF IL)

COUNTY OF LAKE)

I, Connie J. Pritchard a Notary Public in and for said County and State, do hereby certify that John Borucki, personally known to me to be the same person whose name is subscribed to the foregoing instrument, and acknowledged that he executed said instrument as his free and voluntary act, and as the free and voluntary act of The Providence Homes at Stonegate, Inc., being thereunto duly authorized for the uses and purposes therein set forth.

Given under my hand and notary seal this 4 day of October, 2007.



Connie J. Pritchard
Notary Public

7/28/2010
Commission Expires

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

[Signature]
John Borucki

MORTGAGEE'S CONSENT

First Midwest Bank, a banking organization, holder of a Note secured by a certain Mortgage dated March 9, 2007 and recorded with the Recorder of Deeds of Lake County, Indiana on March 19, 2007 as Document # 2007 022926, made by Providence Homes at Stonegate, Inc., an Indiana Limited Liability Company, to First Midwest Bank, hereby consents to the execution and recording of the Declaration of Covenants, Dedications, Restrictions, and Easement and By-laws for The Stonegate Commons Subdivision, and agrees that said Mortgage is subject to the provisions thereof.

IN WITNESS WHEREOF, First Midwest Bank has caused its imprimatur to be affixed hereunto by virtue of its name being signed by its Senior Vice President and attested to by its Vice President this 5th day of October, 2007.

First Midwest Bank,
a banking organization,

By: F. Licata

Name: Frank Licata

Its: Senior Vice President

ATTEST:

Paulette Mincsik

Its: Vice President

EXHIBIT A
LEGAL DESCRIPTION

LOTS 1 THROUGH 77, BOTH INCLUSIVE, OUTLOT A, OUTLOT B, OUTLOT C, OUTLOT D, OUTLOT E, OUTLOT F, OUTLOT G, OUTLOT H, OUTLOT I, OUTLOT J, OUTLOT K AND OUTLOT L, IN STONEGATE COMMONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED MARCH 26, 2007 IN PLAT BOOK 101 PAGE 15, AS DOCUMENT NUMBER 2007-024838 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

THIS INSTRUMENT WAS PREPARED BY
AND AFTER RECORDING, RETURN TO 2007-080170

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2007 OCT -5 PM 2:35

MICHAEL A. BROWN
RECORDER

Providence Homes of Stonegate, Inc.
900 Woodlands Parkway
Vernon Hills, IL 60061

FILED

OCT - 5 2007

PEGGY HOLINGA KATONA
LAKE COUNTY AUDITOR

**DECLARATION OF COVENANTS, DEDICATIONS, RESTRICTIONS, AND
EASEMENTS and BY-LAWS FOR PROVIDENCE TOWNES OF STONEGATE
COMMONS
RESIDENTIAL SUBDIVISION**

**THIS DECLARATION OF COVENANTS, DEDICATIONS, RESTRICTIONS, AND EASEMENTS
and BY-LAWS** ("Declaration") for the Providence Townes at Stonegate Commons Subdivision
("Subdivision"), is made this 4th day of October, 2007 by Providence Homes at Stonegate,
Inc., an Indiana Limited Liability Company ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of and holds legal title to the parcel of real estate situated in the Town
of Winfield, Lake County, Indiana ("Parcel") and legally described in Exhibit A, Legal Description, and shown
in Plat of Subdivision, a copy of which is attached hereto as Exhibit B and is incorporated by reference and
made a part of this Declaration. Exhibit A is attached hereto and is incorporated by reference and made a part
of this Declaration.

WHEREAS, the Declarant desires to subdivide the Parcel ("Subdivision") with permanent common areas, as
shown in Exhibit B, for the benefit of said subdivision; and,

WHEREAS, Declarant desires to provide for the preservation of the value, attractiveness and desirability of
the lots or tracts constituting the Subdivision, Declarant states that all of the Parcel and each part of it will be
held, sold, and conveyed only subject to the following easements, covenants, conditions, and restrictions,
which will constitute covenants running with the land and will be binding on all parties having any right, title,
or interest in the Parcel or any part of it, their heirs, successors, and assigns, and will inure to the benefit of
each owner; and,

WHEREAS, Declarant has deemed it desirable for this efficient preservation of the values and amenities in
said Subdivision, to create a Home Owners Association to which should be delegated and assigned the powers
of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing
the assessments and charges hereinafter created; and,

WHEREAS, Declarant has incorporated, or will incorporate, under the laws of the State of Indiana, as a
nonprofit corporation, The Townes at Stonegate Commons Subdivision Homeowners Association, Inc., for the

016669

purpose of exercising the function aforesaid;

WHEREAS, the legal description and Key Number of the real property are as follows:

Legal Description:	See Exhibit A
Location:	Town of Winfield, County of Lake, State of Indiana
Key Number:	54-0138-0028 to 54-0318-0184, 54-0318-0190, 54-0138-0192, 54-0138-0193, 54-0138-0195, 54-0138-0196, 54-0138-0198, 54-0138-0200

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A of this Declaration is and shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as covenants and restrictions) hereinafter set forth.

ARTICLE I **Definitions**

- 1.1 **Association:** The Townes at Stonegate Commons Subdivision Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.
- 1.2 **Architectural Control Committee:** Those individuals who may, from time to time, be serving in such capacity as provided for in Section 6.1 hereof.
- 1.3 **Board:** The Board of Directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article III.
- 1.4 **By-Laws.** The provisions for the administration of the Association including, but not limited to, assessment, maintenance, use, occupancy, sale, leasing and alienation, all as hereinafter set forth, or as the same may be from time to time duly amended. Articles III, IV, V, VI, and VIII hereof shall constitute the By-Laws of the Association.
- 1.5 **Common Area:** Those portions of the Parcel and Lots, as denoted in Exhibit A, intended to be devoted to the common use and enjoyment of the Owners and other persons described herein which portions are either owned by the Association or to which easements are reserved for the use and benefit of the Owners.
- 1.6 **Common Facilities:** All Common Area and all curbs and gutters, lawns, walkways, sewers, traps; catch basins, water lines, street lights, (except those facilities dedicated to the Town) signs, cable television systems (serving more than, one Dwelling Unit); security systems (serving more than one Dwelling Unit); fences, roofs, mailboxes, exterior stairways, fountains, benches, monuments, and other improvements of all kinds intended to serve more than one Dwelling Unit.
- 1.7 **Declarant:** Providence Homes at Stonegate, Inc., an Indiana Limited Liability Company
- 1.8 **Dwelling Unit:** A residential housing unit including an attached garage located on a Lot and intended for use exclusively as residential living quarters.
- 1.9 **Lot:** Any individual parcel of real estate included within the Parcel upon which a Dwelling Unit is situated or to be situated and which is or hereafter may be made subject to this Declaration.
- 1.10 **Member:** Each person who holds membership in the Association.

1.11 **Owner:** The person or persons whose estates or interest, individually or collectively, aggregate fee simple absolute ownership of a Lot. For the purposes hereof; unless otherwise specifically provided herein, the word "Owner" shall include any beneficiary of a trust, shareholders of a corporation or partner of a partnership holding title to a Lot or purchasing a Lot as aforesaid.

1.12 **Parcel:** The real estate legally described in Exhibit A.

1.13 **Person:** A natural individual, corporation, partnership, trust or other legal entity capable of holding title to real property.

1.14 **Plat:** The recorded Plat of Subdivision, which subdivides the Parcel, a copy of which is attached hereto as Exhibit B.

1.15 **Town:** The Town of Winfield, Indiana, a political subdivision of the state of Indiana located in Lake County.

ARTICLE II Easements

2.1 **Easement for Encroachments:** In the event that, by reason of construction, design, settlement or shifting any Dwelling Unit or portion thereof encroaches upon any other Dwelling Unit, Lot, portion thereof or upon any portion of the Common Area, or if by reason of the design or construction thereof, any pipes, conduits, ducts or other utility facilities serving more than one Dwelling Unit encroach or shall hereinafter encroach upon any of the Lot or, if by reason of the design or the construction of any Dwelling Unit it shall be necessary or advantageous for any Owner to occupy or use any portion of the Common Area for any reasonable use appurtenant to said Dwelling Unit, including but not limited to use for any balcony serving a Dwelling Unit, valid easements for the maintenance of such encroachment and for such use of the Common Area are hereby established and shall exist for the benefit of the Owner of the Dwelling Unit so encroaching and the Association, provided, however, that in no event shall a valid easement of any encroachment or use of the Common Area be created in favor of any Owner and/or the Association if such encroachment or use is detrimental to or materially interferes with the reasonable use and enjoyment of the Dwelling Unit or Common Area burdened thereby and such encroachment results from the willful conduct of the Owner of the Dwelling Unit so encroaching.

2.2 **Utility Easements:** The Association, Town of Winfield, AT&T, Northern Indiana Public Service Company and all other public utilities serving the Parcel (including any utility company providing cable, microwave or other communications service) are hereby granted the right to lay, construct, renew, operate and maintain conduits, cable, pipes, mains, sanitary and storm sewers and services, drainage ways and swales, ducts, wires, street lights and other equipment into and through the areas denoted in Exhibit A as "Public Utility and Drainage Easement" for the purpose of providing the Parcel and Lots with such utilities. In addition, the Association is hereby granted the right to maintain and repair sanitary sewers and/or sanitary service lines outside the areas denoted in Exhibit A as "Public Utility and Drainage Easement", and any Owner whose Dwelling Unit is serviced by a sanitary sewer and/or sanitary service line outside the areas denoted in Exhibit A as "Public Utility and Drainage Easement" is hereby granted the right to maintain and repair said sanitary sewers and service line.

2.3 **Access Easement over Common Area:** Each Owner of a Lot is hereby granted a perpetual, non-exclusive easement for pedestrian and vehicular ingress and egress over those portions of the Common Area designated for pedestrian or vehicular use provided that no portion of the Common Area shall be used for the parking of motor vehicles. The easements hereinabove granted in this Section 2.3 shall benefit the Owners and other occupants, from time to time, of the Lots and their respective guests and invitees. The Association, through its Board of Directors, shall have the right to establish, and thereafter amend and modify, rules and regulations in respect to the exercise of the easement rights granted in this Section 2.3 by the persons benefited

thereby, including, by way of example and not limitation, rules and regulations pertaining to the use of security equipment, towing of illegally parked vehicles and uses other than for pedestrian and vehicular ingress and egress.

2.4 General Provisions: All easements described in this Declaration are perpetual non-exclusive easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the undersigned, the Owners and the mortgagees from time to time of any Lot and their respective heirs, administrators, executors, personal representatives, successors and assigns.

2.5 Obligation to Maintain Easements Reserved To The Association: Whenever any deed to a Lot reserves or grants an easement over a portion of such Lot to the Association, the Association shall have the sole obligation to maintain and repair such portion and to regulate the use thereof.

ARTICLE III **Administration**

3.1 Association: The Association has been, or will be, formed as an Indiana Nonprofit corporation under the Indiana Nonprofit Corporation Act of 1991 having the name "The Townes at Stonegate Commons Subdivision Homeowners Association, Inc." (or one similar thereto) and shall, to the extent hereafter provided and subject to the limitations hereafter contained, be the governing body of the use, exterior maintenance and repair of the Dwelling Units and Lots and the use, maintenance and repair of the Common Facilities.

3.2 Members: Every Owner of a Lot shall be a Member of the Association and such membership shall automatically terminate when such owner ceases to be an Owner. Membership is appurtenant to and shall not be separated from ownership of a Lot. Each Owner by acceptance of a deed or other conveyance of a Lot thereby becomes a member, whether or not this Declaration is made a part of, incorporated by reference or expressed in said deed or conveyance. There shall be one person with respect to every Lot who shall be entitled to vote at any meeting of the Members. Such person shall be known as a "voting member." Such voting member may be the Owner or one of the group composed of all the Owners of a Lot or may be some person designated by such Owner or Owners to act as proxy on behalf of such Owner or Owners and who need not be an Owner. Such designation shall be made in writing and shall be revocable at any time by actual notice to the Board by the Owner or Owners.

3.3 Voting Rights: The Association shall have two classes of voting members.

Class A: Class A Members shall be all Owners with the exception of the Declarant and each Class A Member shall be entitled to one vote for each Lot owned.

Class B: The Class B Member shall be the Declarant who shall at any given time be entitled to two (2) times the number of votes to which the Class A Members shall be entitled at any time. The Declarant shall cease to be Class B Member upon the first to occur of any of the following dates:

- (a) The date upon which the Declarant shall no longer own title to any Lot, or
- (b) On December 31, 2012, provided however that if, on said date the Declarant shall own any Lot or Lots the Declarant shall become a Class A Member as to each Lot so owned.

3.4 Election of Board: For a period commencing on the date this Declaration is executed and ending upon the election of the directors at the initial meeting of voting members, the Declarant shall have the right to exercise the powers of the Board as provided herein. Except for directors so designated by Declarant, each member of the Board shall be one of the Owners and shall reside in a Dwelling Unit; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or

persons, then any person designated by such corporation, partnership, trust, or other legal entity, shall be eligible to serve as a member of the Board, so long as any such designee (other than a person designated by Declarant) resides in a Dwelling Unit.

3.5 Election of Directors:

3.5.1 The initial Board of Directors designated by the Declarant shall consist of three (3) directors who shall serve without compensation. Such initial Board shall serve for a period commencing on a date the Association is formed by the filing of the Articles of Incorporation therefor in the office of the Secretary of State of Indiana and ending upon the qualification of the directors elected at the initial meeting of voting members held as provided in Section 3.6 hereof. At the initial meeting held as provided in Section 3.6 hereof, the voting members shall elect five (5) directors who shall serve until the first annual meeting. In all elections for members of the Board, each voting member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Each voting member shall be entitled to cast the number of votes specified in Section 3.3 hereof. At the first annual meeting five (5) Board members shall be elected. The three (3) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years, and the two (2) persons receiving the next highest number of votes, shall be elected to the Board for a term of one (1) year. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. The voting members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease the number of Board members at any annual or special meeting, provided that such number shall not be less than three (3). Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board shall be filled by the majority vote of all remaining Board members. The Board shall act by majority vote of those present at its meeting when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of members on the Board shall constitute a quorum.

3.5.2 The Board shall elect from among its members a President who shall preside over both its meetings and those of the voting members and who shall be the chief executive officer of the Association, a Secretary who shall keep minutes of all meetings, a Treasurer and such other officers as the Board shall see fit. Except for Directors designated by the Declarant any Board member may be removed from office by the affirmative vote of voting members holding two-thirds (2/3) of the total votes.

3.6 Meetings of Voting Members:

3.6.1 Meetings of the voting members shall be held at such places and times as shall be designated in any notice of a meeting by the Board. The presence in person or by proxy at any meeting of the voting members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting. In the event that a quorum is not present at any meeting of the voting members, another meeting may be called by notice from the Board and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

3.6.2 The initial meeting of voting members shall be held upon not less than ten (10) days written notice from the Declarant. Such notice must be given no later than the earlier of (i) thirty (30) days after the sale and conveyance of title to one hundred and five (105) Lots, and (ii) December 31, 2012, but such notice may, at the discretion of the Declarant, be given earlier. Thereafter, there shall be an annual meeting of the voting members on or about the second Tuesday of September following such initial meeting and on or about the second Tuesday of October of each succeeding year thereafter, or at such other reasonable date and at such time, and at such place, as may be designated by written notice from the Board, provided

however that no meeting may be held outside the Lake County, Indiana.

3.6.3 Special meetings of the voting members may be called at any time for any reasonable purpose on not less than ten (10) days notice from a majority of the Board or the voting members holding at least one-third (1/3) of the total votes.

3.6.4 Notices of meetings may be delivered personally or by mail to the voting members, addressed to each such voting member at the address given by such voting member to the Board, or if no address shall be given, addressed to such voting member to the address of the Dwelling Unit owned by such voting member.

3.7 **General Powers of the Board:** The Board shall have the following powers:

- (a) To adopt rules and regulations governing the use, maintenance and administration of the Lots, Common Facilities and Dwelling Units for the health, comfort, safety and general welfare of the Owners and occupants thereof.
- (b) To provide for maintenance, repair and replacement with respect to the Lots, Dwelling Units and Common Facilities as required by the provisions provided for in Article VIII hereof.
- (c) To enter into contracts on behalf of, and to purchase or secure in the name of, the Association any materials, supplies, insurance (including directors and officers liability insurance), equipment, fixtures, labor, services (including the services of accountants and attorneys) required by the terms of this Declaration or the bylaws of the Association, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Association and its members and for the enforcement of the provisions of this Declaration.
- (d) To enter upon, and to have its contractors, subcontractors and agents enter upon, any Lot and the exterior of any Dwelling Unit as may be required to exercise an of the rights and obligations granted to or imposed upon it pursuant to this Declaration or to correct any condition that in the Board's judgment is a nuisance or is damaging to any Owner or occupant.
- (e) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to draw upon such accounts), and generally, to have all the powers necessary and incidental to the operation and management of the Association.
- (f) To adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property, and if proceeds are insufficient to repair damaged or replace lost property, to assess the appropriate Members in proportionate amounts to cover the deficiency.
- (g) To take such action as may be required to enforce the provisions of this Declaration and the rules and regulations made hereunder.
- (h) To grant non-exclusive easements in respect to, and to dedicate to or as directed by governmental authorities, portions of the Common Facilities and to execute and cause to be recorded such instruments as may be required in respect thereto.
- (i) To borrow money in the name of the Association to provide for the maintenance, repair or replacement of the Common Facilities; provided, however, that the Board shall not secure any such borrowings by encumbering the Common Facilities for a mortgage or trust deed. The Board shall, however, have the power to secure such borrowings by pledging and granting a security interest in the assessments due the Association hereunder.

- (j) To enter into a contract for the management of the Parcel with a professional manager or management company on such reasonable terms as the Board shall determine; provided that, any such contract shall be cancelable by the Association at the end of three (3) years from the date of recording of this Declaration.
- (k) To exercise any and all powers, rights and authorities provided in the Indiana Nonprofit Corporation Act, as amended from time to time.
- (l) To enter into covenant agreements with third party landowners, whereby the covenants contained in said covenant agreements benefit both the Association and the third party landowner. Said covenants contained in such agreements shall run with the land owned by the Association and the third party landowner.

Notwithstanding anything aforesaid to the contrary subject to the initial meeting of Members, except for (i) litigation seeking to enforce any remedy available to the Association at law or in equity in the case of a violation of any provision of this Declaration or the rules and regulations of the Association, including by way of example and not limitation, failure by a Member to pay their assessments; (ii) litigation in connection with real estate tax assessments on the Lots; (iii) litigation against a contractor by reason of the claimed breach of a contract entered into by the Board, or (iv) litigation against an insurance carrier arising out of a claim of the Association under any policy of insurance wherein the Association is a named insured, the Board shall have no authority to commence any litigation without the prior consent of not less than three-fourths (3/4) of the voting members.

3.8 Insurance on Common Facilities: The Board shall have the authority to and shall obtain insurance for the Common Facilities as follows:

- (a) Comprehensive General Liability insurance covering bodily injury and property damage insuring against hazards of premises/operation, death, personal injury liability (with exclusions (a) and (c) deleted), independent contractors and other extensions as deemed necessary by the Board. Such insurance shall name the Association and managing agent as insured, provide limits of liability as deemed desirable by the Board, but in no event for less than One Million Dollars (\$1,000,000.00) with respect to each occurrence. Such policy shall be endorsed to cover cross-liability claims of one insured against the other;
- (b) Worker's Compensation and Employer Liability (minimum amount \$100,000.00) as necessary to comply with applicable laws.
- (c) Fidelity bond insurance covering any officer, director, managing agent or other person who handles or are responsible for funds of the Association, in an amount necessary to comply with the insurance requirements of the Federal National Mortgage Association; and
- (d) Such other insurance, which may include, without limitation, any or all of the following, in such amount as the Board shall deem desirable: directors and officers liability insurance for the officers and members of the Board; and medical payments coverage for members of the public (not Owners) injured on the Common Facilities, without regard to liability of the Board or the Association.

The premium for the above-described insurance shall be paid from the assessments described in Article IV.

All insurance provided for in this Section 3.8 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Indiana. If possible, all such policies shall provide a minimum of thirty (30) days advance notice of cancellation in writing to the

insureds thereunder and the holder of each first mortgage on a Dwelling Unit if requested in writing by such mortgagee unless such cancellation is for non-payment of premium in which case ten-day (10) advance written notice shall be sufficient.

3.9 **Liability of the Board:** Neither members of the Board nor the officers of the Association shall be liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or, omissions found by a court to constitute gross negligence or fraud. The Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Owners or arising out of their status as Board members or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement), reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any member of the Board or officers of the Association may be involved by virtue of such persons being or having been such member or officer; provided however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matters settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer.

3.10 **Books and Records:** The books and records of the Association may be examined by any Owner and any holder of a first mortgage on a Lot at the office where such books and records are maintained, during normal business hours for any proper purpose upon prior, written notice to the Board.

ARTICLE IV Assessments

4.1 **Personal Obligation:** Each Owner (except for the Declarant) by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed, or other conveyance for such Lot, does hereby covenants and agrees to pay to the Association such assessments and fees as are levied pursuant to the provisions of this Declaration and the bylaws of the Association. Such assessments and fees, whether special or otherwise, not paid when due, together with interest thereon at the rate of ten percent (10%) per annum, late fees of \$25.00 per month (or such other amount as the Board shall from time to time determine) and costs of collection, including attorneys fees incurred in respect thereto whether or not suit shall be instituted, shall be a charge and a continuing lien upon the Lot against which such assessment is made. Furthermore, each such assessment, together with such interest, costs, late fees and other fees, shall be the personal obligation of each person who was an Owner of such Lot on the date upon which such assessment became due. The Declarant, to the extent that it shall be an Owner of a Lot which is leased to any person, shall, as to each such leased Lot, be subject to the provisions of this Article from and after the first day of the month in which the Declarant first receives rent for such Lot. Except as provided in the preceding sentence, the Declarant shall not be liable for the payment of assessments hereunder and portions of the Parcel owned by the Declarant shall not be subject to liens hereunder; provided, however, that the Declarant shall pay the actual costs incurred by the Association attributable to the maintenance and repair of those portions of the Parcel owned by the Declarant.

4.2 **Purpose of Assessments:** The assessments and fees levied by the Association shall be used for the purpose of promoting the health, safety and welfare of the Members and, in particular, or (a) paying the cost of maintenance and repair of the Common Facilities, including the cost of labor, equipment, services (including utilities and security services, accountants', attorneys' and other professional fees, licenses and permits); and the materials in connection therewith; (b) the establishment of such reasonable reserves, if any, as the Board

deems appropriate, (c) the performance of the duties of the Board as set forth in this Declaration and the bylaws of the Association, including the enforcement of the provisions thereof, (d) paying the cost of any maintenance and repair of the exterior of the Dwelling Units and Lots to the extent that such costs are not assessed against the particular Owners benefited by such services pursuant to Section 8.3 and (e) in general, carrying out the purposes of the Association as stated herein and in the Articles of Incorporation of the Association.

4.3 Annual Assessments: Each year on or before December 1, the Board shall estimate the total amount (the "Aggregate Annual Assessment") necessary to provide the materials and services which will be required for the ensuing calendar year in the operation of the Association (which estimate shall include a reasonable amount considered by the Board to be desirable for contingencies and reserves and may also include any amounts to be received by third parties) and shall notify each Owner in writing as to the amount of the Aggregate Annual Assessment, with a reasonable itemization thereof and of the amount thereof allocable to such Owner. Each Owner (with the exception of the Declarant except as otherwise hereunder provided) shall be allocated that portion of the Aggregate Annual Assessment as shall be determined by dividing the Aggregate Annual Assessment by the total number of Dwelling Units on Lots. On or before January 1 of the ensuing year, and on the first day of each and every month of said year, each Owner, jointly and severally, shall be personally liable for and obligated to pay one-twelfth (1/12) of the portion of the Aggregate Annual Assessment allocated to such Owner. On or before April of each calendar year following the initial meeting of voting members, the Board shall furnish each Owner with an itemized accounting of the expenses for the preceding calendar year and the amount collected from the Owners.

4.4 Special Assessments: In addition to the annual assessments authorized pursuant to Section 4.3, the Board may at any time or from time to time levy special assessments. Special assessments shall be levied for the purpose of defraying, in whole or in part, the cost incurred by the Association for any repair, replacement, maintenance, service, labor or materials not provided for in the Aggregate Annual Assessment for the then current calendar year. Except for special assessments which shall not exceed in any one twelve month period the sum \$200 per assessed Lot, any such special assessment shall first be approved by the affirmative votes of not less than one-half (1/2) of the votes cast at the annual or a special meeting of the Members called and held in accordance with the provisions of Section 4.5 hereof. Special assessments shall be allocated to each Owner in the same manner as such Owner's respective share of the Aggregate Annual Assessment. The Declarant shall be liable for the payment of special assessments on only those Lots for which the Declarant is obligated to pay a regular assessment.

4.5 Notice and Quorum: Written notice of any meeting called for the purpose of authorizing any special assessment requiring approval pursuant to Section 4.4 hereof shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence in person or by proxy of Members entitled to cast one-half (1/2) of all votes shall constitute a quorum.

4.6 Proof of Payment: Upon written demand of an Owners or mortgagee at any time, the Association shall furnish such Owner or mortgagee a written certificate signed by an officer of the Association setting forth whether there are any unpaid special assessments levied against such Owner's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

4.7 Nonpayment of Assessments: Any assessment which is not paid when due shall be deemed delinquent. If an assessment is not paid within ten (10) days after the delinquency date, such assessment shall bear interest at the rate provided in Section 4.1 from the delinquency date and the Board may impose a late fee as provided in Section 4.1. In the event of the failure of any Owner to pay any assessment, maintenance charge, interest charge, late fee or other fees or costs of collection, when due, the amount thereof shall constitute a lien on the Lot of such Owner. In the event such Owner fails to pay such assessment within thirty (30) days after notice from the Board of such default, the Board may accelerate the maturity of the remainder of the installments of assessments due from such Owner for the balance of the calendar year and may enforce collection thereof. The Board shall, in the name of and on behalf of the Association, have all rights and

remedies to enforce such collections as shall from time to time be permitted by law, including bringing an action at law or in equity against such Owner and foreclosing the aforesaid lien. All expenses of the Association in connection with such action or proceedings, whether or not suit shall be instituted, including attorneys' fees and court costs and other fees and expenses shall be charged to and assessed against such Owner (and shall constitute a personal liability of Such Officer) and shall be added to and deemed part of the assessment attributable to the Lot of such Owner and the Association shall have a lien for all of the same upon the Lot of such Owner.

4.8 Subordination of Lien to Mortgagee: The lien of the assessments provided for herein shall be subordinate to the lien of any prior, recorded first mortgage or trust deed on a Lot made to any bank, savings and loan association or other institutional lender except for the amount of any assessment which becomes due and payable from and after the date such lender obtains title to such Lot pursuant to a judgment of foreclosure of any other proceeding in lieu of foreclosure. Such transfer of title shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

4.9 Exemption from Assessment on Lots Owned by Declarant: In order that those Lots which are improved with Dwelling Units and conveyed or leased by Declarant may, with reasonable promptness, receive the benefits of maintenance by the Association for the enjoyment of the residents of the Parcel, and also be subject to assessments therefor, and so as not to discourage the Declarant from voting for such assessments at such times as the Declarant may still own a substantially number of unoccupied Lots, and inasmuch as assessments levied against such Lots impose a burden on the Declarant without the Declarant desiring, or receiving the benefits of maintenance upon such Lots as may from time to time be provided by the Association, it is therefore expressly provided that no Lot owned by the Declarant shall be subject to the assessments, charges and liens provided for herein until the date upon which such Lot shall be conveyed to a bona fide purchaser or leased to any person who shall have commenced to pay rental therefor or sold pursuant to installment contract or articles of agreement for deed; provided, however, that each year, until the initial meeting of the Board of Directors pursuant to Section 3.5, the Declarant shall contribute to the Association the amount, if any, by which the operating expenses of the Association incurred or paid during such year (exclusive of any amounts allocated to reserves) exceed the gross revenues of the Association during such year. Upon the conveyance or leasing by Declarant of a Lot which was theretofore entitled to the foregoing exemption from assessments, such Lot and the Owner thereof shall immediately become subject to the payment of all assessments and other charges and the liens provided for herein.

4.10 Initial Assessments: The Declarant shall, on behalf of the Association, collect from each purchaser of a Dwelling Unit, at the time of closing of the purchase thereof, an amount equal to three times the monthly assessment initially allocable to such Dwelling Unit by the Declarant. The amounts so collected shall be utilized to fund an operating reserve for the Association and shall not be refundable or applied as a credit against the Owners monthly assessment. The initial monthly assessment of a Dwelling Unit, from the time of conveyance from or leasing by the Declarant to an Owner and until said monthly assessment of a Dwelling Unit is increased or decreased as provide for hererin, shall be eighty and 00/100 dollars (\$80.00). Owner shall pay said initial monthly assessment as provided for herein.

ARTICLE V

Covenants and Restrictions as to Use and Occupancy

5.1 Residential Use: Each Dwelling Unit shall be used for private, residential purposes and no other purposes. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, conducted for profit, altruism or otherwise shall be conducted, maintained or permitted in a Dwelling Unit or on a Lot provided, however, that nothing contained in this section shall be construed in such a manner as to prohibit an Owner from: (i) maintaining a personal professional library; (ii) keeping personal business or professional records or accounts; (iii) handling personal business or professional telephone calls and correspondence; (iv) maintaining a computer or other office equipment; or (v) having

occasional business visitors. Such uses are expressly declared customarily incident to the principal resident use and not in violation of this Section 5.1. Notwithstanding the foregoing, no Owner shall suffer or permit the regular or consistent entry of customers or clients.

5.2 Leasing: No Dwelling Unit may be leased for "transient purposes." For purposes of this Section 5.2, "transient purposes" shall mean for a term of less than twelve (12) months, except for a month-to-month lease by a lessee immediately following a lease by and between the same lessee and the Lessor with a term of not less than twelve (12) months. All leases shall be in writing and shall require the lessee to observe and comply with the provisions of this Declaration and any rules and regulations from time to time enacted by the Board. Any Owner who leases a Dwelling Unit shall provide the Association prior to occupancy by a tenant, with (a) a copy of such lease; (b) the names of all persons who will occupy the Dwelling Unit, and (c) the lessee's telephone number at the Dwelling Unit. The Board may enact reasonable rules and regulations in connection with the leasing of Dwelling Units.

5.3 Restrictions: Except for activities of the Declarant during original construction:

- (a) No animals, reptiles, rabbits, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Elements, except that dogs (no more than two dogs per Unit), cats (no more than two cats per Unit) or other usual household pets may be kept in units, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purpose; provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property upon three (3) days written notice from the Board; after a majority vote for said action, provided further that the Board may restrict pets from access to any portion of the Common elements, and may designate other portions of the Common Elements to accommodate the reasonable requirements of owners who keep pets.
- (b) No noxious, offensive or illegal activity shall be carried on in or on any Dwelling Unit or Lot, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants.
- (c) No campers, trucks, mobile homes, snowmobiles, buses, commercial vehicles, vans, vehicles not bearing a current license, inoperable vehicles, boats, motorcycles, bicycles, sleds or other recreational vehicles shall be parked on any Lot except inside the garage of a Dwelling Unit. No maintenance of any vehicle shall be performed on a Lot. No vehicle shall be parked on any portion of the Common Facilities. The foregoing restriction shall not apply to any trucks or other vehicles owned by the Declarant, its contractors, subcontractors, material suppliers, agents and employees which may be parked on any portion of the Parcel or owned by the Declarant during the construction and marketing of Dwelling Units by the Declarant or necessary to make service calls.
- (d) No clotheslines, clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of a Lot. All rubbish, trash and garbage shall be placed in closed, plastic bags, deposited in closed trash receptacles and regularly removed from each Lot. No trash receptacles shall be kept outside a Dwelling Unit and no burning of trash shall be permitted.
- (e) With the exception of machinery, equipment, building materials and supplies and similar items which the Declarant may store or permit to be stored upon any portion of the Parcel owned by the Declarant during, construction and marketing of Dwelling Units, no machinery, equipment, building materials and supplies or similar items may be stored, kept or maintained on any part of a Lot. No lawn furniture, swing sets or other recreational or playground equipment or barbecues may be placed or used on any part of the Common Facilities or on any part of a Lot except within the patio area adjacent to a Dwelling Unit. No basketball nets shall be permitted on the exterior of

any Dwelling Unit. No swimming pools other than portable, non-permanent children's wading pools shall be permitted on any Lot.

- (f) All exterior lighting and seasonal lighting and decorating shall be subject to rules, regulations and limitations of the Board and all seasonal lighting and decorating shall be removed no later than thirty (30) days after the close of the holiday.
- (g) No radio or television antennas shall be affixed to or placed in, through or upon the exterior walls, roof, or windows of a Dwelling Unit or shall be installed on any part of a Lot. No shortwave radio or other type of radio transmitter shall be permitted in or about any Dwelling Unit, which may interfere with the radio or television reception in any Dwelling Unit. Satellite dishes may be installed provided such do not exceed twenty (20) inches in diameter and subject to such other rules and regulations as the Board may adopt.
- (h) No window air conditioning units shall be installed in any Dwelling Unit without the prior written approval of the Architectural Control Committee.
- (i) No sheds, storage buildings, tent or other temporary structures of any kind shall be erected on any part of a Lot. Garages shall be used for storage of vehicles as permitted herein and for no other purpose including the making of mechanical repairs to vehicles. Garage doors shall remain closed at all times except when vehicles are being moved.
- (j) No Owner shall be permitted to alter the grading of a Lot from the grading originally installed by the Declarant. No Owner shall alter the landscaping originally furnished to a Lot by the Declarant or remove or add any shrubbery, trees, gardens or other plants, rock gardens, fountains or other elements of landscaping without the prior approval of the Architectural Control Committee.
- (k) No sign, billboard, or other advertising device of any character shall be erected or maintained upon any part of a Lot or Dwelling Unit, excepting by the Declarant. One "For Sale" sign containing no more than six (6) square feet may be exhibited on a Lot in such locations as shall be approved by the Board but in no event in a window.
- (l) Other than fences originally installed by the Declarant, no fence shall be commenced, erected or maintained on a Lot.
- (m) No exterior addition to or exterior change or alteration in a Dwelling Unit including storm doors and windows, railings, flower boxes, benches, shutters and seal coating of driveways shall be made without the unanimous approval of the Architectural Control Committee. Any such exterior addition to or exterior change or alteration to a Dwelling Unit approved by the Architectural Control Committee shall be of color, design, material and construction equal to that of the Dwelling Unit as originally constructed, shall comply with all applicable building, zoning and fire laws, statutes and ordinances and any other requirements of the Town, shall be performed in a good and workmanlike manner, and shall harmonize, to the satisfaction of the Architectural Control Committee as to design, color, location and size, with surrounding structures and topography.
- (n) Garbage and receptacles therefore shall not be placed out-of-doors for pick up until after 6:00 p.m. the night before pickup of garbage is scheduled and garbage receptacles shall be placed indoors the same day pickup is made.

5.4 **Remedies:** The violation of any covenant, condition, restriction, rule or regulation adopted by the Board, or the breach of any provision herein contained shall give the Board the following rights, upon not less

than ten (10) days notice (or immediately in the event of any matter of an emergency nature which might result in damage to persons or property), in addition to the rights set forth in the next succeeding section:

- (a) to enter (without breach of the peace) upon that part of any Lot where such violation or breach exists and summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Declarant" or its beneficiaries, or their successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or
- (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or
- (c) to levy fines in such reasonable amounts and pursuant to such procedures for hearing and appeals, as the Board shall from time to time determine.

All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of ten percent (10%) per annum until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of the respective share of the expenses of the Association of such defaulting Owner, and the Association shall have a lien, for all of the same upon the Lot of such defaulting Owner and upon all additions and improvements thereto. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

ARTICLE VI Architectural Control Committee

6.1 **Membership:** The Architectural Control Committee shall consist of three persons who shall be appointed by the Board. Until the initial meeting of voting members, the Declarant shall designate the member of the Architectural Control Committee. Thereafter, until the Declarant shall have sold and conveyed title to all Lots, the Declarant shall designate one member of the Architectural Control Committee and the two remaining members shall be appointed by the Board. Upon the sale and conveyance by the Declarant of all of the Lots, all three members shall be appointed by the Board. Except for members designated by the Declarant, each member of the Architectural Control Committee shall be an Owner and shall reside within a Dwelling Unit. In the absence of any appointment as provided for herein the Board shall serve as the Architectural Control Committee.

6.2 **Powers and Duties:** The Architectural Control Committee shall have the following powers and duties:

- (a) to review requests by Owners for approval of any exterior addition to or modification or alteration to a Dwelling Unit or other matter described in this Declaration as requiring approval of the Architectural Control Committee and, subject to final approval by the Board, to render decisions thereon;
- (b) to propose to the Board rules, regulations and procedures concerning exterior maintenance, repair, landscaping, fences, trash removal and the enforcement of the provisions of the Declaration in relation thereto; and
- (c) such other power and duties as the Board shall from time to time delegate.

6.3 **Procedures:** Any matter requiring the approval of the Architectural Control Committee shall be submitted to the Architectural Control Committee in writing and, if approval of any alteration or addition to a

Dwelling Unit or Lot shall be requested, shall include preliminary design drawings, plans and specifications, elevations, landscaping schemes and descriptive materials showing the size, color, design, configuration, height, shape and materials of such alteration or addition. Within a reasonable time not exceeding thirty (30) days after receipt of all such items, the Architectural Control Committee shall advise such Owner and the Board in writing:

- (a) whether such Owners request has been approved or denied and if denied, the specific reasons therefor; or
- (b) whether the Architectural Control Committee requires additional information, plans or other materials to render a decision, in which case such additional items shall be furnished as expeditiously as possible.

If additional items shall be required pursuant to subsection (b) above, within a reasonable period of time not exceeding ten (10) days from the date of receipt of all such items, the Architectural Control Committee shall advise such Owner and the Board in writing whether such Owners request has been approved or denied and if denied, the specific reasons therefor. If such Owners request for approval shall have been denied, such Owner shall have the right to appeal the decision of the Architectural Control Committee to the Board pursuant to Section 6.4 hereof.

6.4 Right of Appeal: Any adverse decision of the Architectural Control Committee may be appealed to the Board, which shall render a final decision as to the matter in question. An Owner desiring to appeal shall so advise the Board in writing. The Board shall consult with the Architectural Control Committee and such Owner, shall review the plans and other materials submitted by such Owner and shall render a written decision as to the matter under consideration as expeditiously as practical. In rendering its decision, the Board shall take into consideration the criteria set forth in Sections 5.3(n) and 6.5, the manner in which the Architectural Control Committee has applied such criteria to the matter under review and such other factors as the Board deems relevant in respect to the overall enhancement of the value and desirability of the Lots and Parcel.

6.5 Review Criteria: In evaluating requests by Owners for approvals required of the Architectural Control Committee hereunder, the factors to be considered by the Architectural Control Committee shall include those set forth in Section 5.3(a - n) and the following:

- (a) the architectural integrity and compatibility of any proposed exterior modification to a Dwelling Unit with a design, color scheme and materials of such Dwelling Unit as originally constructed in regard to which the Architectural Control Committee shall not have the authority to approve an exterior alteration or addition that:
 - (i) changes color schemes or architectural styles from those originally constructed by the Declarant;
 - (ii) substitutes materials of lesser quality than those originally furnished by the Declarant; or
 - (iii) results in a change in the grade of a Lot or the elevation, size or basic exterior design as to door and window placement from that originally provided by the Declarant.
- (b) the aesthetic effect of any proposed modification of landscaping, exterior fences or exterior lighting; and
- (c) such other factors as the Architectural Control Committee deems relevant in assessing the overall effect of the Owner's request upon the maintenance and operation of the Parcel.

6.6 **Final Board Approval:** There is hereby reserved to the Board the power to reverse any decision of the Architectural Control Committee, whether approving or denying an Owner's request, if, in the Board's judgment, which shall not be subject to challenge or review, the Architectural Control Committee, in rendering such decision, has failed to correctly apply the criteria set forth in Sections 5.3(a- n) and 6.5.

ARTICLE VII

Party Walls, Common Driveways, Common Sanitary Sewer Service Lines

7.1 **Party Wall:** Each wall and fence which is built as part of the original construction of a Dwelling Unit (or as reconstructed following fire or other casualty) which is located on the boundary line between separate Lots, shall constitute a party wall ("Party Wall"), and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2 **Common Driveways:** A common driveway ("Common Driveway") shall be any driveway servicing more than one Dwelling Unit, which is built as part of the original construction of a Dwelling Unit. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Common Driveway and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.3 **Common Sanitary Sewer Service Line:** A common sanitary sewer service line ("Common Sanitary Service") shall be any sanitary sewer service line, servicing more than one Dwelling Unit, which is built as part of the original construction of a Dwelling Unit, and where such Common Sanitary Service is located outside the area denoted in Exhibit A as "Public Utility and Drainage Easement". To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Common Sanitary Service and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.4 **Sharing of Repair and Maintenance:** In the event it shall become necessary to repair or rebuild any portion of any Party Wall, Common Driveway, or Common Sanitary Service the expense of such repairing or rebuilding shall be borne equally by the Owners of the Units adjacent to such Party Wall or serviced by such Common Driveway or Common Sanitary Service, unless the damage to said Party Wall, Common Driveway, or Common Sanitary Service was caused by an act, intentional or otherwise, by one of the adjacent Owners, in which case the cost shall be borne solely by the Owner at fault; also, if damage to said Party Wall, Common Driveway or Common Sanitary Service shall affect only one side, then the cost of repair shall be borne by the Owner on whose side the damage has occurred.

7.5 **Destruction by Fire or Other Casualty:** The easements or cross-easements hereby created shall not terminate in the event any Party Wall, Common Driveway, or Common Sanitary Service has been destroyed by fire or other cause and either Owner shall have the right to rebuild if the other will not cooperate in such rebuilding, in which event the Owner(s) of the Unit(s) adjacent to such Party Wall, Common Driveway, or Common Sanitary Service who shall have rebuilt the same shall be entitled to receive from the Owner(s) of the other Unit(s), and said last -mentioned Owner shall be liable to pay upon demand to the Owner who shall have rebuilt said Party Wall, Common Driveway, or Common Sanitary Service, an amount equal to the fraction the other Owners' Units benefit from the Party Wall, Common Driveway, or Common Sanitary Service multiplied by the cost of such rebuilding, including the costs of foundations and supports necessarily installed except as provided in Section 7.2 hereof. (As a way of example, if there are 4 Owners who share and benefit from one Common Sanitary Service, then each owner shall be responsible for $\frac{1}{4}$ of the cost of rebuilding or repairing said Common Sanitary Service.) whenever any Party Wall, Common Driveway, or Common Sanitary Service, or portion thereof, shall be repaired or rebuilt, it shall be constructed on the same line and be of the same size and the same or similar materials and of like quality as the Party Wall, Common Driveway, or Common Sanitary Service being repaired or rebuilt, and it shall in all respects conform to the laws and ordinances regulating the construction of buildings in force at the time.

7.6 **Weatherproofing:** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

7.7 **Right to Contribution Runs with Land:** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE VIII **Insurance and Maintenance**

8.1 **Insurance:** Each Owner shall maintain in full force and effect, with a company licensed to conduct business in the State of Indiana, a policy of insurance covering the Dwelling Unit and Lot owned against loss or damage by fire and against loss or damage by occurrences now or hereafter embraced by standard extended coverage and vandalism and malicious mischief in one hundred percent (100%) of the full insurable replacement cost of such Dwelling Unit. Each Owner shall deliver to the Board a certificate of insurance confirming that such insurance is in effect and a certificate of all renewals thereof. In the event of the failure of an Owner to maintain the insurance required herein, the Association shall have the right, but not the obligation, to obtain such insurance in the name of such Owner and to add the cost thereof to the assessments due from such Owner.

8.2 **Maintenance by Association:** The Association shall be responsible for:

- (a) snow removal from the Common Facilities and driveways of Lots;
- (b) street cleaning of the Common Facilities;
- (c) maintenance, repairs and replacement of lighting in the Common Facilities;
- (d) maintenance and landscaping of the Common Facilities and the entire courtyard area in front of and up to each Dwelling Unit;
- (e) maintenance, repairs and replacement of the Common Facilities including, without limitation, detention ponds and the structures appurtenant to said detention ponds;
- (f) maintenance, repairs and replacement of roofs and exterior masonry;
- (g) to the extent not maintained by any utility company, maintenance, repair and replacement of all sewer and water lines up to the point of entry to a Dwelling Unit; and (h) the items described in Section 8.3.

Nothing herein contained shall impose upon the Association any greater duty with respect to snow removal than is otherwise imposed by law.

8.3 **Exterior Maintenance and Repair of Dwelling Units:** The Association shall maintain, repair and replace, at the expense of the Owners benefited thereby, the shrubbery, plantings, grass, trees, fencing and gates on Lots. Such maintenance, repairs and replacements shall be made when and as deemed necessary by the Board to maintain the Lots and Dwelling Units as a first-class residential development. Except as may be the obligation of the Association under Section 8.2 above, each Owner shall maintain in first-class condition and repair all exterior portions of Dwelling Units, including by way of example and not limitation, lighting, shutters, doors, walks, patios and partition fences and all shrubbery, trees, grass and plantings on areas of Lots enclosed by fences. In the event any Owner fails to maintain or repair the Dwelling Unit or Lot owned by such

Owner as aforesaid, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot and Dwelling Unit to perform such maintenance or repair and such Owner shall pay all costs and expenses of the Association incurred thereby upon demand. The cost of any maintenance and repairs by the Association under this Section shall be charged to the Unit Owners benefited thereby and shall be added to the assessment payments due from such Owner and shall bear interest and constitute the personal liability of such Owner and shall be a continuing lien on such Owner's Lot and Dwelling Unit enforceable as provided in Article IV hereof. Notwithstanding anything aforesaid to the contrary, in the event it shall become necessary to replace or rebuild any portion of a roof, the expense of such replacement or rebuilding shall be borne by the Association.

8.4 Damage or Destruction: In the event of any damage to a Dwelling Unit by fire or other casualty, the Owner of such Dwelling Unit shall repair, restore and rebuild the portion of such Dwelling Unit so damaged or destroyed to its original condition as near as possible, immediately preceding such fire or other casualty as rapidly as possible but in all instances within 120 days after the occurrence of such damages, unless prevented by inclement weather or other causes beyond such Owner's reasonable control in which event reconstruction shall be completed within 180 days after the occurrence of such damage. Should such Owner fail to reconstruct such Dwelling Unit as aforesaid, the Association may undertake to do such construction as it deems necessary, and to charge such Owner the costs thereof. Any amounts so charged to a Unit Owner shall bear interest and constitute a lien in the same manner as provided in Section 8.3 hereof.

ARTICLE IX **Rights Reserved to Declarant**

9.1 Declarant's Promotional Rights: The right is reserved to the Declarant to place and maintain on any area of the Parcel with the exception of a Lot which has been sold and conveyed or sold on contract, or sold pursuant to an installment contract or articles of agreement for deed, to an Owner, model Dwelling Units, construction trailers, sales offices, fencing, flag poles, advertising signs, banners and lighting in connection therewith and other promotional facilities at such locations and in such forms as shall be determined by Declarant for construction, sales and leasing purposes.

There is also reserved to the Declarant, its agents, employees and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Parcel for such sales and leasing purposes. The Declarant also reserves the right to maintain on the Parcel without charge (a) a general office for the purpose of exercising the rights reserved in Sections 9.1 and 9.2 hereof, (b) a general construction office for Declarant's contractors and subcontractors and (c) appropriate parking facilities for the employees of Declarant's agents and contractors. Declarant's aforesaid reserved rights shall continue for so long as Declarant is engaged in the construction, sale or leasing of Dwelling Units on any portion of the Parcel.

9.2 Declarant's Easements: The Declarant reserves unto itself a non-exclusive easement through, over, under and across the Parcel and all portions thereof for the purpose of exercising the rights reserved to the Declarant pursuant to this Declaration, and for the purpose of implementing the overall development of the Parcel including, without limitation, the planning, construction, marketing, leasing, management and maintenance of improvements in any portion of the Parcel for so long as Declarant is engaged in the construction, sale or leasing of Dwelling Units on any portion of the Parcel. All rights and easements in favor of the Owners created by this Declaration shall be subject and subordinate to the aforescribed development rights and easements of Declarant, whether or not inconvenience to any Owner shall result therefrom. The rights and easements reserved pursuant to this Section 9.2 and Section 9.3 shall inure to the benefit of the Declarant, its respective successors and assigns including any successor to or assignee of the Declarant's rights under this Declaration.

9.3 Rights of Declarant to Make Dedications to Grant Utility Easements: As used in this Section 9.3, the term "utilities" means all public and private utility conduits, wires, ducts, pipes, cables and other lines, and all associated equipment, which serve the Parcel, including without limitation, those for the transmission

and/or distribution of water, electricity, gas, telephone, sewage, drainage and television and other electronic signals. Said term also includes all standpipes, hydrants, pumps, equipment vaults and other structures and facilities for the provision of fire protection services.

Declarant hereby reserve the following rights and easements:

- (a) to add additional Lots (Townhomes) to this Association by December 31, 2009.
- (b) to dedicate streets and street lights, walks, malls, parkways, parkland, drives, open space and water rights to any governmental authority and to make such other dedications as may be required to implement the ordinances of any governmental authority from time to time applicable to the Parcel and to the public improvements therein.
- (c) to dedicate space in the Parcel or any portion thereof to any public or quasi-public utility or to any governmental authority for the location of utilities serving any portion of the Parcel.
- (d) to reserve or grant easements in, over, under, to and across the Parcel or any portion thereof or ingress and egress to, and for installation, construction and maintenance of, any or all of the utilities.
- (e) to record plats of subdivision and resubdivision of portion of the Parcel.
- (f) to Amend this Declaration to the extent not inconsistent with the intent and purpose thereof.

Any rights hereby reserved to the Declarant, to the extent affecting the Common Facilities, may be assigned and transferred by the Declarant to any successor Declarant or to the Association by an instrument in writing, executed by the Declarant and recorded in the office of the Lake County Recorder of Deeds, following which the rights so assigned and transferred shall be exercised by such successor Declarant or the Association as the case may be. Until Declarant's rights under Section 9.2 hereof are terminated, Declarant shall have the right to tap into utilities for the purpose of exercising all such rights.

Notwithstanding anything aforesaid to the contrary none of the rights of the Declarant set forth in this Section 9.3 shall exist so as to alter or amend the legal description of any Lot previously conveyed by Declarant. All said rights shall terminate upon conveyance of all the real estate described in Exhibit A to Owners.

9.4 **Contracts:** The Declarant shall have the right to enter into contracts on behalf of the Association prior to the date of the initial meeting of Members; provided, however, that with the exception of contracts for cable television service and security system, any such contracts shall be terminable by the Association without penalty on not less than ninety (90) days prior notice.

ARTICLE X

Intentionally Omitted

ARTICLE XI

General

11.1 **Amendment:** This Declaration may be amended by recording an instrument executed and acknowledged by not less than three-quarters of the voting members.

11.2 **Severability:** Invalidation of all or any portion of any of the covenants, restrictions, easements,

conditions, reservations, liens and charges imposed by this Declaration, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration, all of which shall remain in full force and effect.

11.3 Enforcement: Enforcement by the Association or any Owner of the covenants and restrictions contained in this Declaration shall be had by any proceeding at law or in equity against any person or persons violating or attempting to violate any such covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

11.4 Notices: Any notice required to be sent to any Member of the Association or to an Owner under the provision for this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last know address of such Member or Owner as it appears on the records of the Association at the time of such mailing.

11.5 Title Holding Land Trust: In the event title to any Lot is conveyed to a title holding trust, under the terms of which all power of management, operation and control of such Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Lot. No claim shall be made against any such title holding trustee personally for payment of any lien or obligations hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon such Lot and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Lot.

11.6 Duration: The covenants, restrictions, conditions, reservations, liens and charges imposed or established by or created under this Declaration shall run with and bind the land for a period of forty (40) years from the date of the recording of this Declaration and may be enforced by the Association or any Owner through any proceeding in law or in equity. Failure by the Association or any Owner to so enforce shall in no event be deemed a waiver of the right to do so thereafter. After the expiration of said forty (40) year period, all of such covenants, restrictions, conditions, reservations, liens and charges shall continue to run with and bind the land for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part, by an instrument in writing which is executed by the Owners of not less than two-thirds of the Lots and recorded in the Office of the Recorder of Deeds for Lake County, Indiana. Except in case of condemnation or destruction of a substantial portion of the Dwelling Units, the legal status of the Association shall not be terminated without the affirmative vote of not less than sixty six and two thirds percent (66 2/3%) of the Owners.

11.7 Captions: The Articles and Section headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration.

[Signature page to follow]

IN WITNESS WHEREOF, the Declarant hereto has caused these presents to be signed by its proper officers and its corporate seal to be hereunto affixed as of the date first above written.

Providence Homes at Stonegate, Inc., an Indiana Limited Liability Company

By: [Signature]

Name: John Borucki

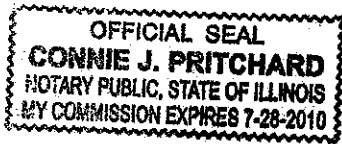
Its: Authorized Representative

STATE OF IL)

COUNTY OF LAKE)

I, Connie J. Pritchard, a Notary Public in and for said County and State, do hereby certify that John Borucki, personally known to me to be the same person whose name is subscribed to the foregoing instrument, and acknowledged that he executed said instrument as his free and voluntary act, and as the free and voluntary act of Providence Homes at Stonegate, Inc, being thereunto duly authorized for the uses and purposes therein set forth.

Given under my hand and notary seal this 4 day of October, 2007.



Connie Pritchard
Notary Public

7/28/2010
Commission Expires

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

[Signature]

John Borucki

EXHIBIT A

LEGAL DESCRIPTION

LOTS 28 THROUGH 73, BOTH INCLUSIVE, OUTLOT B, OUTLOT D, OUTLOT E, OUTLOT G, OUTLOT H, OUTLOT J AND OUTLOT L, IN STONEGATE COMMONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED MARCH 26, 2007 IN PLAT BOOK 101 PAGE 15, AS DOCUMENT NUMBER 2007-024838 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.

Prepared by:
Manhard Consulting, Ltd.
833 W. Lincoln Hwy., Suite 113E
Schererville, IN 46375

EXHIBIT B

PLAT OF SUBDIVISION

MORTGAGEE'S CONSENT

First Midwest Bank, a banking organization, holder of a Note secured by a certain Mortgage dated March 9, 2007 and recorded with the Recorder of Deeds of Lake County, Indiana on March 19, 2007 as Document # 2007 022986, made by Providence Homes at Stonegate, Inc., an Indiana Corporation, to First Midwest Bank, hereby consents to the execution and recording of the Declaration of Covenants, Dedications, Restrictions, and Easement and By-laws for Townes at Stonegate Commons Residential Subdivision, and agrees that said Mortgage is subject to the provisions thereof.

IN WITNESS WHEREOF, First Midwest Bank has caused its imprimatur to be affixed hereunto by virtue of its name being signed by its Senior Vice President and attested to by its Vice President this 5th day of October, 2007.

First Midwest Bank,
a banking organization,

By: Frank Licata

Name: Frank Licata

Its: Senior Vice President

ATTEST:

Paulette Menaieit

Its: Vice President