Plat Cab. H Page 35

2019026304
RECORDED: 06/10/2019 08:45:25 AM
ANITA MATHER
ALLEN COUNTY RECORDER
FORT WAYNE, IN

Secondary Plat
Whisper Rock - Section V

A Subdivision Located in the Northeast Quarter & Northwest Quarter of Section 21, Township 32 North, Range 12 East.

Allen County, Indiana

Developer:
Twin Eagles Development II
9601 Coldwater Road
Fort Wayne, IN 46825
Tel: (260) 489-2000
Fax: (260) 489-8974

Subdivision Engineer:
D.A. Brown Engineering Consultants
5491 County Road 427, P.O. Box 385, Auburn, IN 46706
Phone: (260) 925 - 2200 Fax: (260) 925 - 1212
www.dabrowncivilengineering.com

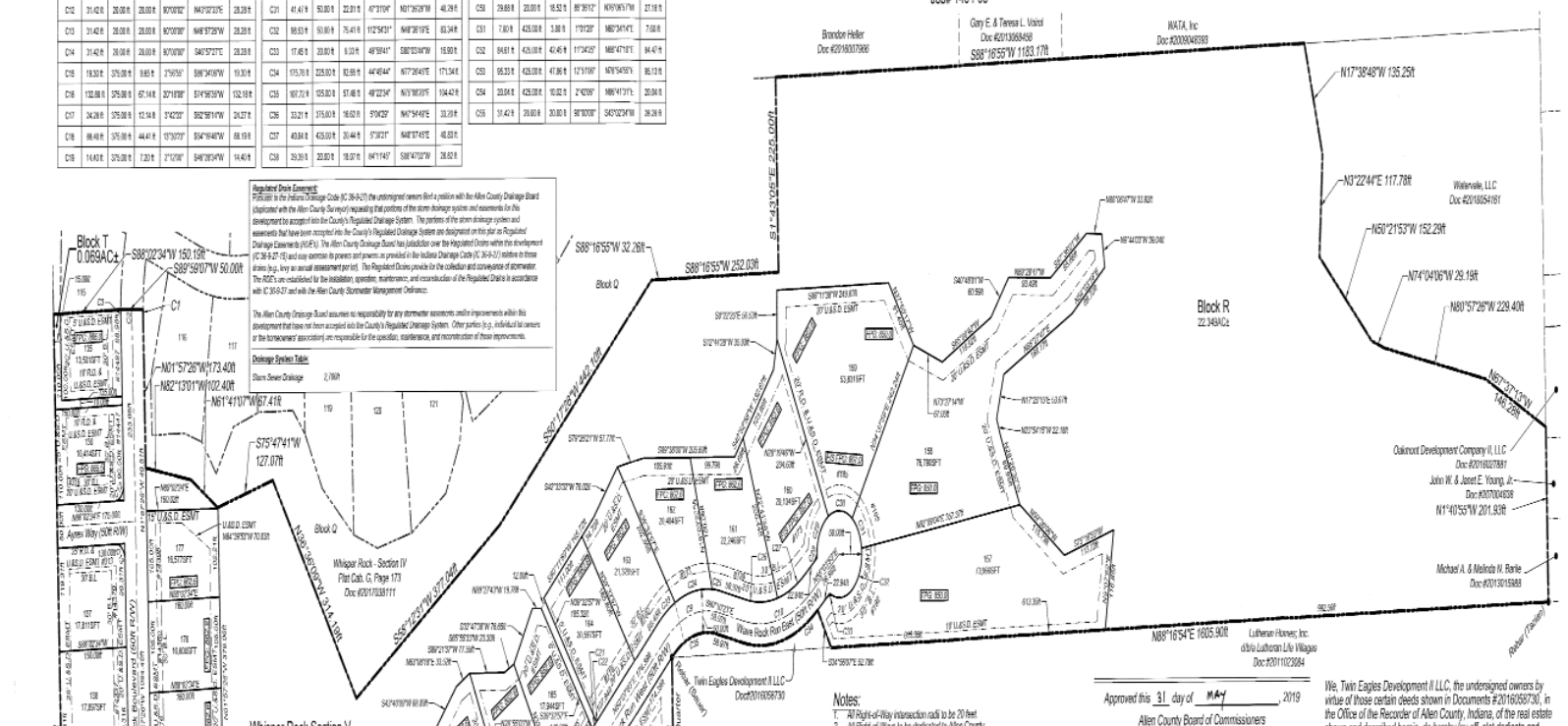
Job# 1404-03

Vicinity Map:
Perry Township
Allen County

Curve Table						
Curve #	Length	Radius	Tangent Length	Delta	Chord Direction	Chord Length
C1	8.32 ft	275.00 ft	4.66 ft	1°56'03"	N08°59'10"W	8.32 ft
C2	10.17 ft	390.00 ft	5.09 ft	1°29'33"	N08°59'10"W	10.17 ft
C3	11.02 ft	325.00 ft	5.51 ft	1°56'03"	S09°59'10"E	11.02 ft
C4	186.22 ft	460.00 ft	95.88 ft	23°12'06"	N14°23'46"E	184.99 ft
C5	30.69 ft	460.00 ft	15.35 ft	4°12'48"	N58°53'03"E	30.69 ft
C6	76.96 ft	460.00 ft	38.61 ft	11°18'25"	N51°12'52"E	76.85 ft
C7	108.65 ft	460.00 ft	54.17 ft	10°42'23"	N63°21'40"E	108.41 ft
C8	35.43 ft	460.00 ft	17.73 ft	5°04'28"	N47°34'40"E	35.42 ft
C9	129.27 ft	150.00 ft	68.66 ft	49°22'34"	N75°08'20"E	125.30 ft
C10	156.25 ft	280.00 ft	80.36 ft	44°48'44"	N77°29'45"E	152.31 ft
C11	110.28 ft	280.00 ft	56.04 ft	31°54'58"	N41°31'46"W	108.81 ft
C12	31.42 ft	20.00 ft	20.00 ft	90°00'02"	N43°32'33"E	28.28 ft
C13	31.42 ft	20.00 ft	20.00 ft	90°00'00"	N46°57'26"W	28.28 ft
C14	31.42 ft	20.00 ft	20.00 ft	90°00'00"	S46°57'27"E	28.28 ft
C15	18.30 ft	375.00 ft	9.65 ft	2°47'53"	S88°34'09"W	18.30 ft
C16	132.88 ft	375.00 ft	67.14 ft	20°18'08"	S74°56'39"W	132.18 ft
C17	34.26 ft	375.00 ft	12.14 ft	3°14'23"	S62°58'11"W	34.27 ft
C18	98.48 ft	375.00 ft	44.41 ft	15°02'23"	S54°16'46"W	98.19 ft
C19	14.40 ft	375.00 ft	7.20 ft	2°11'56"	S46°28'54"W	14.40 ft

Curve Table						
Curve #	Length	Radius	Tangent Length	Delta	Chord Direction	Chord Length
C20	33.86 ft	425.00 ft	11.29 ft	2°16'31"	S48°15'03"W	22.57 ft
C21	12.80 ft	425.00 ft	6.08 ft	1°43'28"	S46°13'44"W	12.80 ft
C22	3.86 ft	425.00 ft	1.93 ft	0°31'46"	S50°14'46"W	3.86 ft
C23	49.66 ft	175.00 ft	23.17 ft	16°15'11"	S57°59'28"W	49.50 ft
C24	85.50 ft	175.00 ft	43.62 ft	27°59'36"	S79°32'02"W	84.65 ft
C25	19.23 ft	175.00 ft	9.63 ft	6°17'47"	N83°19'18"W	19.22 ft
C26	69.89 ft	175.00 ft	35.26 ft	22°52'03"	S86°26'58"W	69.43 ft
C27	67.13 ft	175.00 ft	33.98 ft	21°58'41"	S66°10'14"W	66.72 ft
C28	17.45 ft	20.00 ft	9.33 ft	49°59'41"	N38°34'07"E	16.90 ft
C29	49.82 ft	50.00 ft	26.36 ft	57°05'02"	S32°52'13"W	48.64 ft
C30	55.60 ft	50.00 ft	31.22 ft	63°43'44"	N77°28'45"E	52.86 ft
C31	41.47 ft	50.00 ft	22.01 ft	47°31'04"	N01°35'26"W	40.28 ft
C32	66.53 ft	50.00 ft	75.41 ft	112°54'31"	N48°38'19"E	63.34 ft
C33	17.45 ft	20.00 ft	9.33 ft	49°59'41"	S80°39'08"W	16.90 ft
C34	175.70 ft	225.00 ft	92.69 ft	44°46'44"	N77°28'45"E	171.34 ft
C35	167.72 ft	125.00 ft	97.48 ft	49°22'34"	N75°08'20"E	164.43 ft
C36	33.21 ft	375.00 ft	16.62 ft	5°04'28"	N47°34'40"E	33.20 ft
C37	49.84 ft	425.00 ft	24.94 ft	5°38'21"	N48°37'45"E	48.83 ft
C38	39.39 ft	20.00 ft	18.97 ft	84°14'47"	S38°47'07"W	36.02 ft

Curve Table						
Curve #	Length	Radius	Tangent Length	Delta	Chord Direction	Chord Length
C39	11.80 ft	225.00 ft	5.90 ft	2°48'04"	N31°34'40"W	11.80 ft
C40	104.07 ft	225.00 ft	52.88 ft	26°30'02"	N17°15'43"W	103.15 ft
C41	7.89 ft	225.00 ft	3.95 ft	1°48'22"	N03°03'38"W	7.89 ft
C42	17.46 ft	20.00 ft	9.23 ft	49°59'41"	S36°40'25"E	16.91 ft
C43	71.39 ft	50.00 ft	43.66 ft	82°15'13"	N10°37'33"W	65.77 ft
C44	54.72 ft	50.00 ft	30.48 ft	62°42'20"	N81°59'48"E	52.03 ft
C45	58.44 ft	50.00 ft	33.80 ft	66°56'45"	S33°44'58"E	55.20 ft
C46	58.42 ft	50.00 ft	33.80 ft	66°56'25"	S14°49'46"W	55.15 ft
C47	18.54 ft	20.00 ft	10.00 ft	53°06'59"	N21°41'28"E	17.88 ft
C48	65.13 ft	175.00 ft	43.43 ft	21°32'22"	N85°47'41"E	64.77 ft
C49	9.70 ft	175.00 ft	4.85 ft	3°10'29"	S31°43'39"W	9.70 ft
C50	29.89 ft	20.00 ft	18.52 ft	85°36'12"	N76°56'57"W	27.18 ft
C51	7.80 ft	425.00 ft	3.90 ft	1°03'25"	N85°34'47"E	7.80 ft
C52	84.81 ft	425.00 ft	42.49 ft	11°26'25"	N80°47'41"E	84.67 ft
C53	66.33 ft	425.00 ft	41.86 ft	12°53'09"	N74°54'56"E	66.19 ft
C54	33.04 ft	425.00 ft	16.52 ft	2°40'09"	N86°14'13"E	33.04 ft
C55	51.42 ft	20.00 ft	30.80 ft	88°16'00"	S45°02'34"W	39.26 ft


Block T
0.069AC±
Block Q
Block R
22.349AC±
Block S
1.532AC±
Whisper Rock Section V
52.153AC±
Whisper Rock - Section IV
Plat Cab. G, Page 173
Doc #2017033111
Whisper Rock Run West (50ft R/W)
Whisper Rock Run East (50ft R/W)
Ayres Way (50ft R/W)
Asian Passage - Section II
Plat Cab. G, Page 189
Doc #2017055568
Oakmont Development Company II, LLC
Doc #2016027881
John W. & Janet E. Young, Jr.
Doc #2017004038
Michael A. & Melinda N. Barile
Doc #2013015988
Lutheran Homes, Inc.
d/b/a Lutheran Life Villages
Doc #2011023084
Twin Eagles Development II LLC
Doc #2016058730
Wellerwile, LLC
Doc #2016054161
WATA, Inc
Doc #2009049393
Brandon Heller
Doc #2016007366
Gary E. & Teresa L. Voirol
Doc #2013068458
Weaver Road (Variable)
Weaver Ditch
Weaver Ditch Regulated Drain Easement
Weaver Ditch Regulated Drain Easement - 30' wide
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DEDICATION, DECLARATION, PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO AND AS PART OF THE DEDICATION AND PLAT OF WHISPER ROCK, SECTION 5, A SUBDIVISION IN PERRY TOWNSHIP, ALLEN COUNTY, INDIANA

This Dedication, Declaration, Protective Restrictions, Covenants, Limitations, Easements and Approvals (the "Declaration") is made this 21st day of May, 2019, by TWIN EAGLES DEVELOPMENT II, LLC, an Indiana limited liability company ("Declarant").

WITNESSETH:

A. Declarant is the owner of the real property described on Exhibit "A" attached hereto and referred to in Article IX of this Declaration, and desires to create thereon a residential community with residential lots numbered 135-177, inclusive, open spaces, and other common facilities for the benefit of the community. All streets and easements specifically shown or described are expressly dedicated to public use for their usual and intended purposes.

B. Declarant further desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, for such purposes, Declarant desires to subject the real property described on the Plat, attached hereto and referred to in Article IX, together with such additions as may hereafter be made thereto (as provided in Article IX), to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the said property and each Owner of a Lot, as defined herein.

C. Declarant shall cause Whisper Rock Homeowners Association, Inc., a nonprofit corporation, or a corporation with a similar name thereto, to be formed under the laws of the State of Indiana. Declarant shall delegate and assign to the Association all the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges in connection with the Properties, as hereinafter provided.

AUDITOR'S OFFICE
Duly entered for taxation. Subject to final acceptance for transfer.

JUN 07 2019

AUDITOR OF ALLEN COUNTY

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NOW THEREFORE, Declarant declares that the real property referred to in Article IX, and such additions thereto as may hereafter be made pursuant to Article IX hereof, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meaning:

(a) "Association" shall mean and refer to the entity organized under the name Whisper Rock Homeowners Association, Inc., or a name similar thereto.

(b) "Board" shall mean and refer to the Board of Directors of the Association.

(c) "Committee" shall mean the Architectural Control Committee for the Association, as more particularly described in Article III, Section 21 hereof.

(d) "Common Areas" shall mean and refer to (i) those areas of land designated as Common Areas on any recorded subdivision Plat of the Properties and intended to be devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon; (ii) all areas designated as water impoundment areas on any such recorded subdivision Plat; and (iii) all other real property owned by the Association for the common use and enjoyment of the Owners.

(e) "Covenants" shall mean the covenants, conditions and restrictions contained in and imposed under this Declaration, including, without limitation, those provisions set forth in Article II through and including Article VIII hereof.

(f) "Declarant" or, in the alternative, "Developer" shall mean and refer to TWIN EAGLES DEVELOPMENT II, LLC, an Indiana limited liability company, its successors and any assignee other than an Owner, who shall receive by assignment from the said TWIN EAGLES DEVELOPMENT II, LLC all or a portion of its rights hereunder as such Declarant, by an instrument expressly assigning such rights as Declarant to such assignee.

(g) "Existing Property" shall mean and refer to the real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration pursuant to Article IX.

(h) "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map of the Properties which is designated as a lot therein and which is or is to be improved with a residential, single-family dwelling, which shall not include lots containing villas.

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(i) "Member" shall mean and refer to each Owner as provided herein in Article VII.

(j) "Owner" shall mean and refer to the record owner, whether one or more person or entities, of the fee simple title to any Lot but, notwithstanding any applicable theory of mortgage or other security device, shall not mean or refer to any mortgagee or trustee under a Mortgage or Trust Deed unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(k) "Properties" or, in the alternative, "Subdivision" shall mean and refer to, collectively, all such existing properties and additions thereto, as are subject to this Declaration or any Supplemental Declaration prepared and filed of record pursuant to the provisions of Article IX hereof.

(l) "Whisper Rock" shall mean the community concept of Whisper Rock developed by Declarant, including all sections governed and to be governed by the Association.

ARTICLE II

USE OF PROPERTIES AND COMMON AREAS

The Properties (and the improvements situated thereon) and the Common Areas shall be occupied and used as follows:

(a) Each Lot shall be used exclusively for residential purposes, and streets and parking spaces shall be used exclusively for the parking of passenger automobiles.

(b) There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in the Common Areas, nor shall anything be altered, or constructed or planted in, or removed from or destroyed or damaged in the Common Areas, without the written consent of the Board.

(c) No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which will result in the cancellation of any insurance carried by the Association, or which would be in violation of any law. No waste shall be committed in the Common Areas.

(d) No animals, livestock or poultry shall be raised, bred or kept in any portion of the Properties, except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance.

(e) Nothing shall (i) be done in any part of the Properties, nor shall (ii) any noxious or offensive activity, be carried on, nor shall (iii) any outside lighting or loudspeakers or other sound producing devices be used, which in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners.

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(f) Each Owner shall be liable to the Association for any damage to the Common Areas caused by the negligence or willful misconduct of the Owner or his family, guests, or invitee.

(g) All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including attorneys' fees.

ARTICLE III

AFFIRMATIVE AND PROTECTIVE COVENANTS

Section 1. Single Family Residence and Garages. Subject to the provisions of Section 21 of this Article III, each residential structure erected or placed on any Lot shall be designed, intended and used as a residence for a single family only, and not more than one residential structure shall be placed on any Lot. There shall be constructed and maintained with each single family residence an attached garage for not less than two (2) automobiles. Subject to approval under Section 21 of this Article III, any residence to be constructed on a Lot shall be situated on and within the building pad ("Building Pad") provided on said Lot by the Declarant as part of the Declarant's obligations in connection with the sale of said Lot. The size and location of said Building Pad shall be determined by the Declarant, at its sole discretion. The Declarant shall have no responsibility to an Owner to extend a Building Pad for the purpose of the construction by an Owner of any portion of the proposed residence extending beyond the initial Building Pad, nor shall the Declarant have an obligation to provide a similar pad for the construction by an Owner of any other building, structure, or improvements made to the subject Lot.

Section 2. Side Line and Front Line Set Back Restrictions. No building shall be located on any Lot nearer the front line or the side street line than the minimum building setback lines as shown on the Plat. No projection of any building shall be permitted to extend into or encroach upon the space between said building line and the street. No building shall be located nearer than a distance of five (5) feet to an interior Lot line; provided, however, that the aggregate total distance of both side yard setback lines shall be no less than twelve (12) feet. No building shall be located on any Lot nearer than twenty-five (25) feet to the rear Lot line; provided, however, should any rear Lot line run adjacent to Common Area, no building on such a Lot shall be located nearer than fifteen (15) feet to the rear Lot line.

Section 3. Minimum Lot Size. No residence shall be erected or placed on a Lot having a width of less than sixty (60) feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than 9,500 square feet.

Section 4. Further Subdivision of Lots.

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(a) The further dividing of any Lot or combination of Lots after approval by the Allen County Plan Commission is prohibited unless and until the Allen County Plan Commission has reviewed and approved the change. This restriction will not prohibit utilizing a portion or all of an adjoining Lot to change the size of a Lot, so long as no Lot shall have a width of less than seventy-five (75) feet at the building line.

(b) Declarant hereby reserves the right and shall be allowed to, at any time, further divide any Lot or combine Lots after approval by the Allen County Plan Commission once the Allen County Plan Commission has reviewed and approved said change. In the event of the dividing of a singular Lot by Declarant, each Lot created as a result of such division shall be considered a Lot for purposes of this Declaration, including, without limitation, subject to all assessments payable under Article VI hereof. Should Declarant combine Lots, the resulting Lot shall be considered one Lot for purposes of this Declaration, including, without limitation, subject to all assessments payable under Article VI hereof.

Section 5. Pre-Inhabitation. Before any house or building on any Lot in the Plat shall be used and occupied as a dwelling or as otherwise provided in the Declaration, the Declarant or any subsequent developing Owner of said Lot shall install all improvements serving the Lot as provided in the development plans and specifications for the Properties filed with the Board of Commissioners of Allen County. Before any Lot may be used or occupied, the Owner of such Lot shall first obtain from the Zoning Administration the improvement location permit and certificate of occupancy required by the Allen County Zoning Ordinance.

Section 6. Signs. No sign of any kind shall be displayed to the public view on a Lot except one professional sign of not more than six (6) square feet, advertising the Lot for sale, or signs used by a builder to advertise the Lot during the construction and sale period. The provision of this Section 6 shall be applicable to signs used by Declarant.

Section 7. Waste. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers which are not visible from the front of any residence. All Equipment for the storage and disposal for such material shall be kept in a clean and sanitary condition.

Section 8. Antennae. Unless otherwise approved in writing by Declarant, no radio or television or other type of antennae, satellite disk or dish, or supporting structure may rise more than six (6) feet above the highest point of the roof of any building. Such antennae, satellite disk or dish, or supporting structure must be attached to the main dwelling. No towers will be permitted unless otherwise approved in writing by Declarant.

Section 9. Boats, Trailers, Etc. No boats, trailers, campers, recreational vehicles, or other vehicles of whatever kind or character other than operational automobiles shall be parked or permitted to remain on the street or on any Lot unless housed completely in a garage.

Section 10. Yard Light. Each dwelling located on a Lot will cause a yard light or other illuminating device to be installed in the front yard fifteen (15) feet (plus or minus one (1) foot)

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from the street curb. Such yard light or illuminating device will be of such design and construction as shall be approved by the Committee, as defined herein; the Committee shall also have the authority to approve a change in the location of said yard light or illuminating device. Said yard light or other illuminating device shall be illuminated at all times other than daylight hours. Owner, other than Declarant, will supply at his expense said lights and equip same with sun electric cells.

Section 11. No Prefabricated Construction. All residences and other structures constructed or erected upon any Lot shall be new construction, and in no event shall any prefabricated or existing residences or garages be moved onto any Lot.

Section 12. Communication Equipment. No communication receiving or transmitting device or equipment shall be used on any Lot which interferes with the television reception on any other Lot without the prior written consent of the Committee, which consent may be withheld or, once given, revoked for any reason.

Section 13. Vegetable Gardens. No vegetable gardens shall be placed on any Lot except behind the residence situated on such Lot.

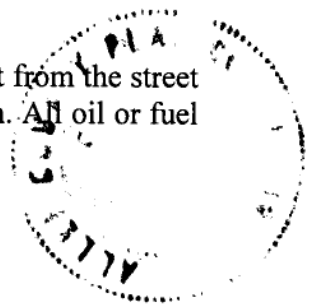
Section 14. Maximum Building Coverage. The total habitable floor area of the residence on each Lot shall have the following square footage restrictions which are exclusive of porches and garages:

(a) All one-story structures shall have a minimum of 1,500 square feet;
(b) All one and one-half-story structures shall have a minimum of 1,850 square feet; and
(c) All two-story structures shall have a minimum of 2,000 square feet.

All structures, exterior colors and design must be approved by the Committee pursuant to Section 21 of this Article III.

Section 15. Temporary Structures. No temporary structures of any kind shall be erected or placed on any Lot and in no instance shall more than one dwelling or residence be erected or placed on any one Lot as the same is shown on the Plat. Any garage and/or servants quarters erected more than one hundred twenty (120) days prior to the connection of the main dwelling or residence shall be considered temporary structures. In no event shall any residential dwelling upon any Lot be occupied until it has been fully completed in accordance with plans approved the Committee. No trailer, basement, tent, shack, or garage erected or placed on any Lot shall at any time be used as a residence temporarily or permanently, nor shall any structure or a temporary character be used as a residence. However, the provisions of this Section 15 shall not apply to structures commenced, erected or maintained by the Declarant.

Section 16. Drives and Storage Tanks. The driveway located on each Lot from the street to the garage shall be concrete surface and not less than sixteen (16) feet in width. All oil or fuel



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storage tanks installed on each Lot shall be done so underground or concealed within the main structure of the dwelling house, basement or attached garage.

Section 17. Fences. The plans, specifications and locations for any fencing to be constructed on any Lot shall be submitted to the Declarant, or to the Committee at any time after the appointment of the members of the Committee by the Declarant, for approval prior to construction in accordance with Section 21 of this Article III. In addition to approval from the Declarant or the Committee, any fencing shall also meet the requirements of the pertinent provisions of the Allen County Zoning Ordinance. All fences shall be of wood, vinyl, or, in the case of a rod iron fence, steel construction. In addition, all fences must be a split-rail or picket-type fence, or, in the case of a steel fence, a rod iron fence. No fence shall exceed four (4) feet in height on any Lot. No aluminum or other types of steel fences will be allowed. Any Lot with any portion of its boundary lines running adjacent to the Common Area containing any pond or lake (each, a "Lake Lot") must have a split-rail or picket-type fence and not exceed four (4) feet in height. Said split-rail fences on Lake Lots shall be limited to three (3) rails. No fence shall extend toward the front yard of any Lot beyond the rear corners of the residence located on any Lot. All fences constructed on a corner Lot shall not extend into or encroach upon the space between said building line and the street on the street side of said corner Lot. No Owner shall construct any fence to contain said Owner's entire Lot.

Section 18. Storage Sheds. No storage sheds, outbuildings, or other similar structures shall be allowed on any Lot, except for buildings required to house mechanical equipment servicing in-ground pools erected under Section 21 below. Any such building allowed hereunder shall meet all applicable requirements of the Allen County Zoning Ordinance.

Section 19. Sidewalks. Each Owner shall provide and maintain a concrete public sidewalk across the front of each of his, her or their Lot(s) prior to occupancy. Concrete sidewalks shall be five (5) feet in width.

Section 20. Pools. No above-ground pool, except for spas, whirlpools and similar structures, shall be commenced, erected or maintained on any Lot. The commencement, erection or maintenance of any in-ground pool on any Lot shall be subject to the provisions of Section 21 below governing the Committee and shall be prohibited on, in, or about any Lot within the community lacking the soil conditions suitable for such commencement, erection or maintenance of an in-ground pool thereon. No in-ground pool shall be located on any Lot nearer than a distance of six (6) feet from the rear or side property line of said Lot. In addition to the foregoing, all in-ground pools shall meet all applicable requirements of the Allen County Zoning Ordinance.

Section 21. Architectural Control.

Section 21.1. New Construction. Notwithstanding any provisions to the contrary set forth in Section 21, until such time as Declarant has conveyed title to all Lots and is no longer a Member of the Association, the following shall apply:

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(a) No Owner shall construct, or cause the construction of, a single-family residence on any Lot prior to obtaining Declarant's written approval of the licensed residential contractor the Owner intends to engage to construct said residence; and

(b) All plans and specifications for the construction of a new single-family residence on any Lot shall be submitted to and approved or disapproved by Declarant pursuant to Section 21.2 below.

Section 21.2. Other Construction. No building, outbuilding, fence, wall, swimming pool or spa, or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until two (2) sets of plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Declarant. Declarant's approval or disapproval as required in these Covenants shall be in writing. No structure of any kind which does not comply fully with such approved plans shall be erected, constructed, placed or maintained upon any Lot, and no changes or deviations in or from such plans as approved shall be made without Declarant's prior written consent. In the event Declarant fails to approve or disapprove such improvements or other matters within ninety (90) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection, addition, alteration, or change has been commenced prior to the completion thereof, written approval will not be required, and this Section 21.2 will be deemed to have been duly complied with by the Lot Owner. Neither Declarant nor any heirs, personal representatives, successors or assigns thereof, shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to Declarant agrees, by submission of such plans, that he or it will not bring any action or suit against Declarant to recover any damages or to require Declarant to take, or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to Declarant's office for review thereby, nor the approval thereof by Declarant, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein.

Once Declarant, or the Board, as appropriate, has appointed the Committee, as defined below, any plans and specifications for construction not considered new construction of a residence under Section 21.1 above shall be submitted to and approved or disapproved by the Committee pursuant to the requirements set forth in this Section 21.2.

Section 21.3. Appointment of Committee. Declarant shall designate the initial representatives to serve on the Architectural Control Committee (the "Committee"). The

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Committee shall consist of at least three (3) and no more than five (5) members appointed by Declarant, or by the Board subject to the Association's Bylaws. Once the Committee is established and provided its authority by Declarant, the Committee shall assume the rights and obligations of Declarant under Section 21.2 above.

Section 22. Flood Protection Grades. In order to minimize potential damages from surface water, flood protection grades, as defined in and governed by the Allen County, Indiana Storm Water Ordinance Technical Standards Manual, as amended from time to time, are hereby established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor of any dwelling. The flood protection grades shall be per North American Vertical Datum 1988 and shall be specifically set forth in the Secondary Plat of Whisper Rock, Section 5, as approved by the Allen County Plan Commission.

The flood protection grades for Whisper Rock, Section 5, are as follows, inclusive:

Lot 135 = 866.0 feet
Lot 136 = 865.5 feet
Lots 146-149, inclusive = 861.0 feet
Lots 151-152 = 861.0 feet rear elevation; 865.7 feet front elevation
Lots 157-158 = 850.0 feet
Lot 159 = 862.6/850.0 feet rear elevation; 867.0 feet front elevation
Lot 160 = 862.6 feet rear elevation; 867.0 feet front elevation
Lots 161-165, inclusive = 862.6 feet
Lots 166-167 = 862.6 feet rear elevation; 865.7 feet front elevation
Lots 168-169 = 862.6 feet rear elevation; 866.2 feet front elevation
Lots 170-171 = 862.6 feet
Lot 172 = 862.6 feet rear elevation; 865.7 feet front elevation
Lot 173 = 862.6 feet rear elevation; 866.5/865.7 feet front elevation
Lot 174 = 862.6 feet rear elevation; 866.5 feet front elevation
Lots 175-177, inclusive = 862.6 feet

Section 23. Front Exteriors. The front elevation of the residence constructed on a Lot must be of natural material, i.e., wood, brick or stone, except for soffits and the use of hardi plank or vinyl siding, on a limited basis, to highlight or complement the natural material required to cover the majority of all front elevations hereunder.

Section 24. Landscaping and Lawn.

(a) All Owners shall landscape, or cause to be landscaped, their Lot, at a minimum, in a manner so as to maintain and remain consistent with the aesthetic integrity of the landscaping contained on the Properties, as defined by Declarant. Said landscaping shall be completed, or caused to be completed, by each Owner within one (1) year after the date of said Owner's certificate of occupancy, as issued by the Allen County Building Department, authorizing the

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(b) All Owners, as soon as reasonably possible upon completion of construction of their residence, shall properly grass seed or sod their Lot and maintain their yard in a condition consistent with the aesthetic integrity of the yards contained on other Lots and the Properties, as defined by Declarant.

(c) The Owners of Lots 146-149, 151-152, 157-172, and 174-177, inclusive, shall each be responsible for mowing and grass and other maintenance of that portion of Common Area located between such Owner's rear Lot line and the edge of any lake located in the block of Common Area that lies adjacent to such Owner's Lot. Such mowing and other maintenance shall be completed at each such Owner's expense and in a manner so that such area shall be and remain consistent with the aesthetic integrity of the lawns and Common Area in and around Whisper Rock. Each Owner designated above shall remain obligated hereunder until such time as the Association shall expressly assume such Owner's obligations under this Subsection (c).

Section 25. Utility Easements. Except for easements and Declarant's rights relating thereto as set forth in Article IV, Section 1 hereof, no Owner shall erect on a Lot, or grant to any entity 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 three (3) wires and have a capacity of not less than two hundred twenty (220) 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.

Section 26. Surface, Storm and Underground Water Discharge. Each Owner shall take all steps necessary to maintain and continue at all times the separation of surface, storm and underground waters from the sanitary sewer system servicing each dwelling unit, including, without limitation, not allowing discharge from gutter downspouts, interior or exterior foundation drains, foundation drain sump pumps, yard and other surface, storm or underground waters to be connected to or flow through or into, directly or indirectly, said sanitary sewer system. Any surface, storm or underground water discharge service system erected, constructed or maintained by the Owner shall be done so in compliance with all local, state and federal rules, regulations and standards governing such discharge systems, including, without limitation, the rules, regulations and standards set forth by the Allen County Drainage Board, or its successor. Declarant shall provide a swale or similar storm water drainage system at the rear of each Lot (each, a "Storm Water Drainage System"), and each Owner shall connect his or her foundation drain sump pump or other surface, storm or underground water discharge system maintained by said Owner to the Storm Water Drainage System (or, in the case of a swale, arrange for said sump pump or system discharge to flow to and through said swale) for purposes of adequately draining said Lot.

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Each Owner shall contact Declarant prior to the connection of his or her dwelling unit to the sanitary sewer system and the Storm Water Drainage System constructed and maintained by Declarant so that Declarant can verify and inspect, or arrange for verification and inspection of, the separate connections of the Owner's dwelling unit to the respective discharge systems. Should any Owner fail to comply with the provisions of this Section 26 and Declarant incur any costs associated with curing said failure, including, without limitation, disconnecting improper connections to Declarant's sanitary sewer system, Declarant shall have the right to collect all of said costs from the Owner, including, without limitation, the costs of collection and reasonable attorney fees.

In addition to the foregoing, each Owner shall take all steps necessary to keep the Storm Water Drainage System provided by Declarant clear of debris so as to maintain the flow of surface water to and through said Storm Water Drainage System for purposes of properly draining said Owner's Lot. Should any Owner fail to comply with the requirements hereunder, Declarant, or the Board, as appropriate, shall have the right to enter onto said Owner's Lot and repair any Storm Water Drainage System and/or remove any debris or other items blocking the flow of water to or through said System, and charge said Owner for all costs and expenses incurred in doing so. All costs and expenses incurred by Declarant, or the Board, as appropriate, and charged to the Owner hereunder shall be considered part of and added to the amounts assessed and collected under Article VI hereof.

Section 27. Single Owner Contiguous or Multiple Lots. Whenever two (2) or more Lots in Whisper Rock, Section 5, shall be owned by the same person, contiguously situated or otherwise, such Owner shall be subject to and agree to pay to the Association for each Lot owned by said Owner all assessments and other charges collectible by the Association pursuant to Article VI of these Restrictions, except in the event a dwelling unit is constructed on such contiguous Lots so that any portion of said dwelling unit is located on or across the common Lot line intended to divide said Lots. In such a case, the subject contiguous Lots shall be considered one (1) Lot for purposes of all assessments and other charges collectible by the Association and payable by the Owner pursuant to Article VI of these Restrictions.

In addition to the foregoing, the Owner of any Lot or multiple Lots, including any contiguous Lots referenced above, shall be responsible for providing yard-quality grass seeding and appropriate maintenance thereof for each Lot owned pursuant to Section 24 of this Article III. Any proposed use of any Lot or Lots owned by any Owner in addition to the Lot owned by said Owner upon which said Owner's dwelling unit is constructed shall be consistent with and not violate any provisions contained herein. Any proposed temporary or other use of any additional Lot or Lots inconsistent with or in violation of any provisions contained herein shall be subject to the prior approval by the Declarant, or Committee, as appropriate, pursuant to Article V hereof.

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Section 28. Construction Damage. Each Owner shall be responsible for any damage caused to any Lot, Common Area, or other Properties during or after construction by any contractor and/or subcontractor engaged by said Owner to construct a dwelling or any other improvements on said Owner's Lot. Should any Owner fail to properly repair such damage and/or restore any Lot, Common Area and/or Properties to a condition deemed acceptable by Declarant, or the Board, as appropriate, Declarant, or the Board, as appropriate, shall have the right to repair any such damage and/or restore any Lot, Common Area or Properties to an acceptable condition, and charge said Owner for all costs and expenses incurred in doing so. All costs and expenses incurred by Declarant, or the Board, as appropriate, and charged to the Owner hereunder shall be considered part of and added to the amounts assessed and collected under Article VI hereof.

ARTICLE IV

EASEMENTS

Section 1. Easements Reserved by Declarant. Easements for the installation, maintenance, repair and removal of public and/or quasipublic utilities and sewer and drainage facilities, and floodway easements are reserved by Declarant over, under and across the Properties, as shown on the recorded Plat thereof. Full ingress and egress shall be had by Declarant at all times over the Properties for the installation, operations, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easements, or with the use, maintenance, operation or installation of such utility. The grade of the land in any such easement shall not be changed or altered by any Owner of any Lot, after the said grade has been established. All utility easements as dedicated on the Plat shall be left free from all permanent structures and the removal of any obstructions, whether temporary or permanent, shall be subject to the paramount right of the utility and/or sewer installation. Declarant shall have the right to assign and transfer the easements and rights herein reserved to or for the benefit of any public or quasipublic utility.

Section 2. Surface Drainage Easements. Surface drainage easements as shown in the Plat are intended for either periodic or occasional use as conductors for the flow or surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the Association or a proper public authority having jurisdiction over storm drainage shall have the right to repair and maintain such easements, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

Section 3. Surface Water. No rain or storm water runoff shall at any time be discharged or permitted to flow into the sanitary sewage system, which shall be a separate sewerage system from the storm water and surface water runoff outlets. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on any Lot except that any individual water system may be used for the purpose of a swimming pool or lawn irrigation.

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ARTICLE V

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Easements of Enjoyment. Subject to the provision of Section 3 of this Article, the following persons shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot:

(i) Each Member and each individual in Member's family residing with Member.

(ii) Each tenant and contract purchaser of any Member (and each individual in the respective families of each such tenant and contract purchaser residing with each of them) who resides on the Lot owned by such Member; provided, that such tenant or contract purchaser, as the case may be, shall have a right and easements of enjoyment in and to the Common Areas in lieu of such Member and such Member's family.

Section 2. Title to the Common Areas. The Declarant may retain the legal title to the Common Areas until such time as it has completed such improvements thereon as it may elect to make and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Areas to the Association not sooner than January 1, 2019. At any time thereafter, the Declarant may convey and transfer to the Association such additional real and/or personal property as the Declarant, in its sole discretion, deems appropriate, and the Association shall accept such transfer and hold such property as part of the Common Areas.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Areas (including limiting the number of guests of Members);

(b) The right of the Declarant, and of the Association in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage the Common Areas, and the rights of such mortgagee in the Common Areas shall be subordinate to the rights of the homeowners hereunder;

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(d) The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of any Member and to suspend the right of any individual to use any of the

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Common Areas and/or common facilities for any period during which any assessment against a Lot resided upon by such individual remains unpaid, and for any period not to exceed thirty (30) days for an infraction or its rules and regulations;

(e) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities of the Common Areas; and

(f) Subject to approval by the affirmative vote of the Association's Members, as provided in Section 3 of Article VII, the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and upon such conditions as may be agreed to by the Members.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance), for each Lot owned by any such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association) Annual Assessments or charges (the "Annual Assessments"), to be paid on June 1 of each year (hereinafter called "Annual Payment Dates") or in such other installments as the Board may elect. The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such Assessment is made. The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the Assessments became due.

Section 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively for (i) the care, preservation, supervision, improvement and maintenance of the Common Areas and of the improvements situated thereon; (ii) the payment of taxes on and insurance in connection with the Common Areas and the repair, replacement and making of additions thereto; (iii) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management, supervision, maintenance and repair of, the Common Areas, including, without limitation, the water quality amenities and storm water detention basin and control structures, and of any existing and future recreational lakes together with any outlet and water level control structures and of the park area and improvements situated thereon, (iv) carrying out the duties of the Board as set forth in Article VIII hereafter; and (v) carrying out the purposes of the Association as stated in its Articles of Incorporation.

Section 3. Improvement and Maintenance of the Common Areas Prior to Conveyance to the Association. Upon conveyance of any portion of the Common Areas to the Association, the Association shall have the responsibility and duty of improving and maintaining that portion of

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the Common Areas conveyed by the Declarant. However, the Declarant shall have the responsibility and duty of improving and maintaining all Common Areas prior to conveyance thereof to the Association, including, without limitation, the payment of taxes on and insurance in connection with the Common Areas (or the portion thereof that has not been conveyed to the Association) and the costs of repairs, replacements and additions thereto, and for paying the costs of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Areas. In this regard, and during such period, all Assessments, both Annual and Special, collected by the Association shall be forthwith paid by the Association to Declarant, to the extent that such Assessments are required by Declarant to improve and maintain the Common Areas as set forth in this paragraph. The Association shall rely upon a certificate executed and delivered by the Declarant with respect to the amount required by Declarant to improve and maintain the Common Areas hereunder. Any sums required by Declarant to improve and maintain the Common Areas, in excess of the Assessments collected by the Association, shall be borne and paid exclusively by Declarant.

Section 4. Basis and Amount of Annual Assessments.

(a) Until the year beginning January 1, 2019, there shall be no Annual Assessment under this Article VI.

(b) Commencing with the year beginning January 1, 2019 and each year thereafter, the Board, at its annual meeting and effective for the year commencing with the next January 1, and each January 1 thereafter, shall set the amount of the Annual Assessment for the following year for each Lot, taking into consideration the current maintenance costs and the future needs of the Association, provided that the Annual Assessment shall never be less than $200.00.

Section 5. Capital Improvements. In the event any Annual Assessment includes, or the Board levies a special assessment ("Special Assessment") in any given year to include, an amount for the purpose of defraying, in whole or in part, the cost of construction, repair or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, that portion of any such Assessment, Annual or Special, relating to the capital improvement(s) must have the assent of the Members entitled to cast a majority of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose, as provided in Section 3 of Article VII. ("Annual Assessment" and "Special Assessment" are sometimes collectively referred to herein as the "Assessments.")

Section 6. Uniform Rate of Assessment. Subject to the provisions of Section 11 of this Article VI, both Annual and Special Assessments must be fixed at a uniform rate for all Lots.

Section 7. Date of Commencement of Assessments: Due Dates.

(a) The initial Annual Assessment provided for in Section 4 of this Article VI shall commence on the date fixed by the Board to be the date of commencement, and shall be payable annually, in advance, on each Annual Payment Date thereafter; provided, however, that if the

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date of commencement falls on other than the first day of a month, the Assessment for such month shall be prorated by the number of days remaining in the month.

(b) The due date or dates of any Special Assessment under Section 5 hereof shall be fixed in the Board resolution authorizing such Assessment.

Section 8. Duties of the Board with Respect to Assessments.

(a) The Board shall fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

(b) Written notice of the Assessment shall thereupon be delivered or mailed to every Owner subject thereto.

(c) The Board shall upon demand at any time furnish to any Owner liable for said Assessment a certificate in writing signed by an officer of the Association, setting forth whether said Assessment had been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board of the issuance of such certificates.

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of the Association.

(a) If any Assessment or any part thereof is not paid on the date(s) when due (being the dates specified in Section 7 of this Article VI), then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot of the non-paying Owner which shall bind such Lot in the hands of the then Owner, his heirs, executors, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. The lien for unpaid Assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use of the Common Areas or abandonment of his Lot. In addition to the foregoing, any Member whose Assessments, Annual or Special, become delinquent hereunder shall have his, her or their privilege of the use and enjoyment of the Pool suspended until such time as the obligations hereunder are satisfied.

(b) If any Assessment or any part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from the date of delinquency at the maximum legal rate of interest, and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the property subject thereto, and there shall be added

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to the amount of such Assessment the costs of preparing and filing the complaint (including reasonable attorneys' fees) in such action and, in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate and inferior to the lien of any mortgage or deed of trust now or hereafter placed upon the Lots subject to assessment; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale, whether public or private, or such property pursuant to the terms and conditions of any such deed of trust. Such sale shall not relieve such Lots from liability for the amount of any Assessments thereafter becoming due nor from the lien of any such subsequent Assessment.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the Annual and Special Assessments, charges and liens created herein:

(a) All properties dedicated and accepted by the local public authority and devoted to public use.

(b) All Common Areas as defined in Article I hereof.

(c) All areas reserved by the Declarant on the recorded Plat of the Properties.

(d) All Lots owned by Declarant.

(e) All Lots owned by a residential contractor licensed in Allen County, Indiana as such and who holds title to a Lot for the purpose of constructing a dwelling unit on said Lot but not residing thereon.

ARTICLE VII

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall automatically be a Member of the Association, including Declarant, for as long as Declarant owns a Lot or Lots, and all other Owners. Subject to the rights of Declarant set forth below, Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. Until such time as Declarant has sold all Lots in Whisper Rock, Section 5, Declarant shall be entitled to forty-three (43) votes for each Lot owned by Declarant.

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Section 2. Quorum and Notice Requirements.

(a) Subject to the provision of paragraph (c) of this Section, any action authorized by Section 3(f) of Article V shall require the assent of the Members entitled to cast two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy at a meeting with a proper quorum, as described below, duly called for that purpose, written notice of which shall be given to all Members at least ten (10) days in advance (unless otherwise provided in the Bylaws of the Association) and shall set forth the purpose of such meeting.

(b) The quorum required under this Section 2 for any action referred to in Section 3(f) of Article V or Section 5 of Article VI shall be as follows: At the first meeting called, as hereinafter provided, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at the meeting, an additional meeting may be called, subject to the notice requirement hereinafter set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such second meeting shall be held more than sixty (60) days following the first meeting.

(c) Any provision of this Declaration to the contrary notwithstanding any action described in Section 3(f) of Article V may be taken with the assent given in writing and signed by the Members entitled to cast two-thirds (2/3) of the votes of the Association.

(d) Except as hereinabove specifically set forth in Section 3, paragraphs (a), (b) and (c) of this Article VII, notice, voting and quorum requirements for all action to be taken by the Association shall be as set forth in its Articles of Incorporation and Bylaws, as same may be amended from time to time.

ARTICLE VIII

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

Section 1. Powers and Duties. The Board, for the benefit of the Properties and the Owner, shall provide, and shall pay for out of the maintenance fund provided for in Article V, Section 1, above, the following:

(a) Taxes and assessments and other liens and encumbrances, which shall properly be assessed or charged against the Common Areas, rather than against the individual Owners.

(b) Care and preservation of the Common Areas and full maintenance of a utility service for the Common Areas including the furnishing and upkeep of any desired personal property for use in the Common Areas.

(c) The services of a person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as

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the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(d) Legal and accounting services.

(e) A policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants), incident to the operation of the Association, in an amount not less than $100,000 to indemnify against the claim of one person $300,000 against the claim of two or more persons in any one occurrence, and property damage insurance in an amount not less than $100,000 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insureds shall not be prejudiced with respect to actions against other named insureds.

(f) Workers' compensation insurance to the extent necessary to comply with any applicable laws.

(g) Such fidelity bonds as the Board may determine to be advisable.

(h) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

(i) To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas on behalf of all Owners.

(j) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(k) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks) and, generally, to have all the powers necessary or incidental to the operation and management of the Association.

(l) To protect or defend the Common Areas from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

(m) To make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members (without limiting the generality of the foregoing language, the rules and regulations may provide for limitations on use of common recreational areas during certain periods by youthful persons, visitors or otherwise).

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(n) To make available to each Owner within sixty (60) days after the end of each year an annual report and, upon the written request of one-tenth (1/10) of the Members, to have such report audited by an independent, certified public accountant, which audited report shall be made available to each Member within thirty (30) days after completion.

(o) To adjust the amount, collect, and use any insurance proceeds to repair damage or place lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(p) To enforce the provision of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

Section 2. Board Powers, Exclusive. The Board shall have the exclusive right to contract for all goods, services, and insurance, payment for which is to be made by the Association, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

Section 3. Owner's Obligations to Repair. Each Owner shall, at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair. In the event that any Owner shall fail to maintain and repair his Lot and the improvements thereon as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessment hereunder when due.

ARTICLE IX

PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration (hereinabove defined as the "Existing Property"), located in Allen County, State of Indiana, is described on Exhibit "A" attached hereto, and is designated Whisper Rock, Section 5, and more particularly described on a subdivision Plat (the "Plat" hereafter) thereof recorded as Plat Cabinet __, page ____, in the Office of the Recorder of Allen County, Indiana.

Section 2. Additions to Existing Property of Whisper Rock. If Declarant is the owner of any property which it desires to add to the community of Whisper Rock, including future Properties to be added as additional sections of Whisper Rock, it may do so by filing of record a Supplemental Dedication, Declaration, Protective Restrictions, Covenants, Limitations,

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Easements and Approvals which shall extend the concept of the Covenants of this Declaration to such property, PROVIDED, HOWEVER, that (i) such additional property shall be contiguous (as hereafter defined) to the Properties subject to this Declaration at the time, and (ii) such Supplemental Declaration may contain such complimentary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept of this Declaration. In no event, however, shall such Supplemental Declaration modify or add to the Covenants established by this Declaration for the Existing Property. Any additions made and sections added to Whisper Rock pursuant to this Section 2, when made, shall automatically become part of the Association, thereby extending the jurisdiction, functions, duties and membership of the Association to the sections and properties added. For the purposes hereof, the term "contiguous" shall mean adjoining; provided, that any tracts or parcels of land which are separated by a street, road, sidewalk, right-of-way, easement or other thoroughfare shall be deemed to be contiguous.

ARTICLE X

GENERAL PROVISIONS

Section 1. Duration. The Covenants contained in this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date that this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Members entitled to cast a majority of the votes of the Association has been recorded, agreeing to abolish said Covenants, or to change said Covenants in whole or in part; provided, however, that no such agreements to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change; provided further, that no such agreements to change shall be applicable to existing buildings on the Properties.

Section 2. Termination or Amendment by Declarant. For a period of ten (10) years following the date of the recording of this Declaration with the Office of the Recorder of Allen County, Indiana, Declarant, at its discretion, may abolish, amend, restate, or otherwise modify the Covenants within this Declaration, in whole or in part, subject, however, to approval of the Allen County Plan Commission. Declarant's rights under this Section 2, for the duration of the aforementioned ten (10) year period, shall supersede the rights to modify the Covenants within this Declaration provided in Section 1 and/or Section 3 of this Article X.

Section 3. Consent of Members Regarding Termination or Amendment of Covenants. Except as provided in Section 1 and subject to Declarant's rights under Section 2 of this Article, the Covenants within this Declaration may be abolished, amended and/or changed, in whole or in part, only with the consent of the Members entitled to cast fifty-one percent (51%) of the votes of the membership, evidenced by a document in writing bearing each of their signatures; provided, that (i) no amendment whatsoever shall be made without the written consent of the Declarant

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prior to January 1, 2029, notwithstanding that Declarant has no interest in the Properties at the time, (ii) Declarant shall have the right to amend this Declaration at any time from time to time, without the consent of any Member, to the extent that such amendments are required by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, or other governmental authority involved in financing the improvement, purchase or sale of any of the Lots or the improvements to be constructed thereon, and (iii) no amendment shall be made eliminating any of the covenants of Articles III and IV or adversely affecting or reducing the assessments provided in Article VI without the prior written approval of the Allen County Plan Commission or its successor, and further, however, that the restrictions and covenants herein contained as they relate to the storm water detention system and the maintenance and repair thereof shall be for an indefinite period except as amended with the prior approval of the Allen County Drainage Board.

Section 4. Enforcement. The Association, Declarant, and any 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 contained herein. Failure by any of the foregoing parties to enforce any provisions contained herein shall in no event be deemed a waiver of the right to do so at any time thereafter.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 6. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 7. Notices. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 9. Storm Water System Maintenance. The Association shall be obligated to maintain, repair and/or replace, if necessary, the storm water drainage system, all water quality amenities, and any current or future Storm Water Detention Basin together with its outlet and water level control structures, as filed with the Allen County Plan Commission in conjunction with this Subdivision Section approval of which has been granted for the use and benefit of this Section of this Subdivision, and further Sections of Whisper Rock, the cost of which shall be assessed in accordance with this Section 9 and Article VI of this Declaration. Additionally, the Association shall be responsible for the offsite regulated drain maintenance from the constructed water quality unit to the outfall on the Dunten Regulated Drain.

The Whisper Rock Community Association and/or the Allen County Drainage Board, or its successor agency, shall have the right to order the Association to carry out its obligations to maintain, repair or replace the Storm Water Drainage System, all water quality amenities, and any current or future storm water detention system improvements as provided hereinabove.

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Assessments which have been collected by the Allen County Drainage Board from the Subdivision will be utilized by the Drainage Board and/or by the Allen County Surveyor for reconstruction or repair and maintenance of the regulated storm pipe system prior to the initiation of Association reconstruction or repair obligations.

Notwithstanding anything contrary to the aforesaid, any alteration or amendment of the Covenants must be made accordingly with the prior approval of the Allen County Plan Commission and further that the Covenants herein contained, and only as they relate to the storm water detention system and the maintenance and repair thereof, shall be in continuous effect for an indefinite period, except as amended with the prior approval of the Allen County Drainage Board.

IN WITNESS WHEREOF, Jeffrey M. Thomas, a Member of Twin Eagles Development II, LLC, being the Declarant herein, has executed this instrument on this, the 21st day of May, 2019.

TWIN EAGLES DEVELOPMENT II, LLC
An Indiana Limited Liability Company

By: _____
Jeffrey M. Thomas, Member

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STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned authority, a Notary Public in and for said County and State, this day personally appeared Jeffrey M. Thomas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said Twin Eagles Development II, LLC, an Indiana limited liability company, and that he executed the same as the act of such Twin Eagles Development II, LLC for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21st day of May, 2019.

My Commission Expires:
9/12/24

Austin Mari Glenn
Austin Mari Glenn, Notary Public
A resident of Allen County

AUSTIN MARI GLENN
Allen County
My Commission Expires
September 12, 2024

This instrument prepared by:
J. Rickard Donovan
ROTHBERG LOGAN & WARSCO LLP
505 East Washington Boulevard
Fort Wayne, IN 46802

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

MAIL TO: Twin Eagles Development II, LLC
9601 Coldwater Road
Fort Wayne, IN 46825

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