

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BENJAMIN CROSSING

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BENJAMIN CROSSING

THIS DECLARATION, _____, 20__, is by Benjamin Crossing LLC, an Indiana limited partnership ("Developer").

Recitals:

- A. Developer is the purchaser and owner of all of the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof (the "Original Tract").
- B. Developer has the right to acquire the parcel of real estate in Tippecanoe County, Indiana, as more particularly described in Exhibit "B" attached hereto and made a part hereof (the "Additional Tract").
- C. Developer intends to subdivide the Original Tract for development of Benjamin Crossing, a single family housing development in Tippecanoe County, Indiana, and may in the future desire to subdivide the Additional Tract as a part of such development, as will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the Office of the Recorder of Tippecanoe County, Indiana (the "Plats").
- D. Developer desires to subject and impose upon all real estate within the platted areas of the Original Tract, together with all or such portions of the Additional Tract as may hereafter be made subject to the terms of this Declaration as provided herein, mutual and beneficial restrictions, covenants, conditions and charges contained herein contained and as set forth in the Plats (such restrictions, covenants, conditions and charges herein referred to alternatively as the "Declaration" or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Original Tract together with all or such portions of the Additional Tract as may hereafter be made subject to this Declaration, and future owners thereof .

Terms:

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Real Estate, as defined below, are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands within the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Real Estate.

ARTICLE I - DEFINITIONS

The following are the definitions of the terms used in this Declaration:

Section 1.1 "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of Article V hereof.

Section 1.2 "Association" shall mean Benjamin Crossing Homeowners' Association, Inc., or an entity of similar name, its successors and assigns, which shall be created as an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended.

Section 1.3 "Board" shall mean the Board of Directors of the Association.

Section 1.4 "Committee" shall mean the Development Control Committee, which shall be appointed by the Board - and have such duties as provided in Article VI, below.

Section 1.5 "Common Area(s)" shall mean those areas and all improvements located thereon which are identified on the Plats.

Section 1.6 "Common Expenses" shall mean the actual and estimated cost to the Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association.

Section 1.7 "Development Period" shall mean the period of time during which Developer owns at least one (1) lot.

Section 1.8 "Dwelling Unit" shall mean and refer to any structure (or portion thereof) designed or intended for use and occupancy as a residence by one (1) family on a Lot located within the Real Estate, irrespective of whether such dwelling is detached or attached to another Dwelling Unit.

Section 1.9 "Easement Area" shall mean any portion of the Real Estate which is subject to an easement as more particularly described in Article III, below.

Section 1.10 "Lake" or "Lakes" shall mean and refer to the water detention pond(s) or lake(s), whether or not such are also a Common Area, together with the shoreline area thereof, as shown on the Plats.

Section 1.11 "Limited Common Area" may appear upon the Plats designated by block letter and further identified as a "cui-de-loop" which is created for the exclusive use and enjoyment of those particular lots having public street access therefrom. Each such owner shall have an easement for ingress and egress in common with the other adjacent owners to the public street across such area. Such cui-de-loop may further have a landscaped island as may be shown on the Plats therein adjacent to the public right-of-way and such Limited Common Area shall be owned and maintained by equal undivided interests as tenants in common of the lots abutting thereon and using the cui-de-loop as a means of ingress and egress to the public street. Such maintenance and repair shall be undertaken by a determination in writing of a majority of the lot owners having an undivided interest in the Limited Common Area, and upon the failure of any such lot owner to pay his equal contributive share for such maintenance or repair, the remaining lot owners or any one of them may advance the defaulting lot owner's contributive share upon thirty (30) days' written notice and such advancement shall constitute a lien upon the lot of the defaulting lot owner enforceable in the same manner and under the same terms as made and provided under the provisions of the Mechanics Lien Laws of the State of Indiana, Chapter 116 of the Acts of the 1909 Indiana General Assembly as amended to date, I.C. 32-8-3-1 et seq. Any such lien shall be subordinate to the lien of any first mortgage and any first mortgagee taking title to a lot by foreclosure or deed in lieu thereof shall take title free and clear of any such assessments for work performed prior to such mortgagee's taking title.

Section 1.12 "Lot" or "Lots" shall mean any parcel(s) of the Real Estate (excluding the Common Areas) which are designated and intended for use as a building site, or developed and improved for use as a single family residence identified by number on the Plats. No Lot shall be further subdivided for development purposes, except as may be reasonably necessary to adjust for minor side or rear yard encroachments or inconsistencies.

Section 1.13 "Member" shall mean any person or entity holding membership in the Association.

Section 1.14 "Owner" shall mean the record owner, whether by one or more persons, of the fee simple title to any Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

Section 1.15 "Real Estate" shall mean the Original Tract, and all or such portion of the Additional Tract as has, from time to time, been subjected to this Declaration.

Section 1.16 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration or a Plat executed by or consented to by Developer, or by the Association pursuant to Article II, and recorded in the public records of the county in which the Declaration was originally recorded, which subjects all or any portion of the Additional Tract to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the Real Estate or the land described therein. A Supplemental Declaration may also remove any portion of the Real Estate then owned by Developer from the control and provisions of this Declaration.

ARTICLE II - DEVELOPMENT OF THE REAL ESTATE

Section 2.1 Development of the Real Estate. All Lots shall be and hereby are restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in this Declaration. Developer shall have the right, but not the obligation, during the Development Period, to submit additional real estate to or exclude any portion of the Real Estate from the provisions of this Declaration, and to make and maintain improvements, repairs and changes to any Common Area and all Lots owned by Developer, including without limitation: (a) installation and maintenance of improvements in and to the Common Areas; (b) changes in the location of the boundaries of any Lots owned by Developer or of the Common Areas; (c) installation and maintenance of any water, sewer, and other utility systems and facilities; (d) installation of security or refuse systems; and (e) additions or changes to the boundaries of any Common Areas or Easement Areas.

Section 2.2 Public Streets. The streets and public rights-of-way shown on the Plats are, upon recording of the Plats, dedicated to the public use, to be owned and maintained by the governmental body having jurisdiction, subject to construction standards and acceptance by such governmental body. All Lots shall be accessed from the interior streets of the Development.

Section 2.3 Development of Additional Property. Developer hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, to submit at any time and from time to time during the Development Period, additional real estate to the provisions of this Declaration, including but not limited to the Additional Tract. This option may be exercised by Developer in accordance with the following rights, conditions, and limitations:

- (a) Additional real estate may be added to the Real Estate at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Real Estate. No single exercise of Developer's option to submit additional real estate to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other real estate.
- (b) The option to add additional real estate may be exercised by Developer by the execution of a Supplemental Declaration or Plat describing such additional real estate, which shall be filed in the public records of the county in which the Declaration was originally recorded, together with a legal description of the additional real estate. The provisions of this Declaration shall then be construed as embracing the real property described in Exhibit "A" and such additional real estate so submitted to the terms hereof, together with all improvements located thereon ..

Section 2.4 Annexation of Additional Real Estate by Members. After the Development Period, the Association may annex additional real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of at least two-thirds (2/3) of the Members. Annexation by the Association shall be accomplished by the appropriate filing of record of a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provision of the By-Laws dealing with regular or special meetings, as the case maybe, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section. 2.4 and to ascertain the presence of a quorum at such meeting.

Section 2.5 Withdrawal of Property. Developer hereby reserves the right and option during the Development Period, to be exercised in its sole discretion and without further approval by any party, to withdraw and remove any portion of the Real Estate then owned by Developer :from the control and provisions of this Declaration. Such removal by Developer shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which shall be filed in the public records of county in which the Declaration was originally recorded, together with a legal description of the Real Estate being withdrawn.

ARTICLE III - PROPERTY RIGHTS AND EASEMENTS

Section 3.1 General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The Owners of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Developer with respect to this Declaration, and also for themselves, their heirs, personal representatives, successors and assigns. Each Owner shall be entitled to the exclusive ownership, and possession of his Lot subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Common Areas as established hereunder and membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title any certificates or

other evidences of his membership in the Association Lots shall not be subdivided by Owners and the boundaries between Lots and between the Real Estate and other neighborhoods shall not be relocated, unless the relocation thereof is made with the approval of the Board and, during the Development Period, of Developer.

Section 3.2 Owner's Easement of Enjoyment. Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and subject to the following provisions:

- (a) The Right of the Association, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon, to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such encumbrance shall be subject to an easement in favor of such Lot for ingress and egress thereto.
- (b) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Real Estate, and the right of the Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an easement area is done at the Owner's risk and is subject to possible removal by the Association or the grantee of such easement.
- (c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved
 - (i) during the Development Period, by the Developer; and
 - (ii) after the Development Period, upon the affirmative vote or written consent, or any combination thereof; of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such dedication or transfer shall be subject to an easement in favor of such Lot for ingress and egress thereto.
- (d) The rights of the Association and Developer reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Real Estate
- (e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

Section 3.3 Easements for Developer.

- (a) During the Development Period, Developer shall have an easement for access to the Real Estate, including any Lot and all Common Areas, for the purpose of constructing structures and other improvements in and to the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Developer have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Developer at that time retains ownership of a Lot, Developer shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvement thereon for such purposes as Developer deems appropriate, provided that Developer shall not exercise such right so as to unreasonably interfere with the rights of owners of the Real Estate.
- (b) In addition to the easement set forth in Section 3.3 (a), Developer hereby retains, reserves and is granted an exclusive perpetual easement over, above, across, upon, along, in, through, and under the Utility Easement Areas, as such is defined in Section 3.4, below
 - (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area;
 - (ii) to provide access to an ingress and egress to and from the Real Estate for the purposes specified in subsection (i); and

(iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to Developer under this Section 3.3(b) shall be transferable by Developer to any person or entity solely at the option and benefit of the Developer, its successors and assigns, and without notice to, or the consent of the Association, the Owners, or any other person or entity. Developer may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, Developer and others to whom Developer may grant such similar or lesser easements, rights or privileges, may so use any portion of the Real Estate to supply exclusive telecommunications services to each Lot. The Easements, rights and privileges reserved under this Section shall be for the exclusive benefit of Developer, its successors and assigns and may not be impaired, limited or transferred, sold or granted to any person or entity by the Association or any of the Owners.

Section 3.4 Drainage, Utility and Sewer Easements ("DU&SE") 1st Amendment.

(a) There is hereby reserved for the benefit of Developer, the Association, and their respective successors and assigns; the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any of the following providers and their respective successors and assigns, upon, over, under, and across

- (i) all of the Common Areas; and
- (ii) those portions of all Lots designated on the Plat as "DU&SE" and as otherwise are reasonably necessary (such areas herein referred to collectively as the "Utility Easement Areas" for installing, replacing, repairing, and maintaining, the following specified services, and no other:

<u>Name of Specific Provider:</u>	<u>Specific Service:</u>
Tipmont REMC	Electricity
City of Lafayette	Water
City of Lafayette	Sewer
Vectren	Natural Gas
Verizon	Telephone
Communications	Cable

(First Amendment to Declaration of Covenants, Conditions and Restrictions; amended December 18, 2003 by Developer)

The Developer, the Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements within the Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Real Estate or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including but not limited to, master television antenna and/or cable systems, security and similar systems, shall be made by Developer in accordance with the rights reserved to Developer under Section 3.3(b), above. To the extent possible, all utility lines and facilities serving the Real Estate and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other Supplier or service provider, with respect to the portions of the Development so encumbered,

- (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities,
 - (ii) to cut and remove any fences, trees, bushes, or shrubbery,
 - (iii) to grade, excavate, or fill, or
 - (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.
- (b) Developer hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Real Estate with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in and upon the Real Estate as shall be required or appropriate from time to time by such governmental authorities under applicable law.
- (c) There shall be created sanitary sewer easements in those areas designated on the Plat, which easements shall be in favor of Developer and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for the sanitary sewer system.

Section 3.5 Drainage Easements. There is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat) in the condition originally provided by Developer and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Developer, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

Section 3.6 Landscape Easements ("LE"). Landscape Easements, as designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of Developer and the Association for access to and installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said Landscape Easements without the written consent of the Board and provided such are in accordance with all applicable zoning laws. Notwithstanding the reservation of this easement, the Owners of Lots subject to an LE which does not extend along adjoining streets or roads shall have the exclusive right to use such area, subject to any other easement affecting such Lot.

Section 3.7 Lake Maintenance Access Easement and Emergency Access Easement. There may be strips of grounds as shown on the Plat marked Lake Maintenance Access Easement (L.M.A.E.) and Emergency Access Easement (E.A.E.), which are created and reserved:

- (a) for the use of the Developer during the Development Period for access to the Common Area or the Lakes and
- (b) for the nonexclusive use of the Association or any applicable governmental authority for access to the Common Areas or the Lakes. The Owner of any Lot which is subject to an LMAE or EAE shall be required to keep the portion of his Lot which is subject to such easement free from obstructions so that access will be unimpeded.

Section 3.8 Medians and Entry Features. There may be landscaped medians and/or islands located within the Real Estate and within the public right-of-way of the streets which are not otherwise labeled as, Common Areas or as LE. These areas are created and reserved for installation and maintenance of landscaping and entry features such as but not limited to permanent walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Association as if such were a Common Area.

Section 3.9 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, during the Development Period, and for a reasonable time thereafter, there is hereby reserved and created for the use of Developer, and its successors and assigns, and persons constructing improvements within the Real Estate, an easement for access to the Real Estate for the maintenance of signs, sales offices, construction offices, business offices, and model houses, together with such other facilities as in the sole opinion of Developer may be reasonably required, convenient, or incidental to the completion, improvement and or sale of Lots and the Common Areas.

Section 3.10 Maintenance Easement. There is hereby reserved and created for the use of Developer, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance for and within the Real Estate, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions.

Section 3.11 Patio Homes. In the event that Developer permits a builder to construct within the Real Estate a Dwelling Unit that is to be substantially contiguous with a the side lot line of an adjacent Lot (such Dwelling Unit herein referred to as a "Patio Home"), then to the provisions of this Section 3.11 shall apply:

- (a) To the extent necessary, the owner of the Lot upon which a Patio Home is constructed is hereby granted a six (6) foot access easement upon the Lot, which is adjacent and substantially contiguous to the side wall of the Patio Home. The easement under this subsection is for the construction, maintenance and the encroachment by walls, eaves, roof overhang, gutters and similar structures, and as necessary or appropriate, for underground utility lines and utility services, in favor of the Owners of each of the affected Lots and to all public, private and municipal utility companies. Notwithstanding the foregoing, there shall be maintained a minimum distance between the side walls of Dwelling Units often (10) feet, and between rear walls of Dwelling Units of twenty (20) feet. The surface of the easement area shall be restored by the person using the easement area to the condition as existed prior to any disturbance.
- (b) Each Patio Home, other than one specifically excepted by Developer, shall have one (1) sidewall constructed without windows (the "blank wall") below a point which is seven (7) feet above the finished floor elevation. The Owner of a Patio Home shall have an exclusive easement of use of the area extended from the exterior side wall of such Owner's Patio Home

to the blank wall of the adjacent Dwelling Unit which faces said area, and running the length of such blank wall side of such adjacent residence (the "patio area"); provided that such exclusive easement shall not apply in the case where there are two (2) adjacent lots where two (2) patio areas face each other, and it further shall not apply in the case when the adjacent Dwelling Unit is not constructed substantially contiguous to a side lot line. The Owner of the Patio Home benefited by the patio area shall maintain such patio area, excluding the blank wall of the adjacent residence. In the event such Owner fails to maintain said patio area, the Owner of the adjacent Dwelling Unit shall have the right and an easement to enter such area as necessary to maintain any portion of his Lot within such easement area. No fences, except fences installed by Developer, shall be erected in said patio area without the written consent of both Owners, and otherwise with the consent of the Committee. In the event two (2) Patio Homes are constructed side by side with blank walls facing a common property line, the Owners of each Patio Home shall be responsible for maintaining the area between the blank wall of their patio homes and the common property line.

Section 3.12 Tree Preservation Areas ("TPA"). Tree Preservation Areas, also known as a TP A, are designated on the Plat of the Real Estate. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon any TP A without the written consent of the Board, provided such are otherwise in accordance with all applicable zoning laws. An Owner of any Lot affected by a TP A shall maintain such area in a natural condition, and shall not further landscape or improve such area except with the prior written approval of the Board. In addition, no Owner of any Lot upon which a TPA exists shall, except as otherwise permitted below, remove or excessively prune, or cause the removal or excessive pruning of, any tree within the TPA. For purposes of this Section, the following definitions shall apply:

- (a) "Excessive pruning" means removal of more than one-fourth of the functioning leaf and stem area of a tree in any twelve-month period, or removal of foliage so as to cause the unbalancing of a tree;
- (b) "Remove" means
 - (i) Complete removal, such as cutting to the ground or extraction, of a tree; or
 - (ii) Taking any action leading to the death of a tree or permanent damage to its health; including but not limited to excessive pruning, cutting, girdling, poisoning, over-watering, unauthorized relocation or transportation of a tree, or trenching, excavating, altering the grade, or paving within the dripline area of a tree; and
- (c) "Tree" means any woody plant which has a trunk three (3) inches or more in diameter at four and a half (4 1/2) feet above natural grade level. A tree located within a TP A may be removed by an Owner if:
- (d) such Owner reasonably determines that such tree is dead, dangerous or is a detriment to or crowding an adjacent protected tree; or
- (e) such Owner has obtained the prior written consent of the Developer, during the Development Period, or the Association thereafter. In the case of subsection (d), above, prior to the removal unless conditions exist which reasonably constitute an emergency, the Owner shall notify the Developer, during the Development Period, and the Association thereafter. If within ten (10) days from such notice the Developer or the Association notifies the Owner that either of them disagrees with the determination that removal is necessary, such removal shall not occur. Otherwise, after such ten (10) day period, the Owner may remove such tree in accordance with such Owner's prior determination.

Section 3.13 Private Lane Easements 1st Amendment. Private Lane Easements, as designated on a Plat of all or any part of the Real Estate, are hereby created and reserved for the use of the Developer, the Association and the Owners of Lots abutting such Private Lane Easements for ingress to and egress from such Lots, as well as for the installation, maintenance, repair, and replacement of signs, walls, earth mounds, trees, foliage, landscaping, and other improvements. Each Owner shall be responsible for the maintenance of any landscaping within the Private Lane Easement affecting Owner's Lot. In the event such Owner does not maintain such landscaping in a manner reasonably accepted to the Developer or the Association, then the Developer or the Association, as the case may be, shall have the right to perform such maintenance, and seek reimbursement for the costs thereof from such Owner in accordance with the procedures available to the Associating for the collection of Assessments. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said Private Lane Easements without the written consent of the Board and provided such are in accordance with the terms of this Declaration and all applicable zoning laws. *(First Amendment to Declaration of Covenants, Conditions and Restrictions; added December 18, 2003 by Developer)*

Section 3.14 Perpetual Non-Buildable Easement 1st Amendment. There are strips of land measuring six (6) feet in width, as depicted on the plat, which are identified at Perpetual Non-Buildable Easements (P.N.E), which P.N.E may be located either separately or in combination with other easements. Each P.N.E is reserved for maintained and fire protection. Except as provided below, no structures shall be erected or permitted to remain upon such strips of land, and the Owners of Lots subject to the following uses and improvements are strictly prohibited within a P.N.E.: fences (other than Permitted Fences), decks, window or wall mounted air condition units, bay windows, eaves and overhands, chimneys, balconies and storage sheds. The following uses and improvements are permitted within the P.N.E. (so long as such are approved by the Association or originally installed by Developer and otherwise

permitted by local ordinance, as applicable), and shall not constitute permanent structures for purposes of a P.N.E.: Permitted Fences (as defined below), grade level patio stoops, HVAC equipment (including compressor units, and related equipment), utility service meters and connections (including but not limited to gas, electric, telephone, cable, satellite and aerials.)” “Permitted Fences” shall mean a fence which otherwise complies with the restrictions set forth in the Declaration and is approved by the Association, and which:

- (a) is perpendicular to the side wall of the subject residence, and
- (b) terminates at point such that there exists at least three feet (3’) between such point and the property line of the subject Lot.

(First Amendment to Declaration of Covenants, Conditions and Restrictions; amended December 18, 2003 by Developer)

ARTICLE IV - ORGANIZATION AND DUTIES OF ASSOCIATION

Section 4.1 Organization of Association. The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Article of Incorporation which have been filed or will be filed by Developer, and the Code of By- Laws of the Association.

Section 4.2 Voting Rights. The membership of the Association shall consist of two (2) classes of membership with the following rights:

- (a) **Class A Membership.** Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot owned by such Member with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. In the event that any Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, each shall be a Member but they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Class A Members, only one (1) vote is cast for each Lot.
- (b) **Class B Membership.** Class B Members shall be the Developer and all successors and assigns of Developer specifically designated in writing by Developer as Class B Members. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner with respect to each matter submitted to a vote of the Association. The Class B Membership shall cease and terminate upon the first to occur of
 - (i) the date upon which the written resignation of the Class B Members as such is delivered to the Association; or
 - (ii) at such time as the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership.

Notwithstanding anything herein to the contrary, during the Development Period all actions of the Association shall require the prior written approval of the Developer.

Section 4.3 General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

- (a) **Maintenance by Association.** The Association shall maintain and keep in good repair the Common Areas. The maintenance shall include, but need not be limited to, maintenance, repair and replacement of all landscaping and other flora, structures, play equipment, and improvements, including all private streets situated upon the Common Areas, landscaping easements along the primary roads through the Real Estate, medians and rights of way of public streets within the Real Estate, entry features for the Real Estate, and such portions of any other real property included within the Common Areas as may be provided in this Declaration, or by a contract or agreement for maintenance with any other person or entity, by the Association.
- (b) **Maintenance by Owners.** Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his or her Lot and Dwelling Unit, and all structures, parking areas, lawns, landscaping, grounds and other improvements comprising the Lot and Dwelling Unit in a manner consistent with all applicable covenants.
- (c) **Association's Remedies & if Owner Fails to Maintain Lot.** In the event that Developer or the Association determines that:
 - (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair, or replacement of items for which is his responsibility hereunder, or

(ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Developer or the Association, except in the event of an emergency situation, may give such Owner written notice of Developer's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner as the case may be, shall have ten (10) days within which to complete such maintenance, cleaning; repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provision hereof after such notice, Developer or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost (together with the cost of attorneys fees, if any, in the enforcement of the Owner's obligations and collection of the charge to the Owner) shall become a lien against the individual Owner's Lot (with respect to any matter relating to an individual Owner's responsibility) and such cost shall become a part of the costs of the Association (until such time as reimbursement is received from the individual Lot Owner). In the event that the Developer undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Developer for the Developer's costs and expenses, including reasonable attorneys' fees and filing fees.

Section 4.4 Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated, to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or 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 fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Real Estate, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

Section 4.5 Owners' Insurance Requirements. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon. The Board may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX of this Declaration and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction, which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat, safe, and attractive condition.

Section 4.6 Condemnation or Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage

thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify Mortgagees of which it has notice of any condemnation, damage, or destruction, of any Common Areas.

Section 4.7 Transfer of Control of Association. Developer shall transfer control of the Association to the Members as soon as is practical upon the termination of the Class B Membership, as described in Section 4.2, above.

Section 4.8 Interim Advisory Committee. Developer may, in its sole discretion, establish and maintain until such time as Developer shall transfer control of the Association pursuant to Section 4.7 hereof, an Interim Advisory Committee (the "Advisory Committee"). If established:

- (a) The Advisory Committee shall serve as a liaison between the Owners (other than the Developer) and the Association, and advise the Association from time to time during such period;
- (b) The Advisory Committee shall consist of three (3) members, each of whom must be an Owner (other than Developer, or an officer; director or employee of Developer);
- (c) The members of the Advisory Committee shall serve without compensation. The Advisory Committee shall be elected for a term of one (1) year by the Owners (other than Developer) at a meeting thereof called for such purpose; and
- (d) The Owners (other than Developer) may remove any member of the Advisory Committee with or Without cause, and elect a successor at a meeting thereof called for such purpose.

Section 4.9 Mortgagees' Rights. All mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

Section 4.10 Compliance with Drainage Plan Second Amendment. The Owner of any Lot is responsible for compliance with the provisions of the drainage plan as approved for this plat by the Tippecanoe County Drainage Board and the requirements of all drainage permits for this plat issued by said Department.

- (a) The Association is responsible for the maintenance and repair of the Storm Water Drainage System and the Storm Water Detention Basin, together with its outlet and water level control structures, until such time as Tippecanoe County or some other appropriate municipal authority assumes such responsibility.
- (b) Any Owner, the Board of Commissioners of Tippecanoe County and/or the Tippecanoe County Drainage Board, or any other appropriate municipal authority shall have the right to order the Association to carry out its obligation to maintain repair and/or replace the landscaping, Storm Water Drainage System and Storm Water Detention System Improvements, as above provided and to assess the Owners with the cost thereof.
- (c) No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Storm Water Drainage and Storm Water Detention Systems or abandonment of his Lot.
- (d) The Developer, its successors and assigns, hereby waive an and all right to object to the establishment of the Storm Water Drainage System and Storm Water Detention System of Benjamin Crossing Planned Development as a legal drain under the management and control of the Tippecanoe County Drainage Board and/or the Tippecanoe County Board of Commissioners.

(Second Amendment to Declaration of Covenants, Conditions and Restrictions; added May 26, 2004 by Developer)

ARTICLE V - ASSESSMENTS

Section 5.1 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Real Estate and promoting the health, safety, and welfare of the Owners, users, and occupants of the Real Estate and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except the Developer) hereby covenants and agrees to pay to the Association:

- (a) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.
- (b) A pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

The Developer hereby covenants and agrees to pay to the Association during the Development Period an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Section 5.1 and the aggregate amount of the annual Assessments collected by the Association.

Section 5.2 Liability for Assessment. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by the Developer and shall constitute a lien from and after the due date thereof in favor of the Association upon each such Lot. The lien for Assessments shall be subordinate to the lien of any first mortgage on a Lot. An Owner's failure to pay any Assessment shall not, by the terms of this Declaration constitute a default under a federally insured mortgage on such Lot. Mortgagees shall not be required to collect any Assessment. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

Section 5.3 Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Article V shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Real Estate ("Pro-rata Share").

Section 5.4 Basis of Annual Assessments. The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association. Such budget shall serve as the basis for establishing the annual assessments.

Section 5.5 Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

Section 5.6 Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The liability of an Owner, other than Developer, for Assessments under this Article V shall commence as of the date such Owner acquires his interest in a Lot. The first annual Assessment shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 5.7 Duties of the Association Regarding Assessments.

- (a) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.
- (b) The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence

of payment of any Assessment therein stated to have been paid. The Association may assess an administrative fee for such certificate, not to exceed the sum of \$25.00.

- (c) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

Section 5.8 Non-payment of Assessments; Remedies of Association.

- (a) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which, such Assessment was made, and such lien shall be binding upon and enforceable as personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in subparagraph (b) hereof; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.
- (b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest at the rate of twelve percent (12%) per annum until paid in full. In addition to such interest, the Association shall assess a late fee, as from time to time determined by the Board of Directors of the Association. The Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, late fees, costs, and attorneys' fees.

Section 5.9 Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the mailing of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

ARTICLE VI - ARCHITECTURAL STANDARDS AND REQUIREMENTS

Section 6.1 Purpose. In order to preserve the natural setting and beauty of the Real Estate, to establish and preserve a harmonious and aesthetically pleasing design for the Real Estate, and to protect and promote the value of the Real Estate, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article VI and in Article VII. Notwithstanding the foregoing, neither this Article nor Article VII shall apply to the activities of the Developer, nor to construction or improvements or modifications to the Common Areas by or on behalf of the Association. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee.

Section 6.2 Development Control Committee. The Board shall establish a Development Control Committee to consist of three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the Committee may include persons who are not Members of the Association. Members of the Committee may or may not be members of the Board. During the Development Period, the Developer shall have all of the powers and authority of the Committee.

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee shall elect a Chairman and Vice Chairman and he, or in his absence, the Vice-Chairman, shall be presiding officer at its meetings. The Committee shall meet at least once in each calendar month, as well as upon call of the Chairman, and all meetings shall be held at such places as may be designated by the Chairman. A majority of the members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto. The Committee shall promulgate a Common Interest and Community Information Disclosure Document (the "CICIO"), which may contain additional architectural standards and guidelines for the Real Estate. In addition to such standards, the following shall apply: plans and specifications showing the nature, kind, shape,

color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling Unit, or to paint the interior of his Dwelling Unit any color desired.

The Committee shall endeavor to approve or to disapprove such plans or to request additional information within thirty (30) days after submission of completed plans, proposals, specifications or drawings.

Section 6.3 No Waiver of Future Approvals. The approval by the Committee of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 6.4 Architectural Approval. *[See RR&P Article II for additional information]* To preserve the architectural and aesthetic appearance of the Real Estate, no construction of improvements of any nature whatsoever with the exception of vegetative landscaping shall be commenced or maintained by an Owner, other than the Developer, with respect to the construction or affecting the exterior appearance of any Dwelling Unit or with respect to any other portion of the Real Estate, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, or outbuildings, nor shall any exterior addition to or change or alteration therein be made (excluding repainting in the original color but otherwise including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of such plans and specifications with such standards as may be published by the Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved" "approved as noted", or "disapproved".

(a) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of the restrictions contained in this Declaration;

(ii) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Real Estate in general;

(iii) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners; and/or

(iv) The Committee is otherwise authorized to disapprove the requested improvement in this Declaration or in the CICID.

(b) Powers Following Approval. Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Committee shall determine that such plans and specification have not been approved or are not being complied with, the Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

Section 6.5 Non Vegetative Landscaping Approval. To preserve the aesthetic appearance of the Real Estate, no material modification to the grading, excavation, or filling of any Lot shall be implemented by an Owner, unless and until the plans therefore have been submitted to and approved in writing by the Committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and lot require removal, etc. shall also be applicable to approvals required under this Section.

Section 6.6 Approval Not a Guarantee. No approval of plans and specifications and no publication of standards, shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be built in a good and workmanlike manner. Neither the Developer, the Association, nor the Committee shall be responsible or liable for:

- (a) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article VI;
- (b) loss or damages to any person arising out of the approval or disapproval of any plans or specifications;
- (c) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor
- (d) any defects in construction undertaken pursuant, to such plans and specifications.

Section 6.7 Building Restrictions. All improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, and obtain such authorizations and permits as are required thereunder, and further, shall receive the prior written approval of the Committee.

ARTICLE VII - USE RESTRICTIONS

The Association, acting through its Board, shall have the authority to make and to enforce standards and restrictions governing the use of the Real Estate, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association by a majority of Members entitled to vote thereon; subject to the prior written consent of the Developer during the Development Period.

Section 7.1 Use of Lots. Except as permitted by Section 7.26 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried therein. The use of a portion of a Dwelling Unit as an office by an Owner, or his tenant shall not be considered to be a violation of this covenant if Owner is in compliance with Section 7.26 below. No building or structure shall be located on any Lot outside of the setback lines designated on the Plats.

Section 7.2 Awnings and Window Screens. No foil or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes nor shall any window-mounted heating or air conditioning units be permitted. No metal, fiberglass or similar type awnings or patio covers shall be permitted. Collapsible or retractable clotheslines, not to exceed fifteen feet in length will be allowed with proper Committee approval. Permanent clotheslines will not be approved. While not in use, the clothes lines must always be kept collapsed or retracted. Clothing, rugs, or other items which are visible to others in the Real Estate shall not be hung on any railing, fence, hedge, or wall.

Section 7.3 Signs. *[See RR&P Article III for additional information]* No signs of any kind shall be erected within the Real Estate, or permitted within any windows, without the written consent of the Board, except for such signs as may be required by legal proceedings and except for a single standard real estate "for sale" or "for rent" sign may exist on a Lot if such does not exceed six (6) square feet in area. Developer may use such signs as it deems necessary or appropriate during the Development Period. No business signs, flags, banners or similar items except those placed and used by Developer advertising or providing directional information shall be erected by any Owner. If permission is granted to any Person to erect a sign, including name and address signs within the Real Estate, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

Section 7.4 Parking and Prohibited Vehicles 1st Amendment. *[See RR&P Article IV for additional information]*

- (a) **Parking.** Vehicles shall be parked in the garages or on the driveways serving the Lots. No motor vehicle, whether or not utilized by an Owner, shall be parked on any Private Lane or any other street or public right-of-way; provided, however; that parking may be permitted on certain dedicated public street within the Development. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed.

No Owners or other occupants of any portion of the Real Estate shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except

- (i) within enclosed garages or workshops, or
- (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

- (b) **Prohibited Vehicles.** Commercial vehicles primarily used or designed for commercial purposes, tractors, busses, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Real Estate except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Real Estate during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board

may be towed at the expense of the Owner. (*First Amendment to Declaration of Covenants, Conditions and Restrictions; amended December 18, 2003 by Developer*)

Section 7.5 Animals and Pets. [*See RR&P Article V for additional information*] No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any lot or lots in the Real Estate. All pets shall remain under the control and supervision of an adult Owner, and shall not be permitted off of such Owner's respective Lot unless on a leash or other restraint. The owner of any pet shall be responsible to clean up or repair any waste or damage caused by such pet, and assure that such pet does not create any unreasonable disturbance.

Section 7.6 Quiet Enjoyment. No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition. No noxious or illegal activity shall be carried on upon any portion of the Real Estate. No hunting of any nature shall be permitted within the Real Estate. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Real Estate, The Developer or the Association may order the relocation of any wood piles which are unsightly. No horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Real Estate.

Section 7.7 Unsightly or Unkempt Conditions; Lawn Care; Dumping. [*See RR&P Article VI for additional information*] It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. All lawns and other landscaping materials shall be maintained on a regular basis. In no event shall the grass on any Lot exceed the length of six inches (6"). The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Real Estate. Nothing which would result in a cancellation of any insurance for any portion of the Real Estate, or which would be in violation of any law or governmental code or regulation shall be permitted in the Real Estate. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Real Estate shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

Section 7.8 Antennas, Aerials and Satellite Dishes.

- (a) Intent. It is the intent and desire of Developer that the Real Estate be developed in an aesthetically pleasant manner, and that the residences constructed on the Lots retain a harmonious and consistent appearance. To this end, it is the goal of the provisions of this Section 7.8 to limit the installation of any satellite dishes, antennas and aerials on the Lots so that such are not visible from the street in front of such Lot.
- (b) Permitted Installation and Standards. A "Satellite Dish" or "Antenna," as such terms are defined below, shall be permitted to be installed by an Owner without the approval of the Developer or the Association provided the location of the Satellite Dish or Antenna, and all related cables and wiring, are installed at the least visible location on such Owner's Lot, as viewed from the street directly in front of such Lot, which will not result in a substantial degradation of reception. Within twenty (20) days from the installation of a Satellite Dish or Antenna, an Owner shall notify the Association of such installation. Such notice shall indicate the item installed, the approximate location on such Lot, and that such installation meets the standards contained in this subsection (b).
- (c) Rights of Association and Developer. The Association and Developer shall have the right to enter upon a Lot' on which a Satellite Dish or Antenna is installed in order to
 - (i) confirm that the Satellite Dish or Antenna, as the case may be, was installed in accordance with the standard specified in Section 7.8(b), above; or
 - (ii) install, at the expense of the Association or the Developer, as the case may be, landscaping, fencing, or a combination thereof, so as to shield or otherwise block the view of such Satellite Dish or Antenna from the street in front of such Lot. In the event the installation does not meet the standard specified in Section 7.8(b); above, the Association may require the relocation of the Satellite Dish or Antenna by the Owner, at the Owner's expense, to another location which meets such standard. In addition, the Association shall have the right to require the Owner at the Owner's expense, to paint the Satellite Dish or Antenna (provided that such painting does not impair the reception thereof) to match the background of the installation area.
- (d) Definitions of Satellite Dish and Antenna. For purposes of this Section 7.8, the terms "Satellite Dish" and "Antenna" shall mean any satellite dish or antenna that is subject to the Telecommunications Act of 1996, as amended, and any applicable regulations issued thereunder (collectively, the "Telecom Act").

- (e) Reception Devices not Governed by the Telecom Act. Any antennas, aerials, satellite dishes, or other apparatus not subject to the Telecom Act shall be permitted on a Lot only if:
 - (i) concealed by landscaping, fencing, or a combination thereof;
 - (ii) installed so as not to be visible from the street in front of such Lot, front elevation street view; and
 - (iii) not constitute a nuisance to any other Owner. All installations under this subsection (e) shall be first approved by the Association.
- (f) Miscellaneous. No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Real Estate, provided however that the Developer and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Real Estate, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

Section 7.9 Garbage Cans, Tanks, Etc. *[See RR&P Article VII for additional information]* No storage tanks of any kind shall be allowed upon a Lot. No rubbish, trash or garbage containers shall be stored or maintained outdoors except for such temporary storage necessary for immediate pick up of the trash and, in that event, trash shall be stored in appropriate containers.

Section 7.10 Pools. *[See RR&P Article VIII for additional information]* No above ground swimming pools shall be erected, constructed or installed on any Lot; provided, nothing herein shall preclude installation and use of hot tubs, spas or in ground pools with prior approval of the Committee as provided herein.

Section 7.11 Storage Sheds and Temporary Structures. *[See RR&P Article IX for additional information]* Except as may be utilized by Developer during the Development Period, no tent, shack, trailer, storage shed, mini-bam or other similar detached structure shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Committee or the Developer and children's overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours.

Section 7.12 Drainage, Water Wells and Septic Systems.

- (a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than the Developer may obstruct or rechannel the drainage flows after location and installation of drainage swales, stone sewers, or storm drains.
- (b) No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot.

Section 7.13 Traffic Regulation and Sight Distance at Intersections. All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Real Estate shall be subject to the provisions of the laws of the State of Indiana, and any other applicable governmental agency, concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Real Estate. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of Indiana or by any other state in the United States may operate any type of motor vehicle within the Real Estate. All vehicles of any kind and nature which are operated on the streets in the Real Estate shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Real Estate.

Section 7.14 Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Real Estate, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

Section 7.15 Air Conditioning Units. *[See RR&P Article X for additional information]* Except as may be permitted by the Board, no window air conditioning units may be installed in any Lot.

Section 7.16 Mailboxes. *[See RR&P Article XI for additional information]* Each Owner of a Lot shall maintain the mailbox and structure which was originally installed by a builder, and shall replace same as necessary with a mailbox and structure which is substantially the same in appearance as that which was originally provided to the Dwelling Unit. Nothing may be attached to the mailbox structure which will affect the uniformity thereof with other such structures in the Real Estate. The Committee shall have the discretion to require the replacement of any mailbox within the Real Estate at the expense of the Owner of the Lot served thereby.

Section 7.17 Solar Panels. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot.

Section 7.18 Homeowner Landscape Requirement. Within six (6) months of closing, the homeowner is responsible for installing one additional tree in the front yard which may be either a one (1) inch caliper ornamental, one and a half (1 1/2) inch caliper shade or four (4) foot high evergreen. Also, the homeowner is responsible for installing at least eight (8) shrubs with a mixture of flowering and evergreen and with an eighteen (18) inch spread or height in the front yard.

Section 7.19 Seeding of Rear Yards. Within thirty (30) days of initial occupancy of a Dwelling Unit, the Owner thereof shall cause the rear yard of such Lot to be seeded with grass of a type generally used in the Real Estate the initial seeding may be delayed if the occupancy date occurs between November 1 and the following March 31, or if, as of the date of occupancy, the final grading of the rear yard has not been completed; however, in either of such events, the initial seeding of the rear yard shall be completed on or before

- (a) May 1 following the date of occupancy, or
- (b) thirty (30) days following completion of final grading, whichever is later.

Section 7.20 Exterior Flags and Sculpture. [See RR&P Article XII for additional information] Exterior sculptures, fountains, flags, and similar items must be approved by the Committee.

Section 7.21 Driveways and Sidewalks. [See RR&P Article XII.1 for additional information] All driveways will be constructed by a builder of the Dwelling Unit which it serves. Owners shall maintain and replace the driveway of their Lot thereafter so as to maintain the same appearance as provided at the time of original construction, ordinary wear and tear accepted. Each Dwelling Unit shall have a continuous side walk from the driveway to the front porch or entry.

Section 7.22 Wetlands, Lakes and Water Bodies. All wetlands, Lakes, ponds, and streams within the Real Estate, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation, fishing, swimming, boating, playing or use of personal flotation devices, shall be permitted except as provided in Section 7.30. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of Lakes, ponds or streams within the Real Estate.

Section 7.23 Fences 1st Amendment. [See RR&P Article XIII for additional information] No fencing shall be installed on any Lot without the proper review and approval of the Committee (which is defined in the Declaration as the Architectural Control Committee of the Association). The Committee shall have approval on all aspects of any proposed fencing, including, but not limited to size, location, height and composition. Fencing restrictions are as follows:

(a) General Restrictions: The following restrictions are applicable to all Lots within the Development

(i) Approvals. Any fencing shall be subject to the prior approval of the Committee.

(ii) Fencing Types and Materials. All fencing shall be constructed of white vinyl, white picket style (4' in height vinyl or painted wood), black vinyl coated chain link, black wrought iron style materials, or wood fencing. Wood fencing is permitted in most locations; however, the ACC Committee reserves the right to approve certain fence types on perimeter and highly visible lots within the community (See section (d) (ii) below). A brochure showing an example of fencing to be installed must be included with the application to the Committee.

(iii) Fencing Colors. Fencing shall be either white, off-white, neutral, or earth toned colors. All wooden fencing must be waterproof, stained and/or painted. Chain link is only permitted to be black vinyl coated and wrought iron must be black. Such stain or paint must be uniform for an entire fence and maintained in good condition.

(iv) Fencing Height. Fencing shall not exceed five (5) feet in height provided that a decorative cap or top (lattice work or other approved decorative detail) may be installed thereon on so long as the aggregate height of the entire structure shall not exceed six (6) feet).

(v) Use of Professional Installer. A professional fencing contractor must be hired by the Owner, at such Owner's cost, to install approved fencing for such Owner.

(vi) Developer Installed Fencing. No fencing shall connect to or otherwise interfere with any fencing originally installed by the Developer. Any fencing installed by Developer shall not be subject to these standards.

(vii) Landscape Easements. Except as installed by Developer or Association, or improvements or permanent structures, including without limitation, fences, shall be erected or maintained in or upon Landscaped Easements.

(viii) Fencing within Easements: Fencing which is installed within any easement affecting a Lot shall be subject to the risk of removal without notice by the Association or any other entities which have access rights, if any work or

repairs are to be done within the easement area(s). The Owner of such Lot shall be responsible for any and all costs relating to the removal of such fencing and for the subsequent replacement of any approved replacement fencing.

In addition, fencing must not impede surface drainage and must be installed to be a minimum of three (3) inches off the ground (fence posts must not obstruct any drainage, i.e. rear swale).

- (b) **Location of Fencing on Conventional Lots:** In addition to the restrictions under subsection (a), above and those found under subsection (d), below, the following restrictions are applicable to all Lots within the Development other than Lots which are improved with Developer's Village Lane product (being Lots which are subject to Private Lane Easements):
- (i) Fencing shall not extend forward beyond a point, which is (10) feet behind the front corner of the residence; and
 - (ii) Fencing on any corner Lot shall be at least five (5) feet from the sidewalk.
- (c) **Fencing location on Lots subject to Private Lane Easements (Village Lane Communities):** In addition to the restrictions under subsection (a), above, and those found under subsection (d), below, the following restrictions are applicable to all Lots which are improved with developers Village Lane products (being Lots which are subject to Perpetual Non-Building Easements (P.N.E.) and Private Lane Easements):
- (i) Fencing shall not extend forward beyond a point, which is ten (10) feet behind the front corner of the residence;
 - (ii) Fencing shall not extend backwards beyond a point towards the rear of a residence determined by a measurement which is the greater of (A) four (4) feet from the rear corner of such residence or (B) the rear corner of the adjacent residence, if any;
 - (iii) Fencing shall not run parallel to an adjoining residence. Permitted Fences are to be perpendicular to the side wall of the subject residence and terminate at a point such that there exists at least three (3) feet between such point and the property line of the subject Lot.
 - (iv) Fencing shall not be constructed within twenty-five (25) feet of the shoreline of any lake or detention pond; and
 - (v) Fencing on any corner Lot shall be at least five (5) feet from the sidewalk.
- (d) **Additional Fencing Restrictions.** Fencing for Lots in highly visible locations (such locations to be determined by the Committee in its sole discretion) shall be subject to the following additional restrictions:
- (i) ***Pond lots:*** Lots which are adjacent to or which abut a Lake or detention pond are subject to the following restrictions:
 - (a) Fencing shall not exceed four (4) in height; provided that in the discretion of the Committee, the portion of such fence closest to the rear side of the residence may be the five (5) feet in height, and have a decorative cap (not to exceed six (6) feet aggregate); provided further that such higher section shall not extend more than ten (10) feet from the rear corner(s) of the residence, subject to (b), below. In exercising its discretion under this provision, the Committee shall take into account the affect such proposed fence would have on the use and enjoyment of the lake or pond areas by other Owners.
 - (b) Fencing shall not be constructed within twenty-five (25) feet of the shoreline of an Lake or detention pond.
 - (ii) ***Perimeter Lots and Highly Visible Lots:*** With respect to a Lot where either (a) the rear yards are highly visible from public streets (within the neighborhood or surrounding neighborhood), or (b) the Lot abuts a Common Area the Committee may require fencing for such Lot to be consistent in material, height, and style to that of previously approved fencing for any other Lot which is on and along such street or Common Area. Such restrictions shall be disclosed to buyers in the Common Interest and Community Information Disclosure.

NOTE: In addition to the above restrictions and stands, the applicable municipality may have restrictions and ordinances that may affect, limit or otherwise restrict or prohibit an improvement to a Lot, including fencing. Approval of any improvements by the Committee does not guarantee that such improvement is not subject to any other governmental approval. There may be instances where a chance is approved through the Committee but may not be allowed through the municipality (or visa versa). An Owner must check with the municipality and obtain any permits or approvals that may be required.

(First Amendment to Declaration of Covenants, Conditions and Restrictions; amended December 18, 2003 by Developer)

Section 7.24 Business Uses. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit;
- (b) the business activity conforms to all zoning requirements for the Real Estate;
- (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Real Estate; and
- (d) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involve the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether:

- (i) such activity is engaged in full or part- time;
- (ii) such activity is intended to or does generate a profit; or
- (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any commercial property within the Real Estate nor shall it apply to any activity conducted by the Developer or a builder approved by the Developer with respect to its development and sale of the Real Estate or its use of any Lots or Dwelling Units which it owns within the Real Estate.

Section 7.25 Basketball Goals. *[See RR&P Article XIV for additional information]* No basketball goals shall be permitted on any lot without the prior review and approval of the Architectural Control Committee of the Homeowners Association. No basketball goals shall be permitted to be used along any curb on or in any street of the Community.

Section 7.26 Playground Equipment. *[See RR&P Article XV for additional information]* No playground equipment shall be installed on any lot without the prior review and approval of the Architectural Control Committee of the Homeowners Association. All such equipment shall be located at least ten (10) feet from any adjacent property lines and in the rear yard of a lot (being the portion of such lot behind the rear comers of the residence on such lot). Notwithstanding the foregoing, in the event such lot is located on a comer in the Community, the Architectural Control Committee may, in its discretion, approve a location for such equipment other than a rear yard provided such is not closer than ten (1 0) feet from any public sidewalk.

Section 7.27 On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Real Estate except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 7.28 Contiguous Lots. Whenever two or more contiguous Lots shall be owned by the same Owner, and such Owner shall not be permitted to use two or more of said Lots as a site for a single dwelling. Each Lot shall be, and shall remain, improved with a single Dwelling Unit, and each Lot shall be subject to the Assessments.

Section 7.29 Control of Lakes and Common Areas.

- (a) Control by the Association. As part of its general duties, the Association shall regulate the Lakes and Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Lakes and Common Areas. No improvements, excavation, changes in grade or other work shall be done upon the Lakes or Common Areas by any Owner, nor shall the Lakes or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Committee.
- (b) Restrictions of Use of Lakes and Common Areas. The following covenants and restrictions on the use and enjoyment of the Lots, the Lakes, and the Common Areas shall be in addition to any other covenants or restrictions contained herein or in the Plats and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:
 - (i) No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Lakes or the Common Areas.

(ii) No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Lakes or the Common Areas.

(iii) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or the Properties or other persons entitled to use the same and to use and enjoy the Lakes and the Common Areas, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Lakes and the Common Areas.

(iv) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Lakes or the Common Areas, except with express permission from the Committee.

(v) The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage system serving the Real Estate, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes, which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shoreline area of the Lakes by an Owner, his occupants, his invited guests and family, shall be permitted subject to rules determined by the Association and compliance with all applicable fishing and game laws, ordinances, rules and regulations. No Owner or other person shall take or remove any water from or out of the Lakes, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Real Estate, which extend into, or to within twenty-five (25) feet of, the shoreline of any Lake, except by Developer or the Association.

Section 7.30 Laws and Ordinances. Every Owner and occupant of any Lot or Dwelling Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Real Estate and any violation thereof may be considered a violation of this Declaration; provided, however, the Board shall have no obligation to take action enforce such laws, statutes, ordinances and rules.

Section 7.31 Sales and Construction. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for the Developer and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwelling Units or the developing of Lots, Dwelling Units and Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model houses, all as may be approved by the Developer from time to time, provided that the location of any construction trailer of any assignees of the Developer's rights under this Section 7.30 shall be subject to the Developer's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwelling Units as model residences, and to use any Dwelling Unit as an office for the sale of Lots and Dwelling Units and for related activities.

Section 7.32 Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

ARTICLE VIII - RULEMAKING AND REMEDIES FOR ENFORCEMENT

Section 8.1 Rules and Regulations. [See RR&P Article XVI for additional information] Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots and Dwelling Units, and the amendments thereto shall be furnished by the Association to all Members prior to the effective date upon the Owners, their families, tenants guests, invitees, servants and agents, until and unless any such rule or regulations be specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Association by a majority of all Members as set forth in the By-Laws, subject to Developer's consent during the Development Period.

Section 8.2 Authority and Enforcement.

- (a) Upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Association shall have the power, after fifteen (15) days written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation:
- (i) to cause the Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing Lien upon the Lot of the Owner or the occupant who is guilty of such violation;
 - (ii) to suspend an Owner's right to vote in the Association; and
 - (iii) to suspend an Owner or occupant's right (and the right of his or her family, guests, and tenants) to use any of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. Such sanctions are in addition to the Association's remedies under Section 4.2, above, relating to maintenance. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter; such additional period not to exceed thirty (30) days per violation.

- (b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation and By-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by the Developer, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations; declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Developer, the Association, or any Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either the Developer or the Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations.

ARTICLE IX - GENERAL PROVISIONS

Section 9.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Real Estate, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by more than seventy-five percent (75%) of the then Owners has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

Section 9.2 Amendment. Prior to the conveyance of the first Lot to an Owner, the Developer may unilaterally amend this Declaration. After such conveyance, the Developer may unilaterally amend this Declaration at any time and from time to time if such amendment is

- (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination, or to otherwise comply with any other governmental order or request;
- (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwellings;
- (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Department of Housing and Urban Development, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units;
- (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots;
- (e) to annex additional real estate to the Real Estate as provided herein;
- (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, any amendment permitted under subsections (a) through (f) of this Section 9.2 shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, during the Development Period, the Developer may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least seventy-five percent (75%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the County in which this Declaration was recorded. If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of the Developer or the assignee of such right or privilege.

Section 9.3 Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation if such insurance is reasonably available.

Section 9.4 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Developer or the Board will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes, which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

Section 9.5 Right of Entry. The Association, and during the Development Period the Developer, shall have the right, but not the obligation, to enter onto any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Association's Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Association to enter a Lot and Dwelling Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 9.6 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by Indiana Code 32-1-4.5-1, et seq. As amended from time to time.

Section 9.7 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote representing at least two-thirds (2/3) of the Members entitled to vote thereon. However, this Section shall not apply to

- (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens),
- (b) actions brought for collection of assessments,
- (c) proceedings involving challenges to ad valorem taxation, or
- (d) counterclaims brought by the Association in proceedings instituted against it

Section 9.8 Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer: title to his or her Lot, such Owner shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Board, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Lot hereunder, including payment of assessments, notwithstanding the transfer of title to the Lot.

Section 9.9 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereby apply either to corporations or other entities or to individuals, men or women shall in all cases be assumed as though in each case fully expressed.

Section 9.10 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 9.11 Rights of third Parties. This Declaration shall be recorded for the benefit of the Developer, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Community, except as provided or herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of the Developer and the Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.