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

**FOR**

**KENTNER CREEK CROSSING SUBDIVISION**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR KENTNER CREEK CROSSING SUBDIVISION** is made this 14<sup>th</sup> day of September, 2021, by Kentner Creek, LLC ("Declarant").

**ARTICLE I. DECLARATION - PURPOSES AND EFFECT.**

1.1 General Purposes. Declarant is the owner of real property in Wabash County, Indiana, described on Exhibit A attached hereto ("Property"), and submits the Property to this Declaration in order to provide for the use, operation, administration, and maintenance of the Property.

1.2 Declaration. All owners, mortgagees, and any other person or entity now or hereafter acquiring any interest in the Property shall hold their interests subject to this Declaration. This Declaration shall constitute covenants, conditions, and restrictions running with the land

**ARTICLE II. DEFINITIONS.**

The terms listed below, as used in this Declaration, shall have the meanings set forth as follows:

2.1 "Articles" means the Articles of Incorporation of the Kentner Creek Homeowners Association, Inc., as amended from time to time.

2.2 "Architectural Committee" means the committee established pursuant Article V of this Declaration.

2.3 "Association" means Kentner Creek Homeowners Association, Inc., an Indiana non-profit corporation, and its successors and assigns, through which all Owners act as a group under the Articles, the By-Laws, and this Declaration.

2.4 "Association Property" means any real property or personal property owned or leased by the Association.

2.5 “Board” or “Board of Directors” means the governing board of the Association.

2.6 “By-Laws” means the By-Laws of the Association adopted and amended by the Board from time to time.

2.7 “Common Expenses” means the estimated and actual expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

2.8 “Declarant” means Kentner Creek, LLC, and its successors and assigns if specifically designated as such by an instrument executed by Declarant and recorded in the office of the Recorder of Wabash County, Indiana.

2.9 “Declaration” means this Declaration of Covenants, Conditions, and Restrictions for Kentner Creek Subdivision as amended from time to time.

2.10. “Dwelling” means the improvement constructed on a Lot for residential living. One (1) Dwelling is to be constructed on each Lot.

2.11 “Lot” means each lot as shown on the Plat. Each Lot is to contain one (1) Dwelling.

2.12 “Maintenance” means such operation, management, maintenance, repair, renovation, restoration, or replacement of any property as may be necessary to maintain such property in substantially the same condition as originally or subsequently constructed, altered or improved, including the removal of snow.

2.13 “Mortgage” means any mortgage or other security instrument creating a real property security interest in the Association Property, or any part thereof, or in any Lot, excluding any statutory, tax, or judicial liens. “Mortgagee” shall include any grantee, beneficiary, or assignee of a Mortgage, and “Mortgagor” shall include any grantor of a Mortgage.

2.14 “Owner” means the person or legal entity holding fee simple title to a Lot.

2.15 “Plat” means the Plat of Kentner Creek Subdivision recorded in the office of the Recorder of Wabash County, Indiana, or as the same may be hereafter amended.

2.16 “Property” means the real property described in Exhibit A attached hereto.

2.17 "Zoning Ordinance" means the zoning ordinance of the City of Wabash, Indiana.

**ARTICLE III. RESERVATION OF RIGHTS TO DECLARANT.**

In order that the Declarant's work may be completed and the Property may be established as a fully developed community, Declarant reserves the following rights with respect to the Property (including both the Association Property and the Lots), which rights shall be reserved to and remain vested in Declarant, notwithstanding the conveyance of Association Property by Declarant to the Association or the conveyance of the Lots by Declarant to any other persons or entities:

(a) The right of Declarant, and its agents, employees and contractors, to enter upon the Property and to do whatever Declarant deems necessary or advisable in connection with the performance of the work to be performed by Declarant for the development of the Property, including, without limitation, the construction and installation of drainage and irrigation facilities, the installation of all utilities, the construction of all roads, the grading and landscaping of the Property, the construction of all other improvements to be constructed by Declarant, the erection or placement of temporary structures and the temporary storage of materials and fill dirt as may be reasonably necessary to facilitate the development of the Property, and the placement of such sign or signs on the Property by the Declarant as the Declarant may deem advisable in connection with sale of, development of or construction on the Lots.

(b) The right of Declarant to grant additional easements, and to relocate existing easements, for utilities, irrigation, drainage, grading, driveway access, and similar purposes, as may be reasonably required for the performance and completion of Declarant's development work.

(c) The right of Declarant to unilaterally modify the square footage requirements described in Section 7.39.

**ARTICLE IV. ASSESSMENTS.**

4.1 Obligation to Pay Assessments. Each Lot shall be subject to such general or special assessments as the Association may levy from time to time. The assessments collected shall be used exclusively to promote the operation, administration,

maintenance, and management of the Association and the Association Property. Each owner shall be obligated to pay and agrees to pay all such assessments levied against his Lot and may not exempt himself from liability by waiver of the use and enjoyment of the Association Property, or by an abandonment of his Lot.

4.2 General Assessments. General assessments shall be based upon a budget for a fiscal year to be designated by the Board, shall include funds for the Common Expenses, and shall also include funds as a reserve for Maintenance which cannot be expected to occur on a regular annual basis. A brief summary of the annual budget shall accompany each general assessment notice. The failure of the Board to establish a budget for the next fiscal year before the expiration of any fiscal year shall not release the Owners from their obligation to pay any assessments or installments thereof for that or any subsequent year. The budget and assessment installments established for a preceding year shall continue until a new budget is fixed.

4.3 Special Assessments. If the estimated cash requirements set forth in the budget prove to be inadequate for any reason, including non-payment of any Owner's assessment, or there are inadequate funds in the reserve, the Board may levy special assessments from time to time. This Section shall not be construed as an independent source of authority for the Board to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections.

4.4 Apportionment of Assessments. Except as otherwise specifically provided in this Declaration, the amounts assessed pursuant to this Declaration as a Common Expense, shall be equally allocated and assessed among the Owners in the proportion that the number of Lots owned by each bears to the entire number of Lots. Assessments which are attributable to only particular Lots may be allocated, in the sole judgment of the Board on an appropriate equitable basis.

4.5 Refunds. If in any fiscal year the assessments collected by the Board exceed Common Expenses incurred, the Board shall have the right, but not the obligation, to make refunds or give credits against future assessments. Refunds or credits shall be apportioned in the same manner as the general and special assessments which created such surplus. Owners whose Lots were subject to this Declaration for less than the full fiscal year shall receive only a proportionate refund or credit based upon the number of days that Lot was subject to this Declaration. Any credit received

by Declarant as an Owner under this Subsection shall be applied to another Lot owned by Declarant or, if there is no such Lot, shall be converted into a cash refund.

#### 4.6 Collection and Enforcement Remedies.

(a) All assessments or installments thereof, fines shall be due and payable at the time or times designated by the Board by written notice delivered to the Owners. Overdue assessments shall bear interest at 18% per annum, or such other lawful rate or charge as the Board may determine from time to time. The payment of any assessment payable in installments may be accelerated by the Board for failure to pay any installment when due.

(b) An assessment shall be the personal obligation of the Owner of the Lot at the time the assessment is levied against the Lot. A suit to recover a money judgement for unpaid assessments may be maintained against any Owner without waiving or otherwise prejudicing the Association's right to pursue any other remedy provided herein or established by law. The Association shall be entitled to recover its costs, expenses and reasonable attorneys' fees as additional sums due under any lien which may be filed or otherwise which are incurred in enforcing any action for payment of assessments or to enforce compliance with any provision contained.

(c) The Association shall have a lien against a Lot for any assessments against the Lot which are due and unpaid from the date of the assessment. All amounts unpaid may be evidenced by a statement executed by the Association and recorded in the office of the Recorder of Wabash County, Indiana. Costs of preparing and filing the statement shall be included in the amount of the lien.

(d) The Association shall have the right to foreclose such lien in the manner provided by Indiana law for mortgages upon real property, to the appointment of a receiver and to the rental value of the Lot and its improvement during the period of delinquency through the period of foreclosure until expiration of the period of redemption. The Association shall have the power to bid on the Lot at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association shall be entitled to recover its costs, expenses and reasonable attorneys' fees incurred in foreclosing a lien.

**ARTICLE V. PROVISIONS APPLICABLE TO THE ASSOCIATION PROPERTY.**

5.1 Benefit of Owners. The Association Property shall be maintained and managed for the benefit of the owners, subject to:

(a) the right of the Association to reasonably limit and regulate the use of the Association Property by the Owners; and

(b) the right of the Association to suspend an Owner, his lessees, and their families and guests from use of the Association Property and for any misconduct or infraction of the rules of the Association.

5.2 Easements. The Association Property shall be subject to the easements as shown on the Plat and to such other and further easements as are provided for and/or authorized in this Declaration. The Association, upon acquiring ownership of the Association Property, shall have the right to grant easements with respect thereto, either public or private, in furtherance of the intents and purposes of this Declaration.

5.3 Compliance with Law. No owner, his Lessees, nor his family members and guests, shall do anything, or keep anything, in or on the Association Property which would be in violation of this Declaration, or any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental or quasi-governmental body.

5.4 Obligations for Maintenance and Management. Except for those obligations to be performed by Declarant with respect to the development of the Association Property, the Association, upon acquiring ownership of the Association Property, shall assume and perform all obligations for the Maintenance of the Association Property as provided for in this Declaration, and Declarant shall automatically be released from said obligations.

5.5 Conveyance of Association Property to Association. No later than upon the sale of all the lots, Declarant shall convey ownership of the Association Property to the Association as defined in this Declaration, together with all rights and easements appurtenant thereto, subject to the Declaration and all reservations, exceptions, easements and restrictions pertaining thereto, but free from all monetary liens except the lien for general real estate taxes for the calendar year of such conveyance. Such

conveyance shall be made without monetary consideration and may be made from time to time.

**ARTICLE VI. ARCHITECTURAL COMMITTEE.**

6.1 Creation. There is created an Architectural Committee which shall have the duty to review plans and to grant or withhold certain approvals in connection with improvements and developments in the Subdivision.

6.2 Membership. The Committee shall be composed of five (5) members appointed by the Board of Directors, who need not be Owners.

6.3 Voting. The vote or written consent of any four (4) members shall constitute action of the Committee.

6.4 Variations. The Architectural Committee may grant a variance from the standards described in Article VII, but only after considering any responses to a notice of the request for a variance sent to all Owners at least fifteen (15) days before the request is considered.

6.5 No Liability. Neither the Committee nor any member thereof, nor the Association nor any director, officer, or member thereof, shall be liable to any party for any action or for any failure to act under or pursuant to or with respect to any provision of this Declaration, provided that such act or failure to act was in good faith.

**ARTICLE VII. DESIGN STANDARDS APPLICABLE TO THE LOTS.**

7.1 Accessory Buildings of Improvements. No unattached accessory buildings or garages are permitted.

7.2 Architectural Style and Character. Dwellings are expected to reflect the traditional character found in the finer upscale neighborhoods. While there are no period or historic style requirements, extremely avant-garde designs as well as period or "pure" architecture, such as American Colonial, Spanish Colonial, Victorian or Santa Fe are prohibited. Dwellings styles shall respond to the setting and be compatible with the overall community. The balance, symmetry and detailing of traditional architecture shall be reflected in all Dwellings.

7.2 Animals. Animals and pets shall be restricted to cats, dogs, fish, domestic birds, hamsters, gerbils, turtles, guinea pigs, and rabbits, subject to the rules

and regulations with respect thereto as may be promulgated from time to time by the Association. No other animals shall be allowed in the Subdivision.

7.3 Approval of Architectural Committee. No improvement shall be made to any Lot without the prior written approval of the Architectural Committee.

7.4 Building Projections. The use of porches, veranda, courtyards, patios and/or outdoor living and circulation are encouraged. Such projections must be designed as integral elements of the Dwelling using compatible forms and materials. Vinyl and aluminum covered porches are not permitted. All roof projections including chimneys, flues, vents and other equipment must be grouped and concealed in a chimney-like structure, compatible in height with the structure, Dwelling, or improvement from which they project. Wood chimney chases are not permitted.

7.5 Business or Commercial Activity. No Lot may be used at any time for business or commercial activity.

7.6 Compliance with Declarations and Zoning Ordinance. All buildings and other improvements constructed upon a Lot, and the use thereof, shall comply with the provisions of this Declaration and the Zoning Ordinance. In the event of a conflict between the provisions of this Declaration and the provisions of the Zoning Ordinance, the provisions of this Declaration shall apply.

7.7 Drainage. No Owner shall do anything which shall impair or adversely affect the natural drainage of the Property, or divert drainage water unto another Lot, or deprive any other Lot of its natural drainage course. Each Owner shall install culverts where driveways cross road ditches, irrigation channels, and other drainage ways as required by the Architectural Committee.

7.8 Driveway and Garage Layouts. Concrete or approved pavers are preferred driveway materials. The driveway and parking garage layouts shall minimize the visibility of garage doors and guest parking form major views of adjacent Dwellings and streets. It is required, where practical and feasible, that garage doors shall be oriented so they do not face the street.

7.9 Easements. The Lots shall be subject to the easements shown and described on the Plat and to such further easements as are provided for and/or authorized in this Declaration.



7.10 Enclosure of Unsightly Facilities and Equipment. All unsightly facilities, equipment and other items, including but not limited to those specified below, shall be enclosed within a covered structure. Any motor home, camper, trailer, boat, tractor, snow removal or garden equipment, and any similar items shall be kept at all times, except when in actual use, in an enclosed garage. Any refuse or trash containers, tanks, utility meters or other facilities, service area, or storage pile shall be enclosed within a structure or appropriately screened from view by planting or fencing approved by the Architectural Committee and adequate to conceal the same from neighbors and public roads. No lumber, metals, materials, scrap, refuse, or trash shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction and only for such reasonable periods of time as is necessary prior to the collection of or disposal thereof.

7.11 Exterior Dwelling Colors. The exterior colors of each Dwelling shall be pre-approved by the Architectural Committee, and shall be earth tones, such as browns, tans, dusty greens, warm grays, and rusty reds

7.12 Exterior Building Materials. The Architectural Committee must pre-approve all building materials and Dwelling plans. At least three (3) sides of each Dwelling, one of which shall be the front of the Dwelling, with the other two sides being contiguous to the front side, are expected to be designed utilizing a significant amount of brick or stone. The remaining side may be constructed with wood or cement siding (with a "board height" of no less than 4" nor greater than 8"). The use of aluminum and/or vinyl siding is prohibited.

7.13 Exterior Lighting. Dusk to dawn lighting is required for each Dwelling, and may be either pole-mounted or attached to the home as determined by the Architectural Committee. The pole style, height and fixture must be approved by the Architectural Committee. The light must be equipped with a photoelectric cell to ensure dusk to dawn lighting. Exterior lighting should not adversely affect neighboring properties. All exterior lighting must conform to local codes and ordinances.

7.14 Fences. Other than fences permitted pursuant to Section 7.10, no fences shall be permitted.

7.15 Firearms. The discharge or shooting of firearms is prohibited, except as may be permitted by rules and regulations promulgated by the Association.

7.16 Fires. No outdoor fires for the purpose of burning leaves, grass, or trash shall be permitted.

7.17 Flagpoles. Flagpoles are permitted, subject to approval by the Architectural Committee.

7.18 Further Subdivision Prohibited. No Lot shall be subdivided into smaller lots or conveyed or encumbered in any less than the full dimensions thereof as shown on the Plat.

7.19 Garages and Driveways. Each Dwelling must have at least a two (2) car, attached garage. All driveways must be sized to accommodate two (2) cars, and shall be constructed of concrete or approved pavers. When feasible, garage doors shall be oriented so they do not face the street.

7.20 Height of Dwelling. No Dwelling may exceed two stories, excluding any basement.

7.21 Home Businesses. No businesses, including home occupations, may be conducted on any Lot.

7.22 Irrigation. All Lots in the Subdivision must have, at a minimum, an in-ground automatic sprinkler system designed to provide irrigation water to all lawn areas (including shrub beds). The irrigation design must be approved by the Architectural Committee.

7.23 Landscaping. All landscaping plans (including size and type of plantings) must be approved by the Architectural Committee, including any additions to existing landscaping the Owner may wish to perform. All landscaping, including, but not limited to, shrubs, flowers, trees, and grass, must be properly fertilized and maintained. All shrubs, trees, grass, and plantings of every kind shall be kept well maintained, properly cultivated, and free of trash, weeds, and any other unsightly material. Lawns must be mowed at least once a week from April 1 through October 31 ("Growing Season"), or as the Association stipulates. Lawns shall be fertilized a minimum of twice per year and weed killer shall be applied a minimum of once per year during said Growing Season. As part of the aforementioned regimen, public walks, private driveways, patios, shrub beds, and trees on Owner's Lot must be edge trimmed at least once per month during said Growing Season. Shrub beds must be mulched annually or have sufficient ground cover planted and growing so as to eliminate the need for mulch. Throughout the year,

all shrubs, trees, grass, and plantings of every kind must be watered as necessary in order to maintain the proper color, shape, and size of said landscaping. Grass shall be adequately watered so as not to appear brown at any time during the time period May 1 through September 30. Trees on Owner's lot must be properly pruned so as to maintain the health of the tree, eliminate dead wood, and stimulate proper growth.

7.24 Lights, Sounds, or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare. No sound shall be emitted from any Lot which is unreasonably loud or annoying. No odor shall be emitted from any Lot which is noxious or offensive to others

7.25 Mailboxes. The initial type and location of mailbox stations and mailboxes shall be the responsibility of the Declarant. Mailboxes shall be maintained by the Association.

7.26 Maintenance of Dwellings. Dwellings shall at all times be kept in good condition and repair, in like-new condition (normal wear and tear excepted) and adequately painted or otherwise finished in accordance with specifications established by the Association. Exterior trim, doors, windows, lintels, and any other exterior materials on the Dwelling shall not have faded, peeling, cracking, or blistering paint, stain, or any other type of finish. Any rust on the Dwelling's exterior must be promptly and properly repaired.

7.27 Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed upon any Lot which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others.

7.28 Outdoor Fixtures. Outdoor fixtures, except for chimneys and weather vanes, shall not exceed the height of the highest improvement on such Lot.

7.29 Pools and Hot Tubs. Swimming pools must be approved by the Architectural Committee prior to construction. No above ground pools or hot tubs are permitted.

7.30 Radio and Television Antennae. No radio or television antennae shall be attached to the exterior of any Dwelling. No free-standing radio or television antennae shall be permitted on any Lot. No television receiving dish or any other type of dish that exceeds two (2) feet in diameter shall be permitted on any Lot or on any Dwelling Unit.

7.31 Reflective Finishes. Reflective finishes and reflective glass shall not be used on exterior surfaces, including, without limitations, walls, roofs, windows, doors, trim, retaining walls, and fences, except that the foregoing shall not prohibit skylights.

7.32 Rentals. No Lot or Dwelling, or part of any Lot or Dwelling may be rented or leased for any purpose.

7.33 Residential Use. Each Lot shall be used only for construction of a Dwelling for single family residential purposes.

7.34 Roofs, Roof Shapes, and Ridge Alignments. Roofs shall be carefully designed in color, material and shape so they help to integrate the Dwelling with the landscape and compliment that surrounding terrain. The goal is to select roofing materials that are dark in color so that the roof recedes into the landscape. Roofing materials shall be non-reflective and fire retardant. Roof flashings, trim and counter flashings shall be in harmony both in color and material with the roof surfacing. The minimum roof pitch for all Dwellings shall be 6 vertical to 12 horizontal. Roofs shall truncate above the ground, and roofs on both sides of a ridge shall be the same slope, but not necessarily the same length. Building codes must be met regarding the distance from the roof eaves to finish grade. Roof appurtenances shall be integral parts of the architecture of the Dwelling. Dormers and skylights create interest and add interior light, but they shall integrate with the overall exterior design. Dormers generally shall be gable, shed, hip or derivative types. Non-functional roof ornamentation shall be avoided. Diverters, gutters, downspouts and similar accessories, if used, shall be designed within the total roof shape. Mechanical, electrical and roof access equipment and vents shall be integrated into the roof or dormer design and not be visible from public view. Ridge ventilators are acceptable.

7.35 Satellite Dishes. Satellite dishes may be permitted on a Lot, but only with the prior written approval of the Architectural Committee, at its sole discretion.

7.36 Sidewalks. A 5-foot-wide concrete sidewalk is required in the front of every Dwelling, which must be installed within thirty (30) days of substantial completion of the Dwelling. All sidewalks and driveway aprons shall be constructed in accordance with the construction plans approved by the Architectural Committee and the City of Wabash, Indiana, specifications.

7.37 Signs. No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than five (5) square feet, advertising such Lot for sale by the Builder or Developer during the construction and sales period. No sign of any nature is allowed after the completion and initial sale of the Dwelling. If the Owner wishes to sell the Dwelling and Lot at a later date, Realtor signs advertising said property are allowed, one sign in the lake yard and one sign in the street yard, not more than five (5) square feet in size. No realtor signs shall be allowed in any public right-of-way. All realtor signs shall be removed within twenty-four (24) hours of the closing of the sale of a Lot.

7.38 Solar Panels. Solar panels are prohibited.

7.39 Square Footage of Dwellings.

(a) With regard to Lots # 1 through #12, 18, 19, 20, 21, 23, 24, 25, and 26, a one-story Dwelling shall contain not less than two thousand (2,000) square feet above grade, and a two-story Dwelling shall contain not less than one thousand (1,000) square feet above grade per story.

(b) With regard to Lots #13 through 17, a one-story Dwelling shall contain not less than one thousand four hundred (1,400) square feet above grade, and a two-story Dwelling shall contain not less than one thousand (1,000) square feet above grade per story.

(c) With regard to Lot # 22, a one-story Dwelling shall contain not less than two thousand eight hundred (2,800) square feet above grade, and a two-story Dwelling shall contain not less than one thousand five hundred (1,500) square feet above grade per story.

(d) In calculating square footage requirements under this Section, patios, decks, garages, and basements shall be excluded.

7.40 Temporary Structures. No Structure of a temporary character, trailer, truck, commercial vehicle, recreational vehicle (RV), camper shell, all-terrain vehicle (ATV), camper or camper trailer, detached basement, tent, shack, detached garage, barn or other outbuilding, shall be used or located on any Lot, or adjacent to any Lot, public street or right-of-way with the Subdivision at any time, or used as a residence either temporarily or permanently. A recreational vehicle may be parked on the drive or

parking area of a Lot for not more than 48 consecutive hours solely for the purpose of preparing such recreational vehicle for use. Boats on boat trailers may be parked on the drive or parking area of a Lot for not more than 48 consecutive hours solely for the purpose of preparing such boat for use. A trailer, truck, commercial vehicle, recreational vehicle (RV), camper shell, all-terrain vehicle (ATV), camper or camper trailer may be placed in a garage if it is not visible from the street or any other Lot.

7.41 Utilities. All water, sewer, gas, electrical, telephone, internet, cable television, and other utility pipes or lines shall be buried underground and shall not be carried on overhead poles or above the surface of the ground. Any areas of natural vegetation or terrain disturbed by the burying of utility lines shall be revegetated by and at the expense of the Owner causing the installation of the utilities no later than the next growing season following such installation.

7.42 Water Wells. Individual water wells shall not be permitted on any Lot and no owner shall be permitted to drill for water on his Lot.

**ARTICLE VIII. DEADLINES FOR COMMENCING AND COMPLETING CONSTRUCTION.**

An Owner must commence construction of a Dwelling within eighteen (18) months after closing on Owner's purchase of a Lot, if all infrastructure in the Kentner Creek Crossing Subdivision has been installed at the time of closing. If all infrastructure has not been installed at the time of such closing, the time frame in which construction must commence shall not start to run until all infrastructure has been installed. Once construction commences, Owner shall have eighteen (18) months in which to substantially complete construction, including the installation of all landscaping. In the event an Owner fails to commence construction as provided herein, the Declarant may, at the Declarant's sole option, purchase the Lot from the Owner for that amount originally paid to the Declarant by the Owner for the Lot, less liens and encumbrances and all closing expenses, including but not limited to those incurred by Declarant for title insurance premiums, documentation preparation, real estate taxes, closing agents, and attorney's fees, upon Declarant's purchase of the Lot from Owner. This remedy shall be in addition to any other provisions contained in these Covenants providing for enforcement of these Covenants.

**ARTICLE IX. ENFORCEMENT AND REMEDIES.**

The obligations, provisions, covenants, restrictions and conditions contained in this Declaration shall be enforceable by the City of Wabash, the Association, or any Owner by a proceeding for damages and/or injunctive relief. The prevailing party in any litigation shall be entitled to recover its litigation costs and expenses, including reasonable attorney's fees, from the non-prevailing party.

**ARTICLE X. TERM, REVOCATION AND AMENDMENT OF DECLARATION.**

10.1 Term of Declaration. The term of this Declaration shall be perpetual.

10.2 Revocation of Declaration. This Declaration may be revoked if all of the Owners agree to such revocation by an executed, acknowledged instrument recorded in the office of the Recorder of Wabash County, Indiana. The prior written approval of each mortgagee of Association Property will be required for any such revocation, except in the case of obsolescence, substantial destruction by fire or other casualty, taking by condemnation or eminent domain, or abandonment or termination provided by law.

10.3 Disbursement of Proceeds. Upon revocation of this Declaration, the Association Property shall be sold by the Association, in whole or in parcels, as the Board may deem appropriate. All sales proceeds shall be allocated among the Owners in the same proportion as is set forth in Article IV hereof. The funds shall be disbursed, without contribution from one Owner to another, by the Association for the following purposes and in the following order:

- (a) payment in full of the customary expenses of sale;
- (b) payment in full of all allocable taxes and special assessment liens in favor of any governmental assessing entity;
- (c) payment in full of the balance of the lien of any Mortgage on the Association Property;
- (d) payment in full of allocable unpaid Common Expenses and the unpaid costs, expenses, and fees incurred by the Association;
- (e) payment in full of recorded junior liens and encumbrances on the Association Property in the order of and to the extent of their priority; and
- (f) payment of any balance to the Owners.

10.4 Amendment of Declaration. This Declaration may be amended if the Owners holding two-thirds or more of the votes outstanding and entitled to be cast under the Articles and By-Laws agree thereto by an executed, acknowledged instrument recorded in the office of the Recorder of Wabash County, Indiana. Until such time as Dwellings shall have been constructed on all of the Lots, no amendment to the Declaration may be made without Declarant's prior written consent.

**ARTICLE XI. MISCELLANEOUS.**

11.1 Declarant's Rights Transferable. Any right or interest of the Declarant established or reserved in this Declaration may be transferred by Declarant either separately or with one or more of such rights or interests.

11.2 Provisions Incorporated in Deeds. Each provision contained in this Declaration shall be deemed incorporated in each deed or other instrument by which any right, the or interest in the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

11.3 Number and Gender. Unless the context shall otherwise provide, a singular number include the plural, a plural number shall include the singular, and the use of any gender shall include all genders.

11.4 Construction. The provisions of this Declaration shall be liberally constructed to effectuate its purpose of creating a uniform plan for the development of certain common facilities and functions and for the Maintenance of the Association Property.

11.5 No Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public or for any public use.

11.6 Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 48 hours after a copy of the same has been deposited in the United States mail, postage prepaid for first class mail and addressed to the receiving party at the address last given by such party to the Association. Any notice to the Association shall be sent to such address as it may from time to time designate in writing to each Owner or if not so designated, to its last known address.



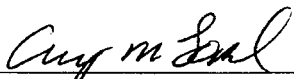
11.7 Successors and Assigns of Declarant. Any rights or responsibilities granted or retained by Declarant under these Covenants shall inure to and be binding on any successors in interest or assigns of Declarant, and any person entity which accedes to the rights and obligations of Declarant with respect to the real property governed by this Declarant, including affiliates of the Declarant, as that term is defined in the Indiana Common Ownership Interest Act; and such rights and obligations shall become the obligations of such successor or assign, at which time the Declarant shall be relieved of any and all such obligations and liabilities except as may be otherwise provided by the Indiana Common Ownership Interest Act.

11.8 Disclaimer. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Property, or any portion thereof, or any improvement thereon, its physical condition, zoning, compliance with the applicable laws, fitness or intended use, or in connection with the subdivision sale, operation, Maintenance, cost of Maintenance, taxes or regulations hereof as a planned unit development, except as expressly set forth in this Declaration.

11.9 Limited Liability. The Association and the Board shall not be liable to any party for any action or for and, failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. The Owners severally agree to indemnify the Association and the Board against loss resulting from such action or failure to act if the Association and the Board acted or failed to act in good faith and without malice.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

KENTNER CREEK, LLC

By   
Amy M. Ford, Managing Member

STATE OF INDIANA            )  
  )  
COUNTY OF WABASH        )

SS:

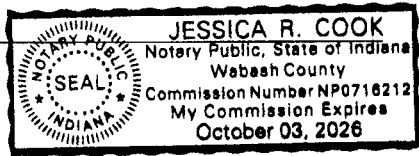
Before me, a Notary Public in and for said County and State, personally appeared Amy M. Ford, managing member, who acknowledged the execution of the foregoing Declaration.

Witness my hand and Notarial Seal this 14<sup>th</sup> day of September, 2021.

Jessica R. Cook  
Notary Public

My Commission Expires:

Residing in Wabash County, Indiana



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. Stephen H. Downs

This document prepared by Stephen H. Downs, 99 W. Canal Street, Wabash, Indiana.

**EXHIBIT "A"**  
**TO**  
**DECLARATION OF COVENANTS, CONDITONS, AND RESTRCTIONS**  
**FOR KENTNER CREEK CROSSING SUBDIVISION**

**Kentner Creek Crossing West**

Part of the Southwest Quarter and part of the Southeast Quarter of Section 33, Township 28 North, Range 6 East, Wabash County, Indiana, being more particularly described as follows:

Beginning at the Northwest corner of the Southeast Quarter of said Section 33, marked by a Wabash County section corner monument; thence North 89 degrees 20 minutes 43 seconds East, grid bearing (North American Datum 1983, Indiana East Zone), along the North line of said Southeast Quarter, a distance of 165.00 feet to the Northwest corner of a tract of land owned by Kyle Zolman and Tracie Zolman as recorded on Document 2019R460386 on file in the records of the Wabash County, Indiana Recorder; thence South 00 degrees 35 minutes 54 seconds East, along said Zolman boundary, a distance of 454.96 feet to the Northeast corner of a tract of land owned by The Board of Directors of Honeywell Public Golf Course Agency as recorded on pages 355-362 of Deed Record 244 on file in the records of the Wabash County, Indiana Recorder; thence South 89 degrees 26 minutes 13 seconds West, along said golf course boundary, a distance of 125.08 feet to iron stake with "HAU" identification; thence South 55 degrees 08 minutes 01 seconds West, along said golf course boundary, a distance of 47.45 feet; thence continuing South

55 degrees 08 minutes 01 seconds West, along said golf course boundary, a distance of 377.63 feet to the Southeast corner of a tract of land owned by Ann Sonbun and Amy Biaglow as recorded on Document 2013R428192 on file in the records of the Wabash County, Indiana Recorder, marked by an iron pipe; thence North 00 degrees 51 minutes 24 seconds West along said Sonbun-Biaglow boundary, a distance of 693.00 feet to the North line of said Southwest Quarter; thence North 89 degree 12 minutes 18 seconds East, along the North line of said Southwest Quarter, a distance of 314.50 feet to the Point of Beginning. Containing 5.96 acres, more or less.

**Kentner Creek Crossing East**

Part of the Southeast Quarter of Section 33, Township 28 North, Range 6 East, Wabash County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of the Southeast Quarter of said Section 33, marked by a Wabash County section corner monument; thence North 89 degrees 20 minutes 43 seconds East, grid bearing (North American Datum 1983, Indiana East Zone), along the North line of said Southeast Quarter, a distance of 427.00 feet to the Northeast corner of a tract of land owned by Kyle Zolman and Tracie Zolman as recorded on Document 2019R460386 on file in the records of the Wabash County, Indiana Recorder, marked by a railroad spike, and being the Point of Beginning; thence continuing North 89 degrees 20 minutes 43 seconds East, along said North quarter section line, a distance of 903.70 feet to a Mag nail with "JHS RLS #80040428" identification; South 33 degrees 50 minutes 04 seconds East, along the Westerly

right of way line of Indiana State Road 15, a distance of 666.68 feet to the Northeast corner of a tract of land owned by Honeywell Public Golf Course Agency as recorded on pages 565-568 of Deed Record 261 on file in the records of the Wabash County, Indiana Recorder, marked by a Mag nail with "JHS RLS #80040428" identification; thence South 89 degrees 57 minutes 18 seconds West, along said golf course boundary, a distance of 651.12 feet to the southeast corner of said Zolman tract, marked by a railroad spike; thence North 01 degrees 58 minutes 26 seconds East, along said Zolman boundary, a distance of 160.34 feet to an iron stake with "9500018" identification; thence South 90 degrees 00 minutes 00 seconds West, along said Zolman boundary, a distance of 271.96 feet to an iron stake with "JHS RLS #80040428" identification; thence South 01 degrees 57 minutes 46 seconds West, along said Zolman boundary, a distance of 10.00 feet to an iron stake with "JHS RLS #80040428" identification; thence South 86 degrees 00 minutes 53 seconds West, along said Zolman boundary, a distance of 101.01 feet to a 5/8-inch iron rebar stake; thence South 58 degrees 04 minutes 58 seconds West, along said Zolman boundary, a distance of 117.90 feet to an iron stake with "HAU" identification; thence South 67 degrees 38 minutes 16 seconds West along said Zolman boundary, a distance of 161.98 feet to a 5/8-inch iron rebar stake; thence North 00 degree 41 minutes 20 seconds West, along said Zolman boundary, a distance of 524.72 feet to the Point of Beginning. Containing 11.95 acres, more or less.