

**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE STONEGATE COMMUNITY**

Cross-References:

<u>Instrument #</u>	<u>Recorded</u>	<u>Description</u>
2003000407	01/06/2003	Declaration of Covenants, Conditions and Restrictions
2004002877	03/11/2004	Supplement to and Amendment of Declaration
2005000988	01/26/2005	Second Supplement to and Amendment of Declaration
2006006833	06/27/2006	Third Supplement to and Amendment of Declaration
20070000622	01/17/2007	Neighborhood Declaration for the Townhomes
2009011419	10/28/2009	Fourth Supplement to and Amendment of Declaration
2009011420	10/28/2009	First Amendment to Neighborhood Declaration for the Cottages Neighborhood

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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR THE STONEGATE COMMUNITY**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE STONEGATE COMMUNITY (“Declaration”) was executed as of the date set forth hereafter.

WITNESS THAT the following facts are true:

The Stonegate Community located in Boone County, Indiana was established by a certain “Declaration of Covenants, Conditions and Restrictions for the Stonegate Community” which was filed on January 6, 2003, as Instrument No. 2003000407 with the Boone County Recorder, said Declaration together with all amendments and/or supplements thereto being hereafter referred to as the “Original Declaration”; and

Plats filed with the Boone County Recorder for the various sections of the Stonegate Community established Dwelling Units, Commercial Units, Lots, and Common Areas in accordance with the Declaration; and

Section 9.06 of the Original Declaration states: “Until the initial sale by Developer of all Lots in the Development, any such amendment or change must be approved in writing by Developer and the Owner(s) of at least twenty-five percent (25%) of the Lots and shall not become binding and effective until five (5) days following the date of recordation in the Office of the Recorder of Boone County, Indiana”; and

As of the date hereof, the Developer has not sold all remaining Lots in the Stonegate Community. The Developer has approved the Amended & Restated Declaration set forth below as memorialized by its written consent attached hereto; and

Special Meetings of the Owners and members of the Stonegate Community Property Owners Association, Inc. (“Association”) were held on November 13, 2019, and November 17, 2019, for the purpose of discussing the Amended & Restated Declaration below and to answer owners’ questions; and

Thereafter, Owners were provided ballots to vote for or against the following Amended & Restated Declaration as well as the Amended & Restated By-Laws of the Association; and

The Owners were given until April 1, 2020, to submit their ballots to vote for or against the following Amended and Restated Declaration; and

The Owners of more than twenty-five percent (25%) of the Lots voted in favor of approving this Amended and Restated Declaration pursuant to the terms below. The Owners of Lots who voted

against this Amended & Restated Declaration constituted less than twenty-five percent (25%) of the Lots; and

Attached as an exhibit hereto is the “Stonegate Ballot Certification” prepared by the Stonegate CCR Ballot Certification Committee; and

The Owners of said Lots desire to amend certain provisions of the Original Declaration and to restate the same for the convenience of the Owners such that this Amended and Restated Declaration of Covenants, Conditions and Restrictions in no way nullifies or changes the Original Declaration or the effective date of the Original Declaration. However, upon the date of recording of this Amended and Restated Declaration with the Boone County Recorder’s Office, the Original Declaration shall no longer be in effect and shall be replaced by the following.

The Original Declaration contained exhibits. For historical purposes, these various exhibits may be referred to from time to time, and therefore, for cross-reference purposes, one should refer to them as they were filed with the Boone County Recorder. Those exhibits, however, are not exhibits to this Amended and Restated Declaration. Except as to any exhibits to the Original Declaration that may remain relevant, all other provisions of the Original Declaration are hereby modified in their entirety, and superseded by this Amended and Restated Declaration.

NOW, THEREFORE, at the recommendation of the Board of Directors of the Association, the Declarant, together with the Owners of Dwelling Units, Commercial Units and Lots in the Stonegate Community, hereby amend and restate the Original Declaration such that all of the platted Dwelling Units, Commercial Units and Lots and lands located within the Stonegate Community as they have been platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said Dwelling Units, Commercial Units and Lots and lands in the Stonegate Community. Such restrictions below were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the development as a whole and of each of said Dwelling Units, Commercial Units and Lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in the development. Now, therefore, the Original Declaration which is applicable to all Owners within the Stonegate Community is hereby amended and restated as follows:

ARTICLE I

Definitions

Section 1.00. Annual Assessments. “Annual Assessments” shall mean those assessments levied in accordance with Article VIII, Section 8.09, Subsection A. of this Declaration.

Section 1.01. Approval(s). “Approval(s)” shall mean those permissions, consents, determinations or other authorizations required to be obtained by this Declaration from as applicable, (i) the Association, Architectural Approval Committee, Town of Zionsville, Board of Directors of the Association, or an officer or other duly authorized representative thereof, as the case may be, and which shall only be effective if given in writing and duly signed by or on behalf of the proper authority who is given the right by this Declaration to issue any such Approval at the time requested; or, (ii) Boone County, Indiana, or any agency, department or subdivision thereof.

Section 1.02. Architectural Approval Committee. “Architectural Approval Committee”, sometimes referred to as the “Architectural Approval Committee” or “Approval Committee”, shall mean and include the committee created to review and evaluate Lot Development Plans, which and shall have the duties and authority set forth in this Declaration or otherwise from time to time delegated to it by the Board (as hereinafter defined).

Section 1.03. Articles of Incorporation. “Articles of Incorporation” shall mean the articles of incorporation of Stonegate Community Property Owners Association, Inc., that were filed with the Indiana Secretary of State on February 3, 2003, as from time to time amended or restated.

Section 1.04. Association. “Association” shall mean and refer to Stonegate Community Property Owners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns. Where the context either permits or requires, the term “Association” shall also refer to the Board.

Section 1.05. Board. “Board” shall mean the Board of Directors of the Association.

Section 1.06. Building. “Building” shall mean any structure, including, but not limited to, each Dwelling Unit, Commercial Unit, freestanding garage, gazebo, garden structures or other outbuilding permitted on a Lot or otherwise within the Stonegate community.

Section 1.07. By-Laws. “By-Laws” shall mean the by-laws of the Stonegate Community Property Owners Association, Inc. as from time to time adopted and/or amended.

Section 1.08. Commercial Unit. “Commercial Unit” shall mean any Unit located in Stonegate Village Business District and/or the Professional Business District and which is intended to be used and occupied for a permitted commercial or retail purpose, which might include rental residences on upper floors, which for this purpose will be deemed a commercial use so that upon calculating votes for Commercial Units and determining annual commercial assessments, this residential square footage will be calculated as commercial.

Section 1.09. Commitments. “Commitments” shall mean and include any commitments from time to time recorded (including any modifications or changes) in the Boone County Recorder’s Office pursuant to Indiana Code Section 36-7-4-615, or any successor or similar statute concerning the use or development of all or any portion of the Real Estate.

Section 1.10. Common Areas. “Common Areas” shall mean those areas within the Real Estate and any improvements thereto or structures or facilities constructed thereon, which the

Association owns or will own and which have been specifically reserved for the non-exclusive common use and enjoyment of the Members of the Association for the purposes and in accordance with and subject to the restrictions contained in this Declaration, the Plat of any section of Stonegate or any Supplemental Declaration. From time to time, the Association may deem a Common Area to no longer be “common” because of the unique circumstances applicable to such a parcel such as its size and proximity to other property within Stonegate, requiring approval from the Board. Once a Common Area is deemed to no longer be “common”, this asset may be sold to adjacent landowners for incorporation into their existing Lots but may not be developed. Any space previously deemed as “common”, limited or otherwise, must be maintained as green space, in a “park-like” state, with no permanent structures to be erected (except fences). At no time shall divestiture of common area by the Board cause the minimum required acreage of common area of Stonegate to drop below that required by the Town of Zionsville and/or Boone County, Indiana, as agreed to at the time of the original development of the subdivision.

Section 1.11. Common Expense. “Common Expense” shall mean and include the actual and estimated expenses of managing the Association and maintaining and operating the Common Areas (including reasonable reserves, which may from time to time be established) in the manner required by this Declaration, the Articles of Incorporation, the by-laws of the Association or by the Board pursuant thereto, or which are otherwise incurred by the Association for the non-exclusive benefit of the Members. Common Expenses shall include, without limitation, the actual and estimated cost to the Association for the maintenance, management, operation, repair, improvement and replacement of the Common Areas, including any landscaping or other

improvements thereto or Buildings located thereon, snow removal from private streets, alleys, walkways and other portions of the Common Areas to the extent from time to time authorized by the Board, real estate and/or personal property taxes assessed against any Common Areas, insurance premiums, and any other similar expenses. Common Expenses shall also include participation in meeting those expenses identified in Section 8.13 of this Declaration.

Section 1.12. Community-Wide Standards. "Community-Wide Standards" shall mean any standards established by this Declaration, any Supplemental Declaration, the Association or the Board on behalf of the Association, or by the Architectural Approval Committee or which otherwise develop through custom, practice and general usage, and which prevail (or are required to prevail) generally throughout Stonegate.

Section 1.13. Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for the Stonegate Community, recorded in the Recorder's Office of Boone County, Indiana, on or about January 6, 2003, as Instrument No. 0300407, and as from time to time supplemented, amended and/or changed by Instruments duly recorded in the office of the Recorder of Boone County, Indiana.

Section 1.14. Developer. "Developer", sometimes referred to as "Declarant", shall mean LRC II, LLC., an Indiana limited liability company.

Section 1.15. Dwelling Unit. "Dwelling Unit", sometimes referred to as "Residential Unit", shall mean any single family dwelling, whether attached to or detached from any other single family dwelling, and intended to be used and occupied for single family residential purposes or as a single family household, which may include, notwithstanding the foregoing,

separate in-law or parent quarters either in the same primary structure or a detached structure otherwise permitted on a Lot by this Declaration.

Section 1.16. Lot. “Lot”, referred to in the plural as “Lots”, shall mean: (i) any of the separate parcels into which the Real Estate is subdivided for purposes of construction or maintenance thereon of; (ii) a Commercial Unit; (iii) a Dwelling Unit; or (iv) both a Commercial Unit and a Dwelling Unit, and which is identified as a “Lot” on a Plat of a section of Stonegate duly recorded in the Office of the Boone County Recorder. A Lot may be either “developed” (by construction of or issuance of a permit to construct improvements thereon) or “undeveloped” for purposes hereof, the distinction significant to the extent otherwise set forth in this Declaration. A Lot shall also represent part of a “Unit” (as defined in subsection 1.33 hereof) for certain purposes as set forth in this Declaration.

Section 1.17. Lot Development Plans. “Lot Development Plans” shall mean and consist of the following: (i) a site plan, prepared to required scale by a licensed land surveyor, engineer or architect approved by Architectural Approval Committee, which includes a topographical study showing existing improvements, if any, and the location, type and trunk diameter, measured 10 inches from above/ground, of any trees in excess of six inches in diameter, and including tree removal plans showing any trees proposed for removal, any proposed alteration of the topography, elevation or natural state of the Lot in connection with the improvement thereof or any construction thereon, and locating thereon all proposed improvements and Buildings, showing finished floor elevations, driveways, parking areas and details relating to drainage; (ii) all exterior elevations of improvements proposed for construction, with finished colors shown and paint chips provided; (iii) material plans and specifications; (iv) landscaping plans; (v) an

erosion control plan; and, (vi) such other data or information as the Architectural Approval Committee may reasonably request, which may include (but is not necessarily limited to) samples of building materials proposed for use.

Section 1.18. Lot Standards. “Lot Standards” shall mean those standards from time to time published by the Association and applicable to the type of Lot proposed for development. Such Lot Standards shall be used as a guide in the preparation of Lot Development Plans and, unless a deviation is approved by the Architectural Approval Committee upon good cause shown with respect to the development of a particular Lot, shall be followed in all respects. The Association hereby reserves the right to modify Lot Standards from time to time within its sole discretion, which shall become effective upon publication, and shall be made available upon request of a Participating Builder or Owner proposing improvements upon a Lot. The latest edition of Lot Standards is on file with both the Association’s property management company and the Architectural Approval Committee and is available upon request.

Section 1.19. Member. “Member” shall mean a person or persons entitled to membership in the Association. There shall be three classes of membership as follows: “Class A” Members consisting of the owner or owners of each constructed Dwelling Unit; “Class B” Members consisting of the owner or owners of each Commercial Unit; and “Class C” Members consisting (i) of a non-owner occupant of either a Commercial or a Dwelling Unit; (ii) the Owner or Owners of an undeveloped Lot in Stonegate; or, (iii) The Owner or Owners of a Lot in Stonegate Proper, the fourteen (14) lot subdivision located generally east of Stonegate (hereinafter referred to as a “Stonegate Proper Member”).

Section 1.20. Neighborhood. “Neighborhood” shall mean an area within Stonegate designated separately in the manner otherwise required by this Declaration, in which the Owners of Units share interests which are common to them but different than those shared in common by all Units within Stonegate. For example, Stonegate Village Business District may constitute a Neighborhood based upon the mixture of Commercial Units and Residential Units in close proximity to each other within a village setting or, by way of further example, the owners of townhomes might be designated as a separate Neighborhood based upon inherent differences in the nature of townhome ownership. As of the writing of this Amended & Restated Declaration, Stonegate currently recognizes the following Neighborhoods established in this or other separate or supplemental declarations: the Stonegate Village Business District, the Professional Business District, the Cottages and the Townhomes.

Section 1.21. Neighborhood Assessments. “Neighborhood Assessments” shall mean assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund neighborhood expenses, as otherwise described in this Declaration.

Section 1.22. Neighborhood Oversight Committee. “Neighborhood Oversight Committee”, sometimes referred to as “Neighborhood Committee” if any is established, shall refer to a committee established in accordance with this Declaration or the By-Laws to act in connection with matters particular to a given Neighborhood and delegated to it either by this Declaration or the Board.

Section 1.23. Neighborhood Expenses. “Neighborhood Expenses” shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association for the particular benefit of the owners and occupants of Units within a particular Neighborhood or

Neighborhoods, which may include (if determined by the Board) a reasonable reserve for capital repairs and replacements with respect to Common Areas and related facilities peculiar to a Neighborhood.

Section 1.24. Owner. "Owner", referred to in the plural as "Owners", shall mean and refer to the record Owner, whether one or more persons or entities, their respective heirs, beneficiaries, successors, assigns and personal and legal representatives, of the legal title to any Unit or Lot which is a part of Stonegate, including contract sellers (but not contract purchasers), but excluding those having such interest merely as security for the performance of an obligation. The Developer of Stonegate shall also be considered an Owner for purposes of this Declaration for so long as, and to the extent that, Developer owns a Lot, Lots or other parcels of real estate in Stonegate.

Section 1.25. Participating Builder. "Participating Builder" shall mean any person or entity who at any time has entered into a Participating Builder Agreement in the form required by the Architectural Approval Committee for the purpose of constructing Units or other improvements on Lots within Stonegate.

Section 1.26. Plat. "Plat" shall mean a plat of any portion or section of the Real Estate which is recorded from time to time with specific reference to this Declaration in the Office of the Recorder of Boone County, Indiana.

Section 1.27. Ponds. A "Pond" or "Ponds", sometimes referred to on a Plat as a "Lake" or "Lakes," often with a numerical designation, shall mean and include the manmade bodies of water to normal elevation (also referred to herein as water's edge and shoreline), the water level of which will vary from time to time on a seasonal basis and in the event of drought may become

dry, which are created for water retention purposes only and not for recreational use (except to the extent specifically set forth herein to the contrary) as a part of Stonegate, together with any waterfalls, outlets, inlets, wells, pumps, pump stations, pipes, rip-rap or other similar structures, equipment or appurtenances, including utility service thereto, which are installed or required in connection therewith.

Section 1.28. Pond Lots. “Pond Lots” shall mean those Lots directly adjacent to a Common Area which includes a Pond.

Section 1.29. Private Streets. “Private Streets” shall mean those portions of the Common Areas improved by a private street constructed to applicable County standards, including curbs and gutters, for use in generally the same manner that a public street is available for use, limited only as set forth herein or in any Supplemental Declaration.

Section 1.30. Rental Unit. “Rental Unit” shall mean a Dwelling Unit that is owned for the sole purpose of monthly and/or annual rental. This does not apply to daily and/or weekly rental through rental websites (i.e. AirBNB, VRBO, etc.); this, if governed, would be governed by the Town of Zionsville. This also does not apply to residential rental units that are part of a Commercial Unit as described in Section 1.08 above. Members being temporarily relocated and/or re-assigned by their employer may rent their unit for a period of one year. A rental of this nature lasting more than one year must be approved by the Board. During this time, the homeowner is required to periodically inspect the property to ensure it is in compliance with the CCR’s.

Section 1.31. Restrictions. “Restrictions” shall mean the restrictions, covenants, conditions, easements and charges either set forth in this Declaration or any Supplemental

Declaration, which shall be imposed from time to time upon the real estate (or parts thereof) located within Stonegate.

Section 1.32. Shared Drives. “Shared Drives” shall mean those portions of Stonegate designated on a Plat as a “Common Area”, but only to the extent improved by a hard or stone surfaced driveway (including any curbs and gutters) together with any culverts, drains, storm inlets and other related structures included as a part thereof, to provide vehicular ingress and egress for the benefit of owners and occupants, their guests and invitees, utility service vehicles, delivery vehicles, police, fire or any other emergency vehicles, and any other authorized vehicles requiring ingress and egress to and from a public street and to and from any of the Lots directly adjacent thereto. Shared Drives (including as a part thereof, culverts, drains, storm inlets and other related structures) shall not be maintained, nor shall any snow be removed therefrom, by Boone County, Indiana, or any agency or department thereof.

Section 1.33. Special Assessments. “Special Assessments” shall mean those assessments levied in accordance with Article VIII, Section 8.09, Subsection B, of this Declaration.

Section 1.34. Specific Assessments. “Specific Assessments” shall mean those assessments levied in accordance with Article VIII, Section 8.09, Subsection C, of this Declaration.

Section 1.35. Street Trees. “Street Trees” shall mean those trees (together with any replacements thereof) planted by either the original Developer or Stonegate or the Association or on authority of the Board in those strips of ground located between any public street and the sidewalk on either (or both) side(s) thereof running generally parallel thereto.

Section 1.36. Unit. “Unit” shall mean an improved portion of the Stonegate development, which may be independently owned and conveyed, and which is intended for occupancy by a single unit or for development, use and occupancy (i) as a detached or attached residence or townhouse for single family residential purposes or (ii) for a commercial purpose. The term shall refer to the land, including the Lot, which is part of the Unit, if any, as well as any improvements constituting a part of the property interest conveyed. The term shall not include Common Areas or any part of Stonegate that is dedicated to the public and accepted for maintenance by the applicable governmental authority. Where Buildings within a part of Stonegate include more than one Unit (i.e., a building containing multiple townhomes), each such Unit shall each be treated as a separate Unit for purposes of this Declaration. Buildings containing both a Commercial Unit and Dwelling Unit will be treated as one Unit for the purposes of this Declaration as they are a singular Commercial Building.

Section 1.37. Stonegate. “Stonegate” shall mean and include all of the real estate that has been subjected to the terms and provisions of this Declaration.

ARTICLE II

Character of Development

Section 2.01. In General. Stonegate has been planned to incorporate a variety of housing options in different Neighborhoods, some of which will include commercial and retail uses limited in character and scale to insure compatibility with neighboring residential areas. The Restrictions imposed and the Approvals required by this Declaration are to promote consistency and coordination within Stonegate, which is necessary to create Stonegate as a community reminiscent of an American small town. Stonegate has the following Neighborhoods: The

Cottages; The Townhomes; Stonegate Village Business District; and, the Professional Business District which each having their own separately recorded Declaration of Covenants.

Section 2.02. Permitted Uses. Every Lot, group of Lots, Unit or parcel of land in Stonegate shall be used and developed exclusively for the use permitted (and in accordance with development standards required) by this Declaration, applicable zoning and any Commitments from time to time applicable thereto, whichever is the most limiting and restrictive as to a particular matter or standard.

Section 2.03. Improvement and Development of Lots. No Lot shall be further divided to create an additional parcel upon which improvements otherwise permitted hereunder may be constructed, nor shall any improvements be made thereto or construction commence, proceed or continue thereon, except in strict accordance with the terms and provisions of this Declaration and with, as the case may be, the written approval of the Association and the Architectural Approval Committee as herein required. To the extent otherwise permissible under applicable ordinances of the Town of Zionsville and Boone County, Indiana, parts of a Lot or other parcel within the Real Estate may be conveyed by metes and bounds description to the Owner of an adjoining Lot or parcel for inclusion as a part of such adjoining Lot or parcel, but only if such conveyance does not result in or create a violation of this Declaration, violate any development standards within applicable zoning ordinances of Boone County, Indiana, or violate any applicable Commitments, as from time to time amended or changed. No real estate other than the Lots currently included and established in Stonegate through a secondary plat as previously recorded in the Boone County Recorder's Office prior to the date of recording of this Amended

& Restated Declaration may be included in Stonegate without approval of the Association's Board of Directors and adjacent Lot owners within Stonegate.

Section 2.04. Occupancy or Use of Partially Completed Improvements Prohibited. No Dwelling Unit shall be occupied or used for human habitation until substantially completed. The determination of "substantially completed" shall be made by Association and/or Architectural Approval Committee as applicable, in its sole discretion, and such decision shall be binding on all parties affected thereby, but in no event shall any decision so made be deemed effective until a certificate of occupancy, if any is required by law, has been issued by the applicable governmental authority having jurisdiction.

ARTICLE III

Common Areas

Section 3.01. Use. Each Member shall have a non-exclusive right to use and enjoy the Common Areas in common with all other Members, together with a right of ingress and egress to and from the Common Areas. The rights of each Member to use and enjoy the Common Areas shall be appurtenant to and pass with the title to each Unit within Stonegate or each Lot within Stonegate Proper, as the case may be, subject to the following:

A. The provisions of this Declaration as amended or supplemented, any Plat of all or any part of Stonegate, the Commitments, Articles of Incorporation and By-Laws of the Association, and any rules or regulations from time to time adopted by the Association governing the use and enjoyment of the Common Areas.

B. The Association's right to take such steps as may be reasonably necessary to protect Common Areas (or any part thereof) against foreclosure.

C. Easements reserved, granted or otherwise created and running on, under, over or through the Common Areas for drainage, driveways, other means of ingress and egress, pipelines, transmission towers, utilities or which otherwise from time to time may burden any part of the Common Areas, either on a temporary or permanent basis. Within such easements, no structures, landscaping, activities or use shall be placed, permitted or shall occur which materially interferes with any such easement rights created or reserved. The topography within any such easements created or reserved in the Common Areas shall also not be altered or changed in a manner which would interfere with, impede or change the direction or flow of surface water drainage in a manner inconsistent with drainage plans for Stonegate approved by applicable governmental authorities, unless such alterations or changes are first submitted to and approved by the Association's Board of Directors and all applicable governmental authorities.

The Board shall have the right to determine for what purpose or purposes the Common Areas, or a particular part thereof, may be used, and shall have the right to promulgate rules and regulations regulating the use thereof.

Stonegate Proper Members' use of the Common Areas shall be subject to the payment of dues in the amount and at the times otherwise provided in this Declaration or from time to time determined by the Board.

Section 3.02. Maintenance. The Association shall maintain the Common Areas and any and all Buildings (as well as any furnishings, fixtures, rugs, equipment, appliances and other personal property located therein and owned by the Association) and/or improvements located within the Common Areas, including, but without limitation, driveways, parking lots, walkways,

decorative adornments, benches, monuments, recreational facilities, fences, lighting, landscaping and other similar improvements thereto made by either the original developer of Stonegate or the Association, excepting and excluding, however, any public or private utility lines, mains, wires, fire hydrants or other equipment or facilities installed or placed therein and required to be maintained by public or private utility companies, or by applicable governmental authorities.

Section 3.03. Ownership. The Association shall retain legal title to all parcels of the Common Areas except as herein provided.

Section 3.04. The Formerly Designated Limited Common Areas. In the original Declaration, together with subsequent amendments and supplements filed with the Boone County Recorder by the original developer of Stonegate, certain parcels of land within Stonegate were designated as Limited Common Areas. However, none of the applicable plats for Stonegate described them as anything other than “Common Areas”. Historically, the Association has maintained all of those areas with the expenses being part of the overall expenses of the Association. In other words, none of those expenses were “passed on” to either a Neighborhood or a group of Owners. As of the date of filing this Amended & Restated Declaration with the Boone County Recorder, all parcels of land within Stonegate that were designated by the original developer as “Limited Common Areas” are hereby simply designated as Common Areas.

ARTICLE IV

Easements

Section 4.01. Title Taken Subject to Easements. Title to each Unit, Lot or parcel within Stonegate shall be taken by an Owner or Owners subject to the non-exclusive, perpetual easements over, under, upon and across portions of the Stonegate real estate as provided in this Article IV, which easements shall run with the land affected thereby.

Section 4.02. General Grant of Easements. Boone County, the Zionsville Fire Department, the Boone County Sheriff's Department, the Indiana State Police, and all other local, county, state and federal authorities having jurisdiction over law enforcement or public health and safety matters, and their respective agencies, departments or divisions, have been granted an easement of ingress and egress over, upon and through the Shared Driveways, any Private Streets within Stonegate, or any parking lots or driveways within the Common Areas for the purpose of providing the normal and customary public services rendered by each of them or which each of them is required, or has a duty, to perform or provide within Eagle Township, the Town of Zionsville and/or Boone County, Indiana, or which become necessary or desirable as a means of ingress and egress in the event of an emergency involving life and/or safety of persons or property.

Section 4.03. Encroachment Easements. If, by reason of the location or placement of a fence, any directional, incidental or identification signage, or any freestanding light pole or other freestanding structure, or because of the settling or shifting of a Building, the Common Areas or any facilities or Building located thereon encroach upon a Lot or Unit, then, in such event, an easement shall be deemed to exist and run to the Association for maintenance, and for the continued use and enjoyment of such Common Areas and any Buildings or facilities otherwise so located.

Section 4.04. Overflow Easements. Some of the Lots within Stonegate are adjacent to Common Areas preserved as open space which also may have been designated as “Drainage Easements”, may include a Pond or other dry retention areas, and may constitute a part of Stonegate’s storm and surface water drainage system. An overflow and flowage easement is hereby reserved for the benefit of the Association and all Owners across those portions of each Lot not improved by a Building and adjacent to any such Common Area to accommodate storm or surface water drainage which may overflow upon such Lot.

Section 4.05. Drainage, Utility, Sanitary, Landscape and Maintenance Easements. Strips of ground shown on the Plat of any section of Stonegate and marked “RD & UE”, meaning Regulated Drainage and Utility Easement; “SD & UE”, meaning Sanitary, Drainage & Utility Easement; “S” or “S.E.”, meaning Sanitary Easement; and “L.M.D. & UE”, meaning Landscape, Maintenance, Drainage and Utility Easements, either separately or together, are hereby (or will hereafter as Plats are recorded be) created, reserved and granted for the use (including required ingress and egress necessary as a part thereof) of public or private utility companies, governmental agencies, and the Association in its collective capacity on behalf of the Owners, their respective agents, employees, successors and assigns, as follows:

A. “Regulated Drain and Drainage Easements” to provide paths and courses for storm and surface water drainage, either over land, in ditches or swales, or in underground pipes, mains or other similar structures, to serve the storm and surface water drainage needs of Stonegate and adjoining ground within the same watershed, and/or the public drainage system. No changes shall be made in the finished grade elevation of drainage swales within areas designated as Drainage Easements, whether in connection

with the construction of a Building or other improvements upon a Lot, or otherwise, so as to alter or change the location or depth of any defined drainage swales, ditches or creeks located within any Drainage Easement without the Approval of the Association and, to the extent required, applicable federal, state, county or municipal authorities.

Notwithstanding the foregoing and the issuance of required approvals, to the extent changes adversely affect storm and/or surface water drainage upon, over or through other neighboring real estate, any such problems created thereby shall be promptly corrected by the Owner (and/or the builder of improvements constructed thereon) of the Lot where any such changes or alterations have occurred.

B. “Landscape/Maintenance Easements” to provide for the installation, placement, planting, maintenance, restoration, change, replanting, trimming, removal and alteration of trees, bushes, ground cover, grass and other vegetation by the Association, their respective employees, agents, contractors and assigns, or otherwise (and to the extent) permitted by this Declaration.

C. “Sewer Easements” to provide paths, courses and ways for the purpose of installing, placing, running and locating sanitary sewers and related structures or facilities comprising a part thereof to provide sanitary sewer service to and through Stonegate.

D. “Utility Easements” to provide paths, courses and ways for the installation, extension, placement, and location of utility services within and through Stonegate and to the Lots, Units, Buildings and other improvements within Stonegate.

No Buildings or other structures shall be erected, placed or permitted to remain within any real estate burdened by the foregoing easements which interfere with the exercise of any of

the easement rights reserved or granted hereby without the written approval of the Board and the written approval of each of the beneficiaries of the easement rights which are directly affected thereby. The easements created, reserved and granted hereby shall expressly include the right, privilege and authority to enter upon, dig, lay, construct, restore, install, reconstruct, renew, operate, maintain, repair, replace, update or change lines, cables, mains, ducts, pipes, manholes or other facilities or equipment needed or as a part of the utilities or sewers permitted (as applicable) within any real estate burdened by such easements. Following the exercise of any of the foregoing easement rights (excepting in the case of drainage facilities within Shared Driveways as hereinafter set forth), the easement real estate affected thereby (and any adjacent or neighboring real estate affected thereby) shall be restored by the party exercising such rights (at its own cost and expense) to substantially the condition existing prior to the exercise of such easement rights. In the event repairs, maintenance or other work is required to drainage facilities under or comprising a part of a Shared Driveway by or at the instance and request of the Boone County Drainage Board or any other agency of Boone County having jurisdiction over storm or surface water drainage, no obligation shall exist on the part of Boone County or any agency or department thereof to either restore the drains within Shared Driveways or repave Shared Driveways affected thereby. The costs of any such restoration or repaving shall constitute a Common Expense for which the Association shall have responsibility. In the event such work is necessitated by acts or omissions of a Lot Owner or Lot Owners, the Association through the Board shall have the right to recover such amounts expended from the Lot Owner or Lot Owners responsible, jointly and severally, in whole or in part.

Section 4.06. Pond and Pond Maintenance Easement Rights: The Association hereby creates, reserves and grants a perpetual easement over, upon, under and through portions of any Lot or other Parcel into which Stonegate is divided which are designated on a Plat as a "Pond Maintenance Easement" for the benefit of the Association and their respective employees, agents, contractors, successors and assigns, for the following purposes: (i) to create, recreate, restore, maintain, repair, renew or replace a Pond, the depth or dimensions of a Pond, any waterfalls (or any fountains) located within a Pond, now or hereinafter installed, or any pumps, equipment, structures or appurtenances thereto, including rip rap, utility services, pipes, conduits, outlets, inlets, wells or other similar structures comprising a part thereof; (ii) to lay, construct, install, reconstruct, renew, operate, maintain, replace or repair storm sewer lines and other appurtenant structures running under, through or within the Pond Maintenance Easement, whether running to or from a Pond, or otherwise; (iii) to stock a Pond with such fish or other forms of marine life, if any, and maintain or control the population thereof, in such manner as is deemed appropriate within the sole discretion of the Association's Board of Directors; (iv) to treat or otherwise deal with the Ponds in order to control weeds, algae and other growths therein, or otherwise maintain the quality thereof or of the water therein; and (v) to take such action as may be required by law or ordinance. The Owner(s) from time to time of each Pond Lot shall have the right to use that portion of the Pond Maintenance Easement which is located upon such Owner's Pond Lot in any manner not inconsistent with the easement rights herein granted, but shall not be entitled to construct any structures, fences, walkways or other similar improvements therein, or in any way change the topography thereof without first obtaining the written approval of the Association, as well as the approval of any governmental agencies having jurisdiction.

The Owner(s) from time to time of each Pond Lot burdened by a Pond Maintenance Easement shall maintain that portion of the Lot burdened by the Pond Maintenance Easement, by keeping the grass mowed, keeping the weeds reasonably cut and providing for the removal of trash and rubbish.

The Ponds created within Common Areas are created and/or preserved to (i) provide for storm water drainage collection and retention and (ii) enhance the aesthetics of Stonegate, particularly the Pond Lots. No right shall exist, however, in any Pond Lot Owner, or any other Lot Owner, or in any other person on or about any Pond Lot or on or about any Common Area adjacent to any Pond to use a Pond for any recreational purposes whatsoever, with the sole exception of fishing by Lot Owners and their guests and invitees from the shoreline in areas where fishing is from time to time authorized by the Board. The Board shall also have the right to control any other recreational activities within or involving a Pond, if any, including, but not limited to, swimming, diving, boating, use by radio-controlled vehicles or toys, fishing, wading, ice skating or other water sports or activities, all of which shall be and remain strictly prohibited except to the extent approved or authorized from time to time by the Board in its sole discretion. Further, no docks or other structures of any kind whatever shall be permitted to extend into a Pond unless constructed by the Association as a part of the Common Areas as authorized by the Board, the use of which also shall be strictly limited and subject to control by the Board any uses permitted also subject to such rules and regulations as may from time to time be published by the Board.

Section 4.07. Right of Entry and Inspection. The Association, through its duly authorized representatives, agents or contractors shall have the right to go upon any Lot or Unit

within Stonegate without being a trespasser to inspect any work being performed thereon to assure compliance with this Declaration and conformity with Lot Development Plans and with any other plans or submittals made to the Association or the Architectural Approval Committee and upon which any Approvals required by this Declaration were based, or to perform any work or take any action which the Association has the right to perform or take pursuant to this Declaration.

ARTICLE V

Board and Architectural Approval Committee

Section 5.01. Powers and Authorities. The powers and authorities contained in this Article shall be vested in, as specified, the Board and/or the Architectural Approval Committee, and the covenants, conditions and restrictions in Article VI of this Declaration shall be administered and enforced by the Board or the Architectural Approval Committee as set forth herein, or by their respective designated agents, employees, contractors, nominees, successors or assigns. The Architectural Approval Committee is hereby created to serve the purposes set forth in this Declaration and to perform those duties otherwise from time to time delegated to it by the Board to, among other things, secure and maintain the quality of the Development and promote consistency and compatibility in architecture and character of improvements within Stonegate. The powers of the Board and the Architectural Approval Committee shall consist of those powers set forth in this Declaration, including, but not limited to, those powers set forth in this Section 5.01. Neither the exercise of such administration and enforcement duties by the Board or the Architectural Approval Committee nor the approval of any Lot Development Plans shall relieve any Owner of any duties or obligations imposed by, or compliance with any Restrictions

set forth in, (i) this Declaration, including, but not limited to, the payment of any Annual Assessments, Special Assessments or Specific Assessments; (ii) a Plat; or (iii) the Commitments.

The Architectural Approval Committee shall be formed by the Board, consisting of at least three (3) but no more than five (5) persons appointed by the Board to serve for such period of time as the Board may designate. A majority of the persons appointed by the Board shall be members of the Association. The Committee should include at least one person who is a registered professional architect, engineer or similar professional, or who has at least ten (10) years' experience in the development of similar mixed-use residential communities. In the event, however, no architect, engineer, similar professional or experienced member is appointed, services of a person having such qualifications shall be retained by the Architectural Approval Committee as necessary. Decisions by the Architectural Approval Committee shall be rendered by majority vote of the persons comprising the Committee, and such decisions may be rendered procedurally in such manner as the Architectural Approval Committee may determine within its sole discretion.

A. Approval Required. No Lot shall be developed or improved, nor shall any Building or structure of any type or kind be constructed, placed, altered or permitted to remain on any Lot or other parcel of real estate within Stonegate (including, without limiting the generality of the foregoing, any excavation, grading or other site work, alteration of existing topography or removal of existing landscaping in connection with initial construction thereon) without the Approval of the Architectural Approval Committee.

B. Participating Builder Required. Each Owner preparing to develop a Lot and have a Dwelling Unit constructed thereon must utilize the services of a Participating Builder. In the event an Owner desires to use a person, firm or entity other than a currently qualified Participating Builder, such Owner shall make written application to the Architectural Approval Committee outlining the qualifications, experience and creditworthiness of the builder proposed for use and involvement in developing such Lot and constructing a Building or other improvements thereon, accompanied by a completed application from the builder proposed for use in such form as the Architectural Approval Committee may require, and must receive Approval to use such proposed builder prior to entering into any contract or incurring any obligation in connection therewith. In the event the builder proposed for use receives Approval as required hereby, any such Approval shall be subject to execution and delivery of a Participating Builder Agreement for the sole purpose of permitting such builder to build a Dwelling Unit and complete related improvements on the Lot in question.

C. Submissions Required. Each Owner preparing to develop a Lot shall undertake the following steps to obtain the Approvals required by this Declaration:

STEP ONE: prior to making any submission to the Architectural Approval Committee and as required by the then-current Participating Builder's Manual: (i) make written application for preliminary plan review in the required form; (ii) prepare and submit two (2) copies of preliminary lot development plans containing the limited information hereafter described ("Preliminary Plans"); and, (iii) schedule and participate in the meeting required to be scheduled and conducted (the initial meeting to be without

cost to the submitting Owner, additional meetings, if any, subject to payment of a fee to defer the reasonable costs associated therewith, as such fee is from time to time set by the Architectural Approval Committee) as described in the Participating Builder's Manual for the purpose of reviewing Owner's Preliminary Plans, so that guidance and direction can be given to Owner and Owner's Participating Builder to facilitate the plan approval process by the Architectural Approval Committee and minimize unnecessary costs and any delays which otherwise might be associated therewith. Such Preliminary Plans to be submitted must, at a minimum, include elevations, the location of all proposed improvements, detail all materials to be used on the exterior of all proposed improvements, and otherwise contemplate Lot development which is consistent with applicable Lot Standards respecting the Lot in question. The Architectural Approval Committee shall circulate such plans for review and comment by the adjacent Lot Owner's when the nature of the construction being approved immediately abuts the adjacent Lot, obstructs views that currently exists from an adjacent Lot, or includes recreational equipment / installations (included, but not limited to, basketball goals, tennis courts, outdoor kitchens, decks, gazebos, garden houses, hot tubs, swimming pools, swing sets, trampolines, etc.) that might pose a hazard to those owning or occupying an adjacent Lot.

STEP TWO: Prior to the development, improvement or alteration of, or any construction on a Lot or Lots or the preparation of final Lot Development Plans, and after Step One has been completed, each Owner preparing to construct improvements upon a Lot shall complete and submit to, and obtain written Approval from, the Approval

Committee of the Preliminary Plans, modified in accordance with suggestions, comments and insight obtained as a result of the preliminary meeting required as a part of Step One.

STEP THREE: Following completion of Step One and Step Two, the Owner(s) shall submit for final Approval from the Architectural Approval Committee three (3) complete sets of final Lot Development Plans (as defined and required to include the information set forth in Section 1.15 of this Declaration), which shall further incorporate and otherwise be consistent with the Approval received and all applicable Lot Standards, together with payment of the application fee, if any, in the amount from time to time established by the Architectural Approval Committee, which fee shall not, in any event, exceed Five Hundred and no/100 Dollars (\$500.00)) for each submittal of Final Lot Development Plans for review. Approval of Preliminary Plans and final Lot Development Plans shall be requested by separate written application to the Approval Committee, and each request shall be made in the manner and in the form otherwise prescribed from time to time by the Association or the Architectural Approval Committee. In the case of final Lot Development Plans, the request for Approval shall be accompanied by three (3) complete sets of Lot Development Plans and by such other information as reasonably may be required by the Architectural Approval Committee. The authority given to the Architectural Approval Committee herein is for the purpose of determining, within its sole discretion, whether the proposed improvement and development of a Lot or any topographical changes thereto is consistent with the terms and provisions of this Declaration, is consistent with and meets Stonegate's overall plans for the Development, and is compatible and consistent with the development of other Lots. In furtherance of

the foregoing purposes, and subject only to the Lot Standards, the Architectural Approval Committee is hereby given complete discretion as to matters related to Lot grading, topographical changes, location, building orientation, layout, design, architecture, color schemes and appearance in approving Lot Development Plans. Building and structure plans (whether preliminary or final) included as a part of any application to the Architectural Approval Committee shall set forth the colors and the composition of all exterior materials proposed to be used. The site plan submitted as a part of the Lot Development Plans for final approval shall describe and detail all proposed fencing and landscaping, any recreational equipment (including, but not limited to, basketball goals, tennis courts, outdoor kitchens, decks, gazebos, garden houses, hot tubs, swimming pools, swing sets, trampolines, etc.) proposed to be constructed, installed or placed upon the Lot, and shall include any other detail or information which reasonably may be required by the Approval Committee. All plans and drawings representing a part of Preliminary Plans or final Lot Development Plans and any other graphic submittals included therewith shall be drawn to the scale required by the current edition of the Participating Builders Manual, or to such other scale as may be authorized by the Approval Committee. All plans submitted as a part of final Lot Development Plans shall be prepared by either a registered land surveyor, engineer or architect, unless permission is specifically given otherwise by the Approval Committee.

D. Duties of Architectural Approval Committee. The Architectural Approval Committee shall approve or disapprove Lot Development Plans outlined within thirty (30) days after all required information is submitted in the form required by this

Declaration and actually received by the Architectural Approval Committee. Should the Architectural Approval Committee fail to act within the specified time, the Lot Development Plans shall be deemed to be disapproved. One copy of all submitted material shall be retained by the Architectural Approval Committee for its permanent files (except material samples, if any, which need not be retained). All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for the disapproval.

In the event of disapproval an affected Owner shall have the following rights:

(1) to appeal any disapproval of final Lot Development Plans to the Board of the Association who, within thirty (30) days of the submission of a written appeal, may affirm, deny or modify the Committee's decision upon a vote of the majority of the members of the full Board. If a majority vote of the full Board is not obtained (whether based upon a decision denying such appeal or inaction on the part of the Board), the Committee's decision shall be deemed affirmed.

(2) Submit final Lot Development Plans a second time for further consideration by the Architectural Approval Committee, modified (or in the same form denied) as the Owner deems appropriate.

E. Architectural Approval Committee to Grant Exceptions. The Architectural Approval Committee may allow reasonable exceptions to the Restrictions where strict application would result in unnecessary hardship, to not include financial hardship. However, any such exception granted must be consistent with the general intent and

purposes of the Declaration, and no exception shall be given which is materially detrimental or injurious to other Lots or Units in Stonegate. For the purposes hereof, the terms of any financing, or the cost of complying with the Declaration shall not be considered a hardship warranting the granting of an exception. No exception shall be valid and effective unless issued in writing and signed by a majority of the Architectural Approval Committee.

Section 5.02. Liability of Developer, Association and Approval Committee. Neither the Developer, the Association nor the Approval Committee, nor their respective agents, successors or assigns, shall be responsible in any way for any defects or insufficiencies in any plans, specifications or other materials submitted for review, whether or not approved by the Developer, Association or the Approval Committee, nor for any defects in any work done in accordance therewith. Neither the Developer, Association nor the Approval Committee shall be liable to any person, firm, corporation or other legal entity aggrieved by the exercise of (or failure to exercise) any of the powers specified in Article III or Article V hereof, and neither of them shall have any liability, loss, cost or expense whatsoever, of any nature, kind or description with regard to any injury, loss or damage which is claimed or alleged to have resulted, in whole or in part, from (i) a refusal to approve the use of any builder proposed for involvement in construction upon or any improvement of a Lot; (ii) the refusal to approve Lot Development Plans or (iii) a refusal to give any other Approval otherwise required by this Declaration.

Section 5.03. Conformance with Submitted Plans. The Architectural Approval Committee shall be responsible for verifying that completed development on a Lot and or future

alterations and/or improvements conforms to the initial submission approved by the Committee. In particular, this shall include the exterior design/materiality, landscaping, grading, exterior paint colors, and location of recreational equipment. Until development of a Lot conforms to the approved Lot Development Plans, a Lot Owner may be denied voting rights and the Association shall have the right to take corrective action at the Lot Owner's expense, with such expenses being recoverable as a delinquent Assessment owed to the Association.

Section 5.04. Maintenance Obligations Approval. The Architectural Approval Committee shall determine and publish landscape maintenance and other service requirements that satisfy the Opt Out Owners Maintenance Obligations (as defined in the Neighborhood Declaration for The Cottages Neighborhood of Stonegate). The Architectural Approval Committee shall have the right to make reasonable modifications and amendments to the Opt Out Owners Maintenance Obligations from time to time, effective thirty (30) days after publication of such modifications and amendments (the "Publication"). Publication shall be made by United States mail to the then existing Opt Out Owners (as defined in the Neighborhood Declaration for The Cottages Neighborhood).

ARTICLE VI

Use and Development Restrictions

Section 6.01. Type, Size and Nature of Construction Permitted. No Improvements permitted by this Declaration shall be erected, placed, altered or permitted to remain on a Lot without the prior Approval of the Architectural Approval Committee as required by this Declaration. Such Approval shall be obtained prior to the commencement of construction and shall be subject to the following minimum standards:

(a) Any improvement of a Lot or any Building to be constructed upon a Lot shall comply with the then-current Lot Standards in effect with respect to the size and type of Lot in question, unless (and only to the extent of) an exception thereto approved by the Architectural Approval Committee.

(b) No Dwelling Unit on a Lot shall be erected, altered, placed or permitted to remain which exceeds two and one half (2 ½) stories in height from finished grade elevation (“finished grade” being defined as the prevailing elevation at the curb or within 18” +/- of the curb). Construction upon a Lot of a Dwelling Unit shall also require construction of a private attached or detached garage for a minimum of two (2) vehicles. An attached greenhouse not exceeding 500 square feet in area, and such other accessory buildings or structures related to swimming pools, tennis courts and other similar recreational facilities not prohibited by this Declaration also may be permitted upon a Lot, as long as usual and incidental to the use of the Lot for single-family residential purposes.

(c) The minimum finished floor of a Dwelling Unit constructed on a Lot, exclusive of open porches, attached garages and basement, shall be as follows: (i) not less than 1900 square feet on Lots located within the English Village platted section of Stonegate, consisting of Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13; (ii) not less than 2,000 square feet on Lots 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36, 37, 38, 57, 58 and 59; (iii) homes more than one (1) story, not less than 3,300 square feet (of which a minimum of 1,800 square feet must be on the first floor) and one story homes not less than 2,400 square feet on Lots 1, 14, 15, 16, 17, 28, 29, 31, 32, 33, 55 and 56; (iv) homes

more than one (1) story, not less than 3,500 square feet (of which a minimum of 2,000 square feet must be on the first floor) and one story homes not less than 2,600 square feet on Lots 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54; and, (v) such minimum square footage on all other Lots as from time to time set forth in the then-current Participating Builder's Manual in effect at the time Lot Development Plans are submitted for required Approval, but in no event containing less square footage than the minimum required by applicable zoning regulations.

(d) No Dwelling Unit, garage or accessory structure of any kind shall be moved onto any Lot, and all materials incorporated into the construction thereof shall be new, except that used brick, weathered barn siding or the like may be approved by the Architectural Approval Committee. No trailer, mobile home, tent, basement, shack, garage, barn or other structure shall be placed or constructed on any Lot at any time for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a Dwelling Unit or Commercial Unit on a Lot.

(e) Any accessory Buildings (other than an indoor pool with track roof or canvas dome cover) hereafter constructed on a Lot shall have a fiberglass or asphalt shingle, slate, tile or wood shake roof and shall be made out of the same materials, or combination thereof, out of which the single-family dwelling house on the same Lot is constructed.

(f) The concrete or block foundation of any Dwelling Unit or accessory structure hereafter constructed on a Lot shall have a maximum unfinished exposure above

finished grade which does not exceed twenty-four inches (24") in height (vertical dimension) and otherwise shall be covered on the exterior with wood, brick or stone veneer, so that no portion of the exterior thereof exceeding eighteen inches (18") in height is left exposed above finished grade.

Section 6.01(A). Stonegate Village Business District Commercial Lots. The following Lots within that portion of the development zoned to the urban business district and consisting of Lots 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 246, 247, 248, 249, 252, 253, 254, 255, 256 and 257 are hereby reserved primarily for commercial development in accordance with the provisions of this Section 6.01(A) ("UB Commercial Lots"). The use and development of the UB Commercial Lots shall be subject to the following: (i) applicable zoning requirements; (ii) the Commitments; (iii) the submission and approval of Lot Development Plans by the Approval Committee as otherwise required by the Declaration, as amended hereby; (iv) compliance with architectural standards included as a part of the Builder's Manual and created in order to ensure consistency of development within the UB zoned village portion of the Development; and (v) construction of Buildings which have a height and number of stories which do not exceed applicable requirements included as part of the Builder's Manual and/or Neighborhood Declaration for Stonegate Village Business District. Specifically, lots 65, 66, 73, 74, 75, 76, 77, and 78 are for commercial development only, with the upper floors allowed to contain residential units for occupancy by the owner or for rental by tenants.

The foregoing "Village Commercial Lot" Designation is not intended to modify in any respect the Commitments made upon rezoning of the real estate containing the UB Commercial

Lots as recorded in the Boone County Recorder's Office on November 14, 2000, as Instrument No. 0011328, and which remain in full force and effect.

Section 6.02. Tree Preservation. Existing trees shall be preserved to the extent the removal thereof is not mandatory in connection with the construction of a Building on or other improvements to a Lot approved by the Architectural Approval Committee, unless the removal thereof is otherwise specifically authorized by the Architectural Approval Committee or any such tree is dead or has reached a state of material decay and is dying, with a remaining life reasonably estimated at less than three (3) years . Within six (6) months following substantial completion of initial construction of a Dwelling Unit or Commercial Unit on a Lot and notification that the Approval Committee has determined additional trees should be planted on such Lot, the Owner(s) of such Lot shall cause new trees (having a trunk in excess of three (3) inches in diameter measured at a point three (3) feet from undisturbed ground) to be planted and maintained on such Lot in the number (which shall be limited to no more than six (6) trees) required by the Approval Committee at locations selected by the Owner(s) and approved by the Approval Committee.

Section 6.03. Street Trees. An Owner, upon initial improvement of a Lot, shall contract with the Association to plant Street Trees, of a type generally recognized to have a deep-root system (including, but not necessarily limited to oak, red maple, ash and other similar deep-rooted trees) and which are approved as a part of the Approval of Lot Development Plans by the Approval Committee before planting, together with (but only to the extent not planted by the Association) Approval of the location and spacing thereof. Once planted, Street Trees shall be fertilized, watered and otherwise maintained as healthy trees by the Association, and shall be

replaced promptly if dead or dying (“dying” meaning for purposes hereof, where remaining life is estimated at two (2) years or less) with a tree of the same type or another type having a deep-root system and approved by the Approval Committee, the costs of which shall be remitted upon demand by the applicable Lot Owner to the Association, together with interest, costs of collection and reasonable attorneys' fees. Public sidewalks through non-Common Area Lots damaged or otherwise adversely affected by the roots or growth of adjacent Street Trees shall be replaced and/or repaired by the Association, the costs of which shall be remitted upon demand by the applicable Lot Owner to the Association, together with interest, costs of collection and reasonable attorneys' fees. In no event shall Boone County, Indiana, or any agency or department thereof, have any responsibility to repair or replace sidewalks damaged by Street Trees. Underdrains, originally installed by the Developer, that are damaged as a result of Street Tree growth over time, will be repaired and /or replaced by the Association, the costs of which shall be remitted upon demand by the applicable Lot Owner to the Association, together with interest, costs of collection and reasonable attorneys' fees.

Section 6.04. Construction Upon a Lot; Completion. All construction upon a Lot shall be completed in strict accordance with the Lot Development Plans approved by the Approval Committee. The exterior of any Dwelling Unit, Commercial Unit or other permitted improvements built (or additions to or material exterior modifications of existing improvements) upon a Lot or combination of Lots shall be completed within twelve (12) months after the date of commencement of the foundation, and the site shall be graded and any areas to be covered with grass or ground cover shall be planted, seeded or sodded. Each Lot shall be kept and maintained in a sightly and orderly manner during the period of construction and no trash or other rubbish

shall be permitted to unreasonably accumulate thereon. A portable toilet and trash dumpster shall be kept and properly maintained on each Lot at all times for use during construction and until substantial completion, each located to the extent practical to minimize visibility from the street. Acceptable and effective erosion control measures (e.g., straw bales, silt fences or similar measures) shall be maintained throughout the construction period. Areas adjacent to a Lot under construction shall be kept reasonably clean and free of mud, debris and other materials (to include public and private streets and drives). Damage to curbs, streets and adjoining Lots caused during construction on a Lot shall be repaired by (or at the expense of) the Owner of such Lot. In the event any Owner fails to comply with the foregoing promptly after notice from the Association, then the Association shall have the authority to effect any necessary clean-up, control or repair, the costs of which shall be remitted upon demand by such Owner to the Association, together with interest, costs of collection and reasonable attorneys' fees.

Section 6.04(A). Landscaping. Completion of the landscaping of a Lot in accordance with approved Lot Development Plans shall be coordinated with construction of the Dwelling Unit and/or Commercial Unit thereon so that all required landscaping is completed as soon as practical following substantial completion of construction, and in any event within forty five (45) days thereafter unless substantial completion occurs during the winter (November 15 through March 15), in which event all landscaping shall be completed by April 30. In the event an Owner fails to complete required landscaping as herein required, the Association, following notice to such Owner of its intention to do so, shall have the right (but not the obligation) to go on or about the Lot without being a trespasser to complete such landscaping in accordance with the approved Lot Development Plans, utilizing either its own personnel or a contractor or contractors

to do so, and otherwise as it determines necessary and appropriate in its sole discretion, subject to reasonableness, and if it does so, the costs associated therewith shall be remitted upon demand by the Lot Owner to the Association, together with interest, costs and reasonable attorney's fees.

Section 6.05. Storage Tanks. Exterior storage tanks only shall be permitted to be used as a part of and during construction of a Dwelling Unit or Commercial Unit upon a Lot and shall be located, maintained, and removed in accordance with all applicable environmental and other laws, regulations, rules and ordinances. Each such storage tank shall be located so that such tank is concealed from public view to the extent practical.

Section 6.06. Driveways. A single driveway shall be constructed on a Lot to and from a Private Drive or Public Street (“Public Street” meaning a street dedicated to the public and accepted for maintenance by applicable governmental authority) or a Shared Driveway and maintained to provide the sole means of vehicular ingress and egress to each such Lot, except in the case of certain corner Lots, which may be permitted by the Approval Committee upon Approval of Lot Development Plans to have both a front driveway for visitors and incidental use for temporary parking and a driveway to a garage in the rear from a Shared Driveway.

Section 6.07. Mailboxes. Mailboxes (other than Common Mailboxes that serve multiple Lots) installed for mail delivery to a Lot shall be installed at each Lot Owner’s sole cost and expense, shall be of a type, color, and manufacture designated by the Approval Committee prior to installation and shall be installed at a location approved by the Approval Committee. Following installation, each mailbox shall be kept and maintained by each Lot Owner in good condition, and if replaced, the replacement shall be at the same location and of the type, color

and manufacture originally required, or as otherwise Approved by the Architectural Approval Committee.

Section 6.08. Location of Driveways. No driveway on any corner Lot shall enter any of the adjoining streets at a point closer than thirty-five feet (35') to the intersection of the street right-of-way lines or, in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The driveway on each Lot shall be cut, and stone or gravel of sufficient size shall be used to avoid easy scatter upon adjacent streets by construction traffic as soon as practical (and before use by construction traffic) and such driveway shall be maintained thereafter as necessary to avoid the transmittal of mud and aggregate from construction traffic to the streets. Prior to substantial completion of construction of a Dwelling Unit or Commercial Unit upon the Lot, each Driveway shall be completed of concrete, or such other material as is approved by the Approval Committee.

Section 6.09. Fences, Walls, Hedges or Shrub Plantings. No fence, wall, hedge, shrub plantings or other screening shall be erected, placed, altered or permitted to remain on any Lot other than as approved (as to location, type, materials, design and height) by the Approval Committee. No structures, or enclosures of any kind, nor any swings, hot tubs, pools, fountains, decorative lawn accessories (e.g., bird baths, statuary or the like), docks, decks, gazebos, fences (other than an electric fence installed below ground for pet containment purposes), walls, hedges, trees or shrub plantings shall be constructed, placed, erected or permitted to remain on any Lot within twenty-five (25) feet from the water's edge, assuming normal pool elevations of any Pond, except as installed or placed by the original developer, the Association or authorized by the Board. The Association or the Board may also place or plant trees and other landscaping

within such twenty-five (25) foot area as the Association deems necessary or appropriate within its sole discretion, and such plantings and landscaping so placed by the Association shall be permitted to remain (or be replaced if dead or dying) without violating this Section 6.09.

Any invisible fence proposed for installation for animal control purposes on a Lot shall comply with the following minimum setbacks: (i) three (3) feet from side and rear Lot Lines; and, (ii) five (5) feet from any sidewalk or designated path, trail, Shared Drive or Private Street in a Common Area.

Section 6.10. Sewage Disposal. Sewage disposal only shall be permitted through hook-on to public or private sanitary sewers available to each Lot. No septic systems of any kind shall be permitted.

Section 6.11. Sump Pump Discharge. Sump pump discharge shall connect to an approved storm sewer control system or part of the Boone County Storm Water system installed throughout Stonegate as designated by the Boone County Surveyor's Office. Sump pumps may discharge into a pond, open ditch, or a tile drain. Sump pumps may discharge into a concrete storm sewer structure, but not a concrete storm sewer pipe. Sump pumps may NOT discharge to grade.

Section 6.12. Refuse Collection. Refuse and garbage collection from each Lot or Unit shall be through a refuse collector or hauler approved by and under Master Contract by the Board at such time or times and on such dates as the Board may from time to time designate. The cost of refuse and garbage collection shall be the separate responsibility of each Lot or Unit Owner unless and until the Board determines otherwise and elects to handle trash collection on a uniform basis, in which event the cost thereof may be included as a part of Annual Assessments

(or other assessments) otherwise permitted to be levied by this Declaration. A single designated trash collector shall be chosen by the Board to provide trash pickup throughout all of Stonegate, in which event the use thereof shall be mandatory by each Lot Owner.

Section 6.13. Ditches and Swales. The Owner of any Lot on which any part of an open storm drainage ditch or swale is situated shall keep such portion thereof as may be situated upon such Lot continuously unobstructed and in good repair so as to permit positive drainage flow along or within such open storm drainage ditch or swale, and shall provide for the installation of such culverts upon such Lot as may be reasonably necessary to accomplish the purposes of this Section 6.13, all at such Owner's own cost and expense.

Section 6.14. Additional Ponds. No Owner shall cause or permit any additional ponds to be created on any Lot, including without implied limitation, from any swale, ditch, stream or creek, such prohibition not to include, however garden ponds not exceeding 125 square feet on a Lot, but only if approved on a particular Lot by the Architectural Approval Committee as to suitability, location and otherwise within the Approval Committee's sole discretion.

Section 6.15. Antenna, Dish or Other Similar Structures. No antenna, dish, antenna towers or other free-standing antenna structures or devices shall be hereafter erected, placed or permitted to remain on any Lot within Stonegate, without the prior Approval of the Approval Committee. In no event shall any antenna dish, antenna tower or free standing antenna structures or similar devices which exceed twenty inches (20") in diameter or three feet (3') in height be permitted without good cause shown as to the necessity for increased size or height for signal reception purposes and approval by the Architectural Approval Committee.

Section 6.16. Free Standing Lights. No light poles, or other similar free standing structures exceeding two feet (2') in height shall be installed or maintained on a Lot unless either (i) installed or required by the original developer of Stonegate as a part of initial construction of a Dwelling Unit or Commercial Unit, or (ii) the location, height, type, style and manufacture thereof has received Approval from the Architectural Approval Committee prior to the installation thereof. Any such light fixture shall also be limited to a maximum wattage approved by the Approval Committee. Light fixtures shall be permitted affixed to the exterior of improvements permitted by this Declaration as long as located, shielded and directed so that the distribution of light is limited to the area to be illuminated and spillover of light onto adjacent Lots is maintained at an approved level or intensity. Until modified or changed by the Approval Committee, the approved level of intensity at the Lot line shall be one (1) footcandle.

Section 6.17 Flagpoles. **Bracket mounted flagpoles** attached to a single- family home or related improvements otherwise permitted to be constructed upon a Lot by this Declaration for the display of the American flag and/or other flags and banners, whether in celebration of a season, holiday, event or otherwise, shall only be permitted at a location approved either as a part of the approval of Lot Development Plans or upon submission of a request in writing for approval made to the Architectural Approval Committee in the manner otherwise required by this Declaration. **Freestanding flagpoles** shall not be permitted in the front or side yard of any Lot. Freestanding flagpoles in the rear yard of a Lot may be permitted, but only upon the approval of the Architectural Approval Committee with respect to the proposed type, size, location, height and any planned illumination thereof, upon submission of plans with respect thereto to the Architectural Approval Committee made as otherwise provided in this Declaration.

Any flagpole permitted on a Lot shall not exceed a height which is taller than a point five feet (5') below the building height of the single-family home constructed upon the same Lot. For purposes hereof, "building height" shall mean the vertical distance below a reference line measured to the highest point of the deck line of a mansard roof or to the height of the highest gable of a pitched or hipped roof. Illumination of any flagpole shall be by light fixtures located, shielded and directed so that the light distributed thereby is appropriately confined to the flag or banner being displayed and does not result in lighting adjacent Lots, Common Areas or result in excessive illumination of the night sky.

Notwithstanding anything which may be construed herein to the contrary, the Architectural Approval Committee shall have the right to prohibit a flagpole (or any illumination thereof) upon a given Lot, taking into account Lot size, configuration, location and effect upon adjacent Lots, Common Areas or improvements thereto.

Section 6.18. Rental Units. No "Rental Units" shall be allowed within Stonegate except those currently marketed and occupied as such as of the date of this Amended & Restated Declaration as filed with the Boone County Recorder except those allowed as stated in Section 1.28 Rental Unit. This excludes the Townhomes and residential rental units and commercial rental tenant spaces as part of a Commercial Unit in either the Stonegate Village business District or the Professional Business District. Residential rental units built specifically as rentals in the Stonegate Village Business district are excluded.

Section 6.19. Inspection. Until the development, improvement or alteration of, or the construction on or addition to, a Lot or Lots is completed, the Architectural Approval Committee from time to time and at reasonable times, peaceably may enter and inspect such Lot.

ARTICLE VII

Use and Maintenance of Lots

Section 7.01. Vehicle Parking. No camper, motor home, truck, trailer, recreational vehicle or boat may be parked or stored longer than forty-eight (48) hours on any Lot in open public view, except pick-up trucks or other similar vehicles customarily used by the Owners of suburban real estate parcels similar in size to the Lots in Stonegate. Any parking of vehicles on the streets of Stonegate shall be in conformity with all applicable ordinances of Boone County, Indiana.

Section 7.02. Home Occupations. No home occupation shall be conducted or maintained on any Lot restricted for residential use excepting only occupations which are both permitted by applicable zoning and incidental to a business, profession or occupation of the Owner or occupant of such Lot and one which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed or permitted to remain on any Lot advertising a permitted home occupation.

Section 7.03. Signs. No sign of any kind shall be displayed to public view on any Lot restricted for residential use only, except that two (2), two (2)-sided signs (each not exceeding five (5) square feet per side or the maximum size permitted by applicable ordinances of Boone County, Indiana whichever is less) may be displayed at any time for the purpose of advertising the property for sale or for rent, or may be displayed either (i) by a builder and/or realtor to

advertise during construction; or, (ii) for a purpose and otherwise of a size and at a location approved by the Board. Signs relative to school athletics, specifically highlighting an occupant of the Lot, are permitted under this section. The location of any such permitted sign on a Lot shall be in conformity with all applicable ordinances of Boone County, Indiana.

Section 7.04. Maintenance of Undeveloped Lots and During Construction – Related Fees.

An undeveloped Lot maintenance fee (“ULM Fee”) is hereby imposed on all undeveloped Lots (herein “Undeveloped Lots”, meaning for purposes hereof any Lots upon which neither a Dwelling Unit or Commercial Unit has been constructed or is under construction). The monthly ULM Fee shall be One Hundred Dollars (\$100.00) per month (subject to change hereafter by the Board at the end of any calendar year), shall be payable on a monthly basis on or before the fifth (5th) business day of the next succeeding month, and shall be assessed through the month in which construction of a Commercial Unit or Dwelling Unit commences on a Lot. In exchange for payment of ULM Fees with respect to a Lot, the Association shall cause weeds and other growth to be periodically mowed, take reasonable steps to prevent rubbish and debris from accumulating thereon, and is hereby given an easement to go on and about such Lot as necessary for the foregoing purposes.

During the month construction of a Commercial Unit or a Dwelling Unit commences on a Lot, the Owner of such Lot shall be billed \$500.00 by the Association in the form of a “Construction Fee.” The Construction Fee shall be payable on or before the fifth (5th) day of the next calendar month. The purpose of the Construction Fee is to help defray the cost of periodic street/service lane cleaning during the construction period. Damage to other Lots, private property or structures or improvements on other Lots or in Common Areas is not covered by the

Construction Fee. Each Lot shall be otherwise kept and maintained (at the Owner's cost and expense) during construction as required by Section 6.04.

Section 7.05. Maintenance of Lots and Improvements After Lot Development. The Owner of any Lot shall at all times, following substantial completion of the construction of improvements for occupancy thereon as otherwise permitted by this Declaration, maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, each such Owner shall: (i) mow such portion of the Lot or Lots upon which grass has been planted at such times as may be reasonably required; (ii) remove all debris or rubbish; (iii) prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of Stonegate; and (iv) keep the exterior of all improvements in a state of proper repair and maintenance so they do not become unsightly or in a visual state of disrepair.

Section 7.06. Maintenance of Lots Owned but Not Yet Developed. Given that development in Stonegate is substantially complete, all Lot Owners who own Lots that have not yet been developed shall maintain their Lot as if it was complete and to the standards set forth in Section 7.05. The Association, at its discretion and cost, may install a public sidewalk across the Lot, connecting adjacent Lots, for use by residents of Stonegate. If and/or when this Lot is developed, any damage to the sidewalk must be repaired by the Lot owner and will be at the Lot Owner's expense.

Section 7.07. Association's Right to Perform Certain Maintenance. In the event the Owner of any Lot in Stonegate fails to reasonably maintain such Owner's Lot and any improvements situated thereon in accordance with the provisions of this Article VII, or as

otherwise required by this Declaration, the Association upon action of the Board and by and through its agents, employees or contractors, shall have the right, but not the obligation, following notice in writing to such Owner of an intention to do so unless reasonable maintenance as detailed in such notice is performed and the expiration of ten (10) days thereafter without such maintenance being done, to enter upon such Lot without being a trespasser to repair, mow, clean, or perform such other acts as reasonably may be necessary to make such Lot and the improvements situated thereon, if any, conform to the requirements of this Article VII, or as otherwise set forth in this Declaration, including the right, but not the obligation, to assume the responsibility of mowing any Lot. The out-of-pocket costs incurred by the Association, plus an amount equal to twenty percent (20%) thereof to cover Association costs incurred in exercise of its rights hereunder in connection with the maintenance of any Owner's Lot as provided in this Section 7.07 shall be collectable from the Owner(s) of any such Lot as a Specific Assessment and shall represent a lien against any such Lot until paid in full together with interest thereon, cost of collection and attorneys' fees, all without relief from valuation and appraisal laws. Neither the Association, the Board, nor any of their respective agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

Section 7.08. Animals. Only dogs, cats and similar animals generally and customarily recognized as household pets, not exceeding in the aggregate three (3) in number, may be kept or maintained on any Lot as household pets. All animals kept or maintained on any Lot shall be kept reasonably confined so as not to become an annoyance or nuisance. No animal shall be kept or maintained on a Lot for commercial purposes or primarily for breeding purposes, except in the

Village Neighborhood, and then only to the extent a pet shop is approved as a permitted use by both the Board and applicable governmental zoning authority. No dog houses, dog "runs" or other similar separate structures or facilities of any kind shall be construed, placed or permitted to remain on any Lot. The provisions hereof shall not apply to household pets who are kept at all times indoors and by their very nature are confined at all times, such as goldfish, tropical fish and the like. Keeping of bees on one's property may be permitted with approval of the Board so long as they do not create a nuisance. However, hives may not be kept in view of public streets.

Section 7.09. Garbage, Trash and Other Refuse. The outside burning of garbage or other refuse shall not be permitted on any Lot, nor shall any outside accumulation of refuse or trash be permitted on any Lot. Each Dwelling Unit built upon a Lot shall be equipped with an environmentally acceptable garbage disposal unit and once installed, each such unit shall be kept and maintained in good working order so as to be and remain environmentally acceptable.

Section 7.10. Nuisances. No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the Stonegate development or another Owner.

ARTICLE VIII

Association and Assessments

Section 8.01. Association. The Association is created to provide a vehicle to (i) own the Common Areas; (ii) promulgate and enforce rules and regulations necessary for the proper use and enjoyment of the Common Areas; (iii) maintain, repair, restore and replace as necessary the Common Areas, including Buildings and other improvements constructed thereon or any related furnishings or equipment; (iv) enforce the restrictions imposed by this Declaration; (v) otherwise

take such actions it deems necessary and appropriate consistent with its Articles of Incorporation and By-Laws to further the interests of the Members; and (vi) hire such employees, personnel, or professional management or other professional assistance (i.e. lawyer, accountant, etc.) as it deems necessary in connection with any of the foregoing.

Section 8.02. Powers of Association. The Association shall have the powers set forth in its Articles of Incorporation, By-Laws, this Declaration and which it has by applicable law, including the power to levy and collect assessments, ULM Fees, Construction Fees and to enforce liens and exercise foreclosure rights.

Section 8.03. Membership. Every Owner shall be a Member of the Association. If a Unit is owned by more than one person, all co-owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws, and all such co-owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. Stonegate Proper Members also shall be entitled to share the privileges of membership and use and enjoyment of the Common Areas, subject to payment of Dues, when required (as hereinafter defined), in amounts and payable as from time to time established by the Board.

Section 8.04. Voting. Class A Members shall have one (1) vote for each Dwelling Unit in which the interest required for membership is held, subject to a limit of one vote per Dwelling

Unit. Class B Members shall have one (1) equal vote for each seven hundred (700) square feet of finished floor Area for each Commercial Unit (including residential space contained therein) in which the interest required for membership is held (rounded down to the nearest 700 square feet increment of finished floor area). Class C Members shall not be entitled to vote. Voting rights for a class may not be altered without an amendment of this Declaration in the manner required by Section 9.06 hereof.

In any situation in which a Member is entitled personally to exercise the vote(s) for his/her Unit and there is more than one Owner of a particular Unit, the vote(s) for such Unit shall be exercised as such co-owners determine among themselves. The Unit's vote shall be suspended if more than one (1) person seeks to exercise it.

Section 8.05. Board of Directors. The Board shall be comprised of a seven (7) person board, elected by the Class A and Class B Members. At least one (1) of the directors shall be selected from among the Owners in Stonegate Village Neighborhood and elected by a majority of the Owners in such Neighborhood, and at least one (1) of the directors shall be selected from the Owners within the Professional Business District Neighborhood, and elected by the Owners within such Neighborhood. The remaining five (5) members shall be residential members who maintain their primary residence in Stonegate.

Section 8.06. Power to Levy. The Board shall have the power to levy Annual, Special, Specific and Neighborhood Assessments, and ULM Fees and Construction Fees as otherwise provided herein. The Board also shall have the power to set the dues (herein "Dues" meaning for purposes of this Declaration amounts assessed for use and enjoyment of the Common Areas) payable by the Stonegate Proper Members, in amounts and otherwise at such times as the Board

may direct, which Dues shall not, in any event, exceed on an annual basis an amount equal to forty percent (40%) of the amount of the Annual Assessments for each detached single-family Dwelling Unit otherwise levied hereunder.

Section 8.07. Creation of a Lien and Personal Obligation of Assessments. The Association hereby covenants, and each Owner of each Lot, Unit or other parcel or tract of land (“Parcel”) into which the real estate is divided as a part of Stonegate, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association when due Annual, Special, Specific and Neighborhood Assessments, ULM Fees and Construction Fees as provided in Article VII or in this Article. Until paid in full, any amounts not paid when due, together with interest thereon (at a percentage rate per annum equal to the then-current Indiana statutory maximum annual interest rate, but in no event less than twelve percent (12%) per annum), monthly late charges and costs of collection (including reasonable attorneys' fees and court costs) shall be a continuing lien upon the Lot, Unit or other Parcel against which such assessment is made. Each assessment or fee, together with interest, monthly late charges and costs of collection as aforesaid, shall also become and remain, until paid in full, the personal obligation of the one or more persons or entities in ownership of the Lot, Unit or Parcel at the time when the assessment first becomes due and payable. If any Owner fails, refuses or neglects to pay an assessment when due, then the lien for such assessment may, at any time following notice thereof by first-class United States mail of the amount thereof to an Owner and the expiration of at least ten (10) days from the date such notice is sent, be foreclosed by the Association in the same manner in which a mechanic's lien is foreclosed from time to time under Indiana law, or in any other manner otherwise from time to time permissible or provided

by law or in equity. The Association may, at its option, bring a suit against the Owner (and if more than one, either jointly or severally) to recover a money judgment for any unpaid assessment or fee without foreclosing the lien for such assessment or fee or waiving the lien securing the same. In connection with any effort to recover an assessment or fee, whether by foreclosure or otherwise, and regardless of whether litigation is initiated, the Association shall be entitled to recover from the Owner, not only the delinquent assessments or fees, but also all late charges imposed, interest, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to the managing agent for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees. The Association need not accept any tender or a partial payment of an assessment or fee, or any installment of an assessment or fee, and all costs, expenses, charges and attorneys fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter. In addition, the Board shall have the power to adopt by Board resolution additional rules and regulations or delinquency procedures.

Section 8.08. Purpose of Assessment. Assessments levied by the Association shall be used exclusively to exercise those powers, perform those duties and advance those purposes for which the Association has been formed or which are provided by this Declaration, and to defer the costs and expenses incurred in connection therewith.

Section 8.09. Types of Assessments. The types of Assessments permitted to be levied by the Board are as follows:

A. Annual Assessments. The Board shall have the power to levy, on a calendar year basis, an Annual Assessment to fund Common Expenses for the general benefit of Members and Units in Stonegate. The Annual Assessment shall be paid as otherwise set by the Board. The Annual Assessment shall be as currently established by the Board, on an annual basis, for each detached single-family Dwelling Unit and for each attached multi-family Dwelling Unit (i.e. townhomes, etc.). The Annual Assessment for each Commercial Unit shall be determined at a rate currently established by the Board on the basis of the amount of finished floor area in the Commercial Unit subject to Annual Assessment.

An annual fee (not considered an assessment) for each Undeveloped Lot (either owned by a private entity or by the Developer), shall be Four Hundred and no/100 Dollars (\$400.00) per annum.

The Annual Assessments as established by the Board shall be evaluated and/or modified each year to allow for proper financial operation as the neighborhood. Any increase in the Annual Assessment shall be limited to no more than Five Percent (5%) above the Annual Assessment for the immediately preceding calendar year, unless the increase is approved by at least sixty percent (60%) of the Members of the Association. The Annual Assessment rate for detached single-family Dwelling Units, attached multi-family Dwelling Units, and commercial Units must all increase by the same percentage, subject to the foregoing Five Percent (5%) limitation.

Upon both closing of the initial sale of a Unit to an Owner for use and occupancy and substantial completion of improvements constructed thereon for use and occupancy, the Purchaser/Owner shall pay the prorated portion of the current year's assessment plus one (1) full

year's Annual Assessment. After the credit has been exhausted, the Owner shall pay the Annual Assessment annually as determined herein or by the Board.

B. Special Assessments. In addition to the Annual Assessment, the Board may levy in any assessment year a Special Assessment, for the purpose of defraying in whole or in part the cost of any construction, re-construction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of seventy five percent (75%) of the Members who are voting in person or by proxy at a special meeting duly called for such purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. The work required to be completed through the Special Assessment may occur over a period of years and the assessment may be levied over that same period of years, with a reconciliation of income and expenses being provided to the Members at each annual meeting.

C. Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units: (a) receiving benefits, items, or services not provided to all Units within a Neighborhood or within Stonegate that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit, or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests. The Association may also levy a Specific Assessment against any Unit or Neighborhood to reimburse the Association for out of pocket expenses incurred in bringing the Unit or Neighborhood into compliance with the provisions of the Declaration other covenants, the Articles, the By-Laws, and rules and regulations promulgated by the Board, provided the Board gives notice at least

twenty (20) days prior to the levy of any Specific Assessment to the Unit Owner or Neighborhood Committee as applicable, and affords any objecting party an opportunity to present evidence to the Board as to why such Specific Assessment should not be levied, in whole or in part.

D. Neighborhood Assessments. The Board shall have the power to specifically assess the actual and estimated Neighborhood Expenses incurred by the Association. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefited thereby and shall be levied as a Neighborhood Assessment. Such assessment shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood.

Any Neighborhood may request that additional services or a higher level of services be provided by the Association and, if providing such services is approved by the Board and such services are provided, any additional costs involved in connection therewith shall be considered Neighborhood Expenses and shall be assessed equally among all Units in the Neighborhood benefited by such services.

The Board shall provide notice of the amount of the Neighborhood Assessment for the coming year, along with a copy of the budget upon which it is based to each Owner of a Unit in the affected Neighborhood at least thirty (30) days prior to the beginning of the Assessment year. Such proposed Neighborhood Assessment shall become effective unless disapproved by a majority of the Owners of Units in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the Neighborhood Assessment proposed except on petition of Owners of at least ten percent

(10%) of the Units in the Neighborhood. The right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to additional services requested by a Neighborhood. In the event of disapproval, such additional services shall be discontinued at the end of the then-current assessment year.

Section 8.10. Subordination of the Lien to Mortgages. The lien of the assessments and fees provided for herein against a Lot, Unit or Parcel shall be subordinate to the lien of a recorded bona fide first mortgage covering such Lot, Unit or Parcel and subordinate to any tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. The sale or transfer of a Lot, Unit or Parcel shall not affect the assessment lien. The sale or transfer of a Lot pursuant to bona fide mortgage foreclosure proceedings or any other bona fide proceeding in lieu thereof shall, however, extinguish the lien of [but not the subject transferring Owner's obligation to pay) such assessments or fees as to any payment which became due prior to such sale or transfer. No such sale or transfer shall release a Lot, Unit or Parcel from liability for any assessments or fees thereafter becoming due or from the lien thereof.

Section 8.11. Certificates. The Association shall, within twenty (20) days after demand made at any time, furnish a certificate in writing signed by the Treasurer of the Association, specifying that the assessments and fees respecting a Lot, Unit or Parcel has been paid or that certain assessments remain unpaid, as the case may be. A reasonable charge may be made by the Association for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any assessments or fees therein stated to have been paid.

Section 8.12. Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood

Oversight Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Oversight Committee in connection with its obligations and responsibilities hereunder or under a Plat, the Commitments or any other covenants or declarations affecting Stonegate. However, no Neighborhood shall have additional restrictions, obligations or responsibilities, other than those set forth in this Declaration or any other covenants or declarations affecting Stonegate, proposed without the affirmative vote, written consent, or a combination thereof, of Owners of seventy five percent (75%) of the Units within the Neighborhood.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Oversight Committee shall be taken within a reasonable time. If the Neighborhood Oversight Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to affect such action on behalf of the Neighborhood Committee.

Section 8.13. Obligation to Contribute to Maintenance. The east entrance to Stonegate from State Road 334 is an entrance shared with Stonegate Proper, an existing fourteen (14) lot subdivision located generally east of the Stonegate development. Although the street is a public street, as extended from State Road 334 to Stonegate it is located within a portion of Stonegate Proper identified on the plat of Stonegate recorded in the Boone County Recorder's Office on or about June 22, 1998 as Instrument No. 98-07100, as "Common Area Block 'C'", which has been fully landscaped and includes common lighted identification signage and entrance features ("Landscape and Entrance Features") which are beneficial to Stonegate. Based upon the benefit

to Stonegate the costs of maintaining, operating and refurbishing such landscaping and entrance features should be shared as a Common Expense of the Association in part with the lot owners in Stonegate Proper as represented by their respective Board. Based upon the foregoing and taking into account the relative size of Stonegate Proper as compared to Stonegate, the Board (of Stonegate) has agreed to bear the cost of all general maintenance within this area, not including any signage, lighting and/or landscaping specific to Stonegate Proper. The cost of additional modifications and upgrades beyond the usual and typical, and desired by either Stonegate or Stonegate Proper will be completed at the cost of the initiating party, or an agreed upon split of the costs between both parties, so long as both parties consent to the additional modifications and/or upgrades as represented by an affirmative majority vote by each Board members at the time.

Section 8.14. Reserves. The Association shall establish a Reserve Fund to be held by the Association for such purposes as the Board may, from time to time, determine.

1) Accumulation: A Budget Surplus at the end of a fiscal year and after paying all debts and expenses for that year shall be designated and accounted as Reserves. The Board may, but shall not be required, to include funding for Reserves as a Budget line item and assessed as part of the Annual Assessment. Assessment for Reserves shall not exceed fifteen percent (15%) of the amount assessed for the Residential Assessment. The Board may accept contributions and solicit contributions for the Reserve Fund established herein.

2) Reserve Fund Accounting and Deposits: The Reserve Funds shall be disclosed on the Financial Statements as an asset of the Association and delineated as Reserve Funds or Reserves. The Reserve Funds may be co-mingled with the Association's general funds and need

not be segregated and held in a separate account. The Association's Board, in its discretion, may invest Reserve Funds in an interest-bearing account.

3) Total Accumulation: Total Reserve Funds shall not exceed one hundred fifty percent (150%) of the immediately preceding annual expenses and costs associated with the operation of the Association. Expenses and Costs shall not include any amount assessed to fund reserves. Expenses and costs shall not include the expenditure of any funds collected as a Special Assessment or debt reduction/interest on debt.

4) Use of Reserve Funds: Reserve Funds can be utilized by the Board or the Association as follows:

- a) Repairs and maintenance in excess of budgeted allocations
- b) Capital improvements not budgeted
- c) Engineering or design studies in anticipation of Capital Projects whether funded by the budget (Annual Assessment) or otherwise (e.g. Special Assessment)
- d) Legal, accounting or other professional fees that may be incurred which are reasonable and necessary in furtherance of the Stonegate Community interests.
- e) To fund Reserve Studies
- f) To fund events or projects proposed and approved by the membership at the Annual Meeting or Special Meeting called for that purpose
- g) Any lawful purpose for which reserve funds may be utilized

5) Reporting and Accounting: The Board shall maintain an account of the Reserve Funds and shall report to the membership on an annual basis. The report shall include additions to Reserves, Expenditures from Reserves, the purpose of the expenditures and Reserve balances.

6) PROHIBITED ACTS: The following restrictions apply.

- a) All expenditures from Reserves shall be by official action of the Board.
- b) Reserves shall not be utilized in lieu of, or as a substitution for, the regular budgetary process.
- c) Expenditures from Reserves shall not, under any circumstance, put the Reserve Fund in a deficit balance.
- d) Reserve Funds cannot be loaned for any purpose.

7) Repayment: There is no requirement that money spent from the Reserve Fund must be repaid to the Reserve Fund. The Reserve Fund shall continue to accumulate as set forth above. However, and notwithstanding anything contained herein, the Board may consider expenditures from Reserves as it considers the Annual Assessment and the need to replenish Reserves as it fulfills its responsibility to propose an Annual Budget.

ARTICLE IX

General

Section 9.01. Waiver of Damages. Neither the Association, the Board of Directors, the Architectural Approval Committee, the Developer, nor the Owners acting as the Association, nor Owners acting as officers or agents of the Association, nor their respective agents, nominees, representatives or designees, shall be liable for any claim whatsoever arising out of or by reason of any acts taken (or not taken) or things done or performed (or not done or performed) pursuant

to any authorities reserved, granted or delegated pursuant to this Declaration, except as may result against the Board from the willful and intentional misapplication at the direction of the Board of any Annual, Special, Specific or Neighborhood Assessments collected by the Association.

Section 9.02. Enforcement. The Association or any party to whose benefit this Declaration inures, including the Developer and the Owners, shall have the right to proceed at law or in equity to enforce and/or prevent the occurrence or continuing violation of any restrictions, obligations or other duties imposed hereby. In no event, however, shall either an Owner, the Developer or the Association be held liable for damages of any kind for a failure to either abide by or enforce any of the provisions of this Declaration or of any Plat or of any part of any Commitments. The rights of enforcement by any Owner, the Developer or the Association shall include, but are not limited to, the right of injunctive relief or the right to seek the removal by due process of law of structures erected or maintained in violation of this Declaration without being required to show actual damage of any kind whatsoever, and an Owner, the Developer, and the Association shall be entitled to recover, if successful, in addition to appropriate monetary damages, if any, reasonable attorneys' fees and other legal costs and expenses incurred as a result thereof. No delay or failure on the part of the Developer or the Association to seek any available remedy at law or in equity with respect to a violation of any one or more of the Restrictions, obligations, duties or other provisions of this Declaration shall be deemed a waiver (or an estoppel) of that party to assert any rights available upon the occurrence, continuation or reoccurrence of such violation(s).

Section 9.03. Severability. The provisions of this Declaration shall be severable and no provision shall be affected by the invalidity of any other provision to the extent that such invalidity does not also render such other provision invalid. In the event of the invalidity of any provision, this Declaration shall be interpreted and enforced as if all invalid provisions were not contained herein.

Section 9.04. Non-Liability of Developer and Association. Neither the Developer, nor the Association (by virtue of taking over Stonegate from the Developer) shall have any liability to an Owner or to any person or entity with respect to drainage on, over, under or through a Lot or other parcel within Stonegate. Upon the improvement and development of a Lot or other parcel within Stonegate, the proper handling of storm and surface water drainage shall be the responsibility of the Owner of such Lot, and each Owner by the acceptance of a deed to a Lot, shall be deemed to and does thereby RELEASE AND FOREVER DISCHARGE the Association and Developer from, and shall INDEMNIFY AND HOLD HARMLESS the Association and the Developer against, any and all liability arising out of or in connection with the handling, discharge, transmission, accumulation or control of storm or surface water drainage to, from, over, under or through the Lot or other parcel of real estate described in such deed.

Section 9.05. Binding Effect. This Declaration, and the covenants, conditions and restrictions herein contained shall be binding upon the Developer, Association, each Owner and any person, firm, corporation or other legal entity now or hereafter claiming an interest in any Lot, Unit or parcel of land comprising a part of the Stonegate development and not dedicated to public use, and his, her, its or their respective successors or assigns.

Section 9.06. Amendments to Declaration. This Declaration may be amended or changed, but only to the extent that such amendments or changes do not affect the following: (i) any easement rights reserved or granted hereby, including without limiting the generality of the foregoing, the rights of ingress and egress for vehicular and pedestrian use; and, (ii) any rights or restrictions within this Declaration which are not subject to change under the express terms of this Declaration. This Declaration may be amended or changed, in whole or in part, at any time upon approval by the Owners of a majority of the total number of Lots and Units who are in good standing. For purposes of this provision, “good standing” shall mean Owners who are no more than six (6) months delinquent on the payment of any Assessments, or any installments thereof, as determined by the Board at the time of the aforesaid approval. All Owners in good standing must be given the opportunity to vote on the proposed amendment(s). Such approval for an amendment to this Declaration may be obtained:

- (a) at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association’s By-Laws; or
- (b) by written consents or approvals received from the Owners; or
- (c) pursuant to any other procedure recognized under Indiana law, including those recognized under the Indiana Nonprofit Corporations Act of 1991, as amended, including, but not limited to, written mail-in ballots; or
- (d) any combination of the above.

The President and Secretary of the Association shall execute the amendment, certifying that the Owners of a majority of the total number of Lots and Units who are in good standing approved

such amendment. Thereafter, the amendment shall be filed with the Boone County Recorder and shall take immediate effect.

Section 9.07. Duration. This Declaration and the restrictions imposed hereby shall run with the land and shall be binding on all Owners and all persons claiming under them for an initial period of twenty-five (25) years from the date of recordation of the original Declaration (which was January 6, 2003), and shall automatically extend for successive periods of ten (10) years each, unless they are amended or changed as provided in Section 9.06 above.

Section 9.08. Rural Development. In accepting ownership of any Lot or Unit in this subdivision, an Owner hereby acknowledges that surrounding land may be agriculture in usage and subject to intense agricultural practices, and each Owner, and their heirs, assigns, and successors-in-interest, are precluded from complaining, seeking damages and/or attempting to enjoin the use of the property (land) for confined feeding, grain handling operations, or use of manure, fertilizers or other agricultural chemicals because of nuisances which may result from such practices as long as generally accepted farming practices are followed. It is further recognized that farming operations may include dust, disruptive noises, and light for twenty-four (24) hours per day during crop planting and harvesting seasons. This condition and agreement also shall run with the land.

Executed this _____ day of _____, 2020.

Stonegate Community Property Owners Association, Inc., by:

John T. Casey, President

Attest:

Trisha D. Benner, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a notary public, in and for said County and State, personally appeared John T. Casey and Trisha D. Benner, the President and Secretary, respectively, of Stonegate Community Property Owners Association, Inc., an Indiana nonprofit corporation, who acknowledged execution of the within and foregoing for and on behalf of said corporation and its members and who, being duly sworn, stated that the representations made therein are true. Witness my hand and notarial seal this _____ day of _____, 2020.

Notary Public - Signature

Printed

My Commission Expires: _____ Residence County: _____

“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.” /s/ P. Thomas Murray, Jr., Esq.

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., EADS MURRAY & PUGH, P.C., Attorneys at Law, 9515 E. 59th Street, Suite B, Indianapolis, IN 46216.
Telephone: (317) 536-2565

STONEGATE BALLOT CERTIFICATION

For the Amended & Restated Declaration of Covenants, Conditions & Restrictions

The Stonegate CCR Ballot Certification Committee met on the ____ day of April 2020 and the meeting having been called to Order by the Chairman, Lynn Tyler, conducted the following review and took the following Action:

- 1) Recognized the Stonegate Community Property Owners Association’s Board of Directors submitted and circulated Amended and Restated Declaration of Covenants, Conditions and Restrictions (hereinafter, “CCRs”) to the POA Membership.
- 2) Recognized the Original CCRs provide at Art IX, Section 9.06: “Until the initial sale by the Developer of all Lots in the Development, any such amendment or change must be approved in writing by the Developer and the Owner(s) of at least twenty-five percent (25%) of the Lots”
- 3) Reviewed the Consent of the Developer which is attached hereto whereby the Developer consented and approved the Amended and Restated CCRs.
- 4) Reviewed all written Ballots submitted and tendered through April 1, 2020, by the POA Membership to determine the Ballots are in proper form and order and properly executed.
- 5) Reviewed the compilation of platted lots provided by Stonegate’s management company to determine there are 377 platted lots in the subdivision/development.

The Certification Committee tabulates and records the Ballots as follows:

- a) Lot Owners approving the Amended and Restated CCRS: _____
- b) Lot Owners Disapproving the Amended and Restated CCRs: _____

The Stonegate CCR Ballot Certification Committee now reports and certifies _____ Stonegate Lot Owners approved the Amended and Restated CCRs which represents _____% of all Stonegate Lot Owners.

All of which is done this ____ day of April, 2020.

Stonegate CCR Ballot Certification Committee

Lynn Tyler

Trisha Benner

Nalini Mowery