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Pamela K. Berglund, Tippecanoe County Recorder

Declaration of  
Covenants, Conditions, and Restrictions  
of  
Fiddlesticks Subdivision

JULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER.

JUN 11 2004

*Robert A. Montoya*  
AUDITOR OF TIPPECANOE CO. 

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
FIDDLESTICKS SUBDIVISION**

*THIS DECLARATION*, made on the 16<sup>th</sup> day of DECEMBER, 2008 by Peanut Enterprises, LLC ("Declarant").

WITNESSETH:

*WHEREAS*, Declarant is the owner of certain real estate, located in Tippecanoe County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Real Estate"), attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision known as Fiddlesticks Subdivision (hereinafter "Subdivision").

*WHEREAS*, Declarant desires to subdivide and develop the Real Estate and may in the future desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided;

*WHEREAS*, the term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to and at anytime subject to this Declaration.

*NOW, THEREFORE*, the Declarant hereby declares that all of the Lots (as defined in Article II below) in the Property, as they are held and shall be held conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of the Property and each Lot situated therein; and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having

or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its respective successors entitled to the Property or any part or parts thereof.

As of the date of execution hereof, the property consists solely of the Real Estate. The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained. By acceptance of such deed, execution of such contract, and/or actively occupying such Lot, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these restrictions and also for itself, its heirs, personal representatives, successors, and assigns, covenants and agrees and consents to and with Declarant, the Association, and the Owners of each of the Lots hereby affected to keep, observe, and comply with the terms and conditions hereof.

Declarant shall have, and hereby reserves the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration of all rights, obligations, and privileges herein, when Declarant places of record in Tippecanoe County, Indiana an instrument so declaring the same to be part of the property, which Declaration may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all of the rights, duties, privileges, and obligations of owners of Lots within the Property. No single exercise of Declarant's rights and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the

Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

## ARTICLE I

### *Name*

The subdivision of the Property created by this Declaration shall be known and designated as Fiddlesticks Subdivision, a subdivision located in Tippecanoe County, Indiana.

## ARTICLE II

### *Definitions*

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.2 "Association" means the Fiddlesticks Subdivision Homeowners Association, Inc, a non-profit corporation, its successors and assigns.

Section 2.3 "Board of Directors" means the Board of Directors of the Association.

Section 2.4 "By-Laws" mean the By-Laws initially adopted by the Board of Directors of the Association and all amendments and additions thereto.

Section 2.5 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), and (2) items (if any) deemed Common Area for maintenance and/or repair purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as an "Outlot", "Common Area", or such other areas

within the Property that are not otherwise identified on the Plat (as hereafter defined) as a Lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

Section 2.6 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area and Outlots (as hereafter defined) with the Subdivision, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.7 "Declarant" means Peanut Enterprises, LLC and its successors and assigns.

Section 2.8 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Property.

Section 2.9 "Dwelling Unit" means any structure used as a single family residential living unit and/or two family residential unit located upon a Lot (as hereafter defined), including the garage and any appurtenances.

Section 2.10 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling that is conveyed to an Owner (as hereinafter defined) by the Declarant in accordance with the Declarations or such further restrictions as may be imposed by any applicable zoning ordinance. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.11 "Outlot" means drainage, utility and landscape easement as shown on the Plat (as hereafter defined) together with all future Outlots of the Property. All Outlots are a part of the Common Area which are to be conveyed to the Association at the time of conveyance of the first Lot to an Owner.

Section 2.12 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.13 "Plat" means the subdivision plats of the Property, which are recorded with the Recorder of Tippecanoe County, Indiana, as the same may be hereafter amended or supplemented pursuant to this Declaration.

### ARTICLE III

#### *Property Rights, Easements and Encroachments*

Section 3.1 Owners' Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in any Common Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

(a) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time, including but not limited to the right to convey and transfer to the Association prior to the expiration of the Development Period such additional real and/or personal property as the Declarant within its sole discretion deems appropriate, and the Association shall accept such transfer and shall hold such property as a part of the Common Area;

(b) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of thirty percent (30%) of the membership of each class of members of the Association;

(c) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its Members;

(d) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions

as may be agreed to by the Members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by thirty percent (30%) of the membership of each class of Members of the Association; and

(e) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any Owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.3 Certain Obligations and Access Rights to the Common Area.

(a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 3.4 Undefined Drainage, Utility, Sewer and Other Development Easement - The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, the Declarant's

right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property or sooner if so requested by the Declarant.

(a) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, an undefined easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit constructed on the Property. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement to areas now or hereafter shown on the Plat as a "Outlot", or "Common Area", any other Common Area within or outside the Property used as a water retention or detention area, or on which a lake now exists or is later constructed, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities

considered necessary, appropriate, useful or convenient anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

- (i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer, Sign and Facilities Easement, or any facility at any time located therein or thereon;
- (ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,
- (iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Tippecanoe County, Indiana.

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

Section 3.5 Easements for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any recorded plat of Fiddlesticks Subdivision as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Fiddlesticks Subdivision Homeowners Association, Inc. for the common enjoyment of all residents in the Subdivision.

Section 3.7 Defined Drainage, Utility, Non Access and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities and public utilities and private for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this Subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, including fences, shall be built, erected or maintained on said easements. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.8 Defined Sign Easements, Mounding, Landscaping, and Screening. If there are strips of ground shown on the Plat for (i) mounding easements, (ii) landscape or landscape maintenance easements, and/or (iii) sign easements, then such strips of ground are reserved for such (i) mounding easements, (ii)

landscape easements and/or landscape maintenance easements and/or (iii) sign easements. Declarant hereby reserves unto itself during the Development Period, and thereafter, unto the Association, any such easements for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements. Furthermore, notwithstanding anything in this Declaration to the contrary, at any time during the Development Period no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property except by the Declarant.

Section 3.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

#### ARTICLE IV

##### *Association Membership, Voting Rights Board of Directors and Professional Management*

Section 4.1 Membership. Initially, the person who serves as incorporator of the Association shall be the member (the "Initial Member"). The Initial Member shall remain a Member of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member shall cease to be a Member unless he also qualifies as a Class A or Class B Member. Every Owner of a Lot which is subject to assessment shall be a Member of the Association ("Member"). Apart from the Initial Member, a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier: (a) when the title to all Lots of the Subdivision have been conveyed to Class A Membership in the Corporation; (b) upon the affirmative vote of the Class B Membership; or (c) December 31, 2010.

Section 4.3 Board of Directors. The Members shall elect a Board of Directors of the Association to perform certain duties as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of not less than ninety (90) days.

## ARTICLE V

### *Covenants for Maintenance Assessments*

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay to the Association;

(a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and

(b) Special Assessments for capital improvements, operating deficits, maintenance of the storm drainage system, and for special maintenance or repairs as provided in this Declaration within the Property or shared Storm Water Drainage Facilities.

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

Section 5.2 Purpose of Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents of the Property, for the improvement, maintenance and repair of the Common Area and easements, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessment.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be an amount not to exceed \$125.00 per Lot per year.

(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than 15% above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than 15% above the maximum Regular Yearly Assessment for the

previous year, with the approval of thirty percent (30%) of the membership of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of 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 to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of thirty percent (30%) of the membership of each class of Members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 Notice and Quorum for Any Action Authorized Under this Article. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of members or of proxies entitled to cast thirty percent (30%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6 Uniform Rate of Assessment. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots, except that Declarant shall not pay the Regular Yearly Assessments and Special Assessments so long as any Dwelling Unit constructed upon a Lot by Declarant has not been conveyed to an Owner intending to occupy or rent said Dwelling Unit as a residence or leased to an individual or entity for use as a residence.

Section 5.7 Date of Commencement of Yearly Assessment; Due Dates. The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat the first day of the first month following conveyance of the Common Area within such Plat to the Association, or if there is no Common Area, the first day of the first month following the recording of such Plat. The Board of Directors

shall fix any increase in the amount of the yearly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

*Section 5.8 Effect of Nonpayment of Assessments; Remedies of the Association.* If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, there shall be a late fee charge of five percent (5%) of each assessment in addition to any assessment due and owing. The entire unpaid assessment and late fee (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall be delinquent three (3) days thereafter and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns (a written Notice of Lien against the Owner's Lot filed in the office of the Recorder of Tippecanoe County, Indiana, shall perfect the lien of the Association). The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at a fluctuating rate equal to the maximum rate of interest which may be charged under the laws of the State of Indiana for consumer loans, adjusted on the first day of each calendar year, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by non use of the Common Area owned by the Association or abandonment of his Lot.

*Section 5.9 Subordination of the Lien to Mortgages; Sale or Transfer.* The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot

pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

Section 5.10 Covenants for Maintenance.

- (a) Every Owner of any Lot in the Subdivision, by virtue of such ownership, is deemed to covenant and agree to pay to the Association any Special Assessments made by the Association for maintenance of the storm drainage system and other necessary special maintenance or repair in or outside the Subdivision. Such assessments shall be made by a majority of the Members' votes cast in accordance with the membership classifications of this Article. If any Owner shall fail to pay any assessment when due, the Association may, in its discretion, file a Notice of Lien against said Owner's Lot in the Office of the Recorder of Tippecanoe County, Indiana, which Notice of Lien shall perfect the lien of the Association and shall have the same force and effect, and be enforced in the same manner, as a mortgage lien under Indiana law and shall include attorneys' fees, title expenses, interest, and costs of collection. Said lien, however, shall be subordinate to any mortgages on the Lot.
- (b) This assessment levied by the Association shall be used exclusively for maintaining the storm water structures, storm water detention ponds, and drainage system, whether within or outside the Subdivision, which shall be the obligation of the Association to maintain. In the event the Association fails to exercise its obligation for maintenance of the storm water structures, storm water detention ponds, and drainage system of the Subdivision, the Tippecanoe County Drainage Board may perform such maintenance and take all other actions necessary for the proper maintenance of such storm water facilities. The cost of any such maintenance performed by the Tippecanoe County Drainage Board shall be paid by the Association. In the event the Association fails to pay such costs, the Tippecanoe County Drainage Board shall

have the right to assess each Lot in the Subdivision a proportionate amount for the costs of such maintenance and, if necessary, to file a Notice of Lien against such Lots in the Office of the Recorder of Tippecanoe County, Indiana. Such Notice of Lien shall perfect the lien of the Tippecanoe County Drainage Board for the proportionate share of costs of maintaining the storm water facilities and said lien shall have the same force and effect, and be enforced in the same manner, as a mortgage lien under Indiana law, and shall include attorneys' fees, title expenses, interest, and costs of collection.

- (c) The Association shall have the right and obligation by thirty percent (30%) vote as per this Article to determine the amount of any assessments against the Owners of Lots in the Subdivision, to determine the due dates for payment of such assessments, and to determine the manner of retaining, expending, and handling such assessment funds.
- (d) In the event the storm water drainage system servicing the Subdivision or servicing any immediately adjacent subdivision shall become or be proposed to become a legal drain, each Owner of a Lot in the Subdivision shall, by virtue of ownership, be deemed to agree and consent to the storm drainage system becoming a legal drain and to all legal requirements and assessments imposed by the Tippecanoe County Drainage Board and applicable drainage ordinances.

#### ARTICLE VI

##### *Use, Restrictions, and Architectural Control*

Section 6.1 Lot Use and Conveyance. All R1 and R1-B Lots shall be used exclusively for single family residential purposes and all R2 Lots shall be used for two (2) family residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other Members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no

Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Architectural Control. No building, improvement, construction, excavation, landscaping, tree removal, lot clearance or outbuilding, swimming pool, spa, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to, change, or alteration or repair due to casualty or otherwise therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant until the end of the Development Period unless sooner authorized by the Declarant and thereafter by the Board of Directors of the Association. After the Development Period, or before as hereinabove stated, the Board of Directors may appoint three (3) or more representatives to an Architectural Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefore as above provided. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, approval will not be required and this Section will be deemed to be fully complied with.

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

Section 6.3 Leasing. Any Lot or unit on a Lot may be leased by its Owner.

Section 6.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any said Lots, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes. No dog runs will be permitted in the Subdivision.

Section 6.5 Outside Storage. All equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. No outside clothesline shall be erected, placed, or allowed to remain on any Lot. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Unless specifically approved by Declarant until the end of the Development Period and thereafter by the Association's Board of Directors or the Architectural Committee in writing, no materials, supplies or equipment shall be stored on a Lot except inside a closed Dwelling Unit or behind a visual barrier screening such areas so that they are not visible from neighboring streets or Lots.

Section 6.6 Setback Lines. Front Building lines are hereby established as shown on the foregoing Plat. Between such Front Building lines and the right-of-way lines there shall be erected, place or altered no structure or part thereof except fences in keeping with architectural style as specifically approved by the Declarant and until the end of the Development Period unless sooner by Declarant, and thereafter by the Association Board of Directors or Architectural Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 6.7 Side Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances and as shown on the final recorded plat.

Section 6.8 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn, trailer, boat trailer, truck, commercial vehicle, recreational vehicle, camper shell, camper or camping trailer or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently or at any time be used for such purpose.

Section 6.9 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed by these covenants, conditions and restrictions.

Section 6.10 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Without limiting any of the foregoing, no exterior lights, the principal beam of which shines upon portions of the Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the Lot, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition, subject to the approval of the Architectural Committee, within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 6.11 Home Service. No Lot shall be used for any purpose other than a single-family residence, except that a home occupation, defined as follows may be permitted: any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that indicates from the exterior that the Dwelling Unit is being utilized in whole or in part for any purpose other than that of a Dwelling Unit; (b) no commodity is sold upon the Lot; (c) no person is employed in such home occupation other than a member of the immediate family residing in the Dwelling Unit; and (d) no mechanical or electrical equipment is used; provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, licensed child care center or other licensed or regulated babysitting service, animal hospital, or any form of animal care or treatment such as dog trimming be construed as a home service.

Section 6.12 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6.13 Number of Dwelling Units. The number of Dwelling Units shall not exceed the number of platted Lots of the Plat with one single family residence for each Lot. However, in the R2 section of the Subdivision, the number of Dwelling Units shall not exceed two (2) times the number of platted Lots of the Plat with two (2) family residences for each Lot.

Section 6.14 Residential Use. Lots shall be used only for residential purposes and only as single-family dwellings and two (2) family dwellings, with private garages, and other such outbuildings as are usual and incidental to the use of a residential Lot may be constructed thereon. All Lots in this subdivision shall be designated as residential Lots, single family Lots or 2-unit duplex Lots, and no home shall exceed two (2) stories or thirty-six (36) feet in height.

Section 6.15 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling or two (2) family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area exclusive of open porches, unfinished basements and attached garages of not less than the following number of square feet for the following types of dwellings. Minimum square footage shall be as more particularly shown on Exhibit B attached hereto and by this reference made a part hereof.

Section 6.16 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys' fees and costs of collection.

Section 6.17 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.18 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers or camper trailers, recreational vehicles, camper shell, all-terrain vehicles, mobile

homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, builder's or Association's business on the Property.

Section 6.19 Rules and Regulations. Initially the Declarant and thereafter the Association's Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.20 Development and Sale Period. Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonable required, or convenient or incidental to, the development of the Property and sale of the Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 6.21 Outside Use of Lots. Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, wall or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Declarant and thereafter by the Association's Board of Directors. Above ground swimming pools are prohibited on the Property.

Section 6.22 Utility and Drainage Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat. No Owner of any Lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use or permit the use of overhead

wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the subdivision). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any Dwelling Unit or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Lots and have a capacity of not less than 100 amperes. Any electric public utility charged with the maintenance of any underground installation shall have access to all easements in which said underground installations are located for operation, maintenance and replacement of service connections. Any such electric public utility shall not be liable for damage to walks, driveways, lawn or landscaping which may result from installation, repair or maintenance of such service.

No Owner of any Lot shall grant to any person, firm or corporation or build or erect any utility or give the right or license or privilege to erect or build any utility to any person, firm or corporation desiring to serve by said utilities any land not in the Subdivision except with the permission of the Declarant.

Section 6.23 Maintenance of Lots and Dwelling Units No Lot and no Dwelling Unit shall be permitted to become overgrown, unsightly or to fall into disrepair. All Dwelling Units shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Declarant. Each Owner, for himself and his successors and assigns, hereby grants to the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Architectural Committee to carry out the intent of this provision and they further agree to reimburse the Association for any expenses actually incurred in carrying out the foregoing. The Association may assess and collect such reimbursement in the same manner as it assesses and collects yearly assessments, and such amount shall become a lien upon the Lot as provided in Article V.

Section 6.24 Signs No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five square feet, advertising such Lot for sale, or signs used by a builder to advertise such Lot during the construction and sales period.

Section 6.25 Building Materials All Dwelling Units and other permitted structures shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any Dwelling Unit or other permitted structure on any Lots of said Subdivision and no roll roofing of any

description or character shall be used as an exterior surface on the roof of any Dwelling Unit or other permitted structure on any of said Lots.

Section 6.26 Driveways All driveways from the street to the garage shall be poured concrete, masonry or asphalt and not less than twelve (12) feet in width or as shown on the Plat of the Subdivision. All culvert pipe under driveways, if any, shall be capped at both ends with tapered metal end sections and meet the specifications of Tippecanoe County, Indiana. All driveways shall be constructed and finished within one hundred twenty (120) days of the issuance of a certificate of occupancy by the appropriate governmental authority.

Section 6.27 Radio, Television Antennas, Disks and Solar Panels No radio or television antenna shall be attached to any Dwelling Unit. No free standing radio or television antenna shall be permitted on any Lot. No television receiving disk or dish shall be permitted on any Lot or on any Dwelling Unit except a dish or disk used for television reception which is less than 12" in diameter may be placed on rear yard side of a Dwelling Unit. No solar panels attached or detached shall be permitted.

Section 6.28 Permits and Certificates Before any Dwelling Unit located on any Lot may be used or occupied, such user or occupier shall first obtain from the County of Tippecanoe an Improvement Location Permit and a Certificate of Occupancy.

Section 6.29 Pools and Hot Tubs No above ground pool which requires a filtration system or other above ground pool which is more than six (6) feet in diameter and is 18 inches deep shall be placed or maintained on any Lot. No in ground swimming pool or hot tub or spa may be placed or maintained on any Lot without the prior written approval of the Declarant, the Board of Directors, or the Architectural Committee. Tennis courts shall be permitted only with the prior written approval of the Declarant, the Board of Directors, or the Architectural Committee.

Section 6.30 Fencing A privacy fence of not more than six feet in height around an immediate patio or pool or a split rail fence not to exceed four (4) feet in height shall be permitted. In any event, all proposed fencing must be approved by the Declarant, the Board of Directors, or the Architectural Committee in writing.

Section 6.31 Mailboxes Owner shall install, at his sole cost, mailboxes which placement and design shall be approved by Declarant prior to installation.

Section 6.32 Time for Building Completion and Restoration Every Dwelling Unit on any Lot in the Subdivision shall be completed within twelve (12) months after the beginning of such construction. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

Section 6.33 Right of Entry The Declarant and the Association, acting through their respective representatives, shall have the right, during reasonable hours, to enter upon and inspect the Lot and Dwelling Unit, whether prior to, during, or after the completion of, any construction, for purposes of determining whether or not the provisions of these restrictions are being complied with and exercising all rights and powers conferred upon the Declarant, the Architectural Committee and the Association with respect to the enforcement or correction or remedy of any failure of the Owner to observe these restrictions, and the Declarant, the Architectural Committee and the Association and such representatives shall not be deemed to have committed a trespass as a result thereof. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered hereunder unless written notice of such proposed entry shall have been given to the Owner at least five days prior to such entry.

Section 6.34 Roof Shingles All roof shingles shall be approved by the Declarant, the Board of Directors, or the Architectural Committee.

Section 6.35 Exterior Building Surfaces All exterior building surfaces, materials and colors shall be harmonious and compatible with colors of the natural surrounding and other Dwelling Units. The front exterior side of all units shall use at least fifty percent (50%) brick. The Declarant, the Board of Directors, or the Architectural Committee shall have the right to approve or disapprove materials and colors so controlled.

Section 6.36 Zoning and Subdivision By way of limitation of the Unified Zoning Ordinance and Unified Subdivision Ordinance of Tippecanoe County, Indiana, all requests for special exceptions and variances in this Subdivision shall be first approved by the Declarant, the Board of Directors, or the Architectural Committee.

Section 6.37 Additional Standards Notwithstanding any other provision of these restrictive covenants, the Declarant, the Board of Directors, or the Architectural Committee shall have the right, prior to the approval

of the plans for the structure to be erected on any Lot herein as provided by these covenants, to make and fix set-back lines more stringent than those shown upon the Plat.

## ARTICLE VII

### *Maintenance, Repairs and Replacements*

Section 7.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

### Section 7.2 Common Properties and Laws by the Association.

- (a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:
  - (i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, mowing and replacing when necessary of the grass and trees and maintenance of any other improvement within the Common Area.
  - (ii) Maintenance of the Entry Signs and perimeter landscaping installed by the Declarant.
  - (iii) Maintenance and repair of underground storm drainage structures located in the utility and drainage easements pursuant to the Plat.
  - (iv) The adoption of such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association or any items deemed Common Area for purposes of maintenance only as it deems necessary.
- (b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the

Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

## ARTICLE VIII

### *Insurance*

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents, or employees of any of the foregoing with respect to the Association. It shall also cover all Common Area owned by the Association, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 Endorsement. The Association shall obtain an endorsement from their general liability policy for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association's endorsement shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own bond or policy, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond or policy. The bond or policy shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond or policy is in

force. In addition, the coverage must at least equal one (1) years assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the bond or policy must include a provision that calls for ten (10) days written notice to the Association or insurance trustee before the bond or policy can be canceled or substantially modified for any reason.

Section 8.3 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall be from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. The same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 8.5 Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 8.6 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

## ARTICLE IX *Mortgages*

Section 9.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 9.3 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 9.4 Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any

"right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell or lease a unit acquired by the mortgagee.

Section 9.5 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Unit by the mortgagee.

## ARTICLE X *General Provisions*

Section 10.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions, and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 10.2 Severability and Waiver. Invalidity of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 10.3 Amendment. During the first twenty (20) years following its recordation, this Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Tippecanoe County, Indiana, approved and signed by at least ninety percent (90%) of the then Owners, and thereafter by an instrument signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within four (4) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners or Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the first mortgagees of the Lots (based upon one (1) vote for each mortgage owned) and two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;

(b) Change the method of determining the obligations, assessments, dues or other charges that may be levied per the terms hereof;

(c) 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 Dwelling Units, the exterior maintenance of Dwelling Units, the maintenance of the Common Area owned by the Association, party walks, common fences and driveways, and the upkeep of lawns and plantings in the Property;

(d) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least 100 percent of the insurable value (based on current replacement costs);

(e) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association;

(f) Change the voting rights, assessments, assessment liens or subordination of assessment liens, except as provided for in this Declaration;

(g) Change the manner in which reserves for maintenance, repair and replacement of Common Areas have been set up and previously maintained by the Association;

(h) Change the rights to the use of the Common Area owned by the Association, except as provided for in this Declaration;

(i) Change the boundaries of any Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, except as provided for in this Declaration;

(j) Any change concerning convertibility of Dwelling Units into Common Area owned by the Association or vice versa, except as provided for in this Declaration;

(k) Allow for the annexation of additional property other than the Additional Real Estate. Per the terms specified on pages two and three of this Declaration, the Declarant may add all or part of the Additional Real Estate to the Property without consent or approval of the Owners or any mortgagees;

(l) Any requirements for insurance or fidelity bonds set forth in this Declaration;

(m) Any change in the manner in which units may be leased except as set forth in this Declaration;

(n) Any imposition of any restriction on a Dwelling Unit Owner's right to sell or transfer his or her Dwelling Unit;

(o) Restoration and repair of the Common Area (after a hazard damage or partial condemnation) in a manner other than specified in the Declaration;

(p) Any action to terminate the legal status of the development after substantial destruction or condemnation occurs;

(q) Any provision that expressly benefits mortgage holders, insurers or guarantors; or

(r) Any termination of legal status of the development for reasons other than substantial destruction or condemnation of the Property.

If an addition or amendment is not considered as a material change, such as the correction of a technical error or the clarification of a statement within the Declaration, Association Articles, Association By-laws or other constituent documents, there shall be an implied approval to be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after proposal is made. The covenants, restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of such ten year period this Declaration is amended or changed in whole or in part as hereinabove provided.

Notwithstanding anything to the contrary contained herein, there shall be no amendment of these Declaration, without prior approval of the Area Plan Commission of Tippecanoe County and the Tippecanoe County Commissioners through the planned development process, which includes the possibility of consideration as a minor modification by the administrative office.

Section 10.4 No Vehicular Access. There shall be no vehicular access for certain lots pursuant to the recorded Plat, which vehicular access shall be enforceable by the Tippecanoe County Area Plan Commission and irrevocable by the Association.

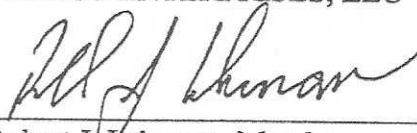
Section 10.5 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

Section 10.6 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

*IN WITNESS WHEREOF*, Peanut Enterprises, LLC, by Robert J. Lahrman, Member, has caused this Declaration to be executed as of the date first written above.

PEANUT ENTERPRISES, LLC

By:

  
Robert J. Lahrman, Member

STATE OF INDIANA       )  
                                  ) SS:  
TIPPECANOE COUNTY    )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Peanut Enterprises, LLC, by Robert J. Lahrman, Member, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Fiddlesticks Subdivision.

Witness my hand and Notarial Seal this 16<sup>th</sup> day of December, 2003

My Commission Expires:

4/16/2007

Resident of:

Tippecanoe County, IN

Lincoln M. Brooks

(written)

Melisa M. Brooks

(printed)

NOTARY PUBLIC

This document prepared by: Daniel A. Teder of the firm REILING TEDER & SCHRIER, LLC; 415 Columbia Street, Suite 3000; P. O. Box 280; Lafayette, In 47902-0280; Telephone: (765) 423-5333; Facsimile: (765) 423-4564; E-mail: dat@rtslawfirm.com