

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
BLACKTHORNE SUBDIVISION,  
PHASE 4**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BLACKTHORNE SUBDIVISION, PHASE 4 (“Declarations”), made on the \_\_\_\_ day of \_\_\_\_\_, 2019, by Tempest Homes LLC, an Indiana limited liability company (“Declarant”), being the owner of all of the real estate platted as Blackthorne Subdivision, Phase 4, in Wabash Township, Tippecanoe County, Indiana, such real estate being more particularly described in EXHIBIT A attached hereto and made a part hereof (the “Addition”), does hereby establish and declare that the following covenants, restrictions, and conditions shall govern the use and occupancy of the Lots (as hereinafter defined) in said Addition:

1. The following terms, when used throughout this Declaration, shall have the following meanings and definitions:
  - a. “Association” means Blackthorne Subdivision of Lafayette Homeowners Association, Inc., an Indiana nonprofit corporation.
  - b. “Common Area” means: (1) the Outlot(s); (2) those portions of the Addition, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), and (3) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Addition designated on the Plat as an “Outlot”, “Common Area”, or such other areas within the Addition that are not otherwise identified on the Plat as a Lot or street. The Common Area is described in the Plat.
  - c. “Declarant” means Tempest Homes LLC and its successors and assigns.
  - d. “Development Period” means the period of time commencing with Declarant’s acquisition of the Addition and ending when Declarant has completed the development and sale of and no longer owns any Lot or any other portion of the Addition.
  - e. “Outlot(s)” means the drainage pond or ponds which may be constructed on the Addition and used for drainage, utilities, landscaping, and/or pedestrian ingress and egress and shall be designated as “Common Area.”
  - f. “Owner” or “Owners” means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Addition, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term “Owner” shall include the Declarant.
  - g. “Plat” shall means the subdivision plat(s) of the Addition, which are recorded with the Recorder of Tippecanoe County, Indiana, as the same may be hereafter amended or supplemented pursuant to this Declaration.
2. Declarant reserves unto itself during the Development Period, and thereafter unto the

Association, the right to install, erect, construct and maintain an entryway sign or signs, directional signs, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient anywhere upon the Addition. Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

3. Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

- a. relocate, alter or otherwise change the location of any drainage flowage, utility, sewer, sign and facilities easement, or any facility at any time located therein or thereon;
- b. grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Addition, for the benefit of the Addition or any portion thereof. And
- c. describe more specifically or to change the description of any drainage flowage, utility, sewer, lake, sign and Addition easement or any other easement, license or right-of-way now or hereafter existing on the Addition, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Tippecanoe County, Indiana.

4. The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Lot owner shall be subject to the rights and easements reserved herein.

5. All numbered lots shall be known and described as residential lots (individually "Lot," and collectively "Lots"). No building shall be erected or placed on any Lot other than one single-family dwelling and a private garage for not less than two (2) nor more than three (3) automobiles. Other structures which are consistent with the high-quality residential character of the neighborhood, including without limitation, fences and storage sheds, may be erected or placed on Lots only with the express written approval of the Building Committee (defined below) established by Section 6 of these Declarations.

6. During the Development Period no building, dwelling, wall, fence or other structure shall be erected or placed on any Lot until the building plans (including without limitation, square footage, roof color and siding and any exterior paint color), specifications and plot plans showing the location and elevation of such structure have been approved in writing as to the conformity and harmony of external design and appearance with existing structures in Blackthorn Subdivision, Phase 3, and as to the location of the structure with respect to topography and finished ground elevation, by a committee composed of John B. Scheumann, John B. Scheumann Jr., and Derrin P. Sorenson (the "Building Committee"), or by a representative designated by a majority of the members of the Building Committee. In case of disagreement among the Building Committee members on any matter officially before the Building Committee, the vote of the majority among such members of the Building Committee shall be controlling. If there is death or resignation of any members of the Building Committee, the remaining member or members shall be authorized to select a replacement, but prior to such selection the remaining member or members shall have full authority by unanimous action to perform all of the duties of the full Building Committee. In the event the Building Committee or its designated representative fails to approve or disapprove building plans, specifications and plot plans within thirty (30) days after said documents have been submitted to the Building Committee, Building Committee approval will not be required and full compliance with this Section 6 shall be assumed.

Neither the members of the Building Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Section 6.

Neither the Association, the Building Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans, specifications, or other construction or architectural documents submitted pursuant to this Section 6 (collectively, the "Construction Documents"), nor shall they, or any of them be responsible or liable for any structural defects in such Construction Documents or in any building or structure erected according to such Construction Documents for any drainage problems resulting therefrom. Every person and entity who submits Construction Documents to the Building Committee agrees, by submission of such Construction Documents, that he/she/it will not bring any action or suit against the Building Committee, any member of the Building Committee, or the Association to recover any damages or to require the Building Committee, any member of the Building Committee, or the Association to take, or refrain from taking, any action whatever in regard to such Construction Documents or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of Construction Documents for review by the Building Committee, nor the approval thereof by the Building Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and/or approval of any such Construction Documents or the buildings or structures described therein.

7. No building shall be located neither nearer to the front lot line nor nearer to the side street line than the building set-back lines shown on the Plat. In any event, no building shall be located on the Lot nearer than twenty-five (25) feet to the front lot line or to any side street line. No building shall be located nearer than five (5) feet from any side lot line. No fence of any kind shall be constructed or maintained between the building set-back line and the front property line of any Lot.

8. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, twenty-five (25) feet from the intersection of the street property lines extended. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any Lot within the triangular areas formed by street property lines and the edges of any driveway or alley (whether on such Lot or adjacent thereto) and lines connecting them at points ten (10) feet from the intersection of the street property lines and the edges of the driveway or alley. No tree shall be permitted to remain within such triangular areas unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

9. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and out of view of other Lots and the street.

10. No garage or other out-building, no shack or other temporary structure, no trailer, no tent, and no basement (other than a basement which is part of a completed dwelling) shall be used either permanently or temporarily as a residence. Garages containing finished living quarters in the upper level or loft shall not be subject to this restriction.

11. All lawns, exclusive of those areas on the Lot that are left in a natural state, shall be sodded or seeded to prevent erosion onto adjoining real estate. All front lawns shall be sodded. The front lawns and side lawns of all corner Lots shall be sodded. Such lawns must be established by sodding or seeding within two (2) months after completion of the dwelling, season permitting. All areas that are left in a natural state shall be maintained by the Owner and no weeds, underbrush or other unsightly growths shall be permitted. All lawns on a Lot shall be maintained by the Owner of said lot and shall not exceed a growth of eight (8) inches in height.

12. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and over the rear ten (10) feet of each Lot. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

13. No business or business activity shall be conducted on any Lot other than that activity which is customarily considered to be purely incidental to residential use.

14. All driveways shall be at least sixteen (16) feet wide. All driveways and walks shall be of concrete or blacktop and shall be built no later than thirty (30) days after a new dwelling is occupied, weather permitting.

15. No permanent outside clothesline shall be erected, placed or allowed to remain upon any Lot.

16. No signs of any kind shall be displayed to the public view upon any Lot other than five (5) square feet advertising the property for sale or rent.

17. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept on any Lot, provided that they are not kept, bred or maintained for any commercial purpose, and provided further that they do not become an unreasonable annoyance or a nuisance to other residents.

18. Vegetable gardens may be raised on any Lot provided the garden is planted and maintained in an orderly fashion.

19. No truck of any kind that requires a "commercial vehicle license," no recreational vehicle, no boat, no trailer, and no unlicensed vehicle shall be parked or permitted to remain on any street or Lot in the Addition unless the same is enclosed by a garage and not exposed to view. Trucks making deliveries or present in connection with service, repair or construction within the Addition are excepted. Other vehicles of any kind except conventional passenger cars shall not be parked or permitted to remain on any street or Lot in the Addition for a period in excess of forty-eight (48) hours unless enclosed by a garage and not exposed to view. Conventional passenger cars may be parked on streets in the Addition for periods of no longer than twenty-four (24) hours and in private driveways for unlimited periods of time. The purpose of this restriction is to preserve the overall appearance and parking wherever possible.

20. Unless a delay is caused by strikes, war, court injunctions or acts of God, the exterior of any dwelling or other structure built upon any Lot shall be completed within twelve (12) months from the date of commencement of the building process.

21. No storage tanks of any kind will be permitted.

22. No above ground swimming pools will be permitted.

23. The Building Committee established under Section 6, subject to U.S. postal regulations, reserves the right to approve the type of mailboxes installed in the Addition.

24. No exterior television or radio antenna, satellite dish larger than nineteen inches (19") or ground station shall be placed, allowed or maintained on any Lot without the prior written approval of the Building Committee, which may require appropriate enclosure or screening as a condition of any approval.

25. The Association has been formed and shall own any Outlot(s) as well as any other Common Areas in the Addition, as shall be conveyed to it and shall be responsible for the maintenance of such Common Areas and facilities located thereon as well as such entry monumentation and street lighting as may be constructed in the Addition.

The Association shall be responsible for maintenance of any storm water management and detention facilities which may be installed to serve the Addition and which are not maintained by a public authority.

In the event the storm water drainage system serving the Addition shall become or be proposed to become a legal drain, each owner of a Lot in the Addition shall, by virtue of ownership, be deemed to agree and consent to the storm water drainage system becoming a legal drain and all legal requirements and assessments imposed by the Tippecanoe County Drainage Board ("Drainage Board") and applicable drainage ordinances.

If the Association fails to exercise any maintenance obligation relating to storm water drainage, the Drainage Board may perform such maintenance and take all other actions necessary for the proper maintenance of such storm water facilities. The Drainage Board shall have the right to assess such Association and the individual Lot owners thereof for the cost of such maintenance and, if necessary, to file a Notice of Lien against such Lots in the office of the Recorder of Tippecanoe County, Indiana. Such Notice of Lien shall perfect the lien of the Drainage Board for the cost of maintaining such portion of the storm water facilities and said lien shall have the same force and effect, and be enforced in the same manner, as a mortgage lien under Indiana law, and shall include attorneys' fees, title expenses, interest and costs of collection.

The requirements of this Section 25 shall run to the benefit of the Drainage Board and may not be altered, amended or repealed by the Lot owners without the written consent of the Drainage Board.

26. Each and every Lot owner within the Addition, as well as all other phases of Blackthorne Subdivision, shall be a member of the Association. The Declarant during the Development Period shall have the exclusive right to control the Association.

27. Declarant, for each Lot now or hereafter owned by it within the Addition, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including common expenses for the Outlot(s), easements and other Common Areas); and

- b. Special Assessments for capital improvements, operating deficits, maintenance of the stormwater drainage system, and for special maintenance or repairs as provided in these Declarations within the Addition or shared stormwater drainage facilities.

Such assessments shall be established by the Association, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at ten percent (10%) per annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to such Owner's successors in title unless expressly assumed by them.

- c. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots, except that Declarant shall not pay the Regular Yearly Assessments and Special Assessments, however, Declarant shall pay all deficits for the capital improvements and operating expenses during the Development Period.
- d. The Regular Yearly Assessment provided for herein shall commence as to each Lot within the recorded Plat the first day of the first month following conveyance of the Common Area within such Plat to the Association, or if there is no Common Area, the first day of the first month following the recording of such Plat.
- e. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to these Declarations, there shall be a late fee charge of five percent (5%) of each assessment in addition to any assessment due and owing. The entire unpaid assessment and late fee (together with interest thereon, costs and attorneys' fees as provided in these Declarations) shall be delinquent three (3) days thereafter and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then owner, his heirs, devisees, successors and assigns (a written Notice of Lien against the owner's Lot filed in the office of the Recorder of Tippecanoe County, Indiana, shall perfect the lien of the Association). The personal obligation of the then owner to pay such assessments, however, shall not pass to such owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at a fluctuating rate equal to the maximum rate of interest which may be charged under the laws of the State of Indiana for consumer loans, adjusted on the first day of each calendar year, and the Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment any costs associated therein together with reasonable attorneys' fees; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees.

28. The Association, as part of its duties, and as part of the Common Area expenses, shall provide for:

- a. Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, mowing and replacing when necessary of the grass and trees and maintenance of any other improvement within the Common Area.
- b. Maintenance of the entry signs and perimeter landscaping installed by the Declarant.

- c. Maintenance and repair of underground storm drainage structures located in the utility and drainage easements pursuant to the Plat.
- d. To ensure that the Common Areas, the easements and the affairs of the Association are properly maintained, professional managerial services are hereby required. Said professional managerial services may include administrative, managerial, bookkeeping, legal, architectural, engineering, maintenance, repair, construction, or other services. Said professional managerial services may be secured by employing a professional manager, contracting with a professional management entity, or otherwise.
- e. The adoption of such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association or any items deemed Common Area for purposes of maintenance only as it deems necessary.

29. These Declarations shall run with the land and shall be binding upon all the parties claiming or owning any interest in Blackthorne Subdivision, Phase 4, or any Lot therein, until January 1, 2025, at which time these Declarations shall be automatically extended for successive periods of ten (10) years unless amended or declared null and void by a vote of the owners of a majority of the Lots covered by these Declarations. Provided however, these Declarations may be amended by Declarant during the Development Period.

30. If any Lot owner or person in possession shall violate or attempt to violate any of the provisions of these Declarations, it shall be lawful for any party, person or persons owning any Lot in Blackthorne Subdivision, Phase 4, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate the same to compel compliance with these Declarations, or to recover damages caused by such violations, and the owner, or owners or person(s) in possession against whom such action is taken shall pay court costs and reasonable attorneys' fees in the event judgment is rendered against said owner(s) or person(s).

31. Except as specifically provided in the last sentence of the first paragraph of Section 6 above relating to the Building Committee's or its designated representative's failure to approve or disapprove building plans, specifications and plot plans within thirty (30) days after said documents have been submitted to the Building Committee, the failure for any period of time to compel compliance with these Declarations shall in no event be deemed as a waiver of the right to do so thereafter, and shall in no way be construed as permission to deviate from these Declarations.

32. There shall be no vehicular access for certain Lots pursuant to the recorded Plat, which vehicular access shall be enforceable by the Tippecanoe County Area Plan Commission and irrevocable by the Association.

33. Invalidation of any provision set forth herein by judgment or decree shall in no way affect any of the other provisions which shall remain in full force and effect.

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IN WITNESS WHEREOF, Tempest Homes LLC, has caused these Declarations to be executed by its duly authorized member, manager, or representative as of the date first written above.

Tempest Homes LLC

By: \_\_\_\_\_  
(written)  
\_\_\_\_\_  
(printed)  
Its: \_\_\_\_\_  
(title)

STATE OF INDIANA            )  
  ) SS:  
TIPPECANOE COUNTY        )

Before me, a Notary Public in and for said County and State, personally appeared Tempest Homes LLC by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged the execution of the foregoing instrument for and on behalf of Tempest Homes LLC, and who, having been duly sworn stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
(written)  
\_\_\_\_\_  
(printed)NOTARY PUBLIC  
Resident of \_\_\_\_\_ County

My Commission Expires:  
\_\_\_\_\_

This instrument prepared by: Daniel A. Teder of the firm of REILING TEDER & SCHRIER, LLC, 250 Main Street, Suite 601, Lafayette, IN 47901. Telephone: (765) 423-5333 E-Mail Address: [dat@rtslawfirm.com](mailto:dat@rtslawfirm.com)

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. Daniel A. Teder



## EXHIBIT A

### Legal Description

A part of the Northwest Quarter of the Northeast Quarter of Section Ten (10), Township Twenty-three (23) North, Range Five (5) West, Wabash Township, Tippecanoe County Indiana, also being a part of the Lafayette Venetian Blind, Inc property per Document Number 90-09786 as recorded in the Office of the Recorder of Tippecanoe County, Indiana, more completely described as follows to-wit:

Beginning at the Northwest corner of the Northwest Quarter of the Northeast Quarter of said Section 10; thence North  $89^{\circ}36'22''$  East along the north line of said quarter-quarter section, 1213.76 feet; thence South  $00^{\circ}00'29''$  West, 591.18 feet; thence North  $89^{\circ}30'18''$  East, 48.89 feet to the east line of said quarter-quarter section; thence South  $00^{\circ}00'29''$  West along said east line, 735.80 feet to the south line of said quarter-quarter section; thence South  $89^{\circ}30'20''$  West along said south line, 171.50 feet to the northerly line of the Lake Erie and Western Railroad; thence along a non-tangent curve to the left (also being the northerly line of the Lake Erie and Western Railway) having a radius of 5779.65 feet, (a chord bearing of North  $47^{\circ}00'21''$  West and a chord distance of 1493.28 feet) an arc length of 1497.47 feet to a point on the west line of said quarter-quarter section; thence North  $00^{\circ}14'35''$  East along said west line, 301.39 feet to the point of beginning, containing 23.869 acres, more or less.

ALSO a replat of Lots 72 thru 75 of Blackthorne Subdivision Phase 2, Part 2 as per the Final Plat by Vester & Associates, Inc. Job No. 03277, Recorded as Document 201414003813 on March 13, 2014 in the Office of the Recorder of Tippecanoe County, Indiana.

SUBJECT TO ALL EASEMENTS, RESTRICTIONS, AND RIGHTS-OF-WAY OF RECORD