



Cross Reference: Instrument No. 1997-66075

AMENDED AND RESTATED DECLARATION OF RESTRICTIONS

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS is made as of the date set forth below.

WITNESSETH:

WHEREAS, on or about September 25, 1997, Persimmon Development, L.L.C (“Developer”), recorded a certain Declaration of Restrictions governing the use of the Development, in the Office of Marion County Recorder as cross-reference number 1997-66075 (the “Declaration”);

WHEREAS, since entering into and recording the Declaration, the Developer has established the existence of a homeowners association and conveyed each residential Lot situated within the Development to separate Owners;

WHEREAS, the Board and the Owners now desire to amend and restate the Declaration to accurately state how the Development is operating and have adopted a resolution outlining the amendments to be made, which is a part of the minutes of the meeting of the Board from June 6th, 2022.

NOW THEREFORE,

1. DEFINITIONS. The following are definitions of the terms as they are used in this Declaration:

- A. “Association” shall mean the Persimmon Property Owners Association, Inc. a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 11 of this Declaration.
- B. “Board” shall mean the Board of Directors of the Association composed of Directors, as appointed by the Owners.
- C. “Development” shall mean those subdivisions currently known as Persimmon Creek and Persimmon Ridge, as described on Exhibit A, attached hereto.



28

- D. "Lot" shall mean any parcel of real estate excluding "Blocks", whether residential or otherwise, described by one of the plats of the Development, which is recorded in the Office of the Recorder of Marion County, Indiana.
- E. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Association, by the President or a Vice President thereof.
- F. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

2. CHARACTER OF THE DEVELOPMENT

- A. In General. Every Lot in the Development is a residential Lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed, or permitted to remain upon any of said residential Lots except a single-family dwelling house and such outbuildings as are usually accessory to dwelling houses.
- B. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential Lots prior to the erection thereon of a single-family dwelling house, and in no event shall any such accessory outbuilding which may be constructed upon a residential Lot under this Declaration ever be used as a residence or dwelling house or place for human occupancy or habitation. Accessory outbuildings must be constructed on a permanent foundation and limited to 120 square feet.
- C. Other Restrictions. All tracts of ground in the Development shall be subject to easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES

- A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential Lots in the Development, exclusive of porches, terraces, garages, or accessory buildings shall be as specified in the recorded plats of the various sections of the Development. Basements shall not be included in the computation of the minimum living area.

B. Residential Set-Back Requirements.

- (i) In General. Unless otherwise provided in this Declaration or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential Lot in the Development except as provided herein.
- (ii) Definitions. "Side line" means a Lot boundary line that extends from the road on which a Lot abuts to the rear line of said Lot. "Rear line" means the Lot boundary line that is farthest from, and substantially parallel to, the road on which the Lot abuts, except that on corner Lots, it may be determined from either abutting road.
- (iii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the Lot abuts as set forth upon the plats of the Development.

C. Fences and Trees.

- (i) Fences. Any fence must be approved by the Committee as to the size, location, height, composition, and easement allowance before it may be installed. The fence must be 10 feet back from the face of the house on each side. 4' if vinyl-coated (a chain link requirement) or wood (picket) or 6' if privacy fence.
- (ii) Trees. A Lot must have at least one (1) tree of a two and one-half (2 1/2) inch caliper of a species acceptable to the Committee growing upon it in the front yard at all times.

D. Driveway. All driveways must be paved with asphalt or concrete from its point of connection with the abutting street or road.

E. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Geo-Thermal heat pumps shall be a closed loop system. Every house in the Development must have a two car attached garage.

F. Diligence in Construction. Every building whose construction or placement on any residential Lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

G. Maintenance of Lots and Improvements. The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly; and, specifically, such Owner shall:

- (i) Mow the Lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.
- (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 the Development.
- (iv) Cut down and remove dead trees.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vi) Within sixty (60) days following completion of a house on a Lot, the Owner shall landscape the Lot, weather permitting.
- (vii) Owners of Lots which abut or adjoin any detention pond shall be responsible for maintaining any area which is between the Lot and the water's edge.

H. Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot in the Development shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of this Declaration. The cost therefore to the Association shall be added to and become a part of the annual charge to which said Lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

I. Solar Panel Policy Guidelines.

Solar panels are allowed in the Development subject to the following conditions:

- (i) Installation of a solar energy system should not substantially interfere with use and enjoyment of any Lot by causing unreasonable discomfort or annoyance to a reasonable person.

- (ii) All plans must be submitted to and pre-approved by the Board prior to installation.
- (iii) The preferred location for solar panels is to be on a rear-facing roof using flush-mounted static panels (i.e. – the plane of the array is parallel to the roof) minimizing the stand-off distance between the panels and the roof. The solar system may not extend 4 inches above or beyond the roof.
 - a. If panels are installed on a rear roof, the array may consist of static panels tilted at a fixed angle if a variance is granted based upon the details of the proposed arrangement and a documented calculation showing at least a 15% efficiency improvement compared to flush-mounted panels.
 - b. Ground-mounted panels will not be approved.
- (iv) All components of the solar system should be integrated into the design of the home. The color of the solar system components should generally conform to the color of the roof shingles to the extent practical. If this is not practical, the solar PV modules should be black. Solar “shingles” that mimic the look of a composite shingle are acceptable but should match the color of the current roof shingles as much as is practical.
- (v) Pursuant to Indiana law the installation of all solar electric systems shall only be done by a licensed contractor and must conform to all applicable current Indiana statutes and codes. Applications submitted to the Board include the following:
 - a. A diagram “drawn to scale” by the licensed contractor installing the system showing where the system will be installed and how the system will be mounted, as well as a description of any visible auxiliary equipment.
 - b. Photos of the roof area where the array will be mounted.
 - c. Material to be used and/or manufacturer’s description of the system, photos and/or pictures of the system and color of the system.
 - d. Where possible, provide photos of similar existing systems as examples.
 - e. Plans showing visibility of the system from areas open to common or public areas (e.g., public streets, neighboring Lots, or Association properties or common areas).
- (vi) Piping and electrical connections will be located directly under and/or within the perimeter of the panels, when possible, and placed as inconspicuously as possible when viewed from all angles. Piping and connections must be black, bronze or silver.

- (vii) The highest point of a solar panel array will be lower than the ridge of the roof where it is attached and will not extend more than 4 inches above or beyond the roof. The top line of the array will be parallel with the roof ridge line.
- (viii) Other restrictions may be applied to a proposed installation as changes in technology occur.
- (ix) The Board reserves the right to deny any application for solar panels for any reason.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE

A. Nuisance. No outside toilets shall be permitted on any Lot in the Development (except during a period of construction and then only with the consent of the Board), and no sanitary waste or other wastes shall be permitted to enter any storm drain. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the Lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt.

Neither the Association, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building Lots shall be designed and constructed in accordance with the provisions and requirements of the Marion County Board of Health. No storm water (subsurface or surface) shall be discharged into sanitary sewers.

5. INDIVIDUAL YARD LIGHTS REQUIRED ON EACH LOT IN THE DEVELOPMENT

At the time that the Owner of the Lot in the Development completes the construction of a home on his Lot, he shall install or cause to have installed a dusk to dawn:

- (i) Persimmon Creek: garage lights
- (ii) Persimmon Ridge: garage lights and a front yard light
- (iii) The design, type and location of the yard light shall be subject to the approval of the Board.

6. MAILBOXES

Owners of a Lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by the Board.

7. GENERAL PROHIBITIONS

- A. In General. No noxious or offensive activities shall be carried on, on any Lot in the Development, nor shall anything be done on any said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Development.
- B. Signs. No signs or advertisements shall be displayed or placed on any Lot or structures in the Development without the prior written approval of the Board, except for real estate sales signs.
- C. Animals. No animals shall be kept or maintained on any Lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.
- D. Vehicle Parking. No campers, trailers, buses, boats, vehicles with commercial advertising, trucks of more than (1) ton hauling capacity, recreational vehicles, or similar vehicles shall be consistently parked on any street or Lot for more than 24 hours. Such vehicles may be parked in the Owner's garage. Inoperable motor vehicles shall not be parked on a Lot for more than two weeks unless it is in the garage.
- E. Garbage and Other Refuse. No Owner shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his Lot except as may be permitted in Subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.
- F. Trash Receptacles. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street nor be stored in the front of the home at any time, except at the times when refuse collections are being made.
- G. Model Homes. No Owner shall build or permit the building upon his Lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Board.

H. Temporary Structures.

- (i) No temporary structure of any kind, such as a house, trailer, shed, barn, garage or other outbuilding shall be placed or erected on any Lot without permission to do so from the Board.
- (ii) A small tent for overnight camping, or a large tent for a yard party, is allowed for a period not to exceed 3 days in the back yard.

I. Ditches and Swales. It shall be the duty of every Owner on every Lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection. All Owners shall be responsible to maintain the grading of their respective Lots as defined by the Persimmon construction plans as prepared by Schneider Engineering and approved by the City of Lawrence. Any accumulation of silt or change in grading caused by sump-pump discharge, downspout run-off, general drainage or the dispersal of excavation spoilage which creates standing water, or an improper drainage condition shall be the responsibility of the property Owner to remove and correct.

J. Utility Services. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the City of Lawrence.

K. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots, nor shall any septic tanks be installed on any of the Lots in the Development, without the approval of the Board.

L. Prohibition of Antennas. All exposed antennas such as AM/FM radio and HAM radio that are not included in the FCC's Over-the-Air Reception Devices Rule (OTARD), are prohibited. Antennas covered by the OTARD to receive video programming are allowed, but the Board must approve the location on the Owner's property prior to installation. The Board shall require that the antenna be placed in a location, or screened, to minimize the visual effect from any street or other homeowners in the Development, provided this doesn't result in unreasonable delay or cost or prevent the antenna from receiving an acceptable signal. If the antenna must be located in view of a street reasonable steps shall be taken to make it as unobtrusive as possible.

M. Swimming Pools. No above ground swimming pools shall be permitted.

8. DEVELOPMENT CONTROL COMMITTEE

- A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location, and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain in a harmonious relationship among structures and the natural vegetation and topography.
- (i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any Lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of $\frac{1}{4}'' = 1'$ and all plot plans shall be drawn to scale of $1'' = 30'$ or to such other scale as the Committee shall require. There shall also be submitted, where applicable, the permits or reports required under Paragraph 3 of these Restrictions.
- (ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:
- (a) The plans, specifications, drawings, or other material submitted are themselves inadequate or incomplete or show the proposed improvement to be in violation of these restrictions.
- (b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures.
- (c) The proposed improvement, or any part hereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other Owners.

(iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development. No variance granted creates an allowance for said variance on other Lots within the development but provides for that variance to be permitted solely as it applies to the designated Lot.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notification to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Association, 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 Committee does not make 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.

D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

E. Committee. The Board, or their designees, shall serve as the Committee with all aforementioned powers.

9. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER

Whenever two or more contiguous Lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, he shall apply in writing to the Board for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying the restrictions in this Declaration to said Lots, so long as the Lots remain improved with one single-dwelling house.

10. OWNERSHIP, USE AND ENJOYMENT OF COMMONS

"Commons" and "Commons Area" shall mean those areas set aside for conveyance to the Association, as shown on the plat. Any commons depicted on the recorded plats of the Development shall remain private, and neither the execution of recording of the plats nor the doing of any other act by the Association is, or is intended to be, or shall be construed as, a dedication to the public of the commons.

Ownership of any Commons has been conveyed in fee simple title, free of financial encumbrances to the Association. Such conveyance was subject to easements and restrictions of record. Such conveyance was deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Commons to the Association.

11. PERSIMMON PROPERTY OWNERS ASSOCIATION, INC.

A. In General.

- (i) Persimmon Property Owners Association, Inc., an Indiana non-profit organization was organized on October 13, 1998, with the filing of Articles of Incorporation with the Indiana Secretary of State. (the "Association").

B. Membership. The Association shall have one (1) class of voting membership, as follows:

- (i) Every Owner shall be a member of the Association and shall be subject to all the requirements and limitations imposed in this Declaration on other Owners of residential Lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual charge.
- (ii) Every Owner shall be entitled to one (1) vote for each Lot owned with respect to each matter submitted to a vote of members upon which the members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Corporation the name of the voting co-Owner or other person entitled to vote at such meeting, unless such co-Owner other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.

C. Board of Directors. The Board of Directors of the Association shall be elected or appointed by the Owners as prescribed by the Association's By-Laws. The Board shall manage the affairs of the Association and the Development.

- D. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.
- E. Responsibilities of the Association.
- (i) The Association shall maintain the landscaping in and along the landscape easements shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.
 - (ii) The Association shall maintain and repair the Common Areas shown on the plat(s) including improvements thereon except as noted in Paragraph 3(G)(vii).
 - (iii) The Association shall maintain the landscaping and any signage located at the entrances on 79th street and Carroll Road and shall keep such areas in a neat, clean, and presentable condition at all times.
 - (iv) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors and officer's insurance) and such other insurance as it deems necessary or advisable.
 - (v) The Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

12. COVENANT FOR MAINTENANCE ASSESSMENTS

- A. Creation of the Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereafter provided. The annual special assessments, together with late fees, cost, 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 late fees, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

- B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Areas and improvements, operated or maintained by the Association, and the landscape easements on the Development and other purposes as specifically provided herein.
- C. Maximum Annual General Assessments.
- (i) The maximum annual general assessment may be increased by the Board each year not more than 10% above the maximum annual general assessments permitted for the previous year without a vote of the membership of the Association.
 - (ii) The maximum annual general assessments may be increased more than 10% over the maximum annual general assessments permitted for the previous year only upon an approving vote of two-thirds (2/3rds) the members who are eligible to vote at a meeting called for such purpose.
- D. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- E. Notice and Quorum for Any Action Authorized Under Section C and D. Written notice of any meeting called for the purpose of taking any action authorized under Section C and D shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- F. Date of Commencement of Annual Assessments; Due Dates. The annual assessment provided for herein shall commence for each Lot on the date of conveyance to the Owner by deed or on the date the Owner signs a land contract to purchase a Lot. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The payment due date for all assessments shall be April 1 of each year, or such other time as established by the Board of Directors, but no later than thirty (30) days upon after the date of the assessment as shown on the notice sent by the Board.

- G. Certificate of Assessments. The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified Lot have been paid or that certain assessments against said Lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.
- H. Effect of Non-Payment of Assessments: Remedies of the Association.
- (i) Assessments not paid within thirty (30) days after the date when due shall bear interest from the date when due to the date paid at the rate of twelve percent (12%) per annum or the maximum amount of interest allowed under Indiana law, whichever is lower.
 - (ii) The Association may file and maintain a lawsuit to collect any delinquent assessments, together with late charges, interest, and attorney's fees. In the event any assessments are placed in the hands of an attorney for collection, by suit or otherwise, the delinquent Owner shall be liable for all costs of collection and/or litigation (including court costs), together with reasonable attorney's fees. These include, but are not limited to, the Association's reasonable attorney's fees and legal expenses, whether or not there is a lawsuit.
 - (iii) The Association shall have a lien against each Lot, all improvements thereon and appurtenances thereto, to secure the obligation of the Owner of the Lot to pay the assessments made against such Lot, together with interest and late charges, reasonable attorney's fees and other costs and expenses of the Lot Owner in enforcing the obligations of such Owner.
- I. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate only to the lien of a first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

- J. Suspension of Privileges of Membership. Notwithstanding any other provisions contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights if any, and the services to be provided by the Association, of any member (i) for any period during which the Association charges or any fines assessed under this Declaration owed by the member remain unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association: and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

13. REMEDIES

- A. In General. The Association or any party to whose benefit these restrictions inure may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration, but the Association shall not be liable for damages of any kind to any person for failing wither to abide by, enforce or carry out any of this Declaration. In any proceeding arising out of the failure of an Owner to make payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.
- B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the restrictions in this Declaration shall beheld to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration

14. EFFECT OF BECOMING AN OWNER

The Owners of any Lot subject to this Declaration by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By accepting of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Committee and of the Association with respect to these restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to the Association and to and with the Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such restrictions and agreements.

15. TITLES

The titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of the construction of any provisions 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 to run with the land and shall be binding on all parties and all persons claiming under indefinitely, unless changed in whole or in part by vote of those persons who are then the Owners of a majority of the numbered Lots in the Development.

17. SEVERABILITY

Every one of the restrictions in this Declaration 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 "ruining" quality of any other one of the restrictions.

18. LEASING RESTRICTIONS.

A. Limits on the Number of Leased Lots ("Rental Cap"). No more than thirty (30) of the two hundred twenty-three (233) Lots may be leased or rented to non-Owner occupants at any given time, unless specifically allowed by the Board. Any Owner that wishes to rent or lease his Lot shall obtain the Board's prior written consent before renting or leasing such Lot. Once the Rental Cap has been reached, an Owner that wishes to rent or lease his Lot shall be placed on the waiting list and notified once he has the ability to rent or lease said Lot.

B. Effective Date of Rental Cap on Existing Rentals. The Provisions of this Section 18 shall be effective immediately upon the recordation of this Declaration (the "Effective Date"). Any Owner who has an executed rental or lease agreement for a Lot effective on or prior to the Effective Date shall be exempt from the Rental Cap.

C. General Lease Conditions.

- (i) All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board of Directors.

- (ii) A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Board of Directors or the Managing Agent by the Owner within thirty (30) days after execution.
 - (iii) No portion of any Lot other than the entire Lot shall be leased for any period.
 - (iv) No subleasing shall be permitted.
 - (v) All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, Articles of Incorporation, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association.
 - (vi) All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease.
 - (vii) The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease.
 - (viii) The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner's right to lease the Owner's Lot, even if during the term of a lease.
 - (ix) The Board of Directors shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.
 - (x) All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home.
- D. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, the Articles of Incorporation, the By-Laws, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

- E. Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Section 18 shall be voidable at the election of the Board of Directors, except that neither party to such lease may assert this provision of this Section 18 to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity.
- F. Institutional Mortgagees. The provisions of this Section 18 shall not apply to any institutional mortgagee of any Lot which comes into possession of the Lot by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure. However, when a Lot is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser shall be bound by the provisions of this Section 18.
- G. Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Lot is not occupied by one of the Owners thereof, there shall be a presumption that the Lot is being leased and subject to the provisions of this Section 18 and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Section 18, including but not limited to the delivery to the Board of Directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Section 18 and this Paragraph G, any occupancy (including occupancy pursuant to a rent-to-buy contract or similar arrangement or pursuant to any option to purchase) by anyone other than an Owner shall be deemed to be a lease, rental or other similar arrangement, unless the Owner delivers to the Board of Directors a written purchase contract, conditional sales contract or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the Lot.

EXHIBIT "A"

Legal Description of Real Estate

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION TWENTY-TWO (22), TOWNSHIP SEVENTEEN (17) NORTH, RANGE FIVE (5) EAST, OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A BRASS PLUG AND PLATE MARKING THE SOUTHEAST CORNER OF SAID HALF QUARTER SECTION; THENCE SOUTH 89 DEGREES 36 MINUTES 43 SECONDS WEST (ASSUMED BEARING) ALONG THE SOUTH LINE THEREOF A DISTANCE OF 1337.21 FEET TO A P.K. NAIL MARKING THE SOUTHWEST CORNER OF SAID HALF QUARTER SECTION; THENCE NORTH 00 DEGREES 06 MINUTES 27 SECONDS EAST ALONG THE WEST LINE THEREOF A DISTANCE OF 2624.65 FEET TO A CUT "X" IN A CONCRETE POST MARKING THE NORTHWEST CORNER OF SAID HALF QUARTER SECTION; THENCE NORTH 89 DEGREES 23 MINUTES 43 SECONDS EAST ALONG THE NORTH LINE THEREOF A DISTANCE OF 1336.16 FEET TO A P.K. NAIL MARKING THE NORTHEAST CORNER OF SAID HALF QUARTER SECTION; THENCE SOUTH 00 DEGREES 05 MINUTES 00 SECONDS WEST ALONG THE EAST LINE THEREOF A DISTANCE OF 2629.69 FEET TO THE POINT OF BEGINNING. CONTAINING 80.613 ACRES, MORE OR LESS.

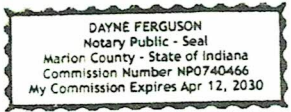
PERSIMMON PROPERTY OWNERS
ASSOCIATION, INC.

By: Kevin Haase
President
KEVIN HAASE

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Kevin Haase, the President of the Persimmon Property Owners Association, Inc. which governs both Persimmon Creek and Persimmon Ridge, who acknowledged the execution of the foregoing Amended and Restated Declaration of Restrictions as his voluntary act for the purposes stated therein.

WITNESS my hand and Notarial Seal this 30th day of June, 2022.



Dayne Ferguson
Notary Public
Dayne Ferguson
(Printed Signature)

My Commission Expires: April 12 2030 My County of Residence: Marion
My Notary Commission #: NP0740466

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/ Alexandra N. Gortchilova

A202200084057

07/26/2022 08:48 AM

KATHERINE SWEENEY BELL
MARION COUNTY IN RECORDER

FEE: \$ 35.00

PAGES: 28

By: MS

The document has been recorded and no further action is necessary.

This page has been added for recording purposes to provide space for the necessary Recorder and/or Assessor stamps and/or recording requirements.

IC 36-2-11-16.5 Requirements for instrument or document presented for recording

Sec. 16.5 (a) This section does not apply to the following:

- (1) A judgment, an order, or a writ of a court.
- (2) A will or death certificate.
- (3) A plat.
- (4) A survey.

(b) The county recorder may receive for record an instrument or a document if:

- (1) the instrument or document consists of at least one (1) individual page measuring not more than eight and one-half (8 1/2) inches by fourteen (14) inches that is not permanently bound and is not a continuous form;
- (2) the instrument or document is on white paper of at least twenty (20) pound weight and has clean margins:
 - (A) on the first and last pages of at least two (2) inches on the top and bottom and one-half (1/2) inch on each side; and
 - (B) on each additional page of at least one-half (1/2) inch on the top, bottom, and each side; and
- (3) the instrument or document is typewritten or computer generated in black ink in at least 10-point type.

IC 36-2-11-15 Instruments that may be received for record or filing; name of person or governmental agency that prepared instrument

I affirm under penalties of perjury, that I have taken reasonable care to redact each social security number in this document unless required by law. This instrument is prepared by:

_____ (printed name of individual)

