

**Cross Reference:** Secondary Plat for Serenade recorded on August 20, 2019, as Instrument Number 2019038247 in Plat Cabinet 5, Slide 1015 in the Recorder's Office of Hamilton County, Indiana.

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR SERENADE**

THIS DECLARATION (hereinafter called "the Declaration" or "this Declaration"), is made effective this 14 day of February 2020 (the "Effective Date"), by CCD Serenade LLC (hereinafter called "Declarant"). Capitalized terms not otherwise defined in this Declaration shall have the meanings ascribed to them under Article I of this Declaration.

WITNESSETH:

WHEREAS, Declarant is the owner of the real estate in Hamilton County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Real Estate"), as subsequently amended as provided below; and

WHEREAS, Declarant is in the process of creating on the Real Estate a residential community known as or to be commonly known as **SERENADE**, or such other name as the Declarant determines; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in the Development; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering the common facilities located on the Property, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, performing certain maintenance, and repairs as hereinafter provided, and promoting the health, safety and welfare of the owners of the Property, and all parts thereof, and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a non-profit corporation under the name "**SERENADE HOMEOWNERS ASSOCIATION, INC.**", or a similar name as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the

provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of the Lots situated therein, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns.

## **ARTICLE I** **DEFINITIONS**

Section 1. The following words, when used in this Declaration or any supplemental declaration (unless the context shall prohibit), shall have the following meanings:

**“Amenities”** shall mean any feature of a Common Area that provides comfort, convenience, or pleasure to the Members.

**“Applicable Date”** shall mean the “Applicable Date” as defined and determined in accordance with Section 3B of Article III hereof.

**“Association”** shall mean **SERENADE HOMEOWNERS ASSOCIATION, INC.**, an Indiana nonprofit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns.

**“Board” or “Board of Directors”** shall mean the board of directors of the Association.

**“By-Laws”** shall mean the by-laws of the Association.

**“Common Area”** shall mean (i) those portions, if any, of the Property shown upon any recorded subdivision plat of the Property, or any part thereof (including the Plat, which are not Lots other than portions thereof (such as streets) which are dedicated to the public, whether such plat is heretofore or hereafter recorded, including all improvements and structures constructed or to be constructed thereon), and (ii) such portions of the Property (if any) as are hereafter declared to be “Common Area” by an instrument executed and recorded by Declarant, whether or not such areas comprise part or all of a lot or lots shown upon any recorded subdivision plat of the Property.

**“Common Area Uses”** shall include recreational uses including, without limitation jogging, walking, team sports, swimming, tennis, basketball, of the common areas and shall also include Facilities installed or directed to be installed and maintained by the Declarant and for its successors, assigns or devisees.

**“Common Expenses”** shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association. Common Expenses shall include, without limitation, the actual and estimated cost to the Association for the maintenance, management, operation, repair, improvement and replacement of Common Area, real estate taxes or personal property taxes assessed against the Common Area, as well as any other costs or expenses incurred by the Association for the benefit of the Common Area and the Owners.

**“Declarant”** shall mean CCD Serenade LLC, a Delaware limited liability company, and any successors and assigns of Declarant who it designates in one or more written recorded instruments to have the rights of Declarant hereunder; including, without limitation, (i) any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of (or by acceptance of a deed in lieu of foreclosure of), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of foreclosure against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder.

**“Development”** shall mean the improvement to the Property as designated on the Plat.

**“Development Period”** shall mean the period of time beginning with the date of execution of this Declaration and ending with the date the Declarant is no longer the owner of any part of the Property.

**“Home”** shall mean a residential housing unit designed or intended for use as living quarters for one family or housekeeping unit.

**“Improvement”** shall mean any exterior structure or improvement upon the Real Estate, broadly defined to include, but not be limited to: (i) dwellings and other buildings of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other Improvements, subject to approval of the Architectural Review Board); (ii) outbuildings of other roofed structures; (iii) gazebos or playhouses; (iv) swimming pools or hot tubs; (v) items resulting from construction, erection, placement of any object or item, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved; (vi) items resulting from the exterior alteration of existing Improvements or changes in exterior color or shape; (vii) staking, clearing, excavation, grading and other site work; (viii) sediment control devices; (ix) underground installations; (x) surface water drainage facilities; (xi) berms; (xii) items resulting from installation or replacement of hardscape; (xiii) streets, roads, driveways, walkways, alley ways, or parking areas or facilities; (xiv) fences of any kind, including invisible fences, screening walls, retaining walls, walls and other enclosures; (xv) dog runs or animal pens; (xvi) stairs; (xvii) patios, decks, balconies, or windbreaks; (xviii) artificial vegetation or sculptures; (xix) mailboxes; (xx) basketball hoops, swing sets, and similar sports and play equipment; (xxi) clotheslines; (xxii) garbage cans, wood piles, poles, signs, antennas, and satellite dishes; (xxiii) utilities improvements, water lines, sewer, electrical and gas distribution facilities, and irrigation systems; (xxiv) heating, cooling, and air circulation equipment and facilities, including window air conditioning units or fans; (xxv) solar panels; (xxvi) exterior illumination devices of any kind or nature; (xxvii) improvements as a result of planting or removal of trees, shrubs, hedges, or other landscaping materials; and (xxviii) all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on any Lot.

**“Lot”** shall mean and refer to any and each plot of land included in the Property (with the exception of Common Area) designed and intended for use as a building site for a Home, and identified as a lot on any recorded subdivision plat of the Property or any part thereof (including the Plat)

**“Members”** shall mean any person or entity holding membership in the Association as provided in Article III hereof

**“Mortgage”**, shall mean any mortgage or other security instrument by which a Lot or any part thereof or any structure thereon is encumbered

**“Mortgagee”** shall mean any person or entity named as the Mortgagee under any such Mortgage or any successors or assigns to the interest of such person or entity under such Mortgage prior to acquisition of the fee simple title to the property encumbered by such Mortgage

**“Owner”** shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**“Parcel”** shall mean any area of land defined on the recorded plat for The Real Estate which shall include but not be limited to Lots, Common Areas and other specifically identified or deeded areas which may be labeled as blocks on the recorded Plat and defined herein.

**“Person”** whether appearing in upper case or lower case form, shall mean an individual, firm, corporation, partnership, limited liability company, limited partnership, limited liability partnership, association, trust, governmental or municipal body or other legal entity, or any combination thereof.

**“Plat”** shall mean any subdivision plat of any portion of the Real Estate recorded in the public records and the recorded plat of any additional property made subject to the provisions of this Declaration pursuant to the provisions hereof, and any amendments or supplements thereto. The initial Plat for the subdivision is that certain Secondary Plat for Serenade recorded on August 20, 2019, as Instrument Number 2019038247 in Plat Cabinet 5, Slide 1015 in the public records.

**“Property”** shall mean and refer to the Real Estate.

**“Real Estate”** shall mean the parcel or parcels of real estate in Hamilton County, Indiana, described in Exhibit “A”, attached to and incorporated herein, and as subsequently amended.

**“Residential Unit”** shall mean any living unit within The Real Estate.

**“Utility Easements”** shall refer to any easement areas dedicated for the purpose of providing sewer, water, gas, Telephone Services or electric services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such services.

**“Utility Services”** shall mean and refer to any of the services using the Utility Easements.

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings ascribed to them in such provision.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. Declaration. Declarant hereby expressly declares that the Property shall be held, transferred, sold, conveyed and occupied subject to, any other liens and encumbrances which may exist, all the terms, covenants, conditions, restrictions and provisions of, by way of example and not limitation, this Declaration, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement. As of the date of execution of this Declaration, the Property consists solely of the Real Estate. The Owner of any Lot at any time subject to this Declaration, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner acknowledges the rights and powers of Declarant, of the Association with respect to or under this Declaration, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 1. Membership. Every Owner of a Lot, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to, and there shall be required, one membership for each such lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner or Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Lot and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such Lot, the Association may issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 3. Voting. The Association shall have two (2) classes of voting membership, as follows:

- A.** **Class A.** Class A members shall be all Owners of Lots, with the exception of the Declarant prior to termination of Class B membership, and shall be entitled to one (1) vote for each lot owned with respect to each matter submitted to a vote of members upon which the Class

A members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one Vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other person has filed a general voting authority with the Secretary applicable to all votes until rescinded.

**B.** **Class B.** Class B members shall be the Declarant and all successors and assigns of the Declarant designated by the Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each Lot owned by them or it and five (5) votes for each single numbered parcel of land shown upon and identified as a Lot on any recorded plat of the Real Estate. The Class B membership shall cease and terminate upon the first to occur of (a) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Association; (b) one hundred twenty (120) days after ninety five percent (95%) of the Lots in the Property have been conveyed to Owners other than Declarant; (c) ten (10) years after the date of recording of the first conveyance of a Lot to an Owner other than Declarant; (the applicable date being herein referred to as the "Applicable Date"). Declarant shall each be entitled to one (1) Class A membership for each Lot of which it is the Owner on or after the termination of the Class B membership.

**Section 4. Suspension of Voting Rights.** In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

**Section 5. Board of Directors.** Following the Applicable Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Until the Applicable Date, the Board shall consist of at least three (3) persons designated by Declarant pursuant to the Articles of Incorporation, as long as it shall own one or more lots.

## **ARTICLE IV** **PROPERTY RIGHTS**

### **Section 1. General Provisions.**

A. All easements described in this Declaration are permanent easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee from time to time of any Lots and the Owner and mortgagee, if any, from time to time of the Common Area, and their respective heirs, successors, personal representatives or assigns.

B. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot

subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for an initial term commencing on the date this Declaration is recorded and ending January 1, 2030, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

Section 2. Right of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area limited, however, to and for the Common Area Uses. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to pass reasonable rules, with respect to the Common Area, for the health, comfort, safety and welfare of persons using the same which rules shall not exclude or limit the activities allowed in the Common Areas as provided for herein;

B. The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;

C. The right of the Association to levy assessments as provided in this Declaration;

D. The Declarant's General Easement set forth in Article XVI;

E. The rights of the Association and Declarant reserved under this Article IV or elsewhere in this Declaration; and

F. Any of the other rights of the Declarant and any and all of its designees, successors or assigns under the Declarant's Reserved Easements (as described in Article IV, Section 3 hereof) or this Declaration.

G. The Association may permit the installation of a fence in a Common Area, even to the exclusion of other Owners, so long as the Common Area is designed only as a buffer to screen the Development from a road, adjacent property owners, or any other undesirable trait. However, if the fence prevents necessary maintenance of the Common Area, the Association and Owner must record a separate document which would permit the encroachment, and create a maintenance obligation that would run with the land.

This Section 2 may not be amended without the written consent of Declarant during the time that Declarant owns any property subject to this Declaration.

Section 3. Declarant's Reserved Easement. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any property in the Development, including, without limitation, utilities and technology infrastructure and Facilities, for the benefit of Declarant and its designees, successors and assigns over, under, in, and on the Development, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment and otherwise dealing with the Development and any other property now owned or which may in the future be owned by Declarant (collectively, "Declarant's Reserved Easements"). The Declarant's Reserved Easements shall constitute a burden on the title to all or any portion of the Development and specifically includes, without limitation:

- (a) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, and in all or any portion of the Development; and, the right to tie into any portion of the Development with driveways, parking areas, Streets, the Drainage System and walkways; and, the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Development;
- (b) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient or incidental to the construction and sale by Declarant of residences in all or any portion of the Development or in any portion of the Additional Land as hereinafter defined.;
- (c) the right to maintain a sales and marketing office for the Development within the Common Area without cost to Declarant until Declarant no longer owns any Lots in the Development; and,
- (d) the Declarant's General Easement as described in Article XVI, Section 2.A hereof.

No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property within the Development, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed or other assignment of rights from or by Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Development. Declarant may grant to a builder of Lots within the Development similar rights as granted to Declarant under (ii) and (iii) above.

This Section 3 may not be amended without the advance written consent of Declarant as long as Declarant owns one or more Lots.

#### Section 4. Association's Rights and Obligations

A. The Association shall have the obligation to manage, repair, maintain, improve and operate the Common Area and to perform all additional obligations described in this Declaration; provided, however, the Association shall be under no obligation where the maintenance obligation is transferred to an Owner pursuant to Article IV, Section 2(g).

B. The Association shall have the right to mortgage all or any portion of the Common Area, excluding any Facilities on, over or under the Common Area, for the purpose of securing a loan of money to be used for any of the purposes specified in subsection 3 A. herein above, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners under this Declaration, and provided, further, that the mortgagee shall have received the prior written approval specified herein below.

C. The Association shall not have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, or to grant permits, licenses, or easements



over the Common Area except for granting the Town or municipality the Street right-of-way (R/W) shown on the plats; provided, however, that any such dedication be fully consistent with Article XVI, Section 2.B(iii).

D. The Property shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Area, which may be granted by Declarant prior to the Applicable Date.

E. Anything herein apparently to the contrary notwithstanding, except as otherwise expressly herein provided, no abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area or other common property or any part thereof shall be effective unless it shall have received the prior written approval specified herein below. However, the Common Area may not be developed in any manner with housing or otherwise. The only improvements which may be erected on any Common Area may only be those facilities which benefit the use of the Common Area by the Owners or which are necessary for the operation of the utilities and technological infrastructure and devices installed by Declarant or directed to be installed by Declarant, or a fence as provided in Article IV, Section 2(g).

Section 5. Declarant's Rights. Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise specified herein. In addition, until the last single numbered parcel of land shown upon, and identified as a Lot on any recorded plat(s) of the Real Estate (whether heretofore or hereafter recorded), including, without limitation, the Plat is conveyed to an Owner other than Declarant, or until the Applicable Date (whichever event shall first occur), Declarant shall have the right and easement over the Common Area for the completion of improvements and making repairs to improvements (whether on the Common Area, or upon unsold Lots, or upon other portions of the Real Estate, and the right to maintain signs upon the Common Area and any other portions of the Property other than Lots owned by an Owner other than Declarant) for the purpose of marketing homes, and to invite and escort the public thereon for such purpose.

Section 6. Owner's Rights and Obligations.

- A. Each Owner shall be responsible for the upkeep and maintenance of his or her Home and all other areas, features or parts of his Lot to the extent not otherwise maintained by the Association.
- B. In the event any Owner does not adequately perform any maintenance obligation provided in this section 5, as determined in the sole discretion of the Association, the Association may, but shall not be obligated to, perform any such maintenance on the Owners behalf. Owner shall be assessed any and all costs incurred for such additional maintenance and shall be subject to collection as set forth in Article V.
- C. Each Owner shall be responsible for and shall perform the following items:
  - (1) Maintenance, repair and replacement of landscaping and any Improvement on the Lot;
  - (2) Maintenance, repair and replacement of all doors in the Home, including the garage door, patio door and front door, pursuant to the design and material requirements hereunder;

- (3) Maintenance, repair and replacement of all sidewalks, walkways, patio surfaces and driveways located on their Lot pursuant to the design and material requirements hereunder.
- (4) Maintenance, repair and replacement of any and all windows of the Home pursuant to the design and material requirements hereunder.
- (5) Proper operation of the front yard light, front porch recessed lighting, and rear garage coach lights, including replacement of the light bulbs.

Section 7. Non-Dedication to Public Uses. Nothing contained in this Declaration or in any subdivision plat of any part of the Property shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to the public or to or for any public use or purpose whatsoever, all of such Common Area being reserved to the Owners and the Association as provided in this Declaration, but subject, however, to the rights of the Association and the Declarant to thereafter dedicate portions of such Common Area to the public or to or for public uses or purposes but only to the extent, and upon all of the conditions, set forth in this Declaration.

Section 8. Easement for Unintentional Encroachment. Notwithstanding any other provisions contained herein, in the event that any Home or any improvement to any Home encroaches upon any part of the Common Area, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, then a perpetual easement appurtenant to such encroaching Home shall exist for the continuance of any such encroachment on the Common Area.

Section 9. Title to Common Area. Declarant hereby covenants that it shall convey and transfer the Common Area included in and constituting a part of the Real Estate to the Association prior to Declarant's resignation as a Class B member. The Common Area so conveyed by Declarant to the Association shall, at the time of such conveyance, be subject to all easements, covenants, conditions, limitations and restrictions then of record, including, without limitation, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement, but shall be free and clear of all liens and financial encumbrances other than the lien of the then current non-delinquent installment of real estate taxes and assessments and subsequent installments thereof which shall thereafter be paid when due by the Association, other than as necessary or permitted elsewhere herein.

## **ARTICLE V** **ASSESSMENTS**

Section 1. Personal Obligations. Each Owner of a Lot, by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Area and all other expenses incurred or to be incurred by the Association for or in connection with the performance by the Association of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to, the expenses and costs of liability insurance for the Common Area and any other common property; snow removal, and trash removal (if provided by the Association); street lighting (if provided by the Association); and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and any other property that must be maintained, repaired or replaced on a periodic basis and which the Association may be obligated to maintain, and (b) special assessments for

capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in a lump sum in advance of such twelve month periods or if the Association so allows, in twelve (12) equal monthly installments on the first day of each and every month or, if so determined by the Association, in such other periodic installments as may be specified by the Association. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of the applicable county. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Home.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property, to construct, manage, improve, maintain, repair and administer the Common Area and Amenities contracting for services for the benefit of the Owners, and for payment of any other costs and expenses incurred by the Association in connection with the performance of its duties, obligations and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area, Amenities and any other property that must be replaced on a periodic basis. Such reserve fund shall be maintained out of the regular annual assessments.

Section 3. Annual Assessments. From and after the Effective Date, the maximum annual assessments may be increased each year not more than ten percent (10%) above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of membership. From and after the Effective Date, the maximum annual assessments may be increased by more than ten percent (10%) above the maximum assessments permitted for the previous year by a vote of two thirds (2/3) of the total votes of the Members who are voting in person or by proxy, at a meeting called for this purpose. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby.

Section 4. Special Assessments In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, or maintenance of the Common Area, Amenities or other such property/improvements for which the Association is responsible, provided that any such assessment shall have the assent of not less than two thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Reserve Fund Contribution. Each time a Lot is transferred, conveyed or otherwise changes ownership, a Reserve Fund contribution from the incoming owner in the amount of \$100.00 is required and shall be collected at the time the ownership is transferred. After the Applicable Date, the Reserve Fund Contribution may be changed only upon approval of two-thirds (2/3) of the members. Such contributions shall be deposited in an account separate from the operating funds of the Association and shall be allocated to cover periodic or extraordinary expense of the community, as determined at the discretion of the Board of Directors. Each time a membership unit or ownership of a Lot is transferred,

conveyed, or otherwise changes ownership, a Reserve Fund contribution from the incoming member/owner in the amount of \$100 is required and shall be collected at the time such ownership is transferred. Such contributions shall be deposited in an account separate from the operating funds of the Association.

Section 6. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Article V, Sections 3 or 4, shall be sent to all Members not less than ten (10) days or more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast sixty percent (60%) of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Annual assessments shall be collected in a lump sum or, if the Association so chooses, on a monthly basis (or other periodic basis, if and as determined by the Board) and special assessments shall be collected as the Board determines.

Section 8. Commencement of Initial Annual Assessments. The annual assessments provided for herein shall commence as to each Lot subjected to this Declaration on the first day of the month following the month of recording of the instrument by which such Lot is conveyed to an Owner who will occupy the single family home constructed upon such lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year for which such assessment is imposed.

Section 9. Commencement of Annual Assessments By November 1st of each year the Board shall fix the amount of annual assessments against each Lot for the following calendar year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 10. Proof of Payment Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's or Mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

Section 11. Non-Payment of Assessments. Any assessments or any other amount due the Association by an owner which are not paid when due shall be deemed delinquent. If not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of eighteen percent (18%) per annum and shall become a continuing lien in favor of the Association on the Lot against which assessed and the improvements thereon, and the Association may bring an action at law or in equity against the person personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of owed and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

Section 12. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment,

the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the person personally obligated to pay the same and a description of the Lot. Such a notice shall be signed by an officer of the Association and it or a notice of lien or adverse claim thereof may be recorded in the office of the Recorder of Hamilton County, Indiana. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency. Such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the lien shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof. The Association shall, upon written request, report to any Mortgagee of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due; provided, however, that such Mortgagee first shall have furnished to the Association written notice of the Mortgage under which it claims and its notice address.

Section 13. Assignment. The Association may assign the lien rights provided herein to any provider of Intranet or Security Monitoring Services, so long as the services are provided for the benefit of the Owners.

Section 14. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage ("First Mortgage") and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or remedies provided in a First Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming payable or from the lien thereof or shall relieve the person personally obligated to pay the same or from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments, the lien for which is extinguished by reason of this provision, may be reallocated and assessed to all Lots as a common expense.

Section 15. Limitations on Assessments Owed by Declarant. Notwithstanding anything to the contrary contained herein, neither Declarant nor homebuilders constructing the initial dwelling unit on a Lot shall be obligated to pay, as to any and all Lots owned by them from time to time, any assessments (whether regular annual assessments or special assessments) payable hereunder by Owners.

## **ARTICLE VI** **ARCHITECTURAL CONTROLS**

Section 1. The Architectural Review Board. An Architectural Review Board ("Architectural Review Board") consisting of two (2) or more persons shall be appointed by the Declarant. Following the end of the Development Period, the Architectural Review Board shall be appointed by the Board of Directors.

Section 2 Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location, and maintenance of the Property and of improvements thereon in such manner as to preserve

and enhance values and to maintain a harmonious relationship among structures, improvements, and the natural vegetation and topography.

Section 3. Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting, or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board of a Lot Development Plan therefore. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Home, building, fence, wall, swimming pool, tennis court, patio or other structure on a Lot, or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Home or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any person other than Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the community, and no Owner shall undertake any construction activity within the Development unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this Section (3), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches. The Declarant shall have the sole responsibility of approving the design of the initial Home constructed on a Lot.

Section 4. Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such Plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant, or, if Declarant is no longer a Class B member, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of the Architectural Review Board to act on the Plan within the specified period) may be appealed to the Board of Directors, which may reverse or modify such decision (including approval of a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such Plan within the specified period) by a two thirds vote of the Directors then serving.

Section 5. Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in Section 2 to the extent that such design guidelines and standards are not in conflict with the specific provisions of the Declaration. Any such guidelines or standards may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

Section 6. Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established pursuant to Section 5 in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In--disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Architectural Review Board if resubmitted.

Section 7. Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of Section 6, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceedings challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Review Board, could only conclude that such determination constituted an abuse of discretion.

## **ARTICLE VII** **OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 1. The Common Area. The Association, subject to the rights and obligations of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Area, Streets (except as otherwise provided for by virtue of the dedication of the Streets in accordance with Article XVI, Section 2.B(iii)), Amenities and all improvements (if any) thereon (including equipment related thereto), and shall keep the same in good order and repair. Such responsibility (to the extent the same is not otherwise herein declared or stated to be the obligation or responsibility of Owners of Lots) shall include, but not be limited to, the maintenance and repair of the Common Area, Streets (except as otherwise provided for by virtue of the dedication of the Streets in accordance with Article XVI, Section 2.B(iii)), Amenities, and all other improvements or material located within or used in connection with the Common Area, except for the maintenance of the Intranet Network and any other Utility Services installed in the Common Area and dedicated rights-of-way by Declarant or provided by Declarant. The Association shall maintain the fences installed by the Declarant (except where installed pursuant to Article IV, Section 2(g)) as well as the landscaping fronting, which shall include walls and signage installed by the Declarant in either the Common Area or the Landscape Easement.

Section 2. Services. The Association may obtain and pay for the services of any persons or entities, to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property, the enforcement of this Declaration or any proceedings or controversy in which the Board determines it is necessary or advisable to have professional advice. The Association may arrange with others to furnish trash collection and other common services to each Lot. Any agreement for professional management of the Property, must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice and by either party for cause upon thirty (30) days or less written notice and shall have a maximum contract term of one (1) year, but may be renewable by agreement of the parties for successive one-year terms.

Section 3. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot, provided that an Owner may delegate his right of enjoyment of such personal property (if any) to any resident of his Lot. A transfer of title to a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under

foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Lot.

Section 4. Hazard and Liability Insurance for Common Property. The Association shall procure extended coverage insurance on the Common Area, reconstruction of such insurable Common Areas and other common property, including insured improvements. The cost of such insurance shall be assessed as provided in Article V above. Holders of First Mortgages (“First Mortgagees”) on Homes, jointly or singly, may pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage on the lapse of a policy, for the Common Area and other common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. The Association is authorized to enter into an agreement in favor of all First Mortgagees of Homes establishing entitlement to such reimbursement.

### **ARTICLE VIII** **OWNERS’ MAINTENANCE**

Section 1. Upkeep and Maintenance. Each Owner shall be responsible for the upkeep and maintenance of his Home and all other areas, features or parts of his Lot to the extent not otherwise maintained by the Association.

### **ARTICLE IX** **GENERAL RESTRICTIONS, OBLIGATIONS AND** **RIGHTS APPLICABLE TO PROPERTY**

Section 1. Home and Lot Restrictions. No more than one Home shall be erected or maintained on each Lot. No Home shall be used for purposes other than as a single-family residence, nor shall any trade or business of any kind be carried on within a Home or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, assigned or suffered to be used for transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:

- A. The maintenance of model Homes and business and sales offices by Declarant or their designated Builders during the construction and sale periods.
- B. The maintenance of offices by the Association or its designated manager for purposes of managing of the Property.
- C. Lease, rental or use of a Home for purposes consistent with this Section.
- D. The use of a Home by an Owner for incidental office purposes to the extent permitted by applicable zoning ordinances.

Section 2. Building Setback Lines and Easements. Building setback lines and easements are established on the Plat. No building or structure shall be erected or maintained between said setback lines and the front, rear or side lot line (as the case may be) of said Lot, unless permitted by applicable zoning ordinance and not prohibited elsewhere in the Declaration. No building or structures may be placed inside of Easements.



Section 3. Garages. No garage shall be erected on any Lot which is not permanently attached to the Home, and no unenclosed storage area shall be erected. No enclosed storage area shall be erected on any Lot which is not permanently attached to the Home.

Section 4. Outbuildings. No trailers, shacks, mini barns, play houses/forts, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot, except that used by a builder during the construction of a Home, which temporary construction structures shall be promptly removed upon completion of construction of the Home.

Section 5. Driveways. Each driveway on a Lot shall be of concrete or asphalt material.

Section 6. Swimming Pools. No above-ground swimming pools shall be permitted. No in-ground pool shall be installed without the prior approval of the Architectural Review Board.

Section 7. Solar Heat Panels. No solar heat panels shall be permitted in the Property.

Section 8. Access. All Lots shall be accessed from the interior streets of the Property, except for Lots 118, 119, and 120 shown on the Plat which may be accessed directly from 161<sup>st</sup> Street.

Section 9. Fences, Yard Ornaments, & Exterior Painting. There shall be no fences, yard ornaments or exterior painting conducted without the prior approval of the Architectural Review Board. No chain link or metal fences with the exception of wrought iron are allowed, except around the swimming pool, athletic facilities and other amenity areas. No outdoor pet enclosures of any kind except for “invisible fences” (underground, electronic or otherwise) shall be permitted without the prior approval of the Architectural Review Board.

Section 10. Basketball Goals and Playground Equipment. There shall be no basketball goals or playground equipment installed without the prior approval of the Architectural Review Board.

Section 11. Trash. No Lot shall be used or maintained as a dumping ground for trash. No trash or leaves shall be burned upon a lot. Rubbish, garbage or other waste shall be kept in sanitary containers and stored within the garage of the home. All rubbish, garbage or other waste shall be regularly removed from a Lot and shall not be allowed to accumulate thereon.

Section 12. Tanks. No gas or oil storage tanks may be permanently used in connection with any Lot.

Section 13. Obstruction. There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written consent of the Association except construction materials and equipment during the construction period or except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Association. It shall be the duty of every Owner of every Lot on which any part of an open storm drainage ditch or is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair.

Section 14. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any Home or on or in any Common Area or any part thereof which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay,

without the prior written consent of the Association. Nothing shall be done or kept on any Lot or in any Home or on or in any Common Area or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area or any part thereof or of the exterior of the Property and buildings thereon shall be committed by any Owner or any invitee or tenant of any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees or tenants, to the Association and other Owners. No noxious, destructive or offensive activity shall be allowed in any Homes, on any Lots or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to or disturb the peace, comfort and serenity of any other Owner or any other person at any time lawfully residing on the Property.

Section 15. Animals. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot, except that household pets may be kept on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days' written notice from the Board, and provided further, that upon written request of twenty-five percent (25%) of the voting power of the Association, the Board of Directors shall have the authority to, and shall order the removal of, any pet.

Section 16. Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, woodpiles, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless approved by the Architectural Review Board. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may not be kept outside. Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini-bikes, mopeds, unlicensed or inoperable vehicles, or any other vehicles of any description other than normal passenger automobiles (including station wagons and small trucks such as pickups, sport utility vehicles and vans) shall at any time be stored or parked on any Lot outside of a garage, or on any street within the Property, or on any part of the Common Area, either permanently or temporarily.

Section 17. Signs. No signs of any kind (other than designations, in such styles and materials as the Association shall by rule or regulation approve, of street addresses and names of occupants) shall be displayed to the public view on any Lot, except that a "For Sale" or "For Lease" sign may be displayed on a Lot which is being offered for sale or lease provided that it is in such form, style and location as the Board may require, and except that Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the development during the construction and sale periods.

Section 18. Satellite Dish. A satellite dish or other means of receiving the transfer of wireless technology shall be allowed on the Property if, and only if, installed, operated and maintained in full compliance with the standards and rules promulgated by the Architectural Review Board.

Section 19. Rentals. Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such

documents shall be a default under the lease. All leases shall be in writing. No Home or Lot may be leased for a period of less than 90 days. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his Home.

Section 20. Rules and Regulations. The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the use and enjoyment of the Property, including the Common Area, as the Board in its sole discretion deems appropriate or necessary which rules shall not limit the ability of the Members to use each and every Common Area.

Section 21. Occupancy or Residential Use of Partially Completed Home Prohibited. No Home shall be occupied or used for residential purposes or human habitation until it has received a certificate of occupancy issued by the City of Westfield.

Section 22. Other Restrictions. The Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Property, including, without limitation, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement, all of which are incorporated herein by reference.

Section 23. Upkeep and Maintenance. It shall be the responsibility of each owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition of his Home and Lot. Each Owner shall be responsible for the upkeep and maintenance of his Home and all other areas, features or parts of his Lot and any area between the sidewalk and any public street adjacent to the Owner's lot to the extent not otherwise maintained by the Association.

Section 24. Right to Perform Certain Maintenance. In the event that the Owner of any Lot in the Property shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of this Declaration, Declarant shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of this Declaration. The cost incurred to perform the maintenance shall be assessed against the Owner and collected accordingly. Declarant or its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder. Upon the Applicable Date, the Association shall succeed to and be vested with the rights of the Declarant as provided for in this Section.

Section 25. Development and Sale Period. Nothing contained in this Article IX shall be construed or interpreted to restrict the activities of Declarant in connection with the development of the Property and sale of Lots. Declarant shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities upon any portion of the Property at any time owned or leased by Declarant, as in the sole opinion of Declarant may be reasonably required, or convenient or incidental to, the development of the Property and sale of the Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 26. Mailboxes. Each Home shall be provided a mailbox by the home builder at the time each Home is constructed. All mailboxes shall be of the same design. No mailboxes shall be installed or replaced without the prior approval of the Architectural Review Board.

Section 27. Parking. No overnight parking by residents is permitted on public streets. Guests of residents are permitted to park overnight, but not for more than three consecutive days and a total of ten days per calendar year. Parking is prohibited at all times within alleys.

Section 28. Clotheslines. Outdoor clotheslines are prohibited.

Section 29. Drilling and Exploration. No oil drilling, oil development operations or refining, quarrying, or mining operation of any kind shall be permitted upon or within the Real Estate, nor shall oil wells, tanks, tunnels, mineral excavations, nor shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

## **ARTICLE XI** **RIGHTS FOR THE PROTECTION OF FIRST MORTGAGEES**

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage on a Lot or Home and the address of such party (a holder of a First Mortgage on a Lot or Home who has so requested such notice shall be referred to herein as an “eligible mortgage holder” and an insurer or governmental guarantor of a First Mortgage on a Lot or Home who has so requested such notice shall be referred to herein as an “eligible insurer or guarantor”), any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(A) Any condemnation loss or any casualty loss which affects a material portion of the project or any lot or Home on which there is a First Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(B) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws or Articles of Incorporation by an Owner of a Lot or Home subject to a First Mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 60 days;

(C) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(D) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article; and

(E) Any default in the performance by the Owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days.

Section 3. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot or Home will not be subject to any right of first refusal or any similar restriction in favor of the Association or other Owners.

Section 4. Liability for Unpaid Assessments. Any First Mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in its First Mortgage or by foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale in connection with any such First Mortgage shall not be liable for the unpaid assessments of the Lot which were payable prior to the acquisition of title to or possession of such Lot by the First Mortgagee.

Section 5. Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the First Mortgagees of the Lots or their assigns (based upon one vote for each First Mortgage owned), and at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Owners (other than any sponsor, developer, or builder, including the Declarant of the Lots (based upon one vote for each Lot owned) have given their prior written approval, neither the Association nor the Owner shall be entitled to:

(A) Terminate the legal status of the project (except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation);

(B) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed such a transfer,

(C) Use hazard insurance proceeds for losses to any Common Area or other common property for other than the repair, replacement or reconstruction of such common property;

(D) Add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (1) voting;
- (2) assessments, assessment liens or subordination of such liens;
- (3) reserves for maintenance, repair and replacement of the Common Area (or exterior maintenance of Homes if applicable);
- (4) insurance or Fidelity Bonds;
- (5) rights to use of the Common Area;
- (6) responsibility for maintenance and repair of the several portions of the project;
- (7) boundaries of any Lot;
- (8) the interests in the general Common Area;
- (9) leasing of Lots or Homes;

- (10) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot or Home;
- (11) any provisions which are for the express benefit of First Mortgage holders, eligible mortgage holders or eligible insurers or guarantors of First Mortgages on Lots, except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation or with respect to a reallocation of interests in the Common Area which might occur pursuant to any plan of expansion or phased development contained in this Declaration; or

(E) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof pertaining to the architectural design or the exterior appearance of Home(s).

For purposes of this Section, an addition or amendment to such documents shall not be considered material if it is made (I) for the purpose of correcting clerical, typographical or technical errors, (II) for clarification only, (III) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (IV) to induce any of the agencies or entities mentioned or referred to in subsection III herein above to make, purchase, sell, insure or guarantee First Mortgages covering Lots and Home(s), or (V) to bring such documents into compliance with any statutory requirements, and any such addition or amendment to such documents which is so considered not to be material may be made by Declarant acting alone and without the consent, approval or joinder of the Owners, the Association, any First Mortgagees, any other mortgagees or any other person.

An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within 30 days shall be deemed to have approved such request.

Section 6. Examination of Books and Records. First Mortgagees and holders, insurers and guarantors of First Mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the By-Laws.

Section 7. Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or other common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area or other common progeny, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 8. Designation of Representative. Any holder of a First Mortgage on a Lot or Home may designate a representative to attend meetings of members, but no such representative shall have any voting privileges unless such voting privileges have been granted to the holder of such First Mortgage by the Owner of the Lot involved.

Section 9. Distribution of Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the By-Laws shall be construed as giving to the Owner or to any other party priority over any rights of First Mortgagees of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area or other common property.

## ARTICLE XII INSURANCE

Section 1. Maintenance of Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance, all of which shall be issued by insurance carriers meeting at least the minimum requirements of, and shall otherwise comply with the requirements of the agencies and entities mentioned or referred to herein, to-wit

(A) Master or blanket type of policy of fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorm and water damage) insuring the Common Area (including all of the fixtures installed therein). Said policy shall afford, as a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement,
- (2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

The name of the insured under such policies must be set forth therein substantially as follows:

*"SERENADE HOMEOWNERS ASSOCIATION, INC.  
for the use and benefit of its individual Owners".*

The policies may also be issued in the name of an authorized representative of the Association, including any insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or insurance Trustee), as a trustee for each Owner and each such Owner's First Mortgagee. Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of the policy with respect to the Common Area equally with each other Lot. Policies must provide for the recognition of any insurance Trust Agreement.

If reasonably available, such policies shall include:

- (1) Agreed Amount Endorsement (or like endorsement);
- (2) Inflation Guard Endorsement;

- (3) Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the project is subject to a construction code provision which would become operative and require changes to undamaged portions of the improvements, thereby imposing significant costs in the event of partial destruction of the project by an insured peril;
- (4) Steam Boiler Coverage (if applicable) for loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location; and
- (5) All such policies must provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.

(B) Worker's Compensation, occupational disease and like insurance (if the Association has eligible employees);

(C) Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:

- (1) covering events occurring anywhere on the Common Area (and public and private ways) or arising out of or in connection with the use, ownership or maintenance of the Common Area;
- (2) covering, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area, and legal liability arising out of lawsuits related to employment contracts of the Association, and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;
- (3) insuring each officer and member of the Board of Directors, the managing agent and each Owner and with cross liability endorsement to cover liabilities of the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the Association; and
- (4) in amounts generally required by private institutional investors for projects similar in construction, location and use. (However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence).

(D) Such other insurance as the Board of Directors may determine.



(E) All such policies must provide that they may not be changed or substantially modified by any party without at least 10 days' prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

Section 2. Owners' Individual Policies. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, his Lot, his Home, and other personal progeny, and fixtures, furniture, furnishings, and other personal property, and fixtures and other property supplied or installed by him or a previous Owner or tenant.

Section 3. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any Trustee with whom the Association may enter into any insurance Trust Agreement or any successor to such Trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Any insurance Trustee must be a corporation or association organized or authorized to do business under the laws of the State of Indiana, and authorized and permitted by its charter documents and by state law to conduct a trust business.

Section 4 Insurance Premiums. Insurance premiums for any blanket property insurance coverage, and the other insurance coverages purchased by the Association, shall be common expenses to be paid by assessments levied by the Association, and such assessments shall be held in a separate escrow account of the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

### **ARTICLE XIII** **EMINENT DOMAIN**

Section 1. Representation. The Association shall represent the Owners in any condemnation proceedings and in any negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof, and by acceptance of a deed for his, her or its Lot, each Owner appoints the Association as such Owner's agent and attorney-in-fact for such purposes. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or other trustee (such as a bank or title insurance company appointed as such by the Association), for the use and benefit of the Owners and their Mortgagees as their interests may appear.

Section 2. Reconstructions. In the event of a partial taking of the Common Area (or conveyance in lieu thereof) the Association shall promptly cause the remaining portions of the Common Area to be restored functionally and aesthetically to reasonably the same condition as before the taking, using so much of the proceeds of such taking for such purpose as shall be reasonably necessary. In the event of a total taking of the Common Area (or conveyance in lieu thereof), and the project is terminated by the election herein above required, the proceeds shall be allocated equally among each Lot, payable jointly to the Owners and mortgage holders thereof.

### **ARTICLE XIV** **GENERAL PROVISIONS**

Section 1. Jurisdiction Any Court of general Jurisdiction in Hamilton, Indiana has jurisdiction to over any issue arising from, or related to, this Declaration.

Section 2. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties in one scheme. No such merger or consolidation, however, shall affect any revocation, change or additions to the covenants established by this Declaration within the Property, except as herein above provided.

Section 3. Severability. Invalidation of any one or more of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Notices. Any notice required to be sent to any Member of the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appearing on the records of the Association at the time of such mailing.

Section 5. Headings: Interpretation. All headings in the Declaration are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Declaration. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and *vice versa*, as the context requires. The introduction paragraph and recitals set forth above shall form a part of this Declaration. The term “including” or terms of similar import, shall mean “including, without limitation” of its equivalent whenever used herein, and shall not limit the generality of any description preceding such term. Reference to any agreement, document or instrument means such agreement, document or instrument, as amended, supplemented or modified and in effect from time to time in accordance with the terms thereof. The term “or” is not exclusive. Terms such as “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this Declaration as a whole, and not to any particular article, section, paragraph or provision.

Section 6. Construction. In the event of an apparent conflict between this Declaration and the By-Laws, the provisions of this Declaration shall govern.

Section 7. Complete Agreement. This Declaration, the schedules and exhibits hereto, together with all other agreements, documents, releases, schedules, exhibits and other writings incorporated into this Declaration shall constitute the complete and exclusive statement of agreement among the parties with respect to their subject matter.

Section 8. Obligation of Good Faith. The parties shall, in the performance of all obligations under this Declaration be obligated to act in good faith with one another in the performance of their duties hereunder; provided, however, that this provision shall not be construed to limit or lessen any higher duties which may exist between the parties by contract, operation of law or otherwise, to the extent any such higher duties may exist.

**ARTICLE XV**  
**AMENDMENT**

Except as hereinafter provided, this Declaration may be amended during the initial term provided above by an instrument signed by not less than seventy-five percent (75%) of the Owners and thereafter by an instrument signed by not less than sixty percent (60%) of the Owners. Certain amendments also require additional approval as specified in this Declaration.

The foregoing notwithstanding, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval, as the case may be, so long as Declarant owns a Lot or Lots. The foregoing notwithstanding, this Declaration may also be amended by Declarant at any time prior to the Applicable Date if it has an ownership interest in the Property.

**ARTICLE XVI**  
**PARTS OF THE PROPERTY**

Section 1. Granting of Permits, Licenses and Easements. The Association is granted the authority to grant permits, licenses and easements over the Common Areas for roads, access and other purposes necessary for the proper operation of the Development as provided herein; provided, however, that the Association and each Owner shall be prohibited from granting permits, licenses and easements over any Lot, Common Area, or any other portion of the Development for any Community Intranet Services, Security Monitoring Services, Communication Services or Utility Services without the prior written consent of the Declarant, or the designees, successors or assigns thereof, which may be granted or withheld in their sole discretion. In no event shall the Association or an Owner impair or limit the Development's Common Services Easements and Restrictions (as defined in Article XVI, Section 2.A hereof) or the operations of the Community Intranet Services, Security Monitoring Services, any other Communication Services or Utility Services derived thereof.

The Declarant shall retain and reserve and is hereby granted the authority to grant permanent easements for the use and enjoyment of the Common Area or portions thereof to any Owners, their families, tenants, guests, and homeowner associations and members of such homeowner associations of real estate adjacent or contiguous to the Property (collectively the "Adjacent Owners") and to provide for the cost of maintenance and operation thereof including payments of joint assessments by such Adjacent Owners upon terms and conditions the Declarant deems appropriate ("Adjacent Owners Easement and Maintenance Agreement").

Section 2. Reservation of Rights to the Use of the Property.

A. Plat Easement Areas. In addition to such other easements created in this Declaration or in a supplemental declaration, and as may be created by the Declarant pursuant to other written instruments recorded in the Office of the Recorder of Hamilton County, Indiana, the Property shall be subject to drainage easements, sanitary sewer easements, utility easements, and dedicated streets, either separately or in any combination thereof, granted by the Declarant in this Declaration or by private easements. The plat legends for the location of private easements and dedicated streets merely show the location of the areas for such private easements and dedicated streets on the plats for the Development. Such areas are reserved for the use of Declarant, the Association, the Owners, private utilities, and public, quasi-public and governmental agencies, respectively, as follows:

(i) Drainage Easements. The Drainage Easements are hereby granted and created for the limited purposes of providing paths and courses for area and local storm drainage, either over land or in an adequate underground conduit, to serve the needs of the Development and adjoining ground and/or public drainage systems, and it shall be the Association's responsibility to maintain the drainage across the Common Area in the Development. The areas of the Drainage Easements are marked, either separately or in combination, on the Plat. Said areas are subject to construction or reconstruction solely to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage on the Property, by Declarant and by the Association; provided, however, such private easement shall not confer in any way any obligation to perform such construction or reconstruction upon the Declarant or the Association. Under no circumstances shall said private easement be blocked in any manner by the construction or reconstruction of any improvement. The Owner of any Lot subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on the Lot free from obstructions so that the surface water drainage will be unimpeded. The Drainage Easement is created and reserved (i) for the use of Declarant during the Development Period (as such term is defined in this Declaration) for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Property and adjoining property and (ii) for the use of the Association and for access to and maintenance, repair, and replacement of such drainage system. Drainage swales, (ditches) located within Drainage Easements shall not be altered, dug out, filled in, tiled in or otherwise changed without the written consent of the Hamilton County Drainage Board or any other governmental authority having jurisdiction over drainage on the Property ("Drainage Board"). Owners must maintain these swales as sodded grass ways or other non-eroding surfaces. Owners violating the Drainage Easement will be subject to action by the Drainage Board which may include the Drainage Board restoring such swale to the proper state which cost shall be the responsibility of the Owner. There is a part of the Property on the Plat marked "Common Area." The Common Area shall be used (i) for storm water retention drainage purpose; (ii) for the aesthetic and visual enjoyment of the Owners of Lots and (iii) following the end of the Development Period, for such purposes allowed herein.

(ii) Sewer Easement. The Sewer Easements are granted and created for the exclusive use of the sewer utility having jurisdiction over the sanitary waste disposal system of said town, city and/or county designated to serve the Development for the sole purpose of installation and maintenance of sewers that are part of said system. The areas of the Sewer Easements are marked, either separately or in combination, on the Plat. Each Owner of a Lot must connect with any public sanitary sewer available. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant, its designees, successors or assigns; provided, however, such easements shall be subject to and include, without limitation, Common Services Easements and Restrictions (as described in Article XVI, Section 2.A hereof).

(iii) Dedicated Streets. The dedicated rights-of-way (denoted "R/W" on the plats and plans as a "Drive", "Place", "Court" or "Street" with a "R/W", (hereinafter referred to as the "Dedicated Streets") as shown on the Plats and Plans shall be subject to a limited dedication to the public for only roadway purposes by specific notation on the Plat or by separate instrument.

(iv) Utility Easements. Utility Easements shall be granted and created by separate private utility easements granted and conveyed to each private or public utility selected by the Declarant in its sole and complete discretion. The areas of Utility Easements are marked, either separately or in combination, on the Plat. The Utility Easement areas are created for the exclusive use of the Declarant, its designees, successors or assigns, for the installation and maintenance of Communication Services and Utility Services as the Declarant may deem necessary for the development of its sole and complete

discretion.

(v) Use Easements. Declarant reserves, creates, establishes, promulgates, and declares a non-exclusive, perpetual, appurtenant easement over certain Lots as noted on the Plat (the “Burdened Lot” with the Owner thereof, the “Burdened Lot Owner”) for the benefit of the Owner of the adjacent Lot (the “Benefitted Lot” with the Owner thereof, the “Benefitted Lot Owner”), an easement of encroachment of a minimum of four feet (4’) (with the actual dimension to be depicted on the Plat depicting the Benefitted Lot and Burdened Lot) adjacent to each garage (the “Use Easement”, with such area of the Use Easement defined as the “Use Easement Area”) to permit the Owner of the Benefitted Lot to enter the Burdened Lot for purposes of (i) having enhanced access to the dwelling upon the Benefitted Lot and (ii) conducting landscaping activities upon the Benefitted Lot and upon the Use Easement Area. The Use Easement is further described under the “Dedication” on the Plat and depicted for each applicable Lot on the Plat. Additionally, the following terms apply to the Use Easements:

(a) The Benefitted Lot Owner shall have the right to use the Use Easement for landscaping, fencing, and as a general recreational and garden area. The Benefitted Lot Owner shall have (i) the obligation to maintain the Use Easement Area for such purposes, and (ii) an easement for ingress and egress in furtherance of such activities.

(b) The Benefitted Lot Owner shall not use the Use Easement Area for any other use except as specifically provided herein, including, without limitation, for constructing any Improvements (except fencing). If the Benefitted Lot Owner installs fencing within the Use Easement Area, at least one (1) gate shall be provided with the fence to allow the Burdened Lot Owner access to the Use Easement Area.

(c) The Burdened Lot Owner shall have the right at all reasonable times to enter the Use Easement Area including crossing the Benefitted Lot for such entry to perform work related to usage of the Burdened Lot.

(d) The Burdened Lot Owner shall have the right to drainage over, across, and upon the Use Easement Area for water resulting from the normal usage of the Burdened Lot Owner, and the Benefitted Lot Owner shall maintain the Use Easement Area in such manner that will not interfere with such drainage.

(e) The Benefitted Lot Owner shall not attach any object to a wall, building, or other Improvement (except fencing) upon the Burdened Lot.

(f) The Benefitted Lot Owner, except as otherwise provided herein, shall have the exclusive use of the surface of the Use Easement Area subject to the rights of any other easement holders, including, without limitation, the Association or the Declarant and subject to minor encroachments, if any, existing at the time of the creation of the Use Easement, including, without limitation, overhangs, eaves, basement window walls, and other such items, over the Use Easement Area that are part of the dwelling situated upon the Burdened Lot.

(g) Generally, by way of illustration and not limitation, the Use Easement shall run from the front corner of the adjoining Burdened Lot to the back corner of the Burdened Lot and the width of such easement shall commence 12” from the dwelling on the Burdened Lot and continue to the property line with the Benefitted Lot.

(vi) Subordination and Limitation. The easements referenced in this Article XVI, Section 2.B shall be subordinate and subject to, without limitation, the Common Services Easement and Restrictions (as described in Article XVI, Section 2.A hereof).

## **ARTICLE XVII** **ENFORCEMENT**

Section 1. Enforcement. Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Declarant and Association, any person or entity having any right, title or interest in the Real Estate (or any part thereof), or any Person having any right, title or interest in a Lot which is now or hereafter made subject to the Declaration, and all persons or entities claiming under them, against the Person (including the Association) violating or threatening to violate any such covenants or restrictions Enforcement of these covenants and restrictions may include an attempt to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants; and, failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the court shall be assessable against and payable by any persons violating the terms contained herein.

Section 2. Remedies. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and reasonable attorneys' fees incurred by any party successfully enforcing these covenants and restrictions; provided, however, that neither the Declarant nor the Association shall be liable for damages of any kind to any Person for failing to enforce the provisions of this Declaration.

## **ARTICLE XVIII** **ANNEXATION OF ADDITIONAL PROPERTY**

### Section 1. Annexation without Approval of Owners

- A. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property adjacent to the Development as the same exists from time to time whether in fee simple or leasehold (the "Additional Land"), by filing in the Recorder's Office of Hamilton County, Indiana, an amendment annexing such property. Such amendment to this Declaration shall not require the vote or approval of any Owners. Any such annexation shall be effective upon the filing for record of such amendment unless provided herein.
- B. Declarant shall have the unilateral right to transfer to any other person the said right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property to be so annexed and that such transfer is memorialized in a written, recorded instrument.
- C. The rights reserved unto this Declarant to subject Additional Land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such Additional Land to this Declaration or to the jurisdiction of the Association nor any obligation,

if subjected, to build housing of the same type, design, or materials. If such Additional Land is not subject to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose covenants and restrictions similar to those contained herein upon such Additional Land, nor shall such rights in any manner limit or restrict the use to which such Additional Land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication shall be accepted by the Association and thereafter shall be maintained by the Association as a Common Expense for the benefit of all Owners.

Section 3. Amendment. These Declarations shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" attached hereto.

Section 4. No Remonstrations. Owners are prohibited from remonstrating against efforts by the Declarant or successors to annex, rezone or plat Additional Land.

**SIGNATURES APPEAR ON THE FOLLOWING PAGE**

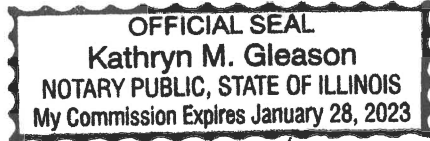
IN WITNESS WHEREOF, executed as of the Effective Date by the undersigned.

CCD SERENADE LLC

By: Theresa O. Frankiewicz  
Theresa O. Frankiewicz  
Its: Authorized Representative

STATE OF ILLINOIS )  
  )  
COUNTY OF COOK        )

SS:



Before me, a Notary Public in and for said County and State this 14<sup>th</sup> day of February, 2020, personally appeared Theresa O. Frankiewicz, Authorized Rep of the Manager of CCD SERENADE LLC, who acknowledges the execution of the foregoing instrument and consent on behalf of such entity and by its authority for the purposes set forth therein.

My Commission Expires: 01/28/2023

Katelyn M. Gleason  
Notary Public

Kendall  
My County of Residence:

KATHRYN M. GLEASON  
Printed



**EXHIBIT A**  
**Legal Description**

THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 18 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 18 NORTH, RANGE 3 EAST; THENCE SOUTH 89 DEGREES 48 MINUTES 03 SECONDS WEST (BASIS OF BEARINGS: INDIANA STATE PLANE, EAST ZONE, NAD 83) 1360.77 FEET ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER TO THE MID-POINT THEREOF, BEING THE SOUTHWEST CORNER OF SAID EAST HALF; THENCE NORTH 00 DEGREES 12 MINUTES 12 SECONDS EAST 2626.16 FEET ALONG THE WEST LINE OF SAID EAST HALF TO THE NORTHWEST CORNER THEREOF, BEING THE MID-POINT OF THE NORTH LINE OF SAID SOUTHEAST QUARTER; THENCE NORTH 89 DEGREES 50 MINUTES 51 SECONDS EAST 1358.60 FEET ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 00 DEGREES 09 MINUTES 21 SECONDS WEST 2625.04 FEET ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER TO THE POINT OF BEGINNING, CONTAINING 81.954 ACRES, MORE OR LESS.

4845-1505-0158, v. 2

# ARTICLES OF INCORPORATION

OF

## SERENADE HOMEOWNERS ASSOCIATION, INC.

The undersigned incorporator, desiring to form a corporation pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991, executes the following Articles of Incorporation:

### ARTICLE I

#### Name

Section 1.01. Name and Type. The name of this Corporation shall be SERENADE HOMEOWNERS ASSOCIATION, INC. This Corporation is a mutual benefit corporation.

Section 1.02. The address of the principal office of the Corporation is 12965 Old Meridian Street, Carmel, Indiana 46032.

### ARTICLE II

#### Purposes and Powers

Section 2.01. Primary Purposes. The purposes for which this Corporation is formed are to exercise all of the powers and privileges and to perform all of the duties and obligations of the Corporation as set forth in the Declaration of Covenants, Conditions and Restrictions and all supplements and amendments thereto ("Declaration").

Section 2.02. Additional Purposes. In addition, the Corporation is formed for the promotion of the health, safety and welfare of the residents and owners within Serenade and other non-profitable purposes that are authorized by the Act and permitted to be carried on by an organization exempt from Federal income taxation under the provisions of Section 528 of the Internal Revenue Code of 1986 (hereinafter referred to as the "Code") and the Regulations issued pursuant thereto, as amended.

Section 2.03. Specific Powers. Subject to any specific written limitations or restrictions imposed by the Act, by the Code, by other law, or by the Declaration or the Articles, and solely in furtherance of but not in addition to the purposes set forth in Section 2.01 and 2.02 of these Articles, the Corporation shall have the following specific powers:

- (a) To Manage etc. To manage, maintain, repair and replace the Common Area, and appurtenant easements, improvements and other property of every kind and nature whatsoever, real, personal or mixed, located upon the Common Area or used or held for use in connection with the business or operation of the Corporation for the

benefit and use of the members of the Corporation subject to such restraints or suspensions of use and authority and voting rights of members as are provided herein, in the By-laws and in the Declaration.

- (b) To Make Assessments. To fix, levy and collect Assessments and to enforce payment thereof by all lawful means.
- (c) To Promulgate Rules. To promulgate such rules and regulations and perform such deeds as are deemed necessary to achieve the aforesaid purposes.
- (d) To Insure. To secure from insurers licensed and approved in the State of Indiana, appropriate fire/property damage coverage, comprehensive general liability coverage and such other forms of insurance as may be deemed necessary or appropriate.
- (e) To Secure Services. To secure professional managerial services by employing a professional manager, contracting with a professional management service or entity, or otherwise, which services may include administrative, managerial, bookkeeping, legal, architectural, engineering, maintenance, repair, construction and other services.
- (f) To Acquire and Dispose of Property. To acquire by gift, purchase or other means, to own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage or otherwise encumber or dedicate for public use, real or personal property in connection with the business of the Corporation subject to the provisions of the Declaration.
- (g) To Borrow. To borrow money and, subject to the provisions of the Declaration, to give, as security therefor, a mortgage or other security interest in any or all real or personal property owned by the Corporation, or a pledge of monies to be received pursuant to the provisions of the Declaration or any Supplemental Declaration, and to assign and pledge its right to make Assessments and its rights to claim a lien therefor.
- (h) To Appoint a Fiscal Agent. To appoint any person or entity as its fiscal agent to collect all Assessments and charges levied by the Corporation and to enforce the Corporation's liens for unpaid Assessments and charges or any other lien held by the Corporation.
- (i) To Make Contracts. To enter into perform, cancel and rescind all kinds of contractual obligations, including the guarantee of the obligations and performance of others.

- (j) To Act With Others. To perform any act which the Corporation acting alone has the power and capacity to perform by acting as a partner or otherwise in association with any Person or Persons, whether legally constituted or informally organized.
- (k) To Pay. To pay all Operating Expenses, including all licenses, taxes or governmental charges levied or imposed against the property.
- (l) To Merge. To participate in mergers and consolidations with other nonprofit corporations organized for the same purpose or annex additional real estate as provided in the Declaration.
- (m) To Otherwise Act. To have and to exercise any and all powers, rights and privileges, which a corporation organized under the Act, may now or hereafter have or exercise.

Section 2.04. Limitations Upon Powers.

- (a) Earnings. No member of the Corporation shall have or receive any earnings from the Corporation, except a member who is an employee of the Corporation, in which event he may receive fair and reasonable compensation for his services as an employee; and a member may also receive payments of principal and interest at a rate not exceeding that from time to time permitted by the Act on funds loaned or advanced by him to the Corporation.
- (b) Loans to Directors. The Corporation shall make no advancements for services to be performed in the future, nor any loan of money or property to any director or officer of the Corporation.
- (c) Dissolution. In the event of dissolution of the Corporation, all assets remaining after payment of all debts of the Corporation, including advances and loans of members of the Corporation, and, if so authorized by the Board of Directors, distribution to members of the Corporation of such amounts as may be authorized by the Act, shall be dedicated by the Board of Directors to an appropriate public agency to be used for purposes similar to those for which this corporation was organized. In the event such dedication is refused acceptance, such assets shall be transferred by the Board of Directors to the State of Indiana or any instrumentality or subdivision thereof exclusively for public purposes, or to any nonprofit corporation whose purposes are substantially the same as those of the Corporation and which, at the time of transfer, is exempt from Federal taxation under Sections 501(c)(3), 501(c)(4) or 528 of the Code of the corresponding provisions of any future United States Internal Revenue Law. Any such assets not so dedicated or transferred by the Board of Directors shall be disposed of in accordance with the Act. No member, director or officer of the Corporation, or any private individual, shall be entitled to share in the distribution

of any of the assets of the Corporation on dissolution of the Corporation, except as otherwise provided in these Articles or in the Act.

(d) Prohibited Activities.

- (i) No part of the net earnings of the Corporation shall inure to the benefit of any member, director or officer of the Corporation, or to any private individual;
- (ii) No substantial part of the activities of the Corporation shall be devoted to attempting to influence legislation by propaganda or otherwise within the meaning of the prospective provisions of the Code;
- (iii) The Corporation shall not directly or indirectly participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of, or in opposition to, any candidate for public office;
- (iv) Notwithstanding any other provision of these Articles, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by any organization exempt from Federal taxation under Section 528 of the Code and Regulations issued pursuant thereto, as amended, or the corresponding provisions of any future United States internal revenue law, if the effect thereof is to subject the gross income of the Corporation to federal income taxation at rates established for corporations engaged in business for profit unless the purposes of the Corporation set forth in Section 2.01 of these Articles cannot otherwise be achieved.

### **ARTICLE III**

#### **Period of Existence**

Section 3.01. Period of Existence. The period during which the corporation shall continue is perpetual.

### **ARTICLE IV**

#### **Registered Agent and Registered Office**

Section 4.01. Registered Agent. The name and address of the Registered Agent in charge of the Corporation's principal office is Roger Foster, 12965 Old Meridian Street, Carmel, Indiana 46032.

Section 4.02. Registered Office. The post office address of the registered office of the Corporation is 12965 Old Meridian Street, Carmel, Indiana 46032.

## ARTICLE V

### Membership

Section 5.01. Classes of Membership. The Corporation shall have two (2) classes as members as follows:

- (a) Class A. Every Person who is an Owner shall be a Class A member of the Corporation. Class A membership shall be appurtenant to and may not be separated from the ownership of a Lot or Parcel.
- (b) Class B. The Declarant shall be a Class B member. No other Person, except a successor to substantially all of the interest of the Declarant in the Development Area, shall hold a Class B membership in the Corporation.

Section 5.02. Voting Rights.

- (a) Class A Members. Each Lot or Parcel shall have appurtenant thereto one (1) vote which may be cast by the Owners thereof who are present in Person or proxy pursuant to the voting procedures established in the By-Laws.
- (b) Class B Members. The Class B member, if present, in Person or by proxy, shall be entitled to five (5) votes for each Lot owned or platted by the Class B member.
- (c) Casting of Votes. Members who are not natural persons shall designate by written notice to the Secretary of the Corporation the name of an individual who is authorized to exercise the right of such Member to vote. The name of such individual shall be kept on the records of the Corporation and may be changed only by written notice to the Secretary.
- (d) Tabulation of Votes. In any matter upon which a vote of the Members is required or allowed, the votes of Class A members and the Class B member shall be totaled and considered as though there were a single class of membership.

Section 5.03. Termination of Membership.

- (a) Class A Members. Membership in the Corporation shall lapse and terminate when a Class A member ceases to be an Owner.
- (b) Class B Member. The Class B membership shall cease and terminate upon the first to occur of (a) the date upon which the written resignation of the Class B members such is delivered to the resident agent of the Association; (b) one hundred twenty (120) days after ninety-five percent (95%) of the Lots in the Development Area have been conveyed to Owners other than Declarant; or (c) ten (10) years after the

date of recording of the first conveyance of a Lot to an Owner other than Declarant (the applicable date being herein referred to as the "Applicable Date").

Section 5.04. Suspension of Membership Rights. No Class A or Class B member may be expelled from membership in the Corporation for any reason. The Board of Directors shall have the right to suspend the voting rights of a Class A member for a period during which any Assessment or charge owed by the Member remains unpaid in excess of thirty (30) days.

Section 5.05. Meetings of Members. All meetings of the Members shall be held at such place within the State of Indiana as may be designated by the Board of Directors pursuant to the provisions of the By-Laws. Notice of meetings need not be given to Associate Members if notice thereof is given to the Members appointing such Associate Members.

Section 5.06. No Preferences, etc. There shall be no other preferences, limitations, or restrictions with respect to the relative rights of the Members.

## **ARTICLE VI**

### **Directors**

Section 6.01. Number of Directors. The initial Board of Directors of the Corporation shall consist of at least three (3) members. The number of Directors of the Corporation shall be specified from time to time in the By-Laws. If the By-Laws fail to specify the number, then the number shall be five (5).

Section 6.02. Names and Post Office Addresses. The names and post office addresses of the initial members of the Board of Directors shall be kept on file by the Secretary of the Association.

## **ARTICLE VII**

### **Incorporator**

Section 7.01. Name and Address of Incorporator. The name and post office address of the incorporator is Roger Foster, c/o CCD Serenade, LLC, 12965 Old Meridian Street, Carmel, Indiana 46032.

## **ARTICLE VIII**

### **Statement with Respect to Property**

Section 8.01. Property of Corporation. The Corporation, upon its incorporation, has no property of value.

## **ARTICLE IX**

### **Provision for Regulation and Conduct of the Affairs of the Corporation**

Section 9.01. Management of Corporation. The affairs of the Corporation shall be managed by the Board of Directors.

Section 9.02. Code of By-Laws. The Board of Directors of the Corporation shall have the power, without the assent of the Members, to make, alter, amend, or repeal the By-Laws.

Section 9.03. Officers. The officers of the Corporation shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as may be prescribed by the By-Laws or prescribed by resolution of the Board of Directors in the manner specified in the By-Laws. The offices of President and Secretary shall not be occupied by the same Person.

Section 9.04. Initial Board. The initial Board of Directors, named in Section 6.01 hereof, shall serve as the Board of Directors of the Corporation until the Applicable Date and, in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by an individual appointed by Declarant. Any such individual appointed by Declarant shall thereafter be deemed a member of the Initial Board. Prior to the Applicable Date, the Declarant may appoint up to fourteen (14) Class A members to serve on the Initial Board.

Section 9.05. Term of Office of Directors and Officers. Each officer and director shall hold his office for the term specified in the By-Laws, but no term shall end until a successor is elected and qualified for the office to be vacated.

Section 9.06. Removal of Member of the Board of Directors . After the Applicable Date, any member of the Board of Directors may be removed or replaced, with or without cause, at a meeting of the Members called for such purpose by the affirmative vote of two-thirds (2/3) of all the votes allocated to Members. Prior to the Applicable Date, any Director may be removed by Declarant.

Section 9.07. Amendment of Articles of Incorporation. The Corporation reserves the right to amend, alter, change or repeal any provisions contained in the Articles or any amendment hereto, in any manner now or hereafter prescribed or permitted by the Act or any amendment thereto; but such power of amendment does not authorize any amendment that would permit any part of the net earnings of the Corporation to inure to the benefit of any private individual, that would modify the provisions of Section 2.04 if such modification would have the effect of disqualifying this Corporation as an organization exempt from Federal income taxation under the provisions of Section 528 of the Code, as amended, or such equivalent provision as may hereafter exist from time to time, or that would be in conflict with the provisions of the Declaration or any Supplemental Declaration. While the Declarant owns any Lots any amendments to the Articles require approval by the Declarant.



Section 9.08. Non-Liability. No member or Director of the Corporation shall be liable for any of its obligations.

Section 9.09. Consent Resolutions. Any action required or permitted to be taken at any meeting of the members or of the Board of Directors may be taken without a meeting if, prior to such action a written consent to such action is signed by all members or all Directors, as the case may be, and such written consent is filed with the minutes of the proceedings of the members or of the Board.

Section 9.10. Indemnification. The Corporation shall, and hereby does, indemnify each Director, officer, former Director, and former officer of the Corporation, and each person who may serve or may have served at its request as a director or officer of any other corporation, against expenses actually and reasonably incurred by him in connection with the defense of any civil action, suit or proceeding in which he is made or threatened to be made a party by reason of being or having been a director or officer, except in relation to matters as to which he is adjudged in the action, suit or proceeding to be liable for negligence or misconduct in the performance or duty to the Corporation.

Section 9.11. Conflicting Provisions. Any further provisions consistent with the Articles of Incorporation and the laws of this state, for the regulation and conduct of the affairs of the Corporation, and creating, defining, limiting or regulating the powers of this Corporation, of the Directors or of the members, may from time to time prescribed by the By-Laws of the Corporation. If there is any conflict between these Articles and the Declaration, the Declaration shall control. If there is any conflict between these Articles and the By-Laws, these Articles shall control.

## **ARTICLE X**

### **Distribution of Assets on Dissolution or Final Liquidation**

The Corporation may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution or liquidation of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Corporation was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, Corporation, trust or other organization to be devoted to such similar purposes.

## **ARTICLE XI**

### **Definitions**

Section 11.01. Terms. The following terms, as used in these Articles, and in the By-Laws, unless the context clearly requires otherwise, shall mean the following:

- (a) "Act" means The Indiana General Nonprofit Corporation Act of 1991, as amended from time to time.
- (b) "Applicable Date" means the date the Class B membership terminates as specified in Section 5.03(b) of these Articles.
- (c) "Articles" means the Articles of Incorporation of the Corporation, as amended from time to time.
- (d) "Assessment" means all sums lawfully assessed against the Members by the Corporation or as declared by the Declaration, any Supplementary Declaration, the Articles or the By-Laws.
- (e) "Board of Directors" means the governing body of the Corporation.
- (f) "By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.
- (g) "Corporation" means Serenade Homeowners Association, Inc., an Indiana nonprofit corporation.
- (h) "Declaration" means the Declaration of Covenants, Conditions and Restrictions of Serenade, as recorded or to be recorded in the office of the Recorder of Hamilton County, Indiana.
- (i) "Development Area" means the real estate described in Exhibit A to the Declaration.
- (j) "Declarant" means CCD Serenade, LLC , its successors and assigns to its interest in the Development Area other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicates an intent that the grantee assumes the rights and obligations of Declarant).
- (k) "Initial Board" means those individuals appointed by Declarant as Directors pursuant to the power granted to Declarant in Section 9.04 of these Articles.
- (l) "Lot" means a platted lot as shown on a Plat.
- (m) "Member" means a Class A or Class B member of the Corporation and "Members" means Class A and Class B members of the Corporation.

- (n) "Operating Expenses" means expenses of administration of the Corporation and expenses for the upkeep, maintenance, repair and replacement of the Community Area and other Property.
- (o) "Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot or Parcel except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.
- (p) "Parcel" shall mean any area of land defined on the recorded plat for Serenade which shall include but not be limited to Lots, Common Areas and other specifically identified or deeded areas.
- (q) "Person" means an individual, firm, corporation, partnership, association, joint venture, trust or other legal entity, or any combination thereof.
- (r) "Plat" means a final secondary plat of a Part of the Development Area recorded in the Office of the Recorder of Hamilton County, Indiana.
- (s) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.
- (t) "Supplemental Declaration" means any supplemental declaration of covenants, conditions or restrictions that may be recorded after the Declaration.

Section 11.02. Other Terms. Any undefined term used herein or in the By-Laws shall, unless the context required otherwise, have the meaning set forth in Article I of the Declaration.

The undersigned, being the sole Incorporator designated in Article 7, does hereby adopt these Articles of Incorporation, representing by his execution hereof to the Secretary of State of the State of Indiana and all persons whom it may concern that a membership list of the Corporation for which a Certificate of Incorporation is hereby applied for has heretofore been opened in accordance with the Act and that at least one (1) person has signed such membership list.

IN WITNESS WHEREOF, the undersigned executes these Articles of Incorporation and verifies, subject to penalties of perjury, that the facts contained herein are true this \_\_\_\_\_ day of October, 2019.

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Roger Foster, Incorporator



**BY-LAWS OF  
SERENADE HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I - GENERAL**

Section 1. The name of the corporation is Serenade Homeowners Association, Inc. (hereinafter referred to as the "Association").

Section 2. The principal office of the Association shall be located at 12965 Old Meridian Street, Carmel, Indiana 46032 until and unless changed in accordance with law by the Board of Directors.

Section 3. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**ARTICLE II - DEFINITIONS**

Section 1. "Declarant" shall mean CCD Serenade, LLC, an Indiana corporation and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer under the Declaration, including, without limitation, any mortgagee acquiring title to any portion of the property (as such term is defined in the Declaration) pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

Section 2. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Serenade, as recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 3. "Association" shall mean and refer to this corporation, which is also referred to as the "Association" in the Declaration and the "Corporation" in the Articles of Incorporation of this the Association.

Section 4. "Applicable Date" shall mean and refer to the date the Class B membership terminates as specified in Section 5.03(b) of the Articles of Incorporation of this Association.

Section 5. All of the terms as defined and used in the Declaration shall have the same meanings in these By-Laws and reference is specifically made to Article I of the Declaration containing definitions of terms.

### **ARTICLE III - MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Membership, Transfer Voting Rights. Reference is hereby made to Article III of the Declaration and Article V of the Articles of Incorporation which set forth terms, provisions and conditions governing and relating to membership in the Association, transfer of membership and voting rights of classes of members, all of which terms, provisions and conditions are incorporated herein by reference.

**Section 2.** Quorum. Written notice of any member meeting called for the purpose of taking any action authorized under this Article shall be delivered to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 3.** Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the members of the Association. Cumulative voting shall not be permitted.

**Section 4.** Majority Required. A majority of the votes of members present (in person or by proxy) at a meeting at which a quorum is present shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Declaration, the Articles of Incorporation, the By-Laws or by statute.

**Section 5.** Meetings. Meetings of the members of the Association shall be in accordance with the following provisions:

- a. **Place.** Meetings of the members shall be held at such place in Hamilton County, Indiana, as may be designated by the Board of Directors of the Association.
- b. **Annual Meetings.** The first annual meeting of the members shall be held within six (6) months after the close of the first fiscal year of the Association, the exact date to be decided by the Board of Directors. At such first annual meeting of the members, the members may designate a regular day or date for successive annual meetings, which date shall be not more than six (6) months after the close of each fiscal year of the Association. If the members fail to designate such a regular day or date, the Board of Directors may continue to designate the day or date of the next annual meeting until such a designation is made by the members. If any designated day or date falls upon a legal holiday, the actual date of the meeting shall be the next business day succeeding such designated day or date.
- c. **Special Meetings.** Special meetings of the members shall be called by the president of the Association, by resolution of the Board of Directors of the

Association or upon a written petition signed by members of the Association who are entitled to vote sixty percent (60%) of all votes of the membership. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

- d. Notice of Meetings. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- e. Order of Business. The order of business at all meetings of the members shall, to the extent applicable, be as follows:
  - i. Roll call.
  - ii. Proof of notice of meeting or waiver of notice.
  - iii. Reading of minutes of preceding meeting.
  - iv. Reports of officers.
  - v. Reports of committees.
  - vi. Election of directors.
  - vii. Unfinished business.
  - viii. New business.
- f. Voting by Co-Owners and Entities. The vote appurtenant to any Lot in which more than one person owns an interest may be exercised by any of such persons present at any meeting, unless the Association is advised (by objection or protest at the meeting or written notice prior thereto) by any other person owning an interest in such Lot that the Owners of the Lot are unable to agree upon the manner in which the vote appurtenant to such Lot shall be cast at such meeting or on any particular question to come before such meeting. In such event, the vote appurtenant to the Lot shall not be counted at the meeting or on the particular question noted, as the case may be. In the event any Lot is owned by a corporation, then the vote appurtenant to such Lot shall be cast by a person designated in a certified letter signed by the President or any Vice President of such corporation and attested by the Secretary or an Assistant Secretary of such corporation and filed with the Secretary of the Association prior to the meeting. The vote appurtenant to any Lot owned by a trust or partnership may be exercised by any trustee or partner thereof, as the case may be, and unless any objection or protest by any other such trustee or partner is noted at such meeting or in writing prior thereto, the Chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote or votes.

- g. Suspension of Voting Rights. No Class A Member shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due to the Association shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors.

#### **ARTICLE IV - NOMINATION AND ELECTION OF DIRECTORS**

Section 1. Nomination. The initial Board of Directors, named in 6.02 of the Articles of Incorporation of this Association, shall serve as the Board of Directors of the Corporation until the Applicable Date and, in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by an individual appointed by Declarant. Any such individual appointed by Declarant shall thereafter be deemed a member of the Initial Board. After the Applicable Date, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the members of the Association. The nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors at each annual meeting of the members and shall serve until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among members of the Association, or persons deemed to be members eligible to serve as directors thereof or otherwise eligible to serve on the Board of Directors in accordance with the Declaration and the Articles of Incorporation of the Association.

Section 2. Election. After the Applicable Date, election to the Board of Directors shall be by secret written ballot at the annual meeting of the members of the Association. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

#### **ARTICLE V - BOARD OF DIRECTORS**

Section 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors composed of at least three (3) persons and after the Applicable Date by a Board of Directors composed of five (5) persons.

Section 2. Additional Qualifications. Where an Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or partner, officer or trustee, as the case may be, of the partnership, corporation, trust or other entity, Owner shall be eligible to serve on the Board of Directors of the Association, except that no Lot may be represented on the Board of Directors



by more than one person at a time subject, however, to the provisions of the Declaration which may allow multiple representation in specific instances.

Section 3. Initial Board of Directors. The initial Board of Directors nominated by the Declarant (the "Initial Board") shall maintain, manage and administer the affairs and the property of the Association until the Applicable Date as that term is defined in the Articles of Incorporation.

Section 4. Term of Office Generally. At such first annual meeting of the members of the Association, the members shall set the directors term of office as required by the Declaration, other provisions of these By-Laws, the Articles of Incorporation, or statute.

Section 5. Duties. The Board of Directors shall have the following duties:

- a. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members holding twenty-five percent (25%) of the total votes of the membership entitled to vote;
- b. To supervise all officers, agents and employees of the Association;
- c. To establish the annual assessment period and fix the amount of the annual assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;
- d. To fix the amount of any special assessment against each member for each Lot owned, all in accordance with the terms of the Declaration and these By-Laws;
- e. To send written notice of each assessment to each Owner in accordance with the Declaration;
- f. To foreclose the Association's lien for assessments against any property for which assessments are not paid within thirty (30) days after the due date thereof or to bring an action at law against the Owner or other person personally obligated to pay the same;
- g. To issue, or to cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessment has been paid;
- h. To procure and maintain the insurance coverage's required by the Declaration and such other insurance coverage's as the Board of Directors, in its sole discretion, deems necessary or advisable;
- i. To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate and at least as required by the Declaration; and,

- j. To cause all of the Common Areas and Lake Easements, Landscape Easements, Drainage Easements, and Utility Easements to be maintained to the extent to the Association's responsibilities therefor as provided in the Declaration.

Section 6. Vacancies. Any vacancy in the Board of Directors shall be filled by vote of the majority of remaining directors, even though they may constitute less than a quorum. Each person so elected shall be a director for the unexpired term of his predecessor, or until his successor is elected.

Section 7. Compensation. No director shall receive compensation for any service he may render to the Association as such director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties, and any director may be paid and compensated for services to the Association in a capacity other than as a director.

Section 8. Removal of Directors. After the Applicable Date, any elected director may be removed with or without cause by a majority vote of the members of the Association. The permanent directorships may not be removed from the board under any circumstance.

Section 9. Regular Meetings. Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two-thirds (2/3) of the directors.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the Declaration, Articles of Incorporation, these By-Laws or statute. If, at any meeting of the Board of Directors, there shall be less than a quorum present, the majority of those present may adjourn the meeting

from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## **ARTICLE VI - OFFICERS AND THEIR DUTIES**

Section 1. Enumeration of Offices. The officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer, all of whom shall be members of the Board of Directors, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members of the Association.

Section 3. Term. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his successor is elected and qualified unless he shall sooner resign, be removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or Secretary. Such resignation shall take effect on the date of receipt of such notice or at any time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

- a. President. The President shall preside at all meetings of the Board of Directors. He shall see that orders and resolutions of the Board are carried out. He shall have the power to appoint committees from among the members of the Association from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Association. The President shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an Association or a stock corporation organized under the laws of the State of Indiana.
- b. Vice-President. The vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by him by the Board of Directors or as are delegated to him by the President.
- c. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Association (if any is adopted) and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the members of the Association, together with their addresses, and shall perform such other duties as required by the Board of Directors.
- d. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## **ARTICLE VII - COMMITTEES**

The Board of Directors shall appoint the committees provided for in the Declaration and the Nominating Committee referred to in Article IV of these By-Laws. In addition, the Board of Directors or the President may appoint various other committees to carry out the purposes of the Association. Except as otherwise expressly provided in Article IV of these By-Laws with respect to the Nominating Committee, members of such committees may, but need not, be members of the Board of Directors.

## **ARTICLE VIII - BOOKS OF ACCOUNT AND FISCAL YEAR**

Section 1. Books of Account. The Association shall keep detailed books of account showing all expenditures and receipt of administration which shall specify the maintenance and repair expenses of the Common Areas and the Lake Easement, Landscape Easement, Drainage Easement and Utility Easement Areas and any other expenses incurred by or on behalf of the Association and the members. Such accounts, books, records, financial statements, and other papers of the Association shall be open for inspection by the members

and other persons having an interest in any Lot, including any Owner, any lender and any holder, insurer or guarantor of the first mortgage on any Lot, during reasonable business hours or under other reasonable circumstances and shall be audited annually by qualified auditors. The cost of such audits shall be a Common Expense. Any holder, insurer or guarantor of a first mortgage on a Lot shall be entitled upon written request to receive an audited financial statement for the immediately preceding fiscal year free of charge to the requesting party and within a reasonable time of such request. Current copies of the Declaration, the Articles of Incorporation, and the By-Laws of the Association, and other rules concerning the Real Estate, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Association during normal business hours or under other reasonable circumstances, where copies of the same and of audits may be purchased at reasonable costs.

Section 2. Fiscal Year. The fiscal year of the Association shall commence January 1, and end the following December 31 each year; provided, however, that the fiscal year for purposes of assessments may be different than the general fiscal year of the Association.

### **ARTICLE IX - CONTRACTS, LOANS & CHECKS**

Section 1. Authorization. The Board of Directors may authorize any officer or officers or agent or agents of the Association to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these By-Laws or the Declaration, no officer, agent or employee shall have any power to bind the Association or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

Section 2. Checks. All checks, drafts, or other orders for payment of money by the Association shall be signed by the President, Secretary, Treasurer or such other person as the Board of Directors may from time to time designate by resolution.

### **ARTICLE X - ADMENDMENTS**

These By-Laws may be amended, at a regular or special meeting of the members of the Association, by a vote of a majority of a quorum of members present in person or by proxy.

In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.