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# **DECLARATION OF RESTRICTIVE COVENANTS FOR THE BUSINESS PARK IN THE LAKES OF VALPARAISO**

**Valparaiso, Indiana**

**PUD Ordinance Adopted by the Common Council  
for the City of Valparaiso  
on February 24, 2014  
and known as  
Ordinance No. 8, 2014**

Developed by:

SJBZ Holdings, LLC



**DECLARATION OF RESTRICTIVE COVENANTS  
FOR THE BUSINESS PARK  
IN THE LAKES OF VALPARAISO**

Valparaiso, Indiana

This Declaration is made this 17<sup>th</sup> day of December, 2015, by **SJBZ PORTER HOLDINGS, LLC**, an Indiana limited liability company (hereinafter referred to as "SJBZ"), as the owner of record of that certain tract of real property subject to this Declaration and more particularly described in Article I herein (hereinafter referred to as the "Business Park in the Lakes of Valparaiso").

**WHEREAS**, SJBZ desires to subject the Business Park in the Lakes of Valparaiso to the covenants, conditions and restrictions hereinafter set forth for the benefit of such real estate and each present and future owner thereof, all of which shall be deemed to run with the land and each and every lot, parcel or tract thereof.

**NOW, THEREFORE**, SJBZ declares that the Business Park in the Lakes of Valparaiso is and shall be held, transferred, sold, conveyed, leased, and occupied subject to the covenants, conditions and restrictions hereinafter set forth for the mutual benefit of the real estate and under a general plan and scheme of development and improvement of the Business Park in the Lakes of Valparaiso.

**ARTICLE I**

**PROPERTY SUBJECT TO THIS DECLARATION;  
ADDITIONS THERETO, DELETIONS THEREFROM**

Section 1.1. Legal Description. The real property which is and shall be held, transferred, sold, conveyed, leased and occupied, subject to this Declaration, is located in the City of Valparaiso, County of Porter, State of Indiana, and comprises all of the Lots, tracts and easements shown and/or platted within or upon the property legally described as follows:

A part of the Southeast Quarter of Section 17, Township 35 North, Range 5 West, Washington Township, Porter County, Indiana, being more particularly described as follows:

*Plat 54-D-2*

Commencing at the Northeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 17-35-5; thence North 89°25'47" West along the North line of said Northwest Quarter-Quarter 668.63 feet to the northeast corner of right-of-way dedicated for Memorial Parkway as shown on the Secondary Development Plan for the Lakes of Valparaiso Planned Unit Development as recorded as Document 2015-005420 in the Porter

County Recorder's Office; thence South  $00^{\circ}18'36''$  West 50.00 feet to the Point of Beginning of the herein-described tract;

thence continuing South  $00^{\circ}18'36''$  West, 1280.78 feet to the southwest corner of land conveyed to Randall Trenchard as recorded in Deed Record 447 Page 507 in said Recorder's Office; thence South  $89^{\circ}31'15''$  East along the south line of said Trenchard land, 613.96 feet to the west right-of-way line of Bartz Road;

thence South  $00^{\circ}30'40''$  West along said west right-of-way line, 921.65 feet to the north line of Outlot 5 as shown said Secondary Development Plan; thence along the perimeter of said Outlot 5 the following 3 courses:

1. North  $89^{\circ}29'20''$  West, 280.44 feet to a non-tangent curve to the right, having a radius of 230.00 feet and a central angle of  $021^{\circ}27'46''$ ;
2. Southwesterly along said curve an arc distance of 86.16 feet (said arc being subtended by a chord having a bearing of South  $28^{\circ}34'05''$  West and a length of 85.65 feet);
3. South  $39^{\circ}18'21''$  West, 205.07 feet to the east right-of-way line of Memorial Parkway as shown on said Secondary Development Plan;

thence along the perimeter of said east right-of-way line the following 5 courses:

1. North  $50^{\circ}39'07''$  West, 60.00 feet;
2. South  $39^{\circ}18'21''$  West, 5.72 feet to the point of curvature of a curve to the right, having a radius of 10.00 feet and central angle of  $085^{\circ}56'25''$ ;
3. westerly along said curve an arc distance of 15.00 feet;
4. North  $54^{\circ}45'15''$  West, 321.19 feet to the point of curvature of a curve to the right, having a radius of 450.00 feet and central angle of  $011^{\circ}29'33''$ ;
5. northwesterly along said curve an arc distance of 90.26 feet to the north line of Outlot 3 of said Secondary Development Plan as extended easterly;

thence along the north line of said Outlot 3 the following 4 courses:

1. South  $50^{\circ}33'39''$  West, 316.16 feet to a non-tangent curve to the right, having a radius of 330.00 feet and a central angle of  $088^{\circ}27'35''$ ;
2. southwesterly along said curve an arc distance of 509.49;
3. South  $49^{\circ}01'14''$  West, 76.55 feet;
4. North  $89^{\circ}39'48''$  West, 324.23 feet to the east right-of-way of State Road 49 as described in Deed Record 475, Page 524 in said Recorder's Office;

thence along said east right of way the following 6 courses:

1. North 05°07'58" East, 512.11 feet;
2. North 04°12'50" West, 711.50 feet crossing into land conveyed to the State of Indiana by Document Number 2000-001841;
3. North 11°00'23" East, 278.77 feet;
4. North 34°10'46" East, 216.80 feet;
5. North 42°39'55" East, 292.65 feet;
6. North 06°17'34" East, 348.78 feet to the southwest corner of land conveyed to the State of Indiana as recorded in Deed Record 475, Page 395 as recorded in said Recorder's Office;

thence along the perimeter of said State of Indiana land the following 2 courses:

1. South 89°34'20" East, 214.53 feet;
2. North 00°25'40" East, 108.75 feet to the south right-way of Vale Park Road;

thence south along the right-way the following 3 courses:

1. North 86°27'46" East, 401.17 feet;
2. North 68°46'23" East, 28.99 feet;
3. South 89°17'02" East, 283.44 feet to the Point of Beginning,

Excepting therefrom the right-of-way dedicated for Memorial Parkway.

Containing after said exception 72.19 acres, more or less.

hereinafter sometimes referred to as "Business Park in the Lakes of Valparaiso". Said real estate includes the portions of the real estate described as "Business Phase and Commercial Phase" in the PUD Ordinance adopted by the common Council for the City of Valparaiso on February 24, 2014 and known as Ordinance No. 8,2014.

Section 1.2. Platting and Restrictions. SJBZ shall be entitled at any time and from time to time, to plat, replat or vacate existing plattage of all or any part of the real estate subjected to this Declaration, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion, or portions of, or additions to the Development.

Section 1.3. Additional Real Estate. SJBZ may, but shall have no obligation to, add at any time or from time to time to the real estate covered by this Declaration additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration shall be contiguous to property then subject to the scheme of this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted as any use permitted by the City of Valparaiso (or any other unit of government having jurisdiction) of the real estate so added, (c) said plat

of added real estate shall dedicate, or commit to dedicate, the real estate intended to benefit the public or more than one Owner within the plat, and (d) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association for their prorata share of the Association expenses. The addition at any time or from time to time of any portion or portions of the real estate to the real estate covered by this Declaration shall be made and evidenced by filing in the Office of the Recorder of Porter County, Indiana, a supplementary Declaration with respect to that portion of real estate to be added. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any Owner and/or Mortgagee of land in The Lakes of Valparaiso.

Section 1.4. Retractable Real Estate. At the sole election of SJBZ, all of the real estate specifically described in Section 1.1 of this Article and subject to this Declaration may be withdrawn from submission hereunder at one time or portions thereof at different times; provided, however, that no real estate may be withdrawn on which the public improvements have been completed. All Owners, mortgagees and the Association are hereby deemed to consent to the vacation, and waive all right to remonstrate thereto, of any portion of the plat of The Lakes of Valparaiso on which the public improvements have been completed and which SJBZ chooses to withdraw from this Declaration.

## **ARTICLE II**

### **PURPOSE OF THIS DECLARATION**

Section 2.1. General Purpose. The Business Park in the Lakes of Valparaiso is hereby subjected to the covenants, conditions and restrictions herein declared as applicable to the Business Park in the Lakes of Valparaiso, all of which shall be deemed to run with the subject property, and each and every parcel thereof, to provide for the proper use and appropriate development and improvement of the Business Park in the Lakes of Valparaiso so as to:

- (a) Protect the Owners and Occupants of buildings, structures and Improvements located in the Business Park in the Lakes of Valparaiso against improper development and use of surrounding real estate;
- (b) Prevent the erection or construction of Improvements with improper or unsuitable materials or improper quality;
- (c) Ensure adequate and reasonably consistent development of the Lots within the Business Park in the Lakes of Valparaiso;

- (d) Encourage and ensure the erection of attractively designed permanent Improvements appropriately located within the Business Park in the Lakes of Valparaiso in order to achieve harmonious appearances and function;
- (e) Provide for the maintenance, repair and reconstruction of the detention area easements;
- (f) Provide for the maintenance, repair and replanting of wetland areas;
- (g) Provide for the maintenance, repair and reconstruction of the bicycle paths to the extent that the same is not performed by one or more governmental agencies; and
- (h) Provide for repair and maintenance of one or more signs located within the Business Park in the Lakes of Valparaiso.

Section 2.2. Local Ordinances. These protective covenants are further intended to complement all applicable governmental regulations, and where conflicts occur, the most strict or rigid requirements shall be applied. Specifically the Business Park in the Lakes of Valparaiso is subject to and governed by that PUD Ordinance No. 8,2014. Notwithstanding the foregoing, nothing contained in this Declaration shall be construed in any way so as to restrict or affect the power and authority of the City of Valparaiso, or any other applicable governmental authority to review the plans and specifications for all proposed Improvements to ensure compliance with all applicable governmental regulations regarding the issuance of building permits or any other applicable permits required in connection with such improvements.

### **ARTICLE III**

#### **DEFINITIONS**

For the purpose of this Declaration, the following terms shall have the following meanings:

Section 3.1. "Association" shall mean The Business Park in the Lakes of Valparaiso Association, Inc., an Indiana not-for-profit corporation.

Section 3.2. "Board" shall mean the Board of Directors of the Association.

Section 3.3. "Business Park in the Lakes of Valparaiso" shall mean the real estate described in Article I herein.

Section 3.4. "Committee" shall mean The Business Park in the Lakes of Valparaiso Architectural Control Committee described in Article X hereof, which Article provides in part, that the Developer will function as the Committee for the period of time outlined therein.

Section 3.5. "Declaration" shall mean the restrictive covenants for the Business Park in the Lakes of Valparaiso.

Section 3.6. "Detention Area Easement" shall mean the storm water detention and drainage easement areas (including flowage easements) depicted on any Subdivision Plat hereto or hereafter recorded in the Office of the Recorder of Porter County, Indiana covering any of the real estate described in Section 1.1.

Section 3.7. "Developer" shall mean Donald J. Weiss, Manager of SJBZ or any successor manager of SJBZ.

Section 3.8. "Improvements" shall mean and include buildings, outbuildings, roads, driveways, pedestrian walkways, parking area, outdoor lighting, fences, screening walls and barriers, retaining walls, stairs, decks, windbreaks, hedges, lawns, private sidewalks, planted trees and shrubs, plantings, poles, signs, loading areas and all other structures or landscaping improvements of every type and kind although not specifically enumerated.

Section 3.9. "Lot" shall mean a portion of the Business Park in the Lakes of Valparaiso, usually a subdivided lot of record, used for or intended to be used for the construction of structures which have frontage upon a street. For the purpose of this Declaration, however, a "Lot" is not required to coincide with a lot of record.

Section 3.10. "Lot Area" shall mean the gross area, in acres of a subdivided lot, including public utility, drainage and access easements and Detention Area Easements and excluding public street right-of-ways as shown on or determined from the Subdivision Plat presently recorded or hereafter recorded regarding the Business Park in the Lakes of Valparaiso or any additional property hereinafter made subject to this Declaration.

Section 3.11. "Mortgage" shall mean either a mortgage or deed of trust creating a lien against a portion of the Business Park in the Lakes of Valparaiso given to secure an obligation of the owner of such portion of the Business Park in the Lakes of Valparaiso.

Section 3.12. "Nuisance" shall include without limitation, any material violation or breach of the performance standards of PUD Ordinance No. 8,2014.

Section 3.13. "Occupant" shall mean any firm, corporation, partnership, natural person or legal entity, public or private, legally entitled to occupy or use any part or portions of a Lot.

Section 3.14. "Owner" shall mean the record owner (or the beneficiaries of a land trust which may be a record owner), of fee simple title to any Lot whether one or more Persons or entities.

Section 3.15. "Person" shall mean any natural individual, corporation, partnership, trustee, or any other legal entity capable of holding title to real property.

Section 3.16. "PUD Ordinance No 8,2014" shall mean the PUD Ordinance adopted by the Common Council for the City of Valparaiso on February 24, 2014 and known as Ordinance No. 8,2014.

Section 3.17. "Signs" shall mean the sign(s) which may be erected by Developer or the Association pursuant to this Declaration.

## **ARTICLE IV**

### **GENERAL RESTRICTIONS**

Section 4.1. Equipment Loading and Unloading. All equipment used in clearing, excavating or construction on a Lot that is not rubber-tired shall be loaded or unloaded only within the boundary lines of the Lot. During clearing, excavating or construction, the Owner of the Lot on which the work is performed shall cause the roads and sidewalks within or bordering on the Business Park in the Lakes of Valparaiso to be kept clear of dirt and debris caused by such clearing, excavating or construction and shall be responsible for any damage to such roads and sidewalks.

Section 4.2. Temporary Structures Prohibited. No trailer, temporary building or structure of any kind shall be permitted except during construction of a permanent Improvement. Such trailer, temporary building or structure shall be removed as promptly as practicable and in any event not later than thirty (30) days after the issuance by the City of Valparaiso of any occupancy permit for such permanent Improvement.

Section 4.3. Pollution and Nuisances. No Owner shall cause or allow any activity which shall cause air, water, soil or noise pollution which would violate any applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Business Park in the Lakes of Valparaiso. Without limiting the generality of the foregoing, no Owner shall willingly or knowingly drain dump any refuse, sewage or other materials into any detention facility located in the Business Park in the Lakes of Valparaiso.

Section 4.4. Association Performance. If any Owner shall fail to perform any obligations created under these Declarations including, but not limited to, maintenance, landscaping, or lawn care, the Association may give written notice to the Owner specifying the manner in which the Owner has failed to so perform. If Owner has not corrected such failure within a fifteen (15) day period or has not commenced the correction of such failure within such period and thereafter diligently completed the same, the Association may enter

upon the Lot and perform such work. Provided, however, if an Owner disputes a determination by the Association that the Owner has failed to perform any such Obligation the Owner may request a review by the Committee to make a factual determination.

The cost of any work shall be assessed against and paid by the Owner within thirty (30) days of the date of rendering a statement therefore which statement shall specify the details of the work performed by the Association and the costs thereof. Such statements may include, at the Association's option, a charge of ten percent (10%) of the direct costs thereof to help defray the Association's administrative expenses connected with performing such work. The provisions of Article XIV shall apply to the aforesaid assessment.

SJBZ, the Association, Committee, or the Developer by:

- (a) making any determination of an unmet obligation or nuisance by an Owner or a review of the same; or
- (b) the performing of any work on any Lot

shall not be liable or responsible to the Owner or Person for any losses or damage thereby sustained by the Owner, person or anyone claiming by or under the Owner or Person, except for gross negligence or wanton and willful conduct.

## ARTICLE V

### NUISANCES AND PROHIBITED USES

Section 5.1. In General. Each Lot or parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, (including PUD Ordinance No. 8,2014), codes and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Lot which is illegal or unreasonably interferes the use or enjoyment of other Owners or Occupants.

Section 5.2. Specific Prohibited Uses. Throughout the term of this Declaration, it is expressly agreed that none of the following uses or operations shall be permitted on any Lot unless approved in writing by the Developer:

- (i) Any use which results in or produces an obnoxious order or noise or sound which is reasonably objectionable and constitutes a public or private nuisance;
- (ii) Any heavy industrial use;

- (iii) Any mobile home, trailer court, labor camp, junkyard, or animal raising establishment (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction);
- (iv) Any dumping, disposing, incineration or reduction of garbage;
- (v) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (vi) Any dry cleaning plant;
- (vii) Any amusement gallery, night club, game arcade, game room, billiard or pool room, dance hall, or discotheque;
- (viii) Any tattoo parlor;
- (ix) Any pawn shop;
- (x) Any adult book store, adult theater, adult amusement facility, or any facility displaying pornographic materials;
- (xi) Any other use which may adversely affect the reputation of the Business Park in the Lakes of Valparaiso;
- (xii) Any use which has the potential or results in an increase in the insurance premiums for personal injury, property casualty or liability coverage for any other Owner in the Business Park; and
- (xiii) Any use which creates a nuisance.

## ARTICLE VI

### DEVELOPMENT STANDARDS

Section 6.1. Compliance. No building or other structure shall be constructed, enlarged, altered or maintained on a Lot except in compliance with this Declaration, covenants and restrictions of record and with all laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the real estate included in the Business Park in the Lakes of Valparaiso subject to any more detailed or extension requirements set forth herein. Owner shall not apply for a variance, deviation, modification of or exemption from any law, rule or regulation applicable to the operation, use, development, construction or maintenance of the Lot, including zoning and building laws, including but not limited to the PUD Ordinance No. 8,2014 without Committee's prior written consent.

Section 6.2. Landscaping. Each Owner shall provide landscaped areas on the Lot as approved by the Committee under Article IX herein and as required by the terms of PUD Ordinance No. 8,2014 for all areas not improved with structures, buildings or pavement. Owner of vacant lots shall establish and maintain a vegetative cover over the Lot within three (3) months after the date of the instrument granting title to Owner. The Committee may extend said three (3) month period during the period of actual building construction or for other good cause shown. Improved Lots shall install all landscaping and required plantings within the time provided by PUD Ordinance No. 8,2014, but in no event longer than the time approved by the Committee.

Section 6.3. Compliance with Soil Erosion Control Plan.

A. SJBZ has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-off Associated with Construction Activity. Each Owner shall undertake all erosion control measures contained therein as the plan applies to "land disturbing activity" initiated by Owner or Owner's builders, contractors and their subcontractors and to comply with the general permit under Rule 5 as well as all other applicable state, county or local erosion control, rules, regulations, ordinances, or statutes currently in force and/or in existence at the time of the construction activity.

B. Owner shall indemnify and hold SJBZ and Developer harmless from and against all liability, damage, loss, claims, demands, and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Owner, Owner's employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by SJBZ and all other applicable state, county, or local erosion control rules, regulations, ordinances, or statutes currently in force and/or in existence at the time of the construction activity.

Section 6.4. Delineation of Wetlands and Restricted Use. There are designated on the recorded Subdivision Plat Open Space areas in which wetlands may have been delineated. No Owner within the Business Park in the Lakes of Valparaiso may alter, remove, or replace or in any manner affect the vegetation and/or other materials within the designated wetlands unless authorized by the Committee and permitted by law. No Owner may engage in any filling, dredging, or other altering, modification or development of the vegetation, soils, and hydrology of the wetland areas shall be undertaken except as necessary for normal detention basin maintenance. All maintenance work will be carried out in such a fashion to minimize wetland damage or alteration.

**ARTICLE VII**

**DETENTION AREA EASEMENTS, PONDS, AND WETLAND AREAS**

Section 7.1. Easement Established. The Association shall maintain the Detention Area Easements not included within the boundaries of any Lot, Ponds, and Wetland Areas.

The Owner, its heirs, successors and assigns shall not modify the grades or slopes of the Detention Area Easements, Ponds, and Wetland Areas or any other surface water runoff or flow pattern or perform any activities in the Wetland Areas without the prior written consent of both the City of Valparaiso, its successors and assigns and the Association.

Section 7.2. Title to Detention Area Easements, Ponds and Wetland Areas. On or before conveyance by SJBZ of the last Lot which SJBZ owns in the Business Park in the Lakes of Valparaiso, SJBZ shall convey the Detention Area, Ponds and Wetland Areas to the Association subject to taxes for the year of conveyance and to restrictions, conditions, limitations, reservations and easements of record.

Section 7.3. Owner's Easements of Enjoyment. Every Owner of a Lot shall have a non-exclusive common right and easement of enjoyment in and to the Detention Area Easements, Ponds, and Wetland Areas which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

- (a) The right of SJBZ and/or the Association to take such steps as reasonably necessary to protect the above-described properties against foreclosure;
- (b) All provisions of this Declaration, any plat of all or any part or parts of the Business Park in the Lakes of Valparaiso, and the Articles and By-Laws of the Association;
- (c) Rules and Regulations governing the use and enjoyment of the Detention Area, Ponds and Wetland Areas adopted by the Association;
- (d) Restrictions contained in any and all recorded subdivision plats or PUD Ordinance No. 8,2014 covering all or any part of the Detention Area, Ponds and/or Wetland Areas or filed separately with respect to all or any part or parts of the Business Park in the Lakes of Valparaiso;
- (e) Easements for installation and maintenance of utilities and drainage facilities as shown on the recorded plat of the subdivision or by separate document created by SBJZ and/or the Developer. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, impede, or change the direction of flow of drainage facilities in the easements. The easement areas shown on each Lot and all Improvements thereon shall be continuously maintained by the Owner of such Lot, except for Improvements for maintenance of which a public authority or utility company is responsible. No Owner shall build, erect or maintain a structure of any kind on any such easement, reservation or right-of-way, and such easements, reservations and rights-of-way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall

also be open and accessible to SJBZ, Developer, and/or Association to use and enjoy the easements, reservations and right of ways located on any Lot including but not limited to utilization of said easements, reservations and right of way for the benefit of additional real estate contiguous to the Business Park owned or later acquired by SJBZ.

Section 7.4. Public Rights. In the event the Association, its successors or assigns shall fail to properly maintain the Detention Area Easements (or SJBZ if SJBZ has not conveyed the Detention Area Easement to the Association), the City of Valparaiso, its successors and assigns may, upon fifteen (15) days prior written notice, have the right to enter upon the Detention Area Easements to perform, or have performed on the City of Valparaiso's behalf, any maintenance work to or upon the easement reasonably necessary to ensure adequate storm water storage and flow of storm water through the Detention Area Easements serving the Business Park in the Lakes of Valparaiso. Maintenance work to or upon the Detention Area Easements shall not include the destruction of native plantings. In the event of an emergency, the City may immediately enter upon the Detention Area Easements and give the Association timely notice as soon as practicable thereafter. The City of Valparaiso shall have a right to be reimbursed from the Association the cost of such work. Nothing in this Declaration shall prohibit the City from establishing the Business Park in the Lakes of Valparaiso, or any part thereof, as an allocation area (tax increment financing district), economic revitalization area, improvement district or any other special district for special tax treatment.

Section 7.5. Right of Entry. SJBZ, Developer and the Association, through their duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot or tract of real estate at any reasonable hour on any day to perform such maintenance as may be authorized herein including without limitation, altering or changing Detention Area Easements.

Section 7.6. No Partition. There shall be no judicial partition of the Detention Area Easements, nor shall any Owner or any other Person acquiring any interest in the Business Park in the Lakes of Valparaiso, or any part thereof, seek judicial partition thereof of the Detention Area Easements. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co-tenancy.

## **ARTICLE VIII**

### **DEVELOPMENT SIGNAGE**

Section 8.1. Location. The Association hereby reserves the right to cause signs to be erected in the Business Park in the Lakes of Valparaiso which shall bear the name and legend of the Business Park in the Lakes of Valparaiso. The Association is hereby granted appropriate easement rights, as determined by the Association, to enter upon that portion of said Lots where the signs are or to be erected for the purpose of constructing,

repairing and maintaining said signs. Signs shall not be located within any public right-of-way.

Section 8.2. Maintenance. The Association shall be responsible for the cost to repair and maintain the signs, including electric use, licenses and any other cost or expenses associated with the signs.

## ARTICLE IX

### LANDSCAPING – EXISTING TREE REMOVAL REQUIREMENTS

Section 9.1. Landscape Plan. All landscaping shall conform to PUD Ordinance No. 8,2014. In addition to compliance with said Ordinance, every Lot on which a building is constructed in the Business Park in the Lakes of Valparaiso shall be landscaped by the Owner in accordance with a landscaping plan (“Landscape Plan”) reviewed and approved in writing by the Committee.

Section 9.2. Installation. Landscaping in accordance with an approved Landscaping Plan shall be installed in a timely manner and in compliance with PUD Ordinance No. 8,2014. Landscape Plans shall be prepared and certified by a landscape architect registered in the State of Indiana.

Section 9.3. Removal of Existing Tree Requirements. Owner acknowledges that the removal of any tree in excess of three inches (3") in diameter shall require the approval of the Committee prior to removal. Owner shall take all reasonable steps necessary in the development of its Lot to minimize the number of trees in excess of three inches (3") diameter proposed to be removed.

## ARTICLE X

### BUSINESS PARK IN THE LAKES OF VALPARAISO ARCHITECTURAL CONTROL COMMITTEE

Section 10.1. Power of Business Park in the Lakes of Valparaiso Architectural Control Committee. There is hereby created a Committee for the purpose of architectural and engineering control to secure and maintain an attractive and harmonious commercial development. If the City of Valparaiso modifies its current Unified Development Ordinance last revised April 26, 2010, the Committee in its discretion may enforce the terms of the existing Unified Development Ordinance last revised April 26, 2010 if the requirements of that Ordinance are more restrictive than the revised version. Developer shall function as the Committee and grant all approvals and variances provided for herein until SJBZ conveys legal title to the last Lot or parcel of real estate which SJBZ owns in the Business Park as reflected in the records of the Auditor of Porter County, Indiana, except that Developer may elect to delegate and assign such duties and responsibilities to the Committee prior to that time. Developer upon such delegation or assignment shall appoint

the Committee which need not be made up of Owners within the Association after Developer elects to delegate and assign such duties and responsibilities to the Committee. After SJBZ conveys legal title to the last Lot or parcel of real estate which SJBZ owns within the Business Park in the Lakes of Valparaiso as reflected in the records of the Auditor of Porter County, Indiana, the control of the Committee shall be transferred over to the Association. After Developer elects to delegate and assign such duties and responsibilities to the Committee, a vote of the majority of the three-member Committee shall be required to constitute the decision of the Committee. The Owner shall request architectural review in writing, and shall furnish sufficient copies of each of the following:

1. Proposed uses of the Lot and buildings.
2. The lot site plan, prepared by an architect, professional engineer or land surveyor, licensed or registered in the State of Indiana, showing:
  - (a) the location and dimensions of all buildings and structures;
  - (b) curb cuts;
  - (c) driveways;
  - (d) parking areas including number and size of parking spaces;
  - (e) loading and storage facilities and areas;
  - (f) means of ingress, egress, curb cuts and pedestrian walkways; and
  - (g) grading and drainage plans.
3. The Landscape Plan, prepared by a landscape architect registered in the State of Indiana, in accordance with the Landscape Plan guidelines as set forth in PUD Ordinance No. 8,2014 and the provision of Article IX entitled "Landscaping—Existing Tree Removal Requirements" of this Declaration showing:
  - (a) the size, location, type and species of all ground cover and plantings; and
  - (b) any underground lawn sprinkling system.
4. Drawings and specifications of all exterior building surfaces, showing elevations and including the color, quality and type of exterior construction materials.

5. Outdoor lighting plan showing the type, style, size, color and candlepower of all outdoor light fixtures and poles. An illumination plan or photometric plan shall be included showing foot candle levels over the entire site.
6. Size, design and location of signage in compliance with PUD Ordinance No. 8,2014 and this Declaration.
7. Any additional information reasonably required for, or requested by the Committee which shall enable the Committee to determine the location, character, design, use, scale and appearance of the proposed Improvements.

Changes in approved plans and specifications, or subsequent alterations, additions and changes to any existing improvements that affects building size, placement or external appearance must be similarly submitted to and approved by the Committee.

Section 10.2. Approval or Disapproval of Site Review. The Committee shall disapprove preliminary concepts or plans and specifications submitted to it in the event the same are not in accordance with this Declaration and/or PUD Ordinance No. 8,2014 or if the concept or final plans and specifications submitted are incomplete, and shall specify the reason for such disapproval. The Committee shall consider any request which is submitted in accordance with the terms hereof on the basis of its conformity and harmony of external design and location in relation to surrounding structures, relation of topography, grade and finish ground elevation of the Lot being improved to that of neighboring sites, proper facing of elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning and rooftop installations, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Committee shall, within thirty (30) days after the submission of such complete plans and specifications approve or disapprove any such request in writing. In the event such plans and specifications are disapproved, the Committee shall specify the reasons therefore. If the Committee fails to so approve or disapprove such request within forty-five (45) days after such plans and specifications are submitted, such request shall be deemed approved. The decision of the Committee shall be final, but the Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

Section 10.3. Variances by Committee. The Committee, by the written consent of two-thirds of the members thereof, or by the decision of Developer, as the case may be, is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that said variances shall not materially injure any of the Business Park in the Lakes of Valparaiso or Improvements within the Business Park in the Lakes of Valparaiso and shall otherwise be subject to all applicable laws, ordinances, rules and regulations of any governmental agency or political subdivision having jurisdiction over the Business Park in the Lakes of Valparaiso. No variance granted pursuant to the authority

granted herein shall constitute a waiver of any provision of this Declaration as applied to any other person, Owner or Lot.

Section 10.4. Liability of Parties. Neither SJBZ, the Committee, the Association, the Developer nor any member, employee, or agent thereof, shall be liable to any Owner, to anyone submitting plans for approval, or to any other person, by reason of good faith exercise of judgment or mistake or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications or for any other action in connection with its or their duties hereunder. No member shall receive any compensation for serving on the Committee.

Section 10.5. Inspection. The Committee may inspect work being performed with its permission to assure compliance with this Declaration, PUD Ordinance No. 8,2014, and applicable laws and regulations.

Section 10.6. Construction Regulations .

A. All construction on the Lot shall be performed in accordance with the rules and regulations governing the Business Park in the Lakes of Valparaiso, established and modified from time to time by Association consistent with good and reasonable construction practices, to protect the Business Park in the Lakes of Valparaiso against damage, liens, labor disputes and unreasonable interference with operations. Association shall have the right to enforce all such rules and regulations against Owner and otherwise cause Owner to cease any activities which may damage the Business Park in the Lakes of Valparaiso, result in liens against or labor disputes affecting the Business Park in the Lakes of Valparaiso or unreasonably interfere with the operations of the Business Park in the Lakes of Valparaiso.

B. Owner shall indemnify, defend and hold SJBZ, the Committee, the Association, the Developer, and their respective members, partners, officers, directors and agents harmless from and against any and all losses, costs, damages, liens, claims, and expenses, including without limitation, damage to persons or property, reasonable attorneys' fees and court costs, and mechanics' liens, which may arise from or in connection with any construction (whether such construction is in progress or already completed) on or about the Lot by Owner or by any contractor, subcontractor or employee or other agent working on behalf of the Owner.

C. All costs and expenses relating to the construction and development of the Lot shall be the responsibility solely of Owner, including without limitation, all costs associated with construction and installation of any building, utilities (except as otherwise expressly provided herein) and other improvements on or serving the Lot.

D. All construction on the Lot shall be performed in a good and workmanlike manner, in compliance with the plans and specifications approved by Committee and shall

meet the requirements of all building and fire codes and other applicable laws, rules and regulations.

Section 10.7. Restrictions of Lot Signage. Without limitation of any other provision hereof and the restrictions contained in PUD Ordinance No. 8,2014, the following restrictions shall apply with respect to signage on the Lot:

A. No sign shall be permitted upon the Lot or the building situated thereon unless such sign has been first approved by the Committee as part of the approved plans and specifications, or otherwise approved by the Committee in writing, such approval not to be unreasonably withheld; and

B. No temporary sign, paper sign, flag, banner, or streamer shall be permitted upon any portion of the Lot without the express written consent of the Committee which consent shall not be unreasonably withheld. Notwithstanding the foregoing to the contrary, Owner may, upon Committee's written approval, prior to the initial opening of any business on the Lot, display such temporary signs which are professionally lettered and prepared.

## **ARTICLE XI**

### **TIME IN WHICH TO BUILD, COMMENCEMENT, AND COMPLETION OF CONSTRUCTION**

Section 11.1. Time in Which to Build Structures. An Owner of a Lot within the Business Park in the Lakes of Valparaiso must commence construction of the improvements within one (1) calendar year after the Owner's purchase of the Lot or the SJBZ's sale of said Lot if the Owner did not purchase the Lot from SJBZ directly. If construction does not begin or if a habitable structure is not completed upon a Lot within the prescribed time, SJBZ shall have the option to repurchase such Lot for a price in cash, equal to Owner's cost basis in the Lot, without paying the cost of improvements up to the time of repurchase. This option shall expire if SJBZ has not notified Owner of SJBZ's intent to exercise the option prior to the time of commencement of the construction.

Section 11.2. Construction Schedule. Owner agrees to:

- (i) complete construction of the building on the Lot and commence therein the operation no later than eighteen (18) months after the date of the issuance of the building permit (the "Construction Completion Date");
- (ii) complete the repair of all improvements damaged or destroyed by casualty or condemnation and not razed pursuant to subsection 11.3C below within a reasonable period of time (not to exceed 180 days) after such casualty or condemnation occurs; and

- (iii) complete all construction promptly, with due diligence, without interruption and with the minimal amount of interference reasonably possible to the Business Park in the Lakes of Valparaiso. In no event shall Owner intentionally delay or abandon or intentionally permit the delay or abandonment of the construction of any improvements after such construction has been commenced (intentional delay or abandonment to include delay or abandonment arising from financial difficulties), provided, however, the Owner shall be excused for failure to commence and complete the construction work required to be performed hereunder if such failure is unavoidably caused by: Acts of God or the elements; war, war defense conditions or the act of the public enemy; strikes or walkouts (but not lockouts initiated by Owner or its contractors, subcontractors or agents); or the unavailability of labor and materials (if not due to the lack of funds to purchase such labor or materials) (collectively "Force Majeure"). Owner shall use reasonable diligence to avoid any such delay and to resume construction as promptly as possible after any such delay. Any failure to comply with this Section shall be considered a default hereunder.

### Section 11.3. Certain Definitions.

A. As used in this Declaration, the term "commence construction" or "commencement of construction: shall mean the actual beginning of the physical process of such construction, including, without limitation, paving, grading, excavation, the installation of utilities or any other site work.

B. As used in this Declaration, "completion of construction" or "complete constructions" shall be deemed to have occurred on the day that Owner delivers to Committee a certificate of occupancy for the facility constructed, issued by the appropriate governmental authority and a notice of substantial completion in the form of a sworn certificate from Owner and Owner's architect or engineer consistent with state and local requirements to the Committee stating that the work performed in connection with such construction has been substantially completed in accordance with the plans and specifications approved by the Committee; provided, however, that if the Committee or the Committee's architect notifies Owner within thirty (30) days after the Committee's receipt of the aforementioned certificate of occupancy and the foregoing notice of substantial completion that, in his or its reasonable judgment, the work is not substantially complete or has not been completed in accordance with the approved plans and specifications, then completion of construction shall not be deemed to have occurred.

C. Without otherwise limiting the Committee's rights and remedies hereunder, if Owner abandons construction of any building or other improvements on the Lot and such abandonment is not the result of Force Majeure, the Committee shall have the right to go onto the Lot and complete the construction or raze the incomplete building and improvements, whichever the Committee may elect, and Owner shall reimburse the Committee, on demand, for all costs and expenses incurred by the Committee in so razing

or completing the incomplete building and improvements. For purposes hereof, the term "abandon construction" shall mean the cessation of construction for sixty (60) consecutive days.

Section 11.4. Maintenance of the Lot.

A. Improvements. Owner shall, at its sole cost and expense, maintain (or cause to be maintained) the Lot and all improvements located thereon, including, without limitation, buildings, parking areas, pedestrian walks, lighting facilities, landscaped and planted areas and signage, in good order, condition and repair, in a clean, sightly and safe condition, in compliance with all applicable laws and at least to the standards of the balance of the Business Park in the Lakes of Valparaiso. Without limiting the generality of the foregoing, Owner shall at all times cause the prompt removal of all papers, debris, refuse, snow and ice and sweeping of paved areas when and as required in order to maintain the Lot in the condition provided above.

B. Restoration and Replacement. In the event of damage to or destruction of any improvement to or upon the Lot by reason of fire or other casualty or the taking of any portion of the Lot pursuant to the exercise of the power of eminent domain or any conveyance in lieu thereof, Owner shall thereafter either (i) restore such improvements and/or the Lot to the condition existing prior to such damage, destruction or taking or replace the same with improvements approved by the Committee in accordance with Article 11 of this Declaration and constructed in accordance herewith, which restoration or replacement, as the case may be, shall be completed promptly and, in any event, no later than one hundred eighty (180) days after the damage, destruction, taking or conveyance occurs, or (ii) raze the remaining site improvements and, at the option of the Owner, the paving, and thereafter landscape the Lot in a manner approved by the Committee, which razing and landscaping shall be completed promptly and, in any event, no later than forty-five (45) days after the damage, destruction, taking, or conveyance occurs.

C. Owner's Failure to Perform. If Owner fails to maintain, restore, replace, raze, or landscape the Lot in the time and manner required under subsection A. or B. above and do not cure such failure within thirty (30) days after written notice of such failure is given to Owner by the Committee, then, in any such event, the Committee shall have the right (but not the obligation) to enter upon the Lot and cure such failure, all in the name of, for the account of and at the sole expense of Owner. Notwithstanding the foregoing, the Committee may enter upon the Lot without notice and take such action as it deems appropriate if it determines in its sole reasonable discretion that immediate action must be taken to prevent damage to the Business Park in the Lakes of Valparaiso or the threat of injury to persons. Committee shall not be liable or responsible to Owner for any losses or damages sustained by Owner or any occupants of the Lot or anyone claiming by, through or under such occupant or Owner, unless such loss or damage arises from the Committee's gross negligence or wilful misconduct. The cost of curing such failure shall be paid by Owner to the Committee within thirty (30) days of demand.

D. Remedies, Costs and Expenses. If Owner fails to pay when due any amounts owed under this Declaration, or if any Owner fails to perform any other agreements or obligations or otherwise defaults hereunder and fails to cure such non-monetary failure or default within thirty (30) days after written notice from Donald J. Weiss, Manager of SJBZ or his successor manager, or if SJBZ no longer holds legal title to any real estate located in Business Park as reflected in the records of the Auditor of Porter County, Indiana, then the Association of such default, the unpaid amounts, if applicable, shall bear interest until paid at an annual rate equal to eight percent (8%) per annum and SJBZ or its successor or assigns shall have the following additional rights and remedies:

a. SJBZ or the Association may institute suit against Owner to enforce collection of the amounts owed to it pursuant hereto;

b. SJBZ or the Association is hereby granted a lien and may record against title to the Owner (i) a Notice of delinquency and intent to foreclose lien and proceed to foreclose its lien for amounts owed under the terms hereof against any such Parcel in the same manner as the foreclosure of a mortgage in accordance with applicable law, or (ii) a mechanic's lien and pursue the foreclosure of such lien accordance with applicable law. SJBZ, or its successor or assigns, may pursue whichever remedy is most beneficial to it along with all of the rights and remedies afforded by the laws of the State of Indiana to secured creditors in such proceedings; and/or

c. SJBZ of the Association may pursue any other rights or remedies available to it at law or in equity. In connection therewith, the parties hereto acknowledge and agree that the breach or default by Owner may not be adequately remedied by actions at law.

In addition to the foregoing, the Owner shall pay to SJBZ or the Association on demand all expenses, charges, fees and costs, including, without limitation, attorneys' fees and court costs, incurred in connection with the enforcement by SJBZ or the Association of the terms and conditions of this Declaration, including the rights and remedies set forth above.

## ARTICLE XII

### INSURANCE REQUIREMENTS

Section 12.1. Comprehensive General Liability Insurance. Owner shall maintain comprehensive general liability insurance insuring against loss, damage and liability arising from occurrences on or about the Lot and operations at the Lot, including, without limitation, hazards of or created by (i) construction operations, (ii) elevators and escalators, (iii) subcontractors and independent contractors, (iv) completed operations, (v) explosion, collapse and underground hazards and (vi) personal injury liability (with the standard contractual and employee exclusions deleted). Such comprehensive general liability

insurance shall be endorsed with a broad form property damage endorsement. Owner shall cause all general contractors and subcontractors performing work on the Lot to maintain general comprehensive liability insurance insuring against loss, damage and liability arising from occurrences on or about the Lot and Common Areas. The insurance required by this Section shall have a combined single limit in the amount of not less than \$3,000,000 per occurrence. SJBZ, the Developer, the Committee, the Association and such other parties as Developer may reasonably designate in writing to Owner shall be named as additional insured parties under the insurance policies described in this Article.

Section 12.2. Personal Property Insurance. Owner shall purchase and maintain insurance in the amount of 100% of the replacement cost of the personal property, improvements and interior finish located on the Lot.

Section 12.3. Certificates. Concurrently with the execution of this Declaration and at least thirty (30) days prior to the expiration of each policy, Owner shall furnish to the Committee copies of policies of insurance evidencing that the required insurance has been obtained or renewed, as the case may be, and is in full force and effect, and providing that the insurance will not be canceled, amended or not renewed except upon thirty (30) days prior written notice thereof having been delivered to the Committee. All copies of policies of insurance submitted under this Article shall be in form and content reasonably acceptable to the Committee.

Section 12.4. Standards. All liability insurance described in this Article shall be occurrence policies (rather than claims-made policies) except to the extent that occurrence policies are unavailable, and all insurance shall be written by a company or companies satisfactory to the Committee. If Owner fails to procure and maintain the insurance required hereby, the Committee shall have the right, but not the obligation, to procure and maintain the required insurance for and in the name of Owner, and Owner shall reimburse the Committee on demand for the cost thereof and shall furnish all information needed by Committee to acquire and maintain such insurance. Owner shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance described in this Article.

Section 12.5. Waiver of Subrogation. Owner hereby waives any and every claim which arises, or may arise, in their favor against SJBZ, Developer, the Committee and/or Association for any and all loss of, or damage to, any of their property situated on the Lot, which Loss or damage is an insured risk under applicable insurance policies or, if Owner fails to carry such insurance policies, would be an insured risk under applicable insurance policies if such policies would have been carried by Owner in accordance with this Article. Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or damage to, the said property of the Owner. Owner shall cause its respective insurance policies to provide for an permit such waiver and, in connection therewith, to provide a waiver of all subrogation rights under such policies.

## ARTICLE XIII

### THE BUSINESS PARK IN THE LAKES OF VALPARAISO ASSOCIATION, INC.

Section 13.1. Establishment of Association. Developer will cause to be incorporated a not-for-profit corporation known as The Business Park in the Lakes of Valparaiso Association, Inc. and said corporation shall have the power: (a) to provide for the selection of members to serve on the Committee subject to the terms of Article X above; (b) to provide for the enforcement of the provisions of this Declaration; (c) to provide such other services and facilities as may be authorized from time to time by the affirmative vote of sixty percent (60%) of the votes cast; (d) in general to maintain and promote the desired character of the development; (e) to exercise the powers of not-for-profit corporations pursuant to the Indiana Nonprofit Corporation Act of 1991, as amended; and (f) to levy assessments against all or a portion of the Business Park in the Lakes of Valparaiso for maintenance fees and Declaration enforcement costs. Pursuant to this Declaration, the Board of Directors of the Association shall constitute the final administrative authority (except as otherwise expressly provided in Article X above) and all decisions of the Board with respect to the administration of the Business Park in the Lakes of Valparaiso shall be binding. All rights, title, and obligations vested or imposed upon the Association by this Declaration shall be held and performed by the Board. The By-Laws for governing the Association shall be those duly enacted by the Association.

If any Owner believes that:

- (a) the disapproval of any plans and specifications;
- (b) the finding of any unfulfilled Declaration obligations; or
- (c) The finding of a nuisance or violation under this Declaration or the Association By-Laws is arbitrary and capricious,

the Owner must, as its sole remedy, submit the matter to final and binding arbitration pursuant to the provisions of the Indiana Uniform Arbitration Act and the rules of the American Arbitration Association not in conflict with said Act. The fees for the arbitrator and a court reporter shall be paid for by the prevailing party. In addition, the prevailing party shall be entitled to its attorney fees and costs. The parties to arbitration agree to cooperate in providing relevant documents, witnesses, employees, agents and contractors requested by the other party. No arbitrator shall vary from or change the provisions of this Declaration.

Section 13.2. Membership. Every Owner of a Lot shall be a member of the Association. No Owner shall have more than one membership for each Lot owned. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

Section 13.3. Voting. The Association shall have one class of membership and each member shall have votes equal to the number of acres and fraction thereof contained in the Lot Area that Owner owns; therefore, votes may be fractional. In no event shall the votes cast with respect to any Lot be cast by more than one Person. If more than one person is the record Owner of any Lot, or an Owner is a trustee, corporation, partnership or other legal entity, the votes for such Lot shall be exercised as such Owner of that Lot shall designate. Such designation shall be made in writing to the Association or in such other manner as the Board may determine, however, the Board may, in good faith, rely upon a single vote cast by any Person representing the Owner without actual knowledge of a dispute or conflicting purported votes among persons. In the event that no written designation form is received from an Owner, and conflicting purported votes are tendered, the Association shall disallow all votes related to the Lot.

Section 13.4. Notice to Owner. Each Owner of a Lot in the Business Park in the Lakes of Valparaiso shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address. The Association shall maintain a file of such addresses and make the same available to appropriate parties. A written or printed notice deposited with the United States Post Office, postage prepaid, and addressed to any Owner at the last address filed by such Owner with the Association shall be sufficient and proper notice to such Owner wherever notices are required in this Declaration and shall be deemed delivered three (3) business days after mailing. In the event no address is provided by the Owner, the Association may rely upon the address on file with the Porter County Auditor for the receipt of real estate tax statements.

Section 13.5. Board of Directors - Requirements for Membership. The Association shall be governed by a Board of Directors as provided in the By-Laws of the Association. Except for directors appointed by Developer, directors shall be members (or in the case of a corporation, partnership or trustee member, any party designated by such corporation, partnership or trustee member) of the Association. Prior to the appointment of the first Board, Developer shall solely exercise all rights, powers and privileges and act in the capacity of the Board and may perform all of its functions as set forth in this Declaration and in the By-Laws of the Association.

Section 13.6. Appointment of Board of Directors by Developer. Subject to the provisions of the last sentence of Section 13.5, the first Board and each subsequent Board shall consist of three (3) directors appointed by Developer who may, but need not be members of the Association, until the first to occur (i) ninety (90) days after the sale and transfer of legal title by SJBZ as reflected in the records of the Auditor of Porter County, Indiana of all of the lots and interest in real estate being a part of the Business Park in the Lakes of Valparaiso or (ii) Developer's relinquishment of its respective rights to appoint all members of the Board, which shall be delivered in writing to the Association. Without the prior written consent of Developer, neither this Declaration or the Articles of Incorporation of the Association, nor its By-Laws shall be amended, modified or changed in any way to diminish the authority of the Board or the rights of Developer while Developer has the right

to appoint any members of the Board. Developer may, from time to time, by written notice to the Association, elect to relinquish its right to appoint anyone or more directors and continue to exercise its right to appoint the remaining members of the Board for the period herein above specified. All directors not appointed by Developer shall be elected as hereinafter provided.

Section 13.7. Board of Directors - Election by Members. Upon termination of Developer's right to appoint any or all of the directors as provided in Section 13.6 above, those directors not subject to appointment by Developer, shall be elected by the members at the annual meeting of the Association called by the president of the Association, by Developer, or by any three (3) members, except as provided in Section 13.8 below. Such meeting shall be called by notice sent pursuant to the By-Laws of the Association. Voting shall be in accordance with Section 13.3.

Section 13.8. Annual Meeting. The first annual meeting of members shall be held not later than the first to occur of the following: (i) ninety (90) days after the sale and transfer of legal title by SJBZ as reflected in the records of the Auditor of Porter County, Indiana of all of the subdivided lots and interest in real estate being a part of the Business Park in the Lakes of Valparaiso; (ii) sixty (60) days after Developer's relinquishment of its right to appoint one (1) or more members of the Board. Developer shall cause to be sent written notice of such first annual meeting in accordance with the By-Laws.

Section 13.9. Liability of Directors, Officers and Developer. Neither the directors nor the officers of the Association or the Developer when acting in the capacity of the Board shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless the directors and officers, their heirs and legal representatives and the Developer when acting in the capacity of the Board, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers or Developer on behalf of the Owner or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such officer or director may be involved by virtue of being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to: (i) any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such director or officer; of (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such director or officer.

## ARTICLE XIV

### ASSESSMENTS LEVIED BY THE ASSOCIATION

Section 14.1. Levy of Assessments. The Association shall have the right, power and duty to levy assessments against the Owners and Lots within the Business Park in the Lakes of Valparaiso for costs incurred by the Association in carrying out the purpose of the Association including land maintenance and the costs of enforcing this Declaration. Notwithstanding anything contained in this Article XIV to the contrary, the lots in the Business Park, the legal title to which is held by SJBZ as reflected in the records of the Auditor of Porter County, Indiana, shall not subject to the levy of any assessments during SJBZ's ownership.

The initial annual assessment payable to the Association shall be fixed by Developer in its reasonable discretion giving due consideration to the cost of maintenance for the prior twelve (12) month period. Commencing with each fiscal year the Board shall estimate its costs of operation for the coming year and the same shall be assessed and paid in advance, at least annually by each Owner, and Developer, or at such other times as the Board directs. Such assessment may take into account reserves for any contemplated repair, replacement or renewal of a specific improvement used for the benefit of any portion of the Business Park in the Lakes of Valparaiso.

Section 14.2. Determination of Assessment. Each Owner's share of any assessment levied hereunder shall be determined by multiplying the total assessment times a fraction, the numerator of which is the Lot Area contained in the Lot owned by said Owner, and the denominator of which shall be the total acreage of all Lots in the Business Park in the Lakes of Valparaiso (exclusive of Lots the legal title of which is held by SJBZ as reflected in the records of the Auditor of Porter County, Indiana dedicated street right-of-ways, common area parcels, ponds, detention areas, wetlands or other public or quasi-public parcels maintained by the Association or non-owners of an individual Lot within the Business Park in the Lakes of Valparaiso).

Each Owner's assessment may be increased by an additional assessment, if any, which may arise by the application of paragraph 14.4 of this Declaration. Any Owner acquiring title after the beginning of the Association's fiscal year shall have its assessment pro-rated for the time of actual ownership.

Section 14.3. Special Assessments for Capital Improvements and Major Repairs. In addition to the annual assessment, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, re-construction, unexpected repair or replacement of a capital improvement as approved by the Board, provided that any such assessment shall have the approval of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all

members at least thirty (30) days in advance, and shall set forth the purpose of the meeting.

Section 14.4. Purposes for Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners or Occupants in the Business Park in the Lakes of Valparaiso, including, but not limited to, the following:

- (a) Any and all costs and expenses provided in this Declaration;
- (b) Operational expenses incurred by the Board, including, but not limited to, management, costs, insurance premiums, professional fees for architects, landscape architects, engineers, accountants and attorneys incurred by the Board;
- (c) For enforcing the provisions of this Declaration;
- (d) Performance of any duty, obligation or requirement or activity permitted, allowed or determined by the Board to be prudent and arising from or pursuant to PUD Ordinance No. 8,2014;
- (e) Improvement, maintenance and repair of the common area including parks, if any;
- (f) Water, sewer, garbage, electrical lighting, telephone, gas, and other necessary utility services for the Detention Area Easements and other common area;
- (g) Maintenance, repair, replacement and/or reconstruction of all storm drains, drainage easements, signs, storm water detention or retention easements, detention ponds, wetlands, sanitary sewers, parks, bicycle paths, private roads, and easements shown on the plat or plats of the Subdivision recorded in the Office of the Recorder of Porter County, Indiana;
- (h) Fire insurance covering the full insurable replacement value of all Improvements located on the Detention Area Easement or other common area with extended coverage;
- (i) Liability insurance insuring the Association and the Board, as well as each Director in their individual capacity, against any and all liability to the public, to any Owner, or to the licensees, invitees, or tenants of any Owner arising out of their occupation and/or use of the common area. The policy limits shall be set by the Association and shall be reviewed at least annually and increased or decreased in the discretion of the Association;

- (j) Worker's compensation insurance to the extent necessary to comply with the Indiana law, and any other insurance deemed necessary by the Board;
- (k) Acquisition of furnishings and equipment for the common area as may be determined by the Association, including without limitation, all equipment, furnishings, and personnel necessary or proper for use of the common area; and
- (l) Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration, or by law, or for doing any other thing necessary or desirable, in the opinion of the Board, to keep the Business Park in the Lakes of Valparaiso neat and in good order, or which in the opinion of the Board may be of general benefit to the Owners or Occupants of the land included in the Business Park in the Lakes of Valparaiso.

Section 14.5. Creation of Lien and Personal Obligation of Owner. The Association shall have a lien upon all the Lots in the Business Park in the Lakes of Valparaiso to secure the payment of maintenance charges due to become due, and the Owner of any such Lot shall be personally liable for all maintenance charges.

Upon demand, the Association shall furnish to any Owner or mortgagee or person interested in a Lot a certificate showing the unpaid maintenance charges against any Lot.

Section 14.6. Remedies.

A. If Owner (a) fails to pay to the Association when due any amount owed by Lot Owners to the Association under this Declaration, or (b) fails to perform any of Owner's other agreements or obligations or otherwise default hereunder and fails to cure such non-monetary failure or default within thirty (30) days after written notice to Owner of such non-monetary failure or default, the unpaid amounts, if applicable, shall bear interest until paid at an annual rate equal to six percent (6%) per annum plus the "prime rate" published from time to time in *The Wall Street Journal* (or an equivalent rate reasonably selected by the Association in the event that *The Wall Street Journal* ceases its publication of the prime rate), changing as and when such prime rate changes, and the Association shall have the following additional rights and remedies:

- (a) Association may institute suit against Owner to enforce collection of the amounts owed to the Association pursuant hereto;
- (b) Association is hereby granted a lien and may record against title to the Lot
  - (i) a notice of delinquency and intent to foreclose lien and proceed to foreclose its lien for amounts owed under the terms hereof against the Lot in the same manner as foreclosure of a mortgage in accordance with

applicable law, or (ii) a mechanics' lien and pursue such remedy in accordance with applicable law. The Association may pursue whichever remedy is most beneficial to the Association along with all of the rights and remedies afforded by the laws of the State of Indiana to secured creditors in such proceedings; and/or

- (c) Association may pursue any other rights or remedies available to it at law or in equity, including, without limitation, the rights of specific performance and injunctive relief. In connection therewith, the parties hereto acknowledge and agree that the breach or default of Owner may not be adequately remedied by actions at law.

B. In addition to the foregoing, Owner shall pay to the Association on demand all expenses, charges, fees and costs, including, without limitation, attorneys' fees and court costs, incurred in connection with the enforcement by the Association of the terms and conditions of this Declaration, including the rights and remedies set forth above.

## ARTICLE XV

### OTHER PROVISIONS

Section 15.1. Covenants to Run with Land, Binding Effect. The covenants, conditions and restrictions created by this Declaration shall attach to and run with the land and shall be binding on every Owner or Occupant who may hereafter come into ownership, occupancy or possession of any portion of the Business Park in the Lakes of Valparaiso in perpetuity. By the registration or acceptance of the conveyance of a Lot or any interest or right therein (including fee or leasehold) the Owner or Occupant to whom such interest is to be conveyed shall be deemed to accept and agree to be bound by the provisions of this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Owner or Occupant acquired such interest or right. The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of a Lot and may not be severed or alienated from such ownership.

Section 15.2. Remedies for Violation. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy either public or private, available at law or in equity against an Owner or Occupant of any premises in the Business Park in the Lakes of Valparaiso shall be applicable against such nuisance and may be enforced by the Association or by any Owner.

Section 15.3. No Waiver. No delay or omission by any party in exercising any right or power accruing upon any non-compliance or failure of performance by the other party under the provisions of this Declaration shall impair any such right or power or be construed to be a waiver thereof. A waiver by any party of any covenant, condition, provision or performance under this Declaration shall not be effective unless given in

writing and shall not be construed to be a waiver of any succeeding breach thereof, or of any other covenant, condition, provision or performance of this Declaration, unless otherwise expressly provided by such waiver.

Section 15.4. Subordination of Mortgages. All covenants, liens and other provisions set forth herein shall be subject to and subordinate to all Mortgages now or hereafter executed, encumbering any portion of the Business Park in the Lakes of Valparaiso, and one of said covenants, liens or other provisions shall supersede or in any way reduce the security or affect the validity of any such Mortgage. However, if any portion of the Business Park in the Lakes of Valparaiso is acquired by deed in lieu of foreclosure, or under the provisions of any deed of trust in the nature of a Mortgage, or sold under foreclosure of any Mortgage, or under any judicial sale, any grantee under such deed or purchaser at such sale, his or its grantees, heirs, personal representatives, successors or assigns shall hold title to any such portion of the Business Park in the Lakes of Valparaiso subject to all the covenants, liens and other provisions of this Declaration.

Section 15.5. Further Subdivision. Developer reserves the right from time to time to subdivide and resubdivide portions of the Business Park in the Lakes of Valparaiso, or to seek a modification or alteration of any plat or Development Plan as anticipated by the terms of PUD Ordinance No. 8,2014 respectively owned by it for the purpose of creating additional Lots within the Business Park in the Lakes of Valparaiso without the consent of any Owner. However, no Owner shall subdivide or resubdivide any Lot or part thereof (or alter any plat or Development Plan) without the prior written approval of Committee which approval may be withheld without reason or justification.

Section 15.6. Severable Provisions. In the event that any provision of this Declaration is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by an administrative agency or any court, Committee and Owner shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Declaration and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

Section 15.7. Third Party Beneficiaries. No agreement shall be effective to add to, change, amend, modify, waive or discharge this Declaration, in whole or in part, unless such agreement is in writing and signed by SJBZ or if SJBZ no longer holds legal title to any Real Estate in the Business Park as reflected in the records of the Auditor of Porter County, Indiana or assigns it rights hereunder, then The Business Park in the Lakes of Valparaiso Association, Inc. No third party shall have any rights, claims or remedies under or interest in this Declaration on account of the existence or performance or nonperformance by a party of its obligations under this Declaration.

Section 15.8. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development for the Business Park in the Lakes of Valparaiso.

Section 15.9. Substitution by Developer. Until such time as the Committee, the Board, and the Association provided for in this Declaration are created and operating, Developer shall exercise any and all of the powers, rights, duties and functions of the Association, the Board, and the Committee.

Section 15.10. Amendment. This Declaration may be amended by an instrument executed by the Owners holding two-thirds (2/3) of the total votes as calculated in accordance with Section 13.3 entitled, "Voting". Notwithstanding the preceding sentence, all amendments are subject to the following provisions:

- (a) that Developer consents thereto for so long as SJBZ holds legal title to any part or portion of the Business Park in the Lakes of Valparaiso as reflected in the records of the Auditor of Porter County, Indiana;
- (b) that no amendment shall in any manner affect any right with respect to any storm water detention or the Detention Area Easements without the consent of the Developer and the City of Valparaiso;
- (c) that the manner of determining the percentage of assessments, if any, allocated to each Lot shall not be affected without the consent of the Owner of each Lot so affected; and
- (d) no amendment shall affect the right of any Mortgage holder without such Mortgage holder's consent. Any amendment shall become effective upon recording with the Office of the Recorder of Porter County, Indiana. For the purpose of this section, the conveyance by SJBZ of legal title to a portion or all of the Business Park in the Lakes of Valparaiso, respectively, to a different entity which shall hold legal title for the principal benefit of Developer or its shareholders, their successors or assigns, shall not constitute a sale.

Section 15.11. Limited Liability of SJBZ and/or Developer. That no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against SJBZ and/or Developer or any of their respective shareholders, officers, directors, employees, trustees, beneficiaries or agents in their individual capacities on account of any covenant, undertaking, indemnity or agreement of SJBZ and/or Developer, either express or implied, all such personal liability or responsibility, if any, being expressly waived and released by each Owner and all persons claiming by, through or under any Owner. The provisions of this Section also shall inure to the benefit of SJBZ and/or Developer's successors and assigns, including, without limitation, any mortgagee of the Business Park in the Lakes of Valparaiso.

Section 15.12. Counterparts. This Declaration may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.



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/ Richard E. Anderson

This instrument prepared by: Richard E. Anderson, #2408-45  
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