





*Plat Cab G Pg. 25*

**DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,  
LIMITATIONS, EASEMENTS AND APPROVALS  
OF THE PLAT OF TOWNE SQUARE, SECTION IV  
A SUBDIVISION IN PERRY TOWNSHIP, ALLEN COUNTY, INDIANA**

02-02-18-451-003.000-05<sup>8</sup>

New Development Corp., an Indiana corporation, by Scott Clark, its Secretary/Treasurer, hereby declares that it is the Owner of the approximate 10.06 acres of real estate shown and described in this plat ("Real Estate"), and lays off, plats and subdivides the Real Estate in accordance with the information shown on the certified plat attached to and incorporated by reference. A part of the Subdivision shall be known and designated as Towne Square, Section IV, a Subdivision in Perry Township, Allen County, Indiana.

The Lots shall be subject to and impressed with the Covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered as part of every conveyance of land in Towne Square, Section IV, without being written therein. The Lots are numbered from 145 through 167 inclusive, and all dimensions are shown in feet and decimals of a foot on the plat. All streets and easements specifically shown or described are hereby expressly dedicated to public use for their usual and intended purpose.

#### PREFACE

Towne Square is part of a tract of real estate, which is currently planned to be subdivided into 316 residential lots. Each owner of a lot in Towne Square will become a member of said Association and shall be bound by its Articles of Incorporation and Bylaws.

**Section 1. DEFINITIONS.** The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

**1.1 "Additional Property".** Such additional real estate as Developer shall declare to be subject to the provisions hereof by duly recorded declarations.

**1.2 "Articles".** The articles of incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those articles.

**1.3 "Association".** Towne Square's Association, Inc., an Indiana not-for-profit corporation, and its successors and assigns.

**1.4 "Board of Directors".** The duly elected board of directors of the Association.

**1.5 "Bylaws".** The bylaws adopted by Towne Square's Homeowners Association, Inc., and all amendments to those bylaws.

AUDITOR'S OFFICE  
Duly endorsed for filing in Subject  
to final approval of the Transfer.

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AUDITOR OF ALLEN COUNTY  
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**1.6 "Committee".** The Architectural Control Committee established under Section 5 of these covenants.

**1.7 "Common Area".** All real property owned by the Association for the common use and enjoyment of Owners. Common Area is designated on the plat.

**1.8 "Covenants".** This document and the restrictions, limitations, easements, and covenants imposed under it.

**1.9 "Developer".** New Development Corp., an Indiana corporation, and its successors in interest and any person, firm or corporation designated by it or its successors.

**1.10 "Lot", and in plural form, "Lots".** Any of the platted lots in the Plat, or any tract(s) of Real Estate which may consist of one or more Lots or part(s) of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by any applicable zoning ordinance; provided, however, that no tract of land consisting of part of a Lot, or parts of more than one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 50 feet in width at the established front building line as shown on the Plat.

**1.11 "Owner", and in the plural form, "Owners".** The record owner(s) whether one or more persons or entities of fee simple title to the Lots, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

**1.12 "Plan Commission".** The Allen County Plan Commission, or its successor agency.

**1.13 "Plat".** The recorded plat of Towne Square, Section IV.

**1.14 "Subdivision".** The platted Subdivision of Towne Square.

## **Section 2. PROPERTY RIGHTS.**

**2.1 "Owners" Easements of Enjoyment".** Each Owner shall have the right and an easement of enjoyment in the Common Area that is appurtenant to and passes with the title to every Lot, subject to the following rights which are granted to the Association:

**2.1.1** To charge reasonable admission and other fees for the use of any recreational facility located in the Common Area.

**2.1.2** To suspend the voting rights and right to the use of the recreational facilities in the Common Area for any period during which any assessment against the

Owner's Lot remains unpaid, or an Owner is in violation of the Covenants, the Articles, the Bylaws, or any published rule of the Association.

**2.1.3** To dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds of each class of Association members agreeing to such dedication or transfer, is recorded.

**2.2 Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and recreational facilities in it, to members of the Owner's family and tenants or contract purchasers who reside on the Owner's Lot.

### **Section 3. MEMBERSHIP AND VOTING RIGHTS**

**3.1** Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

**3.2** The Association shall have the following two classes of voting membership.

**3.2.1 Class A.** Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such lot shall be exercised as its Owners among themselves determine, but in no event shall more than one vote be cast with respect to a Lot.

**3.2.2 Class B.** Class B membership consists of Developer. The Class B member shall be entitled to a number of votes which Class A members are entitled to exercise plus one additional vote (thereby giving the Class B members control) until such time as Developer no longer owns Lots within Town Square Subdivision and any annexed properties as described below or December 31, 2020, whichever shall occur first. In the event Developer sells all Lots within Towne Square and subsequently annexes additional lands, Developer shall, at that time, receive a number of votes necessary to maintain control pursuant to the formula set forth herein.

### **Section 4. COVENANT FOR MAINTENANCE ASSESSMENTS.**

**4.1 Creation of the Lien and Personal Obligation of Assessments.** Each Owner, except Developer, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements. Such assessments to be established and collected as provided in these Covenants and the Bylaws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be

a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

**4.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in the Subdivision, and for the improvements of facilities in the Subdivision. In addition, assessments shall be levied to provide for the proportionate burden of the required post-construction water quality features and maintenance of the common retention basin into which the Subdivision's surface waters drain as shown on the Plat.

**4.3 Maximum Annual Assessments.** Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the Maximum annual assessment shall be Eighty-five Dollars (\$85.00) per Lot. Subsequent assessments may be made as follows:

**4.3.1** From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased each year by the Board of Directors, by a percentage not more than 8% above the annual assessment for the previous year, without a majority vote of the Association.

**4.3.2** From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased by a percentage in excess of 8%, only by the vote or written assent of a majority of each class of members of the Association.

**4.4 Special Assessments for Capital Improvements.** In addition to the annual assessments authorized in section 4.3, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction, or repair or replacement of an existing capital improvement, in the Common Area, including fixtures and related personal property, provided that any such assessment require the vote or written assent of 51% of each class of members of the Association; and provided, further, that no such special assessment for any such purpose shall be made if the assessment in any way jeopardizes or affects the Association's ability to improve and maintain its Common Area, or pay its pro rata share of the cost of maintaining the common retention basin shown on the Plat.

**4.5 Notice and Quorum for any Action Authorized Under Subsections 4.3 and 4.4.** Any action authorized under sections 4.3.2 and 4.4 shall be taken at a meeting of the Association called for that purpose, written notice of which shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. If the proposed action is favored by the majority of the votes cast at such meeting, but such vote is less than the requisite majority of each class of members,

members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the association within 30 days of the date of such meeting.

**4.6 Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or yearly basis as the Board may determine.

**4.7 Date of Commencement of Annual Assessment/Due Dates.** The annual assessments allowed under section 4.3 shall commence as to all Lots then subject to an assessment, on the first day of the month following the recording of these Covenants. The first annual assessment shall be prorated according to the number of months remaining in the calendar year. The Board of Directors shall fix in advance the date the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether an assessment on a Lot has been paid.

**4.8 Effect of Nonpayment of Assessments/Remedies of the Association.**

**4.8.1** Any assessment not paid within 30 days after its due date shall bear simple interest from the due date at the rate of eighteen percent (18%) per annum.

**4.8.2** The Association may bring an action at law against each Owner personally obligated to pay the same, and foreclose the lien of an assessment against a Lot. No Owner may waive or otherwise escape liability for the assessments made under the Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent assessments may be foreclosed in Indiana. The Association shall also be entitled to recover the attorney fees, costs and expenses incurred because of the failure of an Owner to timely pay assessments made under this Section 4.

**4.9 Subordination of Assessment Lien to Mortgages.** The lien of the assessments made under the covenants shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien against it. No sale or transfer shall relieve an Owner or Lot from liability for any assessment subsequently becoming due, or from the lien of an assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer.

**Section 5. ARCHITECTURAL CONTROL**

**5.1** No building, improvement, construction, hot tub or spa, play equipment, fence, wall, in-ground swimming pool, or other structure shall be commenced, created or maintained upon a Lot, nor shall any exterior addition, change or alteration be made to a structure until the plans and specifications showing the structure's nature, kind,

shape, height, materials and location are submitted to and approved by the Committee in writing as to the structure's harmony of external design and location in relation to surrounding structures and topography in the Subdivision. The Committee shall be composed of three (3) members. However, until such time as Developer assigns its rights to control the Committee or until such time as the Board succeeds to the Committee pursuant to Paragraph 5.3 below, New Development Corp., or another designee of Developer shall be the sole member of the Committee. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. All single family residential homes will be constructed with at least ten percent (10%) of the front exterior portion consisting of natural materials; example: wood, brick or stone.

**5.2** The Committee shall have the exclusive authority and responsibility to review plans for construction of all primary residences in the Subdivision. The Committee may delegate to the Board of Directors (or to such other entity designated in the Articles or Bylaws) the authority and responsibility to review plans for construction of fences and other structures (excluding primary dwellings) in the Subdivision. Such delegation shall be made in writing, signed by a majority of the Committee's members, and delivered or mailed to the Association's registered office.

**5.3** After primary residences are constructed on all Lots in the Subdivision, the Board of Directors (or other entity designated under its Articles or Bylaws) shall succeed to the Committee's responsibilities under this section 5 to review subsequent construction, modifications and additions of structures in the Subdivision.

**5.4** In the event the Committee (or Board of Directors or other entity acting under sections 5.2 or 5.3), fails to approve or disapprove the design and location of a proposed structure within 30 days after said plans and specifications have been submitted, approval will not be required, and approval under this section 5 will be deemed to have been given.

## **Section 6. GENERAL PROVISIONS**

**6.1 Use.** Lots may not be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half stories in height. Each residence shall include not less than a two-car garage, which shall be built as part of the residence and attached to it.

**6.2 Dwelling Size.** No residence shall be built on a Lot having a ground floor area upon the foundation, exclusive of one-story open porches, breezeways or garages, of less than 1,000 square feet for a one-story residence, or less than 1350 square feet on a residence that has more than one-story.

**6.3 Home Occupations.** No Lot shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows may be permitted: any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that indicates from the exterior that the Dwelling Unit is being utilized in whole or in part for any purpose other than that of a Dwelling Unit; (b) no commodity is sold upon the Lot; (c) no person is employed in such home occupation other than a member of the immediate family residing in the Dwelling Unit; and (d) no mechanical or electrical equipment is used; (e) no delivery of goods intended for sale, resale, distribution or otherwise of a commercial nature; and (f) no meeting(s) held in the Dwelling Unit of a commercial or business nature which is attended by employees, independent contractors or other individuals receiving or expecting to receive compensation from the sale of goods or services. Notwithstanding the foregoing, in no event shall a barber shop, styling salon, beauty parlor, tea room, licensed child care center or other licensed or regulated babysitting service, animal hospital, or any form of animal care or treatment such as dog trimming be construed as a home occupation. Dwelling Units must be in compliance with all governmental ordinances with respect to home occupations.

**6.4 Building Lines.** No residence or other improvement or structure shall be located on a Lot nearer to the Lot lines, than the minimum building setback lines shown on the Plat. In addition, no building shall be located nearer than 5 feet to an interior Lot line; provided however the aggregate of both side yards shall be a minimum of 12 feet. Rear yard setback shall be 25 feet.

**6.5 Minimum Lot Size.** No residence shall be erected or placed on a Lot having a width of less than 50 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than 6,250 square feet.

**6.6 Utility Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and over the rear twenty (20) feet of each Lot. No Owner of a Lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use, or permit the use of, overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than 3 wires and have a capacity of not less than 100 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said

installations are located for operation, maintenance and replacement of service connections.

No lights, shrubbery, trees, buildings, storage sheds, swimming pools, basketball courts or tennis courts or other playground equipment, signs, or other obstructions are permitted within the easement area.

**6.7 Surface Drainage Easements.** Surface drainage easements and Common Area used for drainage purposes as shown on the Plat, including detention ponds, are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the surface of the Real Estate shall be constructed and maintained so as to achieve this intention. Such easements and common areas shall be maintained in an unobstructed condition, and the County Surveyor (or proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conductors unobstructed.

**6.8 Nuisance.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done there which may be or become an annoyance or nuisance to residents in the Subdivision.

**6.9 Temporary Structures.** No structure of a temporary character, trailer, boat trailer, camper or camping trailer, basement, tent, shack, garage, barn or other outbuilding shall be constructed, erected, located or used on any Lot for any purpose (including use as a residence), either temporarily or permanently.

**6.10 Outside Storage.** No boat, boat trailer, recreational vehicle, commercial van or other vehicle used for commercial purposes and containing logos or advertising on the exterior, motor home, truck, camper or any other wheeled vehicle shall be permitted to be parked ungaraged on a Lot for periods in excess of 48 hours, or for a period of which is in the aggregate is in excess of 8 days per calendar year. The term "truck" as used in this section 6.9 means every motor-vehicle designed, used, or maintained primarily for the transportation of property, which is rated one-ton or more.

**6.11 Free Standing Poles.** No clotheslines or clothes poles, or any other free standing, semi-permanent or permanent poles, rigs, or devices, regardless of purpose, shall be constructed, erected, or located or used on a Lot.

**6.12 Pools.** No above-ground pool temporary or permanent which requires a filtration system or other above-ground pool which is more than six (6) feet in diameter, and 18 inches deep shall be placed or maintained on any Lot. Any above-ground pool which is less than six (6) feet in diameter and 18 inches deep must be drained and stored in the garage after its daily use. No in-ground swimming pool, hot tub or spa, or any fence proposed to contain said pool, hot tub or spa, may be placed or maintained on any Lot without the prior written approval of the Committee and shall be subject to the pertinent

portions of the applicable zoning ordinance. Any Owner of a Lot containing a swimming pool, hot tub or spa must cover said swimming pool, hot tub or spa with a cover that, at a minimum, will supersede any fencing required under the pertinent portions of the applicable zoning ordinance. Approval must be granted by the Appropriate Zoning Authority and the Committee before construction can start.

**6.13 Signs.** No sign of any kind shall be displayed to the public view on a Lot except one professional sign of not more than one square foot, or one sign of not more than five square feet, advertising a Lot for sale or rent, or signs used by a builder to advertise a Lot during the construction and sales periods.

**6.14 Antennas.** No radio or television antenna with more than 2 feet in diameter, or that attains a height in excess of 6 feet above the highest point of the roof of a residence, shall be attached to a residence on a Lot. No free-standing radio or television antenna, or satellite receiving disk or dish shall be permitted on a Lot. No solar panels (attached, detached or free-standing) are permitted on the Lot.

**6.15 Oil Drilling.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained or permitted on a Lot.

**6.16 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

**6.17 Dumping.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot.

**6.18 Workmanship.** All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roof siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage on a Lot.

**6.19 Driveways.** All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width.

**6.20 Individual Utilities.** No individual water supply system or individual sewage disposal system shall be installed, maintained or used on a Lot in the Subdivision.

**6.21 Street Utility Easements.** In addition to the utility easements designated in this document, easements in the streets, as shown on the Plat, are reserved and

granted to all public utility companies, the owners of the Real Estate and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove every type of gas main, water main and sewer main (sanitary and storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the Subdivision as to maintenance and repair of said streets.

**6.22 Storm Water Runoff.** No rain and storm water runoff or such things as roof water, street, pavement and surface water caused by natural precipitation, shall at any time be discharged or permitted to flow into the sanitary sewage system serving the Subdivision, which shall be a separate sewer system from the storm water and surface water runoff sewer systems. No sanitary sewage shall at any time be discharged or permitted to flow into the Subdivision's storm and surface water runoff sewer system.

**6.23 Completion of Infrastructure.** Before any residence on a Lot shall be used and occupied as such, the Developer, or any subsequent Owner of the Lot, shall install all infrastructure improvements serving the Lot only, and Developer is responsible for any external utility infrastructure development to the lot boundary, as shown on the approved plans and specifications for the subdivision filed with the Plan Commission and other governmental agencies having jurisdiction over the Subdivision. This covenant shall run with the land and be enforceable by the Plan Commission or by any aggrieved Owner.

**6.24 Certificate of Occupancy.** Before a Lot may be used or occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator the improvement location permit and certificate of occupancy required by the Allen County Zoning Ordinance.

**6.25 Enforcement.** The Association, Allen County Building Commissioner, Developer and Owner (individually or collectively) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or subsequently imposed by the provisions of these covenants. Failure by the Association Developer or Owner to enforce any provisions in the covenants shall in no event be deemed a waiver of the right to do so later.

**6.26 Invalidation.** Invalidation of any one of these Covenants judgment or court order shall not affect any other provisions, and such provisions shall remain in full force and effect.

**6.27 Duration of Covenants.** These Covenants shall run with the land and be effective for a period of 20 years from the date the Plat and these Covenants are recorded; after which time the Covenants shall automatically be renewed for successive periods of 10 years.

**6.28 Amendments.** Any provision of the Covenants may be amended, but such amendment is subject to the following requirements and limitations:

**6.28.1** Until primary residences are constructed on all Lots in the Subdivision and certificates of occupancy are issued by the Plan Commission for such residences, in order to amend a provision of these Covenants, an amendatory document must be signed by Developer, by the Owners of at least 75% of the Lots in Towne Square Subdivision or any annexed lands. For purposes of this section 6.27.1, the term "Owner" shall have the same meaning with respect to lots in such future sections, as the term "Owner" is defined in section 1.10.

**6.28.1.1** After primary residences are constructed on all Lots in the Subdivision and certificates of occupancy are issued for those residences, Developer's signature shall no longer be required in order to amend provisions of these Covenants.

**6.28.2** Notwithstanding the provisions of section 6.27.1, Developer and its successors and assigns shall have the exclusive right for a period of two years from the date the Plat and these Covenants are recorded, to amend any of the Covenant provisions (except section 6.2) without approval of any Owners.

**6.28.3** In order for any amendment of these Covenants to be effective, the approval of the Plan Commission shall be required.

**6.29 Subdivision.** No Lot or combination of Lots may be further subdivided until approval for such subdivision has been ordained from the Plan Commission; except, however, the Developer and its successors or assigns shall have the absolute right to increase the size of any Lot by adding to such Lot a part of an adjoining Lot (thus decreasing the size of such adjoining Lot) so long as the effect of such addition does not result in the creation of a "Lot" which violates the limitations imposed under section 1.9.

**Section 7. Attorney Fees and Related Expenses.** In the event the Association, Developer, an Owner, or the Plan Commission is successful in any proceeding, whether at law or in equity, brought to enforce any restrictions, covenant, limitation, easement, condition, reservation, lien, or charge new or subsequently imposed by the provisions of these Covenants, the successful party shall be entitled to recover from the party against whom the proceeding was brought, the attorney fees and related costs and expenses incurred in such proceeding.

**Section 8. Sidewalks.** Plans and specifications for the Subdivision approved by and on file with the Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of all Lots as shown on the approved plans. Installation of such sidewalks shall be the obligation of the Owners of those Lots (exclusive of Developer). The sidewalk to be located on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of occupancy for such Lot. A violation of this Covenant is enforceable by the Plan Commission or its successor agency, by specific performance or other appropriate legal or equitable remedy. Should a certificate of occupancy be issued to Developer for a Lot on which a

sidewalk must be constructed, Developer shall be considered as an Owner subject to enforcement of this Covenant with respect to that Lot.

**Section 9. Flood Protection Grades.** In order to minimize potential damage to residences from surface water, minimum flood protection grades are established. All residences shall be constructed so that the minimum elevation of a first floor, or the minimum sill elevation of any opening below the first floor equals or exceeds the minimum flood protection grade established.

The minimum flood protection grade for Lot 156 shall be 837.5 feet.

**Section 10. Annexation.**

**10.1 Right of Annexation.** From time to time, and without requirement of consent by the Owners, Members, or the Association, Developer may annex all or portions of the Additional Property by recording a Declaration of Annexation meeting the requirements hereinafter set forth. Developer shall have no obligation to annex any Additional Property and no such obligation shall be inferred from any provision hereof.

**10.2 Declaration of Annexation.** The Declaration of Annexation shall be recorded in the public records of Allen County and shall:

- (1) Describe the property to be annexed;
- (2) Declare that the property so described is annexed pursuant to the provisions hereof;
- (3) Provide an assessment allocation for each annexed Lot, and with respect to each Lot:
  - (i) identify the Lot;
  - (ii) identify the Developer;
  - (iii) designate Common Area if any;
  - (iv) provide for allocation of Assessments; and
  - (v) provide for other restrictions, conditions and allocations of rights and benefits, not inconsistent with the provisions hereof as Developer may deem appropriate.

**10.3 Effect of Annexation.** From and after the date of recording of a Declaration of annexation, the Additional Property subject thereto shall become part of the Properties for all purposes of these Restrictions and the definitions contained herein shall be applicable thereto; provided, however, that the Additional Property so annexed shall not be or become liable to assessment for the debts or obligations of the Association payable prior to the date of Annexation. The Association shall accept conveyance of all Common Area in the area to be annexed and all other interests to be conveyed to the Association designated in the Declaration of Annexation.

**10.4 Limitation on Annexation.** Developer's rights of annexation pursuant to the terms hereof shall expire with respect to any portion of the Additional Property not theretofore annexed on the twentieth (20th) anniversary date hereof, and there shall be

no further annexation thereafter without a vote of seventy-five percent (75%) of the Members holding Class A voting power as hereinafter provided.

**11.0 Agricultural Ground.** This language is added to protect adjacent land owners from complaints or claims regarding any associated noises, odor or traffic related to surrounding agricultural or equine practices. The owners of lots in the subdivision and their successors-in-title shall waive and release any and all rights, which they may have or hereafter have to remonstrate against or otherwise object to, interfere with, or oppose any pending or future farming or equine operations adjacent to this site.

**IN WITNESS WHEREOF**, New Development Corp., Owner of the Real Estate,  
has signed this document on this day of October, 2010.

2154

## New Development Corp.

Bv:

Scott Clark  
Its Secretary/Treasurer

STATE OF INDIANA

§§:

## COUNTY OF ALLEN

Before me, the undersigned, a Notary Public in and for said County and State, this 21<sup>st</sup> day of October, 2010, personally appeared New Development Corp., by Scott Clark, Its Secretary/Treasurer, and acknowledged the execution of the foregoing document. In witness whereof, I have hereunto subscribed my name and affixed my official seal.

My Commission Expires: June 13, 2016

Signature: Julissa D Bunch

Printed: Melissa D. Brueck, Notary Public  
Resident of Allen County

**Pursuant to IC 36-2-11-15(d):** I/we affirm, under the penalties for perjury, that I/we have taken reasonable care to redact each Social Security number in this document, unless required by law.

This Instrument prepared by: Timothy L. Claxton, Attorney at Law  
Attorney No. 14523-02

