

**Crosswind Commons  
Homeowners Association, Inc**

**Amended and Restated  
Declaration of Covenants, Conditions, and Restrictions**

**2021**

## 1. DEFINITIONS

THE FOLLOWING ARE THE DEFINITIONS OF THE TERMS AS THEY ARE USED IN THE DECLARATION:

- a. **Association** - the Crosswind Commons Homeowners Association, Inc; a not-for-profit corporation, the membership and power of which are more fully described in Section 10 of this Declaration. The articles of incorporation of the association were originally filed with the Indiana Secretary of State on [REDACTED] and were amended on \_\_\_\_\_.
- b. **Backyard** - anything between the back baseline of the house and the property line at its furthest point.
- c. **Board or Board of Directors** - the Board of Directors for the Crosswind Commons Homeowners Association, Inc.
- d. **City** - The City of Westfield, Hamilton County, IN
- e. **Common Area** - those areas of current and future plats plus any other areas designated by the Association for the common use and enjoyment of the residents of the Crosswind Commons Neighborhood, which are more fully described in Section 9 and Exhibit B of this Declaration.
- f. **Committee** - the Crosswind Commons Architectural Control Committee, as more fully described in Section 6 of this Declaration.
- g. **County** - means the incorporated and unincorporated areas of the county.
- h. **Direct Control** - means immediate and continuous physical control of an animal at all times such as by means of a fence, leash, cord, or chain of sufficient strength to restrain the animal. When an animal is specifically trained to immediately respond to oral or visual commands, the term "direct control" includes oral or visual control if the controlling person is at all times clearly and fully within unobstructed sight and hearing of the animal, but in no case to exceed 100 feet. Oral control shall at all times prevent the animal from running at large or otherwise violating the County ordinances.
- i. **Domestic Animal** - means a dog, cat, or any other animal such as a rabbit, guinea pig, lizard, iguana, hamster, ferret, mouse, snake, spider, bird, or gerbil which may normally be held, sold, or maintained as a pet.
- j. **Good Standing** - any owner that is not in violation of any restriction in this declaration and has fully paid all assessments owed to the Association.
- k. **Front Yard** - any area between the road and the front line of the house.
- l. **Lot** - any parcel of residential real estate described by the plat of Neighborhood that is recorded in the Office of the Recorder of Hamilton County, Indiana.
- m. **Owner** - a person, partnership, trust, or corporation 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.
- n. **Person** - means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.
- o. **Pet Owner** - means any person who owns, harbors, keeps, feeds, maintains, has lawful possession of, or knowingly causes or permits an animal to be harbored or kept as an animal in his/her care, or who permits an animal to remain on or about his/her premises; provided, however, this shall not include a person hired or acting as custodian of the animal for its owner.
- p. **Residence** - any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single family residential Lot.
- q. **Running at Large** - means any dog or cat that leaves or strays from the land owned, rented, or leased by the owner or possessor of the dog or cat. Any animal not under immediate control, not on a leash, not at heel, not beside a competent person, not in a vehicle driven or parked, or not confined within the property limits of his/her owner.
- r. **Side Yard** - anything in back of the front line of the house and forward of the rear line of the house with the exception of corner Lots which have no side yards.

- s. **Tract** - the land described as Crosswind Commons and such other real estate as may from time to time be annexed thereto according to the provisions of Exhibit A thereof.
- t. **Vicious Animal/Dangerous Animal** - means any animal that attacks, bites, or injures human beings, pets, companion animals, or livestock or which, because of temperament, conditioning, or training, has a known propensity to attack, bite, or injure human beings, pets, companion animals, or livestock. No dog may be declared dangerous if a threat, injury, or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the dog or was teasing, tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have teased, tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

## 2. CHARACTER OF THE COMMUNITY

- a. In General Every Lot as part of the Community is for residential purposes only and must conform to the commitments of zoning of the real estate made in connection with the City of Westfield Plan Commission. No structure shall be erected, placed, or permitted to remain upon any said residential Lots except a single-family dwelling house or unoccupied storage sheds (as defined in Section 3B). No double occupancy structure shall be permitted on any part of the Neighborhood.
- b. Occupancy or Residential Use of Partially Completed Homes Prohibited No home constructed on any of the residential Lots shall be occupied or used for residential purposes or human habitation until a certificate of occupancy has been issued.
- c. Other Restrictions All tracts of ground in the Community shall be subject to the easements, restrictions, and limitations of record appearing on the recorded plat and amendments thereto of the subdivision, on recorded easements, right-of-ways, and also to all governmental zoning authority and regulation affecting the Community, all of which are incorporated herein by reference.
- d. General Easement 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, drainage, and service lines and systems, including but not limited to the following: water, sewers, gas, telephones, electricity, television, cable or communications lines and systems, landscaping, lighting and irrigation (if any). By virtue of this easement it shall be expressly permissible for the Association or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if the Association or such company restores the disturbed area as nearly as in 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 a Section except as proposed and/or approved by the Association. Should any utility furnishing a service covered by the general easement herein provided requisite a specific easement by separate recordable document, 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.
- e. Landscape Maintenance Easement Areas of ground on the plots marked "landscape maintenance easements" (LME). The landscaping located within the easement shall be maintained by the Association and the Association shall have an easement of ingress and

egress on or over such areas for the purpose of this maintenance obligation. However, the Association shall not have the obligation to maintain the landscaping located within the landscape easements which are within the perimeter boundaries of a Lot. The landscaping and other improvements planted or installed by the original developer or the Association in these areas may not be removed by an owner and no fence shall be placed in such areas by an owner, except as approved by the Board of Directors after the owner has first submitted an application to the Committee.

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

- a. Minimum Living Space Area The minimum square footage of living space of dwelling units constructed on all Lots shall be 1300 finished square feet for a single-story dwelling unit, and 1600 finished square feet for dwelling units exceeding single-story (provided that such dwelling units shall contain a minimum of 700 finished square feet on the first floor and a minimum of 550 finished square feet of living space on the second floor of such unit, with an aggregate total of 1600 finished square feet). In any event, the finished square footage calculation of living space of a dwelling unit shall not include porches, terraces, garages, basements, or any area below ground level.
- b. Storage Sheds and Mini-Barns No storage shed, mini-barn, or other detached outbuilding (collectively referred to as "shed" hereafter) shall be permitted on any Lot at any time unless approved by the Architectural Committee. The Committee will not approve a shed unless it complies with the following requirements:
  1. There shall be no more than one (1) shed per Lot;
  2. The shed shall be no larger than ten feet (10') by twelve feet (12') (120 sq. ft) and must include four adjoining walls and a roof;
  3. No metal or plastic sheds are permitted;
  4. All sheds must be constructed of wood materials painted to match the color of the residence on the Lot. Vinyl siding will be considered if it is the same type, color, and quality of the siding of the home. All sheds with proposed vinyl siding must have a wood underlay;
  5. All sheds shall have shingles that match as closely as possible to the color of shingles on the residence. No shed shall have galvanized roofing.
  6. All sheds that have a distance of 8 inches or higher from the ground to the floor joists must have some type of vented cover (i.e. lattice work) covering the open area;
  7. All sheds must be located directly behind the home, which means it should not be seen from the front of the home;
  8. No shed may be placed in the side yard or front yard;
  9. All sheds shall be set in at least 10 feet from all property lines and shall not encroach upon an adjoining Lot or Common Area;
  10. Sheds to be constructed on a Lot adjacent to the pond must be located in close proximity to the main dwelling;
  11. All sheds must be well-maintained at all times;
  12. All sheds must comply with all applicable municipal laws, rules, and ordinances;
  13. A sixty day (60) time frame, weather permitting, will be enforced for the construction and completion of the shed.
  14. Sheds shall be constructed for outside storage only. No shed shall be used for the purpose of business or occupancy.

Notwithstanding the above, the Architectural Committee may, in its sole discretion, approve a

shed different than those described above (including location) if the same is compatible with the overall development plan for the subdivision and is of a style and quality which meets or exceeds the spirit and intent of the above requirements.

c. Mailboxes All mailboxes and posts must be approved by the Architectural Committee and shall be uniform as to the size, location, post, design, height, material, composition, and colors. It is the Lot Owner's responsibility to maintain the post and mailbox to be in conformance with all other mailboxes. If a mailbox and/or post is damaged beyond repair, regardless of the reason, the mailbox and/or post must be replaced in accordance with the above criteria at the Lot Owner's expense. Mailbox posts should be painted with the Porter Paint color, Sagebrush, or an equivalent of another brand. To expedite replacement, the following companies are able to provide and/or install replacement mailboxes and/or posts with the criteria noted above:

1. Otto's Streetscape Solutions 317-886-4400
2. Estes Designs 317-899-5556

d. Fences It is the goal of the Crosswind Commons community to keep all fencing and/or landscape screening harmonious with the architectural character of the community. The Architectural Committee must approve any fence or landscape screen prior to any installation. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Committee and the Board when reviewing fences or screens for approval. No front yard fencing is permitted. Approved fences may be professionally or privately installed, however, must be constructed to professional levels of quality, design, material, composition and color as determined by the Committee. Privately installed fences may be subject to inspection upon completion to ensure that the final product is of professional quality. All fences and screens shall be kept in good repair. Any fence or screen constructed without prior approval from the Committee shall be removed at the owner's expense.

1. Height Restrictions Fences shall not exceed 6 feet in height except as further restricted hereafter and which otherwise meet these guidelines:
  - a. Lot fencing and walls above grade shall not exceed 6 feet above grade.
  - b. Patio screens/privacy fences may join with the side of the house anywhere behind the front corner on the shorter side of the dwelling. Symmetry must be considered when deciding on placement. No fence shall be constructed closer to the street than the front corner of the house on the adjacent Lot.
  - c. No fence may exceed 6 feet in height where it adjoins the house.
  - d. No fence placed on a Lot in the Community abutting the pond shall exceed 42 inches in height when located at any point within 16 feet of the rear property line. No portion of any fence making up the rear fence line, or that portion of the fence closest to the pond and running in a generally parallel direction to the rear property line shall exceed 42 inches in height.
  - e. Fences constructed of wood for the purpose of obscuring view shall be installed so that the finished side is facing outward. Fences constructed of wood that are on a property line in which two or more Lot Owners share, are not subject to this provision.
  - f. The Association reserves the right to amend or change any of the above restrictions.

2. Materials and Finish The Committee must approve all fencing materials, design, and location prior to installation.

- a. Fences are to be constructed of wood or reinforced vinyl.
- b. Wood fences must meet the following requirements:
  1. Shadowbox style, dog-eared 1" x 6" vertical boards or of other styles pre-approved

- by the Committee and Board.
  - 2. Stained or sealed for preventative maintenance
  - c. Vinyl fences are to be of sturdy construction and must meet the following requirements:
    - 1. Vertical boards greater than 2" wide
    - 2. Shall not contain any lattice
    - 3. Colored to match the siding of the home or standard white
    - 4. Measurement between the slats must be no more than the width of the slat.
  - d. Invisible Fences are permitted provided they meet the following guidelines:
    - 1. Must be submitted and approved by the Architectural Committee prior to installation.
    - 2. Must be installed at least five (5) feet from the inside of the sidewalk in the front yard
    - 3. Must adhere to the same restrictions and guidelines of Section 3D.
  - e. The Architectural Committee may permit the installation of black iron fence when a Lot is adjacent to the pond. This exception applies only to the rear Lot line of the property.
  - f. Walls above grade must be constructed of natural stone, masonry, shadowbox, or other approved fencing and cannot impede or change current drainage flow.
  - g. The Architectural Committee must approve landscape screening materials, design, and location on an individual basis.
  - h. Previously approved fences and/or landscape screens are considered grandfathered in and are not subject to these restrictions.
3. Approval The Architectural Committee must approve all fencing, materials, design, and location prior to installation. The Owner must submit an architectural request form including the exact location, material, color, and height of the fence, with drawings and/or pictures, to the Architectural Committee for review.
- a. Requests may be submitted via email, mail, or hand delivered at least 15 days prior to proposed construction.
  - b. The applicant will receive approval or denial pursuant to Section 7 (D-J).
- e. Sidewalks Each home shall have a continuous 4-foot wide by a minimum of 4 inches thick concrete sidewalk adjacent to all interior dedicated street frontage. Sidewalks must be maintained by the homeowner, and at the homeowners expense if cracked, raised, or damaged in a manner that constitutes a hazard to other residents, or detracts from the appearance of the neighborhood.
  - f. HVAC Units No heat pumps, air conditioning units, or gas meters will be installed in the front of the house.
  - g. Windows/Doors No unfinished aluminum windows or doors shall be permitted. If storm doors are installed, they must be painted to match the exterior of the home.
  - h. Vents All roof or range vents will be painted to blend with roof color. All roof vents must be located on the rear of the roof, with the exception of peak vents, which will be located at the peak of the roof.
  - i. Plumbing All plumbing vent stacks are to be on the rear of the house.

j. Awnings All awnings shall be approved by the Committee prior to installation and must meet the following guidelines:

1. Must be attached to the main structure of the house
2. Must be retractable and meet the following guidelines:
  - a. Should not require painting
  - b. Be professionally installed
  - c. Be constructed of good quality materials
  - d. Must be designed to cover a deck or patio and be attached on the rear of the home
  - e. Must be of a color complimenting the house and a design that does not distract from the neighborhood
  - f. Must be kept in good repair at all times.
  - g. Window and door awnings shall not be allowed on any structure in Crosswind Commons
  - h. Temporary structures will not be permitted for a period exceeding 14 days

k. Swimming Pools Only permanent, in-ground pools with professional construction may be approved by the Architectural Committee. All pools must be located in the backyard of the resident's Lot. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Architectural Committee and Association approvals.

l. Tennis, Racquetball, and Paddleball Courts, etc Tennis courts, racquetball courts, paddleball courts, squash courts, and other recreational facilities or sporting facilities will not be permitted without approval from the Architectural Committee. Lighted courts are prohibited.

m. Miscellaneous No clotheslines or flagpoles may be erected on any Lot. However, residents can fly flags from the small wooden or metal flagpoles that are mounted directly to the house (cannot be cemented or installed in the ground). Flags must be in good taste and must be properly maintained according to the law (American Flags) and covenants. Flags cannot be offensive to your neighbors or the neighborhood as a whole.

n. Recreational Equipment Children's play equipment such as sandboxes, temporary swimming pools, swing and slide sets, playhouses, and trampolines shall not require approval by the Architectural committee provided:

1. Such equipment is not more than 8 feet high (to the highest point of the structure including canopies, firemen poles, etc.). Equipment higher than 8 feet shall require approval of the design, location, color, material, and use by the Architectural Committee.
2. Not placed in the front or side yards of the home, and placed at least 10 feet off of all property lines.
3. No flag or banner other than that designed specifically for and as part of the playground equipment by the manufacturer will be allowed to be displayed as part of any playground. Any flag or banner flying from the playground equipment cannot be offensive to your neighbors or the neighborhood as a whole, and must be pre-approved by the architectural committee prior to being installed.
4. Trampolines must be properly staked to the ground to prevent property damage in the event of a storm.
5. Basketball goals may be installed on a Lot adjacent to the driveway without the Architectural Committees approval provided they have white or translucent fiberglass or glass backboards. Independent basketball courts may not be constructed on a Lot without written approval from the Architectural Committee. No basketball goal or backboard shall be permitted to hang from the home or garage.

6. Temporary swimming pools with a depth of 18 inches or less are permitted.
7. All recreational equipment must be maintained by the homeowner and kept in good repair.

o. Garages/Driveways All residential dwellings in the Neighborhood shall include at least a two car enclosed garage. Detached garages are not permitted. All driveways shall be constructed of concrete and be a minimum of 14 feet wide. Driveways must be maintained by the homeowner, and at the homeowner's expense, if cracked, raised, or damaged in a manner that constitutes a hazard to other residents, or detracts from the appearance of the neighborhood.

p. Dusk-to-Dawn Lighting In lieu of public street lighting, each Lot shall maintain and operate at least 2 continuous dusk-to-dawn lights to be controlled by a photocell, on each side of the garage doors. These lights must be properly maintained, kept operational by the homeowner at the home owner's expense. Appropriate wattage shall be 40-80 watts. Failure to maintain these lights will result in fines being assessed against the homeowner.

q. Yard Post Lanterns Permanent yard post lanterns are not permitted.

r. Up Lighting Up lighting (lights that are projected upwards toward the home and illuminate the exterior) will be permitted only with the following guidelines:

- 1 Most styles of up lighting will be permitted as long as the color, size, shape and configuration compliment the home and are not a nuisance to others.
- 2 Wattage must not exceed 25 watts.
- 3 The light must only be directed at the front of the home in an upward direction in such a fashion that it does not reflect on others' homes or develop a safety issue for traffic. No up lighting on the rear or side of the home is permitted.
- 4 Up lighting may or may not be controlled by a photocell.
- 5 No decorative mural type lights may be used. This describes lights that depict pictures and/or multiple colors. Holiday lights are considered an exception to this restriction but should be removed within two weeks of the holiday (weather permitting).

s. Diligence in Construction No dwelling or other improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such a state for more than 3 months from the time of such destruction or damage.

t. Prohibition of Used Structures All structures constructed or placed on any Lot in the Neighborhood shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such Lot including, but not limited, to the following: houses, decks, sheds, etc.

u. Sump Pump Discharges In areas where the Developer provided subsurface drains or storm sewers, all sump pump discharge lines shall be connected to underground subsurface drains or storm sewers.

v. Maintenance of Lots and Improvements The Owner of any Lot in the Neighborhood 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, the Owner shall:

- 1 Prevent the existence of any condition that reasonably tends to detract from or diminish the aesthetic appearance of the Neighborhood.
- 2 Mow the Lot at such times as may be reasonably required in order to prevent the

unsightly growth of vegetation and noxious weeds.

- 3 Remove all debris or rubbish.
- 4 Cut down and remove dead trees, shrubs, and/or plants.

w. Association's Right to Perform Certain Maintenance In the event that the Owner of any Lot in the Neighborhood shall fail to maintain their Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents, 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 these Restrictions. The cost incurred by the Association shall be assessed to the Lot Owner. The Lot Owner shall reimburse the Association within 30 days of the date on which the Lot Owner is invoiced by the Association. The Association shall have the right to collect any outstanding assessments as outlined hereafter in Section 12 of this Declaration. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

x. Pond Restrictions Each Lot Owner abutting the pond shall indemnify and hold harmless the Association, Board of Directors, and each other Owner against all loss or damage incurred as a result of injury to a person, pet, or damage to any property, or as a result of any other cause or thing, arising from or related to use of, access to, a lake, pond, or park, by any person who gains access thereto from, over or across such Owner's Lot, inclusive of damage from pond chemicals used for algae containment, or other, or damage relating to any Lot or building resulting from damage from water or erosion.

- 1 Members owning Lots adjacent to the pond will have full responsibility of mowing the area lying directly between their property and the pond.
- 2 There is to be no wading, swimming, skating, or boating on the pond. Any person disregarding posted warning signs and these Covenants does so at their own risk and shall hold the Association harmless.
- 3 Fish taken from the pond may contain harmful chemicals and should not be eaten. Anyone ingesting fish taken from the pond shall hold the Association harmless of damages caused by such act.

#### **4. PROVISIONS RESPECTING OF SANITARY SEWER EASEMENT**

No storm water (subsurface or surface) shall be discharged into sanitary sewers. No driveways, walks, patios, etc., shall be constructed within 12 inches of any sanitary manhole.

#### **5. GENERAL PROHIBITIONS**

- a. Visual Obstructions No fence, wall, gate hedge, tree, or shrub planting which obstructs sight lines and elevations between 3 and 12 feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and line connecting points 25 feet from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight-line limitations shall apply to any Lot within 10 feet from the intersection of a street line with the edge of a driveway pavement or alley line.
- b. Nuisance In order to maintain balance and peace in the neighborhood, no noxious or offensive activities shall be permitted on any Lot in Crosswind Commons, nor shall anything be done on any of said Lots that may be or may become an annoyance or nuisance to the

neighborhood. Nuisances are defined as something (an act, object, or practice) that invades or interferes with another's rights or interests (as the use or enjoyment of property) by being offensive, annoying, dangerous, obstructive, or unhealthful. This may include, but is not limited to, excessive noise. Barking dogs shall constitute a nuisance. Noxious activities are defined as those harmful or injurious to the health or physical well being of a complainant. When specific disputes arise between specific neighbors, the aggrieved neighbor will often request that the Board become involved to remedy the dispute or become an impartial intermediary. The Board will not be involved in the dispute, because ultimately there is nothing the Association can legally do about the dispute as it is between two Individuals.

- c. Exterior Antenna/Dish No television, radio, or other antenna or any other obtrusive object may be erected by any Lot Owner on the exterior of the house or on a Lot. One (1) satellite dish of 24 inches in diameter or smaller may be permitted provided the installation location is approved by the Committee, but in no event will it be permitted to be installed on the front of the home or to be higher than the roof ridge.
- d. Signs No signs or advertisements shall be displayed or placed on any Lot or structure in Crosswind Commons, except entry signs, home or Lot sale signs, and school sport related signs without the prior approval of the Architectural Committee. An owner may display up to four (4) political signs, no larger than 18"x24", for the time period of thirty (30) days prior to and five (5) days after an election. Construction related signs may be permitted for the duration of the repair/improvement, but must be removed when the project is complete.
- e. Animals No animals shall be kept or maintained on any Lot in the Neighborhood, except the usual household pets, and, in such case, household pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of a dog(s), vicious animal(s), and animals running at large shall constitute a nuisance. Household pets are subject to all state and local ordinances.
- f. Vehicle Parking
  - 1. No one (1) ton trucks or larger in size, campers, trailers, motor homes, boats, snowmobiles, jet skis, or similar vehicles shall be parked on any street or driveway in the Neighborhood.
  - 2. Passenger vans dedicated to family transportation are exempt from the one (1) ton limit as long as there is no commercial usage of the vehicle. A one and one half (1.5) ton limit will be imposed on these vehicles.
  - 3. Any recreational vehicle or trailer, camper, snowmobile, jet ski, or boat shall not be permitted to remain for prolonged periods of time on any street, driveway, or Lot except within a closed garage and shall not be regularly parked on unpaved areas. An exception to this restriction is temporary parking of said recreational vehicles on the driveway may be permitted for limited periods of time (i.e., preparing the vehicle for a trip, repairs, maintenance, etc.).
  - 4. There shall be no outside storage of commercial trucks, trailers, boats, junk cars, or exposed fuel tanks.
- g. Garbage and Other Refuse No Lot Owner in the Neighborhood 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 refuse. Trash receptacles cannot be stored (on a permanent or temporary basis) in the front of the house or where they can be seen from the road. Trash receptacles must not remain on the driveway after trash pickup for more than 24 hours.
  - 1. Trash receptacles may be stored outside of the house under the following guidelines:
    - a. Inside a 6' fenced rear yard.
    - b. On the side of your house only if hidden behind a screen of sufficient height to completely hide the container and be designed specifically for this purpose. All

such screens must be approved by the Architectural Committee prior to installation and conform to all fencing guidelines.

2. Composting is permitted as long as the Lot Owner purchases and utilizes a store bought, rotating compost container. It must be stored and maintained in the back yard in such a manner as to not cause a nuisance and must not be visible from the road.
3. Rain barrels are permitted under the following guidelines:
  - a. Inside a 6' fenced rear yard.
  - b. On the side of your house only if hidden behind a screen of sufficient height to completely hide the container and be designed specifically for this purpose. All such screens must be approved by the Architectural Committee prior to installation and conform to all fencing guidelines.
  - c. Acceptable colors shall include black or brown
- h. Fuel Tanks External propane tanks, except portable tanks (less than 5 gallons) for gas grills, shall not be permitted.
- i. Temporary Structures No temporary house, trailer, garage, or other outbuilding shall be placed or erected on any Lot.
- j. Solar Panels Solar panels must be approved by the Committee and must meet the following guidelines:
  1. Solar panels shall either be installed on the ground of a Lot and out of sight behind a privacy fence or shall be installed on the roof, out of sight from the street (on the back of the house).
  2. Regular maintenance of solar panels will be expected similar to that for the dwelling, as noted in Section 3V.
  3. The Lot Owner shall replace or remove the solar panels at their end of life or use.
  4. Solar panels shall be subject to any additional guidelines or restrictions adopted by the Board to ensure compliance with the harmony and aesthetics of the community.
- k. Electric Bug Killers Electric bug killers, "zappers," and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall be operated only when outside activities require the use thereof and not continuously.
- l. Home Occupations No Lot or Lots shall be used for any other purpose than a single-family residence, except that a home occupation, defined as follows, may be permitted: any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. The following guidelines must be followed:
  1. No sign or display that will indicate from the exterior that the building or any other outside building is being utilized in whole or in part for any purpose other than that of a dwelling;
  2. No commodity sold upon the premises;
  3. No person is employed other than a member of the immediate family residing on the premises; and
  4. No manufacture or assembly operations are conducted.
  5. In no event shall a business enterprise be operated out of a home. Examples include but are not limited to: child day care, barber shop, styling salon, auto repair, animal

hospital, or any form of animal care or treatment such as dog trimming.

m. Open Drainage, Ditches, Swales

1. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency, the Board of Directors, and the Association. Property Owners must maintain these swales as grass ways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Lot Owner except the designated 10' drain easement around the retention pond.
2. Any property Owner or their agent altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given **10 days** notice, by registered mail, to repair said damage, after which time if no action is taken, the appropriate jurisdictional agency or the Association will cause said repairs to be accomplished and the bill for such repairs will be sent to the affected Property Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Section 12 of this Declaration.

n. Utility Services Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

o. Wells and Septic Tanks Water wells shall not be drilled on any of the Lots except as required to irrigate common areas nor shall any septic tanks be installed on any of the Lots in Crosswind Commons.

p. Roofing Materials The roofing materials on all homes, specifically shingles, shall be conforming in quality, style, composite, and similar color as described and approved by the Architectural Committee. No metal roofs will be permitted. Solar shingles may be considered pending approval by the Committee.

## 6. LEASING RESTRICTIONS

- a. General Purposes of Leasing Restrictions The Association's members recognize that an Owner-occupant is both psychologically and financially invested in a home to a greater extent than a renter, and thus Owner occupants maintain their property better than renters generally. The Association's members wish to ensure that the residents within Crosswind Commons share the same proprietary interest in and respect for the Lots and the Common Areas. They also want to encourage residents to not only maintain property values, but also to improve them and recognize that owner occupants have more incentive to do so compared to non-owner occupants. Thus, the provisions of this Paragraph 6 shall be applicable. Except as allowed in this Section 6, residents of a Lot can only consist of the Owner(s) and those who live with the Owner, or if the Owner(s) do not reside in the home on the Lot, residents must be members of the Owner's immediate family as defined herein.
- b. "Rent" and "Lease" Defined For the purposes of this Section 6, "rented" or "leased" (or any variation thereof, singular or plural), as used interchangeably herein, shall mean leased or rented or occupied, whether or not for compensation of any kind, by anyone other than an Owner of the Lot together with members of his or her household or temporary guest. However, the "Waiting Period" set forth herein will not apply to any situation where a home on a Lot is occupied by members of the Owner's immediate family. For purposes of this Section 6, "immediate family" shall only include the Owner's parents, siblings, children, grandchildren, spouse, or significant other/life partner,

- c. Estate Planning, and Business Entity Ownership Any Lot owned by a Trustee or by a Fiduciary shall not be deemed to be a rental provided that the resident is the Trustee, the Fiduciary of an Estate, or a beneficiary of the Trust or Estate. Any Lot owned by a business or corporate entity (including, but not limited to, a corporation, LLC, partnership, etc.) shall submit a Certificate of Designated Representative to the Association (form available on Crosswind Commons website). This certificate will indicate both who is authorized to vote on behalf of the business entity as well as who is authorized to reside in the Lot. The resident and the designated representative for voting purposes must be the same individual. If they are not the same, the Lot will be deemed a rental under the terms of this paragraph 6.
- d. Three Year Waiting Period; Hardship Exceptions and Waiver For a period of at least three (3) years after an Owner's acquisition of a Lot, said Owner cannot lease such a Lot (the "Waiting Period"). After such time, said Lot will be eligible to be leased if all other conditions of this Section 6 are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. The Owner may request the Board of Directors to waive the Waiting Period and approve a proposed lease if the Owner establishes to the Board's satisfaction that the Waiting Period will cause undue hardship. If a majority of the entire Board of Directors approves in writing of the Owner's hardship request, the Board of Directors shall permit the Owner to rent or lease said Lot, subject to any further conditions or limitations imposed by the Board in the Board's discretion, but only if the Owner satisfies all other requirements of Section 6. Such a decision shall be at the sole discretion of the Board. The duration of a given hardship exception will be decided by the Board and will not generally be longer than one (1) year unless there are extenuating circumstances as determined by the Board. An undue hardship is specifically defined as:
1. Temporary relocation of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Crosswind Commons made necessary due to a change of employment of at least one (1) of such Owners, which must be documented by written confirmation from the Owner's employer;
  2. Necessary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners;
  3. Death, dissolution or liquidation of an Owner;

If an Owner desires to request an exception based upon hardship circumstances other than those specifically defined as an "undue hardship" in this Section 6, the Owner must submit a written request describing, with reasonable particularity, the nature of the alleged hardship and the alleged need to rent. The Board may approve or deny such requests as it deems appropriate, and such decisions shall be final and binding.

e. General Lease Conditions

1. All leases, including renewals, shall be in writing, and no lease shall be entered into for an initial term of less than one (1) year without the prior written approval of the Board of Directors. However, in no event shall an Owner ever be permitted to lease, rent, or otherwise operate his or her home, outer building, or Lot on a short-term rental basis for any term of less than thirty (30) days. This short-term rental prohibition includes, but is not limited to, the use of a short-term rental platform through which unaffiliated parties offer to rent a short-term rental to an occupant and collect consideration for the rental from the occupant.
2. A copy of each executed lease by an Owner which identifies the tenant shall be provided to the Board of Directors by the Owner within thirty (30) days after execution. However, the rental amount may be deleted as well as any personal identifying information such as social security numbers.
3. No portion of any home on a Lot other than the entire home shall be leased for any period.
4. No subleasing shall be permitted.
5. All leases shall be made expressly subject and subordinate in all respects to the terms of the

Declaration, the 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;

6. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease.
7. All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joining the Owner of such a Lot. If such provision is not in the lease, it will be deemed to be in such lease.
8. 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.
9. All Owners who do not reside in the home on the Lot shall provide the Board of Directors with the name of the tenant(s) and any other residents living in the home.
10. All occupancy must comply with local ordinances as amended from time to time.

f. Owner is Still Liable No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her 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.

g. Rental Caps In an effort to promote neighborhood stability and a sense of community, a maximum of five (5) rental units are permitted at one time. Rental units already established prior to this Declaration amendment are considered "grandfathered" in, but going forward, must comply with the provisions listed here in Section 6. Lot Owners wishing to lease their homes according to the provisions in this Section 6 while said Rental Cap is at its maximum may request to be put on a waiting list.

h. Violations Any lease or attempted lease of a home or Lot in violation of the provisions of this Section 6 shall be voidable at the election of the Association's Board of Directors or any other Owner, except that neither party to such lease may assert this provision of this Section 6 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 remedies available at law or equity.

i. Burden of Proof Anything to the contrary herein notwithstanding, if at any time a home is not occupied by one of the Owners thereof, there shall be a presumption that the home and Lot are being leased and subject to the provisions of this Section 6.

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 6, including but not limited to:

1. The delivery to the Board of Directors of a written statement of the nature and circumstances of the occupancy, and
2. Any written document or memorandum that is the legal basis for the occupancy.

For purposes of this Section 6(l), 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:

1. A written purchase contract, conditional sales contract or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the home and Lot.
2. If the Owner is selling his or her Lot via land contract, contract for deed, or similar agreement, the contract must be recorded with the Hamilton County Recorder to be deemed valid. Failure to record the contract will automatically deem the document to be a lease for purposes of this Declaration.

j. Effective Date of Waiting Period Within thirty (30) days after the Recording Date on which this amended Declaration is filed with the Hamilton County Recorder, the Board of Directors shall provide written notice to all Owners notifying them of said Recording Date. After said Recording Date, any/all new leasing agreements will be subject to the three-year waiting period and all provisions set forth in this Section 6. Owners of pre-Recording Date rented Lots shall not be subject to the waiting period so long as they provide to the Association a copy of each executed lease of their Lot(s) that is in effect as of the Recording Date within sixty (60) days. Sensitive information such as monthly rent, and personal identifying information (SSN, etc) may be omitted from the lease copy provided to the Association. Owners of pre-Recording Date rented Lots shall be subject to the provisions of this paragraph 6. The failure of any such Owner-landlord of a leased or rented Lot to deliver a copy of such pre-Recording Date lease within said sixty (60) day period shall result in said Owner-landlord's Lot being subject to the Waiting Period (from and after the date of expiration of such pre-Recording Date lease). However, in no event shall the waiting period apply to any lease executed prior to the Recording Date, or to any renewals thereof provided for in any such leases, so long as the Lot continues to be occupied by one or more of the non-Owner occupants in possession of the Lot as of the Recording Date. When and if the legal Owners of record of any of the pre-Recording Date rented Lots sell, transfer or convey such Lot(s) to another Owner after the date of recording of this Amendment, such Lot(s) shall immediately become subject to the waiting period.

## 7. ARCHITECTURAL COMMITTEE

- a. Committee An architectural review committee, composed of three (3) members, shall be appointed by the Board of Directors, and such members shall be subject to removal by the Board of Directors at any time, with or without cause. Any vacancies from time to time shall be filled by appointment of the Board of Directors.
- b. Statement of Purposes and Powers The Architectural Committee shall regulate the external design, appearance, use, location, and maintenance of lands and improvements thereon subject to these Restrictions in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography, and in keeping with the intent of the Association.
- c. Generally No dwelling, building structure, fence, deck, driveway, swimming pool, rear yard basketball hard-surfaced court, or improvement of any type or kind (including significant landscaping) shall be constructed or placed on any Lot in Crosswind Commons without the prior approval of the Architectural Committee. Such approval shall be obtained only after the Owner of the Lot has submitted a written application to the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and the Board of Directors and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include what material will be used for the improvement, the location, size, and color of the improvement, as well as any additional information that the Committee and the Board of Directors may determine is necessary to make a decision regarding the proposed improvement. After the Committee reviews the Owner's application, the Committee shall make its recommendations for approval or denial to the Board of Directors and shall forward

to the Board of Directors all materials submitted by the Owner. The Board of Directors shall then make a final determination.

- d. Approvals Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed by an Officer of the Association, after a decision has been made by the Board of Directors.
- e. Power of Disapproval The Architectural Committee may refuse to grant permission to construct, place, or make the requested improvement.
  - 1 The plans, specifications, drawings, or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of these Restrictions.
  - 2 The design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures.
  - 3 The proposed improvement, or any part thereof, would in the sole opinion and absolute discretion of the Board of Directors, must conform to the interests, welfare, or rights of all or any part of other Owners and the Association.
  - 4 Lot Owners that do not apply for and receive approval from the Architectural Committee prior to making alterations under this section shall be subject to, at a minimum, fines outlined in paragraph 12B. The Board of Directors reserves the right to require the said Lot Owner to return the property to its previous state or rebuild in compliance with our Covenants and Restrictions.
  - 5 If the Lot Owner does not receive a written response (i.e., approval, disapproval, or notification that additional time is needed, per 7.g below) from the Board of Directors within 30 days after proper submission of the required documents and plans, those plans shall be deemed approved on the 31st day following submission. It will be the responsibility of both applicant and committee members to show due diligence in meeting this time frame.
    - a. The Committee's written decision may be delivered in person, by certified mail, or electronically.
    - b. The applicant must be reasonably available to receive notice of the Board's decision. Failure to serve an applicant due to the applicant making himself unavailable shall in no way nullify the Board's decision or result in the project being approved by default.
  - 6 If the Committee does not approve the plans as submitted and returns the application with a written reason for rejection,
    - a. The Lot Owner has the right to re-submit the request to the Committee with changes and the time frame shall restart upon the date of resubmission.
- f. Power to Grant Variances The Board of Directors 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 Crosswind Commons.
- g. Duties of the Board of Directors The Board of Directors may approve or disapprove of proposed improvements within thirty (30) days after all required information related to the proposed improvement is submitted to and actually received by the Committee. However, the Board of Directors shall have the right to an additional thirty (30) days to render its decision if the Board of Directors deems the extra time

necessary to review and consider the Owner's request. If The Board of Directors needs additional time, the Owner must be notified within the initial 30 days. The Board of Directors shall retain one copy of the submitted request for its permanent files. All notifications to applicants shall be in writing, whether by mail, hand-delivered, or electronically. In the event that such notification is one of disapproval, it shall specify the reason or reasons for disapproval so that the requesting applicant may resubmit their request with appropriate changes.

- h. Liability of the Committee and the Board of Directors Neither the Committee or any agent thereof, nor the Association, its Board of Directors or Officers, shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Committee, Board of Directors, or Officers 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, the Board of Directors, or Officers do 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. All parties should seek professional construction advice, engineering, and inspections on each Lot prior to proposing construction.
- i. Exercise of Discretion The Board of Directors shall have discretion in the performance of their duties consistent with the provisions hereof, and every Owner, by the purchase of the 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 Board of Directors, and in any action initiated to enforce this Declaration, in which an abuse of discretion by the Board of Directors is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Board of Directors, could only conclude that such determination constituted an abuse of discretion.
- j. Verification The Board of Directors may verify the work, during or after completion, to assure compliance with these restrictions and applicable regulations. Any alteration from the approved plans may result in fines or other penalties as outlined in Section 12. If it is determined that a Lot Owner has completed an exterior change or improvement without properly submitting a request to the Architectural Committee, the Board of Directors reserves the right to require the said Lot Owner to return the property to its previous state or rebuild in compliance with our Covenants and Restrictions.

## **8. CONTIGUOUS LOTS**

### Rules Governing Building on Several Contiguous Lots Having One Owner

Whenever two or more contiguous Lots in Crosswind Commons 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, the Owner must apply, in writing, to the Architectural Committee for permission for such use. If permission 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 these Restrictions, so long as the Lots remain improved with one single-dwelling house. In addition, a land surveyor and engineer must present the plan to the Declarant's and Association for written Board approval.

## **9. USE AND OWNERSHIP OF COMMON AREA**

The Common Area shall be used for such purposes as deemed appropriate by the Association. Any

Common Area depicted on the recorded plats of Crosswind Commons shall remain private and neither the recording of the Plats, nor the doing of any other acts, is, or is intended to be, or shall be construed as a dedication to the public of the Common Area. The Plats for Crosswind Commons are marked with areas of "greenspace", "retention pond", and "playground/park". These are all part of the Association's Common Area. A map of the common area may be found in Exhibit B.

## 10. CROSSWIND COMMONS HOMEOWNERS ASSOCIATION, INC

- a. Membership Each Lot Owner shall be entitled to and required to be a member of the Association and shall enjoy the privileges and be bound by the obligations contained therein and in the Articles and By-Laws of the Association.
  1. Each Lot Owner acknowledges the rights and powers of the Declarant and of the Association with respect to or under this Declaration, and for himself/herself, his/her heirs, personal representatives, successors, tenants, and assigns, covenants, agrees, and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each Lot affected by this Declaration, to keep, observe, perform, and comply with the terms and provision of this Declaration. There is only one class of membership. Only one member per Lot is eligible to be a voting member on Crosswind Commons Board of Directors and Committee(s) as supported by the by-laws, Article 3, Section 5. There is only one (1) vote per Lot.
  2. If a person would realize upon his/her security and become an Owner, such as a mortgage company foreclosing on a property, he shall then be subject to all of the requirements and limitations imposed by this Declaration, on the other Owners, including those provisions with respect to the payment of Assessments.
  3. All persons residing in Crosswind Commons shall be subject to the rules and regulations contained within this Declaration and subject to all the provisions of these covenants.
    - a. Powers - The Association shall have such powers as are set forth in this Declaration and in the Articles and By-Laws, together with all powers that belong to it by law, as well as those powers that can be reasonably inferred from such governing documents.
- b. Reserve for Replacements The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal, and replacement of the Common Area.
  1. In determining the amount, the Board shall take into consideration the expected useful life of the Common Area, projected increases in the cost of materials and labor, interest to be earned by such a fund and the advice of any consultants that the Board may employ.
  2. The Board shall deposit funds in appropriate accounts.
    - a. A portion of this fund must be kept in an account easily accessible for emergency situations as they occur; and
    - b. Funds not needed for immediate emergency use may be deposited in certificates of deposit in order to realize a larger return as long as the term on such certificates is sufficiently staggered so that funds are readily available.
- c. Limitations on Action by the Association Unless at least 2/3 of the voting members in Good Standing have given their prior written approval or mandated by a governing authority, the Association, Board of Directors, and Owners may not:
  - 1 By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area (but the granting of easements for public utilities or other public purposes

consistent with the intended use of the Common Area shall not be deemed transferred for the purposes of this clause).

- 2 Fail to maintain fire and extended coverage or insure Common Area on a current replacement cost basis in an amount at least 100% of the insurable value (based on current replacement cost).
- 3 Use hazard insurance proceeds for losses to any Common Area for purposes other than the repair, replacement, or reconstruction of the Common Area.
- 4 Change the method of determining obligations, assessments, dues, or other charges that may be levied against the Owner of a Residence.
- 5 By act or omission, change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Common Area.
- 6 Fail to maintain the reserve for replacements in the amount required by this Declaration.
- 7 Select and hire a management company to manage Crosswind Commons in cooperation with the Board of Directors of the Association.

## 11. ASSESSMENTS

- a. Creation of Lien and Personal Obligation Assessments Each Owner of any Lot in Crosswind Commons, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association the following:
  1. Resale Assessment;
  2. Annual Assessments or charges;
  3. Special assessments for covenant enforcement, capital improvements, and operation deficits, copies of association documents if requested by an Owner; such assessments to be established and collected as hereinafter provided or established by the Board.
- b. Collection All assessments, together with interest thereon, late fees 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, late fees and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment became due. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several.
- c. One-time Assessment A resale assessment in the amount of one hundred dollars (\$100.00) shall be payable to the Association by a transferee upon the conveyance of the legal title to a Lot by an Owner to a new Owner. The Board is authorized to unilaterally increase and further determine the amount of the resale assessment. Unless such resale assessment is paid to the Association as part of the closing of a conveyance of a Lot, such resale assessment will be billed to the new Owner of the Lot immediately following the conveyance/closing. For purposes of this provision, the term "conveyance" shall mean the transfer of record legal title to a Lot by deed or other authorized means of conveyance, with or without valuable consideration.

The following conveyances shall be exempt from payment of the resale assessment:

1. between and among co-owners of the same Lot being transferred;

2. to the Owner's estate, surviving spouse or other heirs, resulting from the death of an Owner;
3. to a trustee or the Owner's current spouse, solely for bona fide estate planning or tax reasons;
4. to a mortgagee or the Association pursuant to a Final Judgment of Foreclosure or Deed in Lieu of Foreclosure; and
5. to the current Owners who choose to refinance their mortgage. Provided, however, that upon a transfer that occurs following the exempt transfers described in (a) through (e) above, the Re-Sale Assessment shall be due and payable.

If a Resale Assessment is not paid when due, it shall be treated as a delinquent Annual Assessment and the Association shall have the right to collect it by whatever means necessary.

- d. Annual Assessment An Annual Assessment determined by the budget for herein shall be paid per calendar year and shall commence for each Lot on the date of closing by the Homeowner. Annual dues for the calendar year shall be prorated to year-end.
- 1 Amount: The Board of Directors must determine the amount of Annual Assessment (including any increases), and present it to the Homeowners at least **30 days** prior to the assessment due date.
  - 2 Purpose of Assessment: The Annual Assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of the Lots and for the improvement, maintenance, and operation of the Common Area, plus other maintenance and services provided by the Association deemed appropriate by the Board of Directors.
  - 3 Method of Assessment: By a vote of majority of the Board of Directors, the Board of Directors 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. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.
- e. Special Assessment Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject thereto.
- 1 The due dates for all assessments shall be established by the Board of Directors.
  - 2 In addition to such other Special Assessments as may be authorized herein, the Board of Directors may levy, in any year, a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, other activity that is the responsibility of the Lot Owner hereunder, and/or defraying, in whole or in part, the cost of any construction, reconstruction, repair, or 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 or the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- f. Effect of Nonpayment of Assessments; Remedies of the Association - Any Assessment not

paid within thirty (30) days after the due date shall bear interest from the due date at eighteen percent (18%) per annum plus a late charge in an amount determined by the Board. The Association shall be entitled to initiate any lawful action to collect delinquent Assessment plus any expenses or costs, including attorney's fees, and appellate attorney fees, incurred by the Association, regardless if suit is filed, 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. In connection with any effort to collect or in any action to recover an Assessment, regardless of whether litigation is initiated, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the Lot, not only the delinquent Assessments, but also all late charges imposed, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to a managing agent for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees. The Association need not accept any tender or a partial payment of an Assessment, or any installment of an Assessment, and all costs, expenses, charges and attorney fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter. In addition, the Board shall have the power to adopt by Board resolution additional rules and regulations or delinquency procedures. 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.

- g. Subordination of the Lien to Mortgages - The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien or 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 6 months prior to such sale or transfer. No sale transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.
- h. Certificates - The Association shall, at any time and for a reasonable fee of up to and including \$250.00, furnish a certificate in writing signed by an officer or managing agent of the Association stating that the Assessments on a specific Lot have been paid or that certain Assessments or other charges against said Lot have not been paid, as the case may be.
- i. Annual Budget - By majority vote of the Board of Directors, an Annual Budget shall be prepared for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations can effectively be met. The Annual Budget shall be submitted to all interested Lot Owners at least 30 days prior to the start of the fiscal year. The Annual Budget must be approved at a meeting of the Association Members by a majority ( $\frac{2}{3}$ ) of the members of the Association in attendance at a meeting called and conducted in accordance with the Association's governing documents.

The Annual Budget must reflect:

1. The estimated revenues and expenses for the budget year; and
2. The estimated surplus or deficit as of the end of the current budget year.

The Association shall provide each member with:

1. A copy of the proposed Annual Budget; or
2. A written notice that a copy of the proposed Annual Budget is available upon request at no charge to the member; and
3. A written notice of the amount of any increase or decrease in a regular Annual Assessment

paid by the members that would occur if the proposed Annual Budget is approved; before the annual meeting.

- j. Suspension of Privileges of Membership - Notwithstanding any other provision 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 together with the right to use the facilities of the Association, of any member:
- 1 For any period during which any of the Association's charges or any fines/fees assessed under these Restrictions owed by the member remains unpaid for a period of over six (6) months, unless a shorter period of time is allowed under Indiana law
  - 2 During the period of any continuing violation of the restrictive covenants for Crosswind Commons, after the existence of the violation shall have been declared by the Board of Directors of the Association.
  - 3 During the period of any violation of the Articles of Incorporation, By-Laws, or regulations of the Association.

## 12. REMEDIES

- a. In General The Association or any party to whose benefit these Restrictions inure, including the Declarant, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to force compliance with these Restrictions and Covenants, together with the right to collect costs and reasonable attorney fees, and the Association shall not be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any of these Restrictions.
- b. First Notice of Violation A first letter stating the violation shall be delivered to residents accused of violating the covenants. This letter may be sent by US mail, electronic, or hand delivery by an officer of the Association. This letter shall:
- 1 Serve as notice that penalties shall be levied against the member if the violation continues for 7 days after notice has been given.
  - 2 Outline the amount and severity of fines or other actions the Association will take to enforce the covenants.
- c. Second Notice of Violation The second notice shall be sent if the violation continues for 7 or more days after the first notice is sent or delivered and will impose a fine equal to 10% of the Annual Dues assessed on the member by the Association during that year.
- d. Subsequent Notice of Violations Each subsequent notice shall follow 7 or more days after the previous notice. A new fine equal to the fine assessed in the previous notice plus an amount equal to 10% of the Annual Dues of the Association shall be assessed and added to the previous fines assessed against the member.
- e. Fines Fines must be paid within 30 days or the member shall be considered to be in violation for failure to pay. If fines are unpaid for 6 months, Membership rights may be suspended, additional fines will be assessed, and other remedies may be sought until the delinquency is fulfilled.
- f. Other Remedies Other remedies including court action may be taken to force compliance if fines fail to do so. If violations continue to the point where legal action is needed either to force compliance or to collect fines, the Lot Owner in violation shall be responsible for all

court costs and attorney fees.

- g. 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 these Restrictions shall be held to be a waiver by that party (or an estoppel of that Party to assert) of any right available to him/her upon the occurrence, reoccurrence, or continuation of such violation or violations of these Restrictions.
- h. Enforcement by City of Westfield Plan Commission These Restrictions may be enforced by the City of Westfield and Hamilton County Plan Commissions, or their successors or assigns, pursuant to whatever powers or procedures are statutorily available to them for such purposes.

### **13. EFFECT ON BECOMING AN OWNER**

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

### **14. TITLES**

The titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only and none of them shall be used as an aid to the construction of any provision of the Restrictions. 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.

### **15. DURATION**

The forgoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until December 31, 2027, at which time said Covenants and Restrictions shall be automatically extended for successive periods of 5 years, unless changed in whole or in part by vote of those persons who are then the Owners of a majority ( $\frac{2}{3}$ ) of the numbered Lots in the Community.

### **16. SEVERABILITY**

If any Restriction is determined to be unenforceable in a court of law, binding arbitration, or other judicial action, the remaining restrictions and sections of this Declaration shall remain in full force and effect.

### **17. AMENDMENTS TO DECLARATION**

This Declaration may be amended or changed, in whole or in part, at any time, upon approval by the Owners of a majority ( $\frac{2}{3}$ ) of the Lots who are in Good Standing. For purposes of this provision, "Good Standing" shall mean Owners who are no more than six (6) months delinquent on the payment of any Assessments, or any installments thereof, as determined by the Board at the time of the aforesaid approval. All Owners in good standing must be given the opportunity to vote on the

proposed amendment(s). Such approval for an amendment to this Declaration may be obtained:

- a. At a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws; or
- b. By written consent or approval received from the Owners; or
- c. Pursuant to any other procedure recognized under Indiana law, including those recognized under the Indiana Nonprofit Corporations Act of 1991, as amended, but not limited to, written mail-in or electronic ballots; or
- d. Any combination of the above.

The President and Secretary of the Association shall execute the amendment, certifying that the Owners of a majority ( $\frac{2}{3}$ ) of the Lots who are in good standing approved such amendment. Thereafter, the amendment shall become effective upon its filing with the Hamilton County Recorder.

## **18. NON-LIABILITY OF ASSOCIATION**

The Association shall not have any liability to a Lot 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 (to be) 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 that the Lot purchaser (Owner) has inspected the Lot, soils, compaction, drainage, manhole covers, swales, easements, utility placements, Lot lines and setbacks and accepts the Lot "as is" and agrees to indemnify and hold the Association free and harmless from and against any liability arising from or related to, or in connection with the Lot described in such deed. The Association shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by the Association and no duty of, or warranty by, the Association shall be implied by or inferred from any term or provision of this Declaration. Further, the Association makes no warranties or guarantees of any kind concerning any matters related to the pond. Lot purchasers should obtain professional construction advice and inspections of the Lot, land, soil, compaction integrity, drainage availability, pond uses, deep safety issues of purchasing and owning a Lot in Crosswind Commons with a deep pond, prior to signing a contract to purchase a Lot(s) and become an Owner.

## **19. ROADS**

All roads shown on the plat not heretofore dedicated are hereby dedicated to the public.

## EXHIBIT A - LEGAL LAND DESCRIPTION

### LAND DESCRIPTION - SECTION 1 CROSSWIND COMMONS

A Part of the Southeast Quarter of the Southeast Quarter of Section 10, Township 18 North, Range 3 East, located in Washington Township, Hamilton County, Indiana, being described as follows:

Commencing at the aluminum plug at the southeast corner of the Southeast Quarter of Section 10, Township 16 North, Range 3 East; thence South 89 degrees 15 minutes 36 seconds West (assumed bearing) 209.00 feet on and along the south line of said Southeast Quarter to a PK nail at the POINT OF BEGINNING of this description; thence South 89 degrees 15 minutes 36 seconds West 398.32 feet on and along said south line; thence North 00 degrees 48 minutes 05 seconds West 239.93 feet; thence South 89 degrees 11 minutes 55 seconds West 5.60 feet; thence North 00 degrees 48 minutes 05 seconds West 150.00 feet; thence South 89 degrees 11 minutes 55 seconds West 350.50 feet; thence North 00 degrees 48 minutes 05 seconds West 780.00 feet; thence North 89 degrees 11 minutes 55 seconds East 10.80 feet; thence North 00 degrees 48 minutes 05 seconds West 142.34 feet, to a point on the north line of the Southeast Quarter of said Southeast Quarter; thence North 89 degrees 09 minutes 06 seconds East 560.99 feet, more or less, on and along said north line to a point that is South 89 degrees 09 minutes 06 seconds West 410.00 feet from the northeast corner of the Southeast Quarter of said Southeast Quarter; thence South 00 degrees 00 minutes 00 seconds 461.52 feet parallel with the east line of said Southeast Quarter; thence North 89 degrees 09 minutes 06 seconds East 387.39 feet, parallel with the north line of the Southeast Quarter of Southeast Quarter Section; thence North 00 degrees 02 minutes 16 seconds East, 37.13 feet; thence North 06 degrees 55 minutes 30 seconds East, 104.85 feet; thence North 90 degrees 00 minutes 00 seconds East, 9.94 feet to a point on the East line of said Southeast Quarter; thence South 00 degrees 00 minutes 00 seconds, 522.95 feet more or less to a PK nail, said PK nail being North 00 degrees 00 minutes 00 seconds -4-70.25 feet from the southeast corner of said Southeast Quarter; thence South 69 degrees 15 minutes 36 seconds West 209.00 feet parallel with the south line of said Southeast Quarter Section; Thence South 00 Degrees 00 minutes 00 seconds 470.25 feet to the POINT OF BEGINNING. Containing 19.58 acres, more or less and being subject to all applicable easements and rights-of-way of record.

### LAND DESCRIPTION - SECTION 2 CROSSWIND COMMONS

A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 18 NORTH, RANGE 3 EAST LOCATED IN WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE ALUMINUM PLUG AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 18 NORTH, RANGE 3 EAST: THENCE SOUTH 89 DEGREES 15 MINUTES 36 SECONDS WEST (ASSUMED BEARING) 607.32 FEET ON AND ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER TO A PK NAIL AT THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 00 DEGREES 48 MINUTES 05 SECONDS WEST 239.93 FEET; THENCE SOUTH 89 DEGREES 11 MINUTES 55 SECONDS WEST 5.60 FEET; THENCE NORTH 00 DEGREES 48 MINUTES 05 SECONDS WEST 150.00 FEET; THENCE SOUTH 89 DEGREES 11 MINUTES 55 SECONDS WEST 350.50 FEET; THENCE NORTH 00 DEGREES 48 MINUTES 05 SECONDS WEST 780.00 FEET; THENCE NORTH 89 DEGREES 11 MINUTES 55 SECONDS EAST 10.80 FEET; THENCE NORTH 00 DEGREES 48 MINUTES 05 SECONDS WEST 142.34 FEET. MORE OR LESS, TO A POINT ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89 DEGREES 09 MINUTES 06 SECONDS WEST 326.50 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER; THENCE SOUTH 00 DEGREES 11 MINUTES 54 SECONDS EAST 1311.35 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SOUTHEAST QUARTER; THENCE NORTH 89 DEGREES 15 MINUTES 36 SECONDS EAST **685.61** FEET TO THE POINT OF BEGINNING. CONTAINING 12.92 ACRES, MORE OR LESS AND BEING SUBJECT TO ALL APPLICABLE EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

**EXHIBIT B - COMMON AREA**

