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**DECLARATION OF COVENANTS AND RESTRICTIONS  
RED TAIL RIDGE**

This Declaration, made as of the 27<sup>th</sup> day of February, 2020, by Red Tail Development, LLC, an Indiana limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, the following facts are true:

A. Declarant owns the real estate located in Clark County, Indiana, upon which Declarant intends, but is not obligated, to develop a residential community to be known as Red Tail Ridge.

B. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Red Tail Ridge and for the maintenance of Red Tail Ridge and the improvements thereon, and to this end desires to subject Red Tail Ridge to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in Red Tail Ridge and the future owners thereof.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities in Red Tail Ridge, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in Red Tail Ridge.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in Red Tail Ridge, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in Red Tail Ridge, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of Red Tail Ridge as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in Red Tail Ridge or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to Red Tail Ridge or any part or parts thereof.

**1. Definitions.** The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

"Applicable Date" means the date when all Lots in the Tract have been sold or conveyed in Red Tail Ridge to unrelated third parties.

"Architectural Review Board" means that entity established pursuant to Paragraph 8 of this Declaration for the purposes therein stated.

"Assessments" means all sums lawfully assessed against the Owner of a Lot or as declared by this Declaration.

"Association" means Red Tail Ridge Homeowners Association, an incorporated or unincorporated association, its successors and assigns."

"Board of Managers" means the governing body of the Association elected in accordance with the By-Laws. If the Association is, at some point, incorporated, the "Board of Managers" shall also refer to the Board of Directors.

"By-Laws" means the Code of By-Laws of the Association, as amended from time to time.

"Common Area" means (i) the Drainage System, (ii) the Detention Area, (iii) the Entry Ways, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through the Tract, and (iv) any areas of land (1) shown on the Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Association, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

"Declarant" means Red Tail Development, LLC, an Indiana limited liability company, its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

"Detention Area" means the area(s) depicted on the Plat which is engineered to accommodate from time to time surface water drainage.

"Drainage Board" means the Board of Commissioners of Clark County, Indiana, or its appointed drainage board as its designee.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties,

equipment and facilities (excluding the Detention Area) located in Red Tail Ridge and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across Red Tail Ridge, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"Red Tail Ridge" means the name by which the Tract shall be known.

"Entry Ways" means the structures constructed as an entrance to Red Tail Ridge or a part thereof (including signage but exclusive of the street pavement, curbs and drainage structures and tiles) and the grassy area surrounding such structures.

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in Red Tail Ridge, as such may be amended from time to time.

"Landscape Easement" means a portion of a Lot denoted on the Plat as an area to be landscaped.

"Lot" means a platted lot as shown on the Plat.

"Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

"Member" means a member of the Association and "Members" means all members of the Association.

"Mortgagee" means the holder of a first mortgage on a Residence.

"Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a

Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" means the final plat of the real estate recorded as 202004885 PB18x27 in the Office of the Recorder of Clark County, Indiana.

"Residence" means any structure intended exclusively for occupancy by (and subsequent to construction, actually occupied by) a single family together with all appurtenances thereto, including private garage.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Managers or the Architectural Review Board, as the same may from time to time be amended.

"Tract" means the land depicted in the Plat.

**2. Declaration.** Declarant hereby expressly declares that the Tract shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

**3. Drainage System.** The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to Red Tail Ridge and the occasional discharge thereof to the Detention Area as reasonably required from time to time. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the date the Association is formed. After the earlier of such dates, the Association shall maintain the Drainage System. To the extent not maintained by the

Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board or the Association.

#### **4. Construction of Residences.**

(a) Land Use. Lots may be used only for the construction, maintenance and use thereon of a Residence and for other single-family residential purposes, and only one Residence not to exceed two (2) stories may be constructed, maintained and occupied thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Red Tail Ridge than the number of original Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any use that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of such Lot and 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. If a Residence is leased, or otherwise occupied by an individual that is not the Owner, the Owner must provide the Association with written notification of the lease, including the tenant name, the length of the lease, and acknowledgement of the tenant and Owner that both must comply with this Declaration and any other rules adopted by the Association. Storage sheds and other free-standing buildings shall contain no more than 120 square feet storage area and shall be no greater than one (1) story height. All storage buildings, sheds or other structures may be constructed or placed on a lot provided the same are constructed with a wood, metal, or hardie board siding on the front, sides and rear, and have the same color and similar roof angles and roofing material as the primary residence. Above ground pools are explicitly prohibited on any Lot.

(b) Lot Development Plans. Prior to commencement of any construction on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 8. Each Owner shall comply with the terms and provisions of Paragraph 8 and the requirements of the Architectural Review Board established pursuant to the authority granted by this Declaration.

(c) Temporary Structures. No trailer, shed, tent, boat, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Driveways. All driveways shall be paved solidly of concrete upon completion of construction of

the residence and shall be kept in proper maintenance.

(e) Yard Lights. The Declarant may for the benefit of the Association cause streetlights, landscaping lights or other improvements to be installed within Red Tail Ridge. If the Declarant does not cause such improvements to be constructed, the Association may cause the improvements to be made if the Association obtains the Architectural Review Board's written approval. Regardless of who causes the improvements to be constructed, the Association shall be responsible for the maintenance and the expenses associated with.

(f) Storage Tanks. No gas or oil storage tanks are allowed within Red Tail Ridge, regardless of if said tanks are buried, located in a Residence, or otherwise completely concealed from public view.

(g) Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Board agrees to a later landscaping completion date. Unless a delay is caused by strikes, war, court injunction or acts of God, construction of a Residence shall be completed within one (1) year after the date of commencement of the building process. For the purposes of this subparagraph, construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(h) Declarant Exemption. Notwithstanding anything herein to the contrary, the Declarant is not required to submit to, or receive approval from, the Architectural Review Board for a Lot Development Plan, or for any other modification or work otherwise considered to be construction, on any Lot owned by Declarant. Additionally, notwithstanding anything herein to the contrary, the Declarant is not required to complete a Residence within one (1) year from the date of commencement of the building process.

(i) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

(j) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Association

or the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within Red Tail Ridge may be included in a legal drain established by the Drainage Board and/or the Declarant. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots.

## **5. Maintenance of Lots.**

(a) Vehicle Parking. No recreational vehicle, motor home, truck or van in excess of a 2 1/2 ton gross weight capacity, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view. All vehicles must be parked or stored in the driveway. Parking vehicles in the street is explicitly prohibited, unless parked in an area designated by Declarant, which a vehicle in said designated area may not be parked for a period in excess of twenty-four (24) hours.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of Red Tail Ridge and the sale of Lots therein and such signs as may be located on the Common Area, no sign of any kind shall be displayed on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No portion of a fence of any kind shall be allowed in excess of six (6) feet. A fence erected upon a Lot must be either vinyl or metal. No wood or chain link fences are allowed. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. All landscaped area(s) on any Lot must be maintained at all times and be kept in a clean and attractive condition. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Managers shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Association shall have a lien against the cleared Lot

for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. 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 provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot.

(i) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

## **6. Red Tail Ridge Homeowners Association, Inc.**

(a) Formation. If not already formed by the Declarant, following the first (1<sup>st</sup>) day of January of the year following the time at which the Declarant, or its successors or assigns, has sold or conveyed eighty percent (80%) of the total lots in Red Tail Ridge to unrelated third parties, the Declarant shall form the Association for the purpose of (i) promoting the recreation, health, safety and welfare of the residents of the Subdivision, (ii) enforcement of these covenants, (iii) the improvement and maintenance of the entrances and street lights (if any) in, the Subdivision, and (iv) the maintenance of storm detention facilities situated within the Subdivision as follows.

### **(b) Initial Meeting.**

(i) The first meeting of the Association shall be held within thirty (30) days after the Applicable Date or at a time elected by the Declarant, whichever occurs first. All Owners must be provided with at least a fifteen (15) day written notice of the first meeting.

(ii) At the initial meeting, the presence of one-fourth (1/4) of all lot Owners (or holders



of proxies entitled to cast votes) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement. A required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. A majority vote of the quorum shall be required to take any action at the meeting.

(iii) At the initial meeting of the Association, a board of managers shall be elected to act on behalf of the Association.

(c) Membership and voting rights.

(i) Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

(ii) Members must be an Owner and, except for the Declarant, shall be entitled to one vote for each respective lot owned. The Declarant shall be entitled to five (5) votes for each respective lot owned by the Declarant. When more than one person owns an interest in any lot, only one person shall be authorized to vote on any membership matters. The vote for such lots shall be exercised as they among themselves agree, but in no event shall such vote be split into fractional votes nor shall more than one vote be cast with respect to any lot.

(iii) The Association may be incorporated or unincorporated. The Association members, pursuant to the requirements as set forth herein, may take by proper vote the action to incorporate the Association or they may decide to stay as an unincorporated entity.

(iv) Where the Owner constitutes more than one person, or is a partnership, there shall be only one voting representative entitled to cast the vote allocated to that Lot. Those persons constituting such Owner or the partners shall determine among themselves who shall be the voting representative for such Lot. In the event agreement is not reached the vote attributable to such Lot shall not be cast.

**7. Assessments.**

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner 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 the following: (1) General Assessments and (2) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full.

Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance, repair, replacement and operation of the Common Area.

(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a Person other than Declarant shall be assessed at an annual uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant or an entity affiliated with Declarant shall be assessed by the Association.

(3) Initial General Assessment. The initial General Assessment shall be One Hundred Dollars (\$100.00) per Lot per year.

(iii) Method of Assessment. By a vote of a majority of the Managers, the Board of Managers shall fix the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association.

(iv) Allocation of Assessment. The cost of maintaining, operating, restoring or replacing the Common Area has been allocated in this Declaration among Owners of Lots on the basis of the location of the lands and improvements constituting the Common Area and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots improved with comparable types of Residences be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses.

(c) Special Assessment. In addition to such other Assessment as may be authorized herein, the Association may levy in any fiscal year a Special Assessment applicable to that year, provided that any such Assessment shall have the assent of the Declarant and of a majority of the votes of the Members. Assent of

the Declarant is not required after the Applicable Date.

(d) Date of Commencement of General Assessments. The General Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot in Red Tail Ridge to an Owner who is not Declarant. The initial General Assessment on any assessable Lot shall be adjusted according to the months remaining in the year in which the Lot became subject to assessment. If conveyed during the first half of a month, that month shall be included in the assessment amount. **Thereafter, the yearly General Assessment shall be paid on or before February 1. Owners may receive email reminders, however, the Association is not required to mail, or otherwise send, billing statements to Owners.**

(e) Effect of Nonpayment of Assessments; Remedies of the Association. If an Assessment is not paid within thirty (30) days after the due date, a Twenty-Five Dollar (\$25.00) fine is imposed and is added to the unpaid Assessment. If any Assessment (and fine included herein) are not paid within sixty (60) days after the due date, an additional Fifty Dollar (\$50.00) fine is imposed and is added to the unpaid Assessment, which already include the Twenty-Five Dollar (\$25.00). The Association shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting such Assessment. If the Association has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

(f) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

## **8. Architectural Control.**

(a) The Architectural Review Board. An Architectural Review Board shall consist of three (3) Persons and shall be appointed by the Board of Managers. The initial Architectural Review Board shall be Gregory S. Lander, Edwin J. Miller III, and David Miller.

In the event of death, resignation, or incapacity of any member or members of the board, the

remaining member or members shall have full authority to designate a successor. If at any time the board loses all of its members (either the original members herein set out or designated successor members), or the members refuse to act for a period of one (1) year or more, then a majority of the Members may select a new board. Neither the members of the board, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. Successors to the above named board shall be named and their addresses stated by written notice filed in the Miscellaneous Record in the Office of the Recorder of Clark County, Indiana, and they shall be presumed to continue in office until the recording of written notice as provided herein of the names of any replacements.

(b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of Red Tail Ridge and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, patio, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no Residence, other building, fence, wall, swimming pool, patio or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental the authorities having jurisdiction over Red Tail Ridge, and no Owner shall undertake any construction activity within Track unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by the Board of Managers, approval will be deemed denied.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration.

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established pursuant to subparagraph (e) in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.

(g) Design Consultants. The Architectural Review Board may utilize the services of architectural, engineering and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

(h) Existing Violations of Declaration. The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of these Restrictions.

(i) Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

(j) Liability of Board. Neither the Architectural Review Board, nor any member thereof, nor any agent thereof, nor the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

(k) Inspection. Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

## **9. Common Area.**

(a) Ownership. The Common Area shall remain private, and neither Declarant's execution or recording of an instrument portraying the Common Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Common Area. Declarant or the Association may, however, dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Obligations of the Association. The Association, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon, and shall keep the Common Area in good, clean, attractive and sanitary condition, order and repair.

(c) Damage or Destruction by Owner. In the event the Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Association to repair said damaged area; the Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

(d) Conveyance of Title. Declarant may retain the legal title to the Common Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Detention Area to the Association, free and clear of all liens and financial encumbrances except as otherwise provided herein, not later than the Applicable Date. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Common Area prior to conveyance.

## **10. Easements.**

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Clark County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, sign, and landscape easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Declarant, Owners, the Association, the Architectural Review Board,

public utility companies and governmental agencies as follows:

(i) Drainage Easements are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Tract and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve the Tract for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements are created for the use of Declarant, the Association and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements are created for the use by Declarant, the Architectural Review Board and the Association for the installation, operation and maintenance of the Entry Ways.

(v) Sign and Landscape Easements are created for the use by Declarant, the Architectural Review Board and the Association, at their election, for the installation of sign(s) and planting and maintenance of trees, shrubs and other plantings.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Clark County, but a paved driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the

Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(c) Declarant's Easement to Correct Drainage. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Tract except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Tract to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

**11. Use of Lots During Construction.** Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in Red Tail Ridge, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices.

**12. Enforcement.** The Association, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither Declarant nor the Association shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.



**13. Approvals by Declarant.** Notwithstanding any other provisions hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: dedication or transfer of the Common Area; mergers and consolidations of Red Tail Ridge with other real estate; mortgaging of the Common Area; amendment of this Declaration; and changes in the basis for assessment.

**14. Amendments.**

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Association acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required by Paragraph 13, (ii) Declarant.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to the Applicable Date. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Clark County, Indiana.

**15. Interpretation.** The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

**16. Duration.** The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2030, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in Red Tail Ridge.

**17. Severability.** Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

**18. Non-Liability of Declarant.** Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the

Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

[Signature Page to Follow]

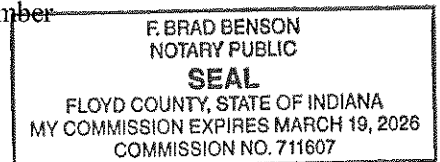
IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

RED TAIL DEVELOPMENT, LLC, an Indiana limited liability company

By: Gregory S. Lander  
GREGORY S. LANDER, Member

STATE OF INDIANA

COUNTY OF Clark



Before me, the undersigned, a Notary Public in and for said County and State, this 27 day of February, 2020, personally appeared Gregory S. Lander, as a Member of Red Tail Development, LLC, an Indiana limited liability company, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for and on behalf of said company

WITNESS my hand and notarial seal, this 27 day of February 2020.

My Commission Number:

711607

F. Brad Benson  
Notary Public

My Commission Expires:

3-19-26

F. Brad Benson  
Printed Name

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, and that this instrument was prepared by:

F. Brad Benson  
APPLEGATE FIFER PULLIAM LLC  
P.O. Box 1418  
Jeffersonville, Indiana 47131-1418  
(812)284-9499