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MORRIS W. ORLICH
RECORDER

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SAM ORLICH

AUDITOR LAKE COUNTY

KEYS 9-515-1 to 38

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ELLENDALE FARM

FIRST RESTATED

DECLARATION

OF COVENANTS,

CONDITIONS,

EASEMENTS,

AND RESTRICTIONS



TICOR TITLE INSURANCE
Crown Point, Indiana

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TABLE OF CONTENTS

GENERAL PROVISIONS	2
1. Purpose	2
2. Declaration to Run with Land	2
3. Changes to Real Estate	2
4. Easements	2
(a) Drainage System	3
(b) Sanitary	3
(c) Combination	3
(d) Miscellaneous	3
5. Dedication	3
6. Agency for Plats	4

ARTICLE I

DEFINITIONS	4
Section 1.1 Additional Land	4
Section 1.2 Area of Common Responsibility	4
Section 1.3 Association	5
Section 1.4 Attached Residential Unit	5
Section 1.5 Board	5
Section 1.6 By-Laws	5
Section 1.7 Common Area	5
Section 1.8 Common Expenses	5
Section 1.9 Community-Wide Standard	5
Section 1.10 Construction	5
Section 1.11 Declarant	5
Section 1.12 Declaration	6
Section 1.13 Detached Residential Unit	6
Section 1.14 Development	6
Section 1.15 Drainage System	6
Section 1.16 Eligible Mortgage Holder	6
Section 1.17 Eligible Votes	6
Section 1.18 Fenceline Easement	6
Section 1.19 Land Use Standards	6
Section 1.20 Lot	6
Section 1.22 Majority	6
Section 1.23 Member	7
Section 1.24 Mortgage	7
Section 1.25 Mortgagee	7

<u>Section 1.26</u>	<u>Mortgagor</u>	7
<u>Section 1.27</u>	<u>Owner</u>	7
<u>Section 1.28</u>	<u>Person</u>	7
<u>Section 1.29</u>	<u>Plat</u>	7
<u>Section 1.30</u>	<u>Real Estate</u>	7
<u>Section 1.31</u>	<u>Residential Unit</u>	7
<u>Section 1.32</u>	<u>Single Family</u>	7
<u>Section 1.33</u>	<u>Streets</u>	8
<u>Section 1.34</u>	<u>Supplemental Declaration</u>	8
<u>Section 1.35</u>	<u>Townhome Common Area</u>	8
<u>Section 1.36</u>	<u>Townhome Development</u>	8
<u>Section 1.37</u>	<u>Townhome Lot</u>	8
<u>Section 1.38</u>	<u>Trails</u>	8

ARTICLE II

<u>PROPERTY RIGHTS</u>	8
<u>Section 2.1</u> <u>In General</u>	8
<u>Section 2.2</u> <u>Owner's Rights of Enjoyment</u>	9
<u>Section 2.3</u> <u>Declarant's Reserved Easements</u>	11
<u>Section 2.4</u> <u>Owner's Rights to Ingress and Egress</u>	12
<u>Section 2.5</u> <u>Use of Lots and Units</u>	12
<u>Section 2.6</u> <u>Use of Common Areas</u>	13
<u>Section 2.7</u> <u>Signs</u>	13
<u>Section 2.8</u> <u>Rules and Regulations</u>	13
<u>Section 2.9</u> <u>Exterior Lighting</u>	13
<u>Section 2.10</u> <u>Storage and Parking Vehicles</u>	14
<u>Section 2.11</u> <u>Pets</u>	14
<u>Section 2.12</u> <u>Nuisances</u>	14
<u>Section 2.13</u> <u>Garbage, Trash and Other Refuse</u>	15
<u>Section 2.14</u> <u>Trash Receptacles</u>	15
<u>Section 2.15</u> <u>Model Homes</u>	15
<u>Section 2.16</u> <u>Temporary Structures</u>	15
<u>Section 2.17</u> <u>Utility Services</u>	15
<u>Section 2.18</u> <u>Wells and Septic Tanks</u>	16
<u>Section 2.19</u> <u>Antennas and Solar Heat Panels</u>	16
<u>Section 2.20</u> <u>Mailboxes and Address Identification</u>	16
<u>Section 2.21</u> <u>Use of Yards</u>	16
<u>Section 2.22</u> <u>Maintenance of Lots, Lawns, and Improvements</u>	16
<u>Section 2.23</u> <u>Ditches, Swales, and Waterways</u>	17
<u>Section 2.24</u> <u>Storage Tanks</u>	17
<u>Section 2.25</u> <u>Motor Vehicles</u>	17
<u>Section 2.26</u> <u>Soliciting</u>	17

<u>Section 2.27</u>	<u>Swimming Pools</u>	17
<u>Section 2.28</u>	<u>Attached Residential Units</u>	17
<u>Section 2.29</u>	<u>Trails</u>	17
<u>Section 2.30</u>	<u>Fenceline Easement</u>	18
<u>Section 2.31</u>	<u>Lot 17 Additional Land Maintenance</u>	18
<u>Section 2.32</u>	<u>Sidewalks</u>	18
<u>Section 2.33</u>	<u>Water Flow Easements</u>	18

ARTICLE III

<u>MEMBERSHIP AND VOTING RIGHTS</u>	18	
<u>Section 3.1</u>	<u>Membership</u>	18
<u>Section 3.2</u>	<u>Classes of Membership and Voting Rights</u>	18
<u>Section 3.3</u>	<u>Board of Directors</u>	19
<u>Section 3.4</u>	<u>Professional Management</u>	19
<u>Section 3.5</u>	<u>Responsibilities of the Association</u>	19
<u>Section 3.6</u>	<u>Control and Transfer of Control of Association</u>	19

ARTICLE IV

<u>COMMON MAINTENANCE</u>	20	
<u>Section 4.1</u>	<u>Maintenance by Association</u>	20
<u>Section 4.2</u>	<u>Liabilities of Owners</u>	20
<u>Section 4.3</u>	<u>Excess Costs</u>	21

ARTICLE V

<u>INSURANCE</u>	21	
<u>Section 5.1</u>	<u>Insurance</u>	21
(a)	<u>Insurance of Common Area</u>	21
(b)	<u>Liability Insurance</u>	21
(c)	<u>Standards for Insurance</u>	22
(d)	<u>Other Insurance</u>	23
<u>Section 5.2</u>	<u>Individual Insurance</u>	23
(a)	<u>Required Insurance</u>	23
(b)	<u>Rebuilding of Attached Residential Units</u>	23
(c)	<u>Rebuilding of Detached Residential Units</u>	24
<u>Section 5.3</u>	<u>Disbursement of Proceeds</u>	24
<u>Section 5.4</u>	<u>Damage and Destruction</u>	24
<u>Section 5.5</u>	<u>Repair and Reconstruction</u>	25



ARTICLE VI

NO PARTITION 25
Section 6.1 No Partition 25

ARTICLE VII

CONDEMNATION 25
Section 7.1 Condemnation 25

ARTICLE VIII

ANNEXATION OF ADDITIONAL REAL ESTATE 26
Section 8.1 Annexation Without Approval of Owners 26
Section 8.2 Acquisition of Additional Common Area 27

ARTICLE IX

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION 27
Section 9.1 Common Area 27
Section 9.2 Duty To Comply With Easements Benefitting The Development ... 27
Section 9.3 Services 28
Section 9.4 Personal Property and Real Property for Common Use 28
Section 9.5 Implied Rights 28
Section 9.6 Self-Help 28

ARTICLE X

ASSESSMENTS 28
Section 10.1 Purpose of Assessment 28
Section 10.2 Creation of Assessments 29
Section 10.3 Computation of Assessment 29
(a) Budget 29
(b) Amount of Assessments 29
(c) Failure to Approve Budget 30
(d) Deficits 30
(e) Limitation on Increases 30
Section 10.4 Special Assessments 30
Section 10.5 Lien for Assessments 31
Section 10.6 Effect of Nonpayment of Assessments: Remedies of the Association 31

(a)	<u>Lien Rights</u>	31
(b)	<u>Priority of Application of Payment</u>	32
(c)	<u>Suspension of Voting Rights</u>	32
Section 10.7	<u>Capital Budget and Contribution</u>	32
Section 10.8	<u>Subordination of the Lien to First Deeds of Trust and First Mortgages</u>	32
Section 10.9	<u>Capitalization of Association</u>	32
Section 10.10	<u>Date of Commencement of Annual Assessments</u>	33
Section 10.11	<u>Assessments by Declarant</u>	33

ARTICLE XI

	<u>ARCHITECTURAL STANDARDS</u>	33
Section 11.1	<u>Architectural Standards Jurisdiction</u>	33
Section 11.2	<u>Board Authority</u>	34
Section 11.3	<u>Procedures for Approval</u>	34
Section 11.4	<u>Power of Disapproval</u>	35
Section 11.5	<u>Hold Harmless</u>	36
Section 11.6	<u>Inspection</u>	36
Section 11.7	<u>Declarant Improvements</u>	36
Section 11.8	<u>Remedies for Failure to Obtain Approval</u>	36
Section 11.9	<u>Certain Architectural Standards</u>	37
Section 11.10	<u>Erosion Control</u>	38
Section 11.11	<u>Power to Grant Variances</u>	39

ARTICLE XII

	<u>TOWNHOME DEVELOPMENT</u>	40
Section 12.1	<u>Additional Land</u>	40
Section 12.2	<u>Townhome Association</u>	40
Section 12.3	<u>Exterior Maintenance</u>	40
Section 12.4	<u>Pond Maintenance</u>	40

ARTICLE XIII

	<u>MORTGAGEE RIGHTS</u>	41
Section 13.1	<u>Notices of Action</u>	41
Section 13.2	<u>Rights of Mortgagees</u>	41

ARTICLE XIV

	<u>GENERAL PROVISIONS</u>	42
Section 14.1	<u>Duration</u>	42

<u>Section 14.2</u>	<u>Amendment</u>	42
<u>Section 14.3</u>	<u>Indemnification</u>	43
<u>Section 14.4</u>	<u>Easements for Utilities</u>	43
<u>Section 14.5</u>	<u>Construction and Sale</u>	44
<u>Section 14.6</u>	<u>General and Grammar</u>	44
<u>Section 14.7</u>	<u>Severability</u>	44
<u>Section 14.8</u>	<u>Captions</u>	44
<u>Section 14.9</u>	<u>Perpetuities</u>	44
<u>Section 14.10</u>	<u>Mailing Address</u>	45

ARTICLE XV

<u>ENFORCEMENT</u>	45
<u>Section 15.1</u>	<u>In General</u> 45
<u>Section 15.2</u>	<u>Government Enforcement</u> 45
<u>Section 15.3</u>	<u>Delay or Failure to Enforce</u> 46

ARTICLE XVI

<u>PRIVATE AMENITIES AND SERVICES</u>	46
<u>Section 16.1</u>	<u>Private Amenities and Services</u> 46

ARTICLE XVII

<u>LIMITATION ON DECLARANT'S LIABILITY</u>	46
<u>Section 17.1</u>	<u>Limitation on Declarant's Liability</u> 46

<u>EXHIBIT A</u>	Exhibit A - Page 1 of 1
<u>Legal Description of Real Estate</u>	Exhibit A - Page 1 of 1

<u>EXHIBIT B</u>	Exhibit B- Page 1 of 1
<u>Legal Description of Additional Land</u>	Exhibit B- Page 1 of 1

<u>EXHIBIT C</u>	Exhibit C- Page 1 of 1
<u>Legal Description of Townhome Development</u>	Exhibit C- Page 1 of 1

<u>EXHIBIT D</u>	
<u>Lot 17 Additional Land</u>	Exhibit D- Page 2 of 1

FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

This First Restated Declaration of Covenants, Conditions, Easements and Restrictions of Ellendale Farm ("First Restated Declaration") is made as of June 19, 1998, by David J. Wilcox, Trustee under Trust Agreement dated July 30, 1996 and known as Trust N^o 202615-96 ("Declarant").

Declarant states as follows:

A. Declarant is the owner of the real property described in Exhibit A, which is attached hereto and made a part hereof ("Real Estate").

B. Declarant recorded covenants on certain property described in such covenants recorded in the Lake County Recorder's Office on March 31, 1997 as Document N^o 97018695 ("Original Documents"). This First Restated Declaration is executed and recorded to add Additional Land, as shown as Exhibit "B" and as authorized under Article VIII of the Declaration. A part of the Additional Land will be used as a townhome development and the remainder for single family residences. This First Restated Declaration replaces the Original Declaration.

C. Declarant has established on the Real Estate a planned community to be commonly known as Ellendale Farm which, if carried to full and final completion, will consist of residential lots with dwelling units consisting of single-family homes and multi-family townhomes and flats. As part of the Ellendale Farm development, various community facilities, such as walks, trails, roads, landscaping, open spaces, greenbelts, storm water drainage, detention, and retention systems, fencing, and parking areas may be provided for the benefit and enjoyment of the owners of Ellendale Farm.

D. The development contemplated hereby will require uniform and continuing care and maintenance for the primary benefit and enjoyment of the Owners and residents of Residential Units.

E. Declarant intends by this Declaration to impose upon the Real Estate and the development contemplated hereby mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners and residents of Residential Units in the development contemplated hereby by the recording of this Declaration.

F. Declarant intends to sell and convey the Lots situated within the platted, to be platted, or annexed areas of the development contemplated hereby, and before doing so wishes to subject to and impose upon all real estate within the platted, to be platted, or annexed areas of the development contemplated hereby mutual and beneficial restrictions, covenants, conditions, easements, and charges under a general plan or scheme of improvement for the benefit and complement of the residential units and lands in the development contemplated hereby and future owners thereof.

G. Declarant has formed The Ellendale Farm Property Owners' Association, Inc., as a nonprofit, mutual benefit corporation under the general laws of the State of Indiana ("Association") for the purpose of carrying out the powers and duties set forth herein.

H. Declarant has formed The Ellendale Farm Townhome Property Owners' Association, Inc., as a nonprofit, mutual benefit corporation under the general laws of the State of Indiana ("Townhome Association") for the purpose of carrying out the powers and duties set forth herein.

I. Declarant intends to convey all or any portion of the common area in the development contemplated hereby from time to time in fee simple title, free of financial encumbrances, to the Association, subject to easements, restrictions of record and such other conditions as Declarant may at the time of such conveyance deem appropriate.

J. Pursuant to Article VIII and other relevant parts of the Declaration, Declarant annexes the Townhome Real Estate into the Development.

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate and any additional property as may by subsequent amendment hereto be added and subjected to this Declaration will be held, sold, and conveyed subject to the following:

GENERAL PROVISIONS

1. **Purpose.** The purpose of this Declaration is to protect the value and desirability of the Real Estate.

2. **Declaration to Run with Land.** The provisions of this Declaration will run with the Real Estate and with any additional property as may by subsequent amendment hereto be added and subjected to this Declaration and will be binding on all parties having any right, title, or interest in the Real Estate or any part thereof, and their respective heirs, successors, successors-in-title, and assigns and will inure to the benefit of each owner thereof.

3. **Changes to Real Estate.** Declarant, for itself and its successors and assigns, specifically reserves unto itself the right and privilege, prior to the recording of any plat, plans or Supplemental Declaration dealing with specific portions of the Development in any phase, to exclude any real estate as shown from, or to include additional property that will be subject to, the terms and provisions of this Declaration by recording a document with the Recorder of Lake County making reference to the terms and provisions hereof and purporting to accomplish such exclusion from or addition of real estate with respect to the provisions hereof.

4. **Easements.** Declarant intends to record, by document or plat recordation, some or all of the following easements and when so recorded, each will encumber all or portions of the Real Estate and, if applicable, any other real estate described in such plat or document:

(a) **Drainage System**

Buffer Easement
Floodway Easement
Floodway Fringe Easement
Storm Drainage Easement
Levee Easement
Detention Basin Flooding Easement
Storm Overflow Easement
Side Lot Line Easement

(b) **Sanitary**

Sanitary Sewer Easement
Sanitary Sewer Lift Station Easement

(c) **Combination**

Any combination of two (2) or more of the above easements.

(d) **Miscellaneous**

Adjacent neighbor encroachment easements
Fenceline Easements
Utility easements as specific to certain utilities
General utility easements

The Association, if then in existence, will join Declarant as a party to such easements and the Association, if then in existence or when subsequently formed, will provide a hold harmless covenant to the grantee of each of such easements in the event such grantee is made a party to personal injury litigation with reference to the reserved rights of grantor of such easement without good cause by a plaintiff in such litigation. For purposes of such covenant, dismissal of the cause of action against the grantee will constitute a lack of good cause in such litigation.

5. **Dedication.** So long as Declarant is the record title holder of all or any portion of the Real Estate or of any additional property as may by subsequent amendment hereto be added and subjected to this Declaration, Declarant, for itself and its successors and assigns, specifically reserves unto itself the right and privilege to convey or contract to convey at a future time, any portion of the common area of the Development to any public agency or authority, or to any public or private utility for any of the following:

(a) storm water runoff, detention, retention, or conveyance serving all or any portion of the Development or nearby properties;

- (b) public rights-of-way;
- (c) utility services serving one or more of the Lots, including but not limited to any or all facilities for gas, electricity, telephone, cable television, water, and sanitary sewer services.

Such rights will also accrue to the Association as provided in this Declaration.

6. **Agency for Plats.** So long as Declarant is the owner of any Portion of the Development (as defined in Section 1.14 hereof), Declarant, in its own capacity and as agent for any or all of the other Owners (as defined in Section 1.26 hereof), may at any time and from time to time prepare, present for approval by any or all appropriate governmental entities, execute, and/or record a Plat, a re-plat, an amended plat, a corrective plat, or other similar survey or modification thereof, and may prepare, present for approval by any or all appropriate governmental entities, execute, and/or record any other documents with respect thereto. The execution of any such Plat or other document by Declarant as agent of any Owner will, for all such purposes, be deemed to constitute the execution of such Plat or other document by such Owner. This paragraph will be construed to permit Declarant (so long as Declarant owns any portion of the Development) to present for approval and obtain approval by the appropriate governmental authorities and to effectuate the recording of any Plat and any amendment thereto or re-platting thereof. Notwithstanding the foregoing, the agency rights granted to Declarant pursuant to this paragraph will be applicable only with respect to those Lots which are owned by Persons other than Declarant whereby:

- (a) The boundaries, setback lines, and easements over such Lot will remain unchanged; and
- (b) The benefits of the Common Areas with respect to such Lot will be substantially equivalent (although not necessarily precisely equal).

ARTICLE I
INDIANA
DEFINITIONS

Section 1.1 Additional Land. Additional Land will mean and refer to real property in addition to the Real Estate which is annexed to the property included in this Declaration pursuant to Declarant's reserved unilateral right of annexation as provided in Article VIII hereof. The Additional Land being added by this First Restated Declaration is described on Exhibit "B."

Section 1.2 Area of Common Responsibility. Area of Common Responsibility will mean and refer to the Common Area, which becomes the responsibility of the Association. In addition, the office facilities and overhead of any property manager employed by or contracting with

the Association and, if located on the Development, will be part of the Area of Common Responsibility.

Section 1.3 Association. Association will mean and refer to The Ellendale Farm Property Owners' Association, Inc., formed as an Indiana nonprofit, mutual benefit corporation, and its successors and assigns.

Section 1.4 Attached Residential Unit. Attached Residential Unit means a Residential Unit which includes a building which has a party wall with, or otherwise touches, a building on an adjoining Lot.

Section 1.5 Board. Board will mean the Board of Directors of the Association.

Section 1.6 By-Laws. By-Laws will refer to the By-Laws of the Association, as the such by-laws may exist and be in effect from time to time.

Section 1.7 Common Area. Common Area will mean all portions of the Real Estate and any Additional Land which have not been designated as residential lots in the Plat, including any ponds, open space, outlots, landscape parcels, public streets, public street entryway median planting strips, trails, and all other real and personal property now or hereafter owned by or subject to an easement in favor of the Association for the common use and enjoyment of the Owners as set forth in Section 2.1 hereof. The Common Area does not include the Townhome Common Area.

Section 1.8 Common Expenses. Common Expenses will mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, and the Articles of Incorporation and By-Laws of the Association. Common Expenses will include, without limitation, the actual and estimated cost to the Association for the maintenance, management, operation, repair, improvement, and replacement of the Common Areas, real estate taxes or personal property taxes assessed against any Common Area, as well as any other costs or expense incurred by the Association for the benefit of the Common Area and the Owners.

Section 1.9 Community-Wide Standard. Community-Wide Standard will mean the standard of conduct, maintenance, or other activity generally prevailing in the Development. Such standard may be more specifically determined by the Board.

Section 1.10 Construction. Construction will mean and include the erection or construction of a building, building accessory, staking, clearing, excavation, grading, or other site work.

Section 1.11 Declarant. Declarant will mean David J. Wilcox, trustee under Trust Agreement dated July 30, 1996 and known as Trust N^o 202615-96, and its successors and assigns.

Section 1.12 Declaration. Declaration will mean this First Restated Declaration of Covenants, Conditions, Easements and Restrictions of Ellendale Farm, as amended from time to time as provided herein.

Section 1.13 Detached Residential Unit. Detached Residential Unit means a Residential Unit which is not an Attached Residential Unit.

Section 1.14 Development. The Development will mean the Real Estate (including the Townhome Development), the Additional Land, the Residential Units, and the Common Area.

Section 1.15 Drainage System. Drainage System will mean and include all retention ponds and areas, detention ponds and areas, storm sewers, subsurface drainage tiles, swales, ditches, pipes, culverts, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Area, streets, or easements affecting one or more Lots, or property located outside the Development relating thereto; and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across the Development, including storm sewer lines and related facilities located on the property, for the benefit of the Development, other than such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency.

Section 1.16 Eligible Mortgage Holder. Eligible Mortgage Holder will mean a holder, insurer, or guarantor of a first mortgage on a Lot who has requested notice of certain matters from the Association as hereinafter and in the Association's By-Laws provided.

Section 1.17 Eligible Votes. Eligible Votes will mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast. A Person owning more than one Lot will, if otherwise qualified, have more than one Eligible Vote.

Section 1.18 Fenceline Easement. The Fenceline Easement is that easement shown on the plat located on lots 1-7 and further described in Section 2.30.

Section 1.19 Land Use Standards. Land Use Standards will mean and refer to those standards, covenants, obligations, and restrictions as enumerated in this Declaration for the Development as hereinafter recorded and amended from time to time.

Section 1.20 Lot. Lot will mean any parcel of land within the Development, including Townhome Lots, which, pursuant to the Plat, is improved or is to be improved with a single-family Attached or Detached Residential Unit. Where the context indicates or requires, the term "Lot" includes all improvements on the Lot.

Section 1.22 Majority. Majority means those Eligible Votes, Owners, or other groups as the context may indicate, totaling more than 50% of the total number of Eligible Votes.

Section 1.23 Member. Member will mean and refer to a person or entity entitled to membership in the Association.

Section 1.24 Mortgage. Mortgage means any mortgage, deed in trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 1.25 Mortgagee. Mortgagee will include a beneficiary or holder of Mortgage.

Section 1.26 Mortgagor. Mortgagor will include the trustor of a deed of trust, as well as a mortgagor.

Section 1.27 Owner. Owner will mean the record owner, whether one or more persons or entities, of any Lot or Unit, but excluding any party holding the fee simple title merely as Mortgagee. Owner may include Declarant. Only one Eligible Vote per Lot will be available despite multiple ownership of such Lot. The owner of the Townhome Lots does not have a vote for the Townhome Lots. Where appropriate within the context of any provision hereof, references to an Owner will include any person occupying any Lot as a tenant or as otherwise permitted by any Owner.

Section 1.28 Person. Person means a natural person, a corporation, a general or limited partnership, a joint venture, a trust, the trustee of a trust, a limited liability company, or any other legal entity.

Section 1.29 Plat. Plat will mean, collectively, all plats of survey of all or any portion of the Development (including Additional Land) or otherwise making reference to the Development which have been or hereafter may be recorded in the Office of the Recorder of Lake County, Indiana, as the same may be amended or supplemented by replats, amendments, or otherwise.

Section 1.30 Real Estate. Real Estate will mean the real property situated in Lake County, Indiana, as described on Exhibit A hereto and includes the Townhome Development.

Section 1.31 Residential Unit. Residential Unit will mean a structure and all related improvements situated upon a Lot intended for any type of independent ownership for use and occupancy as a residence by no more than a single family. For purposes of this Declaration, a Residential Unit will come into existence when substantially complete or upon the issuance of a certificate of occupancy by the local governmental entity.

Section 1.32 Single Family. Single Family means one of (a) one or more persons related by blood, marriage, adoption, or if on or more of the persons are younger than 18 years of age ("Minor"), such Minor is under the custody of a person who is the legal custodian or is in the process of obtaining custody of the Minor or has permission of the parent or legal custodian of the Minor for domicile with that Minor or (b) two persons living and cooking together as a single housekeeping unit either or both of which may have Minors related by blood or the person is the legal custodian or is in the process of

obtaining custody of the Minor or has permission of the parent or legal custodian of the Minor for domicile with that Minor.

Section 1.33 Streets. Streets will mean all roadways, and related rights-of-way, streets and similar areas, designated as such on the Plat, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots. All or portions of the Streets may, in the discretion of Declarant, be dedicated to the public and accepted for maintenance by the appropriate public agency.

Section 1.34 Supplemental Declaration. Supplemental Declaration will mean an amendment to this Declaration which adds additional property to that covered by this Declaration or otherwise imposes additional restrictions on all or any portion of the Development or otherwise amends this Declaration.

Section 1.35 Townhome Common Area. The Townhome Common Area means all portions of the Townhome Development which have not been designated as Townhome Lots in the Plat, including any ponds, open space, landscape parcels, public streets, public street entryway median planting strips, trails, and all other real and personal property now or hereafter owned by or subject to an easement in favor of the Townhome Association for the common use and enjoyment of the Owners in the Townhome Development. The land and water areas along the exterior perimeter of the Townhome Lots are not Townhome Common Areas but are Common Areas.

Section 1.36 Townhome Development. The Townhome Development is the Real Estate described on Exhibit "C."

Section 1.37 Townhome Lot. A Townhome Lot, prior to having a Residential Unit erected on it, is a lot in the Townhome Development as shown on the Plat. After a Residential Unit is erected on such Townhome Lot, each of the two parcels within such Townhome Lot will be a Townhome Lot. A Townhome Lot does not include an Outlot.

Section 1.38 Trails. Trails will mean Common Areas used for walking and jogging throughout the Development as indicated on the Plat.

ARTICLE II

PROPERTY RIGHTS

Section 2.1 In General. Every Lot in the Development will, after a Residential Unit is placed thereon, be used as single-family Attached or Detached Residential Units. No Unit will be erected, placed, or permitted to remain upon any of the Lots except single-family residential Units. With the exception of the initial split of a Townhome Lot, no Lot will be resubdivided except pursuant to any Plat. All parcels and tracts of land located within the Development which are not

obtaining custody of the Minor or has permission of the parent or legal custodian of the Minor for domicile with that Minor.

Section 1.33 Streets. Streets will mean all roadways, and related rights-of-way, streets and similar areas, designated as such on the Plat, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots. All or portions of the Streets may, in the discretion of Declarant, be dedicated to the public and accepted for maintenance by the appropriate public agency.

Section 1.34 Supplemental Declaration. Supplemental Declaration will mean an amendment to this Declaration which adds additional property to that covered by this Declaration or otherwise imposes additional restrictions on all or any portion of the Development or otherwise amends this Declaration.

Section 1.35 Townhome Common Area. The Townhome Common Area means all portions of the Townhome Development which have not been designated as Townhome Lots in the Plat, including any ponds, open space, landscape parcels, public streets, public street entryway median planting strips, trails, and all other real and personal property now or hereafter owned by or subject to an easement in favor of the Townhome Association for the common use and enjoyment of the Owners in the Townhome Development. The land and water areas along the exterior perimeter of the Townhome Lots are not Townhome Common Areas but are Common Areas.

Section 1.36 Townhome Development. The Townhome Development is the Real Estate described on Exhibit "C."

Section 1.37 Townhome Lot. A Townhome Lot, prior to having a Residential Unit erected on it, is a lot in the Townhome Development as shown on the Plat. After a Residential Unit is erected on such Townhome Lot, each of the two parcels within such Townhome Lot will be a Townhome Lot. A Townhome Lot does not include an Outlot.

Section 1.38 Trails. Trails will mean Common Areas used for walking and jogging throughout the Development as indicated on the Plat.

ARTICLE II

PROPERTY RIGHTS

Section 2.1 In General. Every Lot in the Development will, after a Residential Unit is placed thereon, be used as single-family Attached or Detached Residential Units. No Unit will be erected, placed, or permitted to remain upon any of the Lots except single-family residential Units. With the exception of the initial split of a Townhome Lot, no Lot will be resubdivided except pursuant to any Plat. All parcels and tracts of land located within the Development which are not

designated as lots for residential units on the Plat will be Common Area and will be used in a manner consistent with the zoning and use designated by such Plat, by this Declaration, or pursuant to the conditions designated by Declarant or by the Association.

The Common Area will, except as otherwise provided herein, remain private, and except as otherwise provided herein neither Declarant's execution or recording of the Plat nor the doing of any other action by Declarant is, or is intended to be, or will be construed as, a dedication to the public of the parcel. A license for the use and enjoyment of the Common Area is or will be granted by Declarant, its successors, and assigns or by the Association, or both, to the persons who are from time to time members of the Association. Said license will be on the terms and conditions deemed appropriate by the grantor of said license. Ownership of the Common Area, or any portion thereof, will be conveyed from time to time as determined by Declarant in its discretion in fee simple title, free of financial encumbrances, to the Association. Such conveyance will be subject to easements and restrictions of record, and such other conditions as Declarant may at the time of such conveyance deem appropriate. Such conveyance will be deemed to have been accepted by the Association and those persons who are, from time to time, members thereof upon the recording of a deed or deeds conveying said Common Area to the Association.

Section 2.2 Owner's Rights of Enjoyment.

(a) Every Owner will have a right by license of ingress and egress, use and enjoyment in and to some of the Common Area which right and license will be appurtenant to and will pass with the title to every Lot subject to:

(i) the right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities.

(ii) the right of the Association to suspend an Owner's voting rights, both as a Member and as an Owner, and to suspend the right to use any of the Common Area and facilities for any period during which any assessment of the Association against that Owner's Lot remains unpaid, and for any infraction by an Owner of the Association's rules and regulations for the duration of the infraction and for an additional period thereafter not to exceed 30 days;

(iii) non-exclusive easement rights of all occupants of Residential Units and all invitees and guests thereof for pedestrian access to and across all sidewalks which are situated in the front yard of such Lot and are parallel or substantially parallel to the front Lot line of such Lot, as installed in the original construction of any Residential Unit, and the right of the Association to enter onto such Lot for the purpose of fulfilling the obligations of the Association pursuant to this Declaration to the extent that such sidewalks are not required hereunder to be maintained by the

Association, the Owner of such Lot will maintain such sidewalks in good and sightly condition;

(iv) Declarant's reserved easements, as described herein, and the right of Declarant to grant easements in and to the Common Area contained within the respective portions of the Development to any public agency, authority, or utility for such purposes which will benefit the Development or portions thereof and Owners or Lots contained therein;

(v) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided two-thirds ($\frac{2}{3}$) of all Owners present or represented by proxy at a meeting called for such purpose approve; provided, however, the lien and encumbrance of any such mortgage given by the Association will be subject and subordinate to any and all rights, interest, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Development; and

(vi) the right of Declarant, for so long as Declarant is the Owner of any property in the Development, to dedicate or transfer all or any portion of the Common Area to any public agency or authority, or to any public or private utility for any of the following:

(A) storm water runoff, detention, retention, or conveyance serving all or any portion of the Development or nearby properties;

(B) public rights-of-way;

(C) utility services serving one or more of the Lots, including but not limited to any or all facilities for gas, electricity, telephone, cable television, water, and sanitary sewer services.

After Declarant is no longer the Owner of any property in the Development, such dedication or transfer may be made by the Association, provided that no such dedication or transfer will be effective unless such act is evidenced by an instrument agreeing to such dedication or transfer approved by a vote of at least two-thirds ($\frac{2}{3}$) of all Eligible Votes.

(b) This Section 2.2 may not be amended without the written consent of Declarant during the time that Declarant owns any property subject to this Declaration.

Section 2.3 Declarant's Reserved Easements.

(a) Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any property in the Development, for the benefit of Declarant, its successors, and assigns over, under, in, and on the Development without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment and otherwise dealing with the Development and any other property now owned or which may in the future be owned by Declarant (such other property is herein referred to as "Additional Real Estate"). No Residential Unit (or improvements under construction which will become Residential Units upon completion) will be subject to the reserved easements of this Section 2.3. Subject to such exception, the reserved easement will constitute a burden on the title to all or any portion of the Development and specifically includes, but is not limited to:

(i) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in all or any portion of the Development; and the right to tie into any portion of the Development with driveways, parking areas, streets, the Drainage System and walkways; and the right to tie into and otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and over all or any portion of the Development;

(ii) the right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction and sale by Declarant of Lots and residences, if any, in all or any portion of the Development excepting only Lots which are not owned by Declarant, or in any portion of the Additional Real Estate;

(iii) no rights, privileges, and easements granted or reserved herein will be merged into the title or any property within the Development, but will be held independent of such title, and no such right, privilege, or easement will be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Development; and

(iv) if these reserved easements are exercised without annexing any Additional Real Estate to the Development, the owners of the affected Additional Real Estate will share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, and Drainage System, lines and facilities with the owners in the Development in the proportion that the number of acres in the affected Additional Real Estate bears to the total acres in the affected Additional Real Estate and the Development. The costs of maintenance and repair of the Development roads and driveways will likewise be apportioned to the affected Additional Real Estate if the only means of vehicular access to the affected Additional Real Estate is across the Development. For the purposes of this provision, a dwelling on the affected Additional Real Estate will be considered completed when a certificate of occupancy has been granted. The allocation of expenses and the collection therefore may be done on a monthly, quarterly, or annual basis as may reasonably be determined by the Association in accordance with this Declaration.

If any of the Additional Real Estate (thereby being Additional Property) is added to the Development, from the time of the annexation, the sharing of costs and expenses and the use of any property to be added will be governed by this Declaration rather than by these reserved easements and other provisions of this Section 2.3.

Section 2.4 Owner's Rights to Ingress and Egress. Each Owner will have the right to pedestrian (not vehicular) ingress and egress over, upon, and across the Common Area necessary for access to such Owner's Lot and such other easements as may be designated on the Plat for access to such Common Area. Such rights will be appurtenant to and will run with title to each Lot.

Section 2.5 Use of Lots and Units.

(a) Except as may be otherwise expressly provided in this Declaration, each Lot will be used for residential purposes only as a residence for a Single Family. No trade or business of any kind may be conducted on any Lot. Lease or rental of a Unit will not be considered to be a violation of this covenant, so long as the lease is in compliance with reasonable rules and regulations as the Board may promulgate, or in the absence of such rules and regulations, with the prior written approval of the Board. Any lessee or tenant will in all respects be subject to the terms and conditions of this Declaration, the By-Laws, and the rules and regulations adopted hereunder.

(b) Without the prior written consent of the Board, nothing will be done or kept on any Lot or on the Common Area or any part thereof to increase the rate of insurance on the Development or any part thereof over what the Association or any other Owner, but for such activity, would pay. Noxious, hazardous, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, will not be conducted on any Lot or on the Common Area or any part thereof, and the Association will have standing to initiate legal proceedings to abate such

activity. Each Owner will refrain from any act or use of such Owner's Lot or Unit which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board will have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

Section 2.6 Use of Common Areas. No planting or gardening shall be done, and no fences, hedges, walls or any other structure or planting shall be erected or maintained upon the Common Area or upon any Lot, except in accordance with the initial construction of the improvements located thereon by the Declarant or as approved by the Association's Board or their designated representatives. No antennas may be erected upon the Common Area, except the Association may erect a master antenna serving the members. Except for the right of ingress and egress, the Owners of Lots may use property outside their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein.

It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

Section 2.7 Signs. Except as provided for Declarant in Section 2.3, no advertising signs, for sale signs on vacant Lots, billboards, unsightly objects, or nuisances will be erected, placed, or permitted to remain on the property subject to this Declaration. Two political yard signs (each not larger than nine square feet in size) may be placed in yards 30 days prior to a primary, general or special election but must be removed on the day following said election. During construction, one contractor and the lender may erect on the Lot one sign (not larger than nine square feet) indicating their identity.

Section 2.8 Rules and Regulations. The Association may establish reasonable rules and regulations concerning the use of the Common Area, facilities located thereon, Residential Units and individual Lots. Copies of such regulations and amendments thereto will be furnished by the Association to all Owners prior to the rules' effective date. Such regulations will be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement is specifically overruled, canceled, or modified by the Association in a regular or special meeting by the vote of Owners holding a two-thirds ($\frac{2}{3}$) majority of the Eligible Votes or with the written approval of Declarant for so long as Declarant controls the Development as described at Section 3.6 herein. The Board will have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure, as provided in Article X. In addition, the Association, through the Board, may, by contract or other agreement, enforce municipal ordinances or permit the municipality having jurisdiction to enforce ordinances affecting the Development for the benefit of the Association and its Members.

Section 2.9 Exterior Lighting. Declarant may adopt and designate a standard exterior light fixture to be located on all Residential Units in the Development and may designate a standard locations for such exterior light fixtures. No yard lights may be installed by an Owner. All yard lights will be owned by the municipality. No exterior lighting fixture, other than those fixtures

approved by Declarant will be installed on the exterior of any Residential Lot. No lighting fixtures will be installed that may become an annoyance or a nuisance to Owners or occupants of adjacent properties. All modifications of exterior lighting must be approved in writing by Declarant or the Association.

Section 2.10 Storage and Parking Vehicles. There will be no outside storage or parking upon any Lot, street, private drive, or the Common Area of any commercial vehicle, truck, van, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, travel-trailer, recreational vehicle, snowmobile, motorcycle, boat or other watercraft, boat trailer, or any other such transportation device of any kind (excluding only non-commercial passenger automobiles, station wagons, and mini-vans), except within the parking spaces in the Owner's garage (with the door closed) and for visitors and providers of services temporarily parking in driveway or street and in accordance with rules and regulations designated and promulgated by the Board. No unlicensed automobiles will be parked longer than 48 hours within any seven day period on any of the Streets or any Lot in the Development. No Owners or tenants will repair or restore any vehicle of any kind upon any Lot, street, private drive, or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have been reasonably parked in the garage as originally constructed.

For purposes of the preceding, commercial vehicle will also include any and all automobiles, station wagons, mini-vans, and utility vehicles which bear signs or have printed on the side of same a reference to any commercial undertaking or enterprise.

Section 2.11 Pets. No animals, livestock, or poultry of any kind will be raised, bred, or kept on the Development, except that no more than a total of two animals (dogs, cats, or other larger household pets) may be kept in residences subject to rules and regulations adopted by the Association through the Board, provided that such pets are not kept, bred, or maintained for any commercial purpose. The Board will have the absolute power to prohibit a pet, or any reasonably established class of pets (including but not limited to any specified type of animal other than dogs and cats, and any particular breeds of dogs and/or cats), from being kept on any Lot in the Development, including inside Residential Units. Excessive barking by dogs will be considered a nuisance requiring abatement.

No animal shelters, containment pen structures or exercise run areas, enclosed or open, will be permitted, placed or erected on any Lot without the approval of the Board.

Section 2.12 Nuisances. No outside toilets will be permitted on any Lot in the Development (except during a period of construction and then only with the consent of Declarant or Board), and no sanitary waste or other wastes will be permitted to enter the storm drainage system. No discharge from any floor drain will be permitted to enter into the storm drainage system. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance

which may be abated by Declarant, the Association, or any Owner in the Development in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, will become a charge of lien upon the offending Lot occupant, and may be collected in any manner provided by law or in equity for collection of a liquidated debt. No noxious or offensive activities will occur in any Lot, nor will anything be done on any of said Lots or in any Residential Unit that will become or be an unreasonable annoyance or nuisance to any owner of another Lot in the Development. Neither Declarant, nor any partner, agent, employee or contractor thereof, the Association, nor any Owner enforcing the provisions of this Section will be liable for any damage which may result from enforcement hereof. No grass clippings or other materials may be deposited on an Owner's Lot in heaps or on vacant Lots in any way.

Section 2.13 Garbage, Trash and Other Refuse. No occupant of a Lot will burn leaves or permit the burning out-of-doors of garbage or other refuse, nor will any such occupant accumulate or permit the accumulation out-of-doors of such refuse on such occupant's Lot except as may be permitted in Section 2.14 below.

Section 2.14 Trash Receptacles. Every outdoor receptacle for ashes, trash, rubbish or garbage will be installed underground or will be so placed and kept as not to be visible from any street within the Development at any time, except at the time when refuse collections are being made. If the municipality having jurisdiction does not commence trash collection services, or discontinues trash collection services, the Association may designate a trash collection day and a trash collection service to be used and paid for by Owners in the Development in furtherance of this paragraph. Additionally, the Association may enter into a master contract for trash collection with a refuse disposal service with the costs thereof to be included as a Common Expense of the Association to be paid by Owners as part of their normal assessments. Additionally, the Association may designate a standard trash container as acceptable by the municipality having jurisdiction or a private disposal company, all at the expense of each Owner, if applicable.

Section 2.15 Model Homes. No Owner of any Lot in the Development other than Declarant or persons having the written permission of Declarant will build, or permit the building upon any such Lot of any dwelling that is to be used as a model home or exhibit house.

Section 2.16 Temporary Structures. No temporary structure (house, trailer, tent, garage or other out building) will be placed or erected on any Lot, nor will any overnight camping be permitted on any Lot excepting occasional lot owner's children "camp-out" activities.

Section 2.17 Utility Services. No utility services will be installed under any paved areas in the Development, except by jacking, drilling, or boring unless specifically approved by Declarant (or, the Association, after Declarant turns over control, or after acceptance of such areas by the municipality having jurisdiction). All utility facilities in the Development will be underground, except where required to be placed above ground by the individual utility supplier.

Section 2.18 Wells and Septic Tanks. No water wells will be drilled on any of the Lots in the Development without the approval of Declarant or Association. No septic tanks will be installed on any of the Lots or in any of the Common Area.

Section 2.19 Antennas and Solar Heat Panels. No exposed radio or TV antennas, satellite dish antennas over 20 inches in diameter, or solar heat panels will be allowed on any Lot, which is visible from the front of such Lot without the approval of the Board.

Section 2.20 Mailboxes and Address Identification. Declarant will select and designate a standard mailbox, post, and individual address identification devices for the Development. No exterior newspaper receptacles will be permitted in the Development, except when integrated with the mailbox as approved by the Board. All standard mailboxes, posts, and identification devices will be consistent in color, quality and appearance with the original mailbox, post, and identification devices unless the advance written approval of Declarant or Board is obtained.

Section 2.21 Use of Yards. No clotheslines, outside storage, or other similar uses of yards which may prove detrimental to the value of the adjoining Lots will be permitted. Playground equipment, tennis courts, gazebos, and flag poles are permitted on Lots if approved by Declarant or the Board.

Section 2.22 Maintenance of Lots, Lawns, and Improvements. The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly, and, specifically, such Owner shall:

- (a) Mow and water the Lot and provide fertilizer and weed control at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and noxious weeds. No plants or seeds, or other things or conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Lot. If a Lot has Common Area between the Lot and a waterway, the Owner will maintain such Common Area at Owner's expense.
- (b) Remove all debris or rubbish.
- (c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of development.
- (d) With the approval of the appropriate Architectural Committee, cut down and remove dead trees.

(e) Keep the exterior of all improvements in such a state of good repair and maintenance so as to provide for an aesthetic appearance and as required to avoid their becoming unsightly.

The opinion of the Association will be binding with respect to said subjective judgments.

Section 2.23 Ditches, Swales, and Waterways. It shall be the duty of every Owner of every Lot to keep any ditches, swales, waterways, or storm drainage portion areas as may be situated upon his Lot continuously unobstructed and in good repair and to repair all erosion with respect to such areas situated on such Owner's Lot even if said ditch or swale or waterway is not specifically referenced by an easement on the plat or elsewhere.

Section 2.24 Storage Tanks. No underground storage tanks, and no attached above-ground storage tanks will be permitted for the storage of gasoline, propane, kerosene, or other fuels.

Section 2.25 Motor Vehicles. No minibikes, go-carts, snowmobiles, powerboats (electric or gas) or similar motor-driven vehicles will be operated within the Development. This restriction will not restrict the use of toys manufactured for children under the age of nine.

Section 2.26 Soliciting.

(a) Subject to Constitutional protection, if applicable, no person may enter upon any Common Area for purposes of commercial solicitation, except upon the express authorization or invitation of the Association, upon application for a permit for such purposes by a Member of the Association, provided, however, that this rule will not prohibit the use of said Common Area by Declarant for purposes of advertising, solicitations and sale of any of the properties within the Development, so long as Declarant owns any properties therein.

(b) No garage sales nor public auctions will be permitted in the Development except by the approval of the Association.

Section 2.27 Swimming Pools. No above-ground swimming pools will be installed on any Lot.

Section 2.28 Attached Residential Units. Any wall which separates any two adjoining Attached Residential Units is owned by the Owners of the Attached Residential Units so separated as provided by the metes and bounds description, and will not constitute a part of the Common Area or the Townhome Common Area.

Section 2.29 Trails. The Trails shall be used only for jogging and walking. No motorized vehicles (except for maintenance purposes) of any kind such as but not limited to minibikes, motorcycles, go-carts, snowmobiles; nor cycles (uni, bi, tri), scooters, skateboards, wagons or any other wheeled device (excepting baby strollers, baby carriages and wheel chairs) shall be permitted

on or around the Trails nor any portion of the Common Area, except that hard surfaced walks may be used for cycles (uni, bi, tri), scooters, and skateboards.

Section 2.30 Fenceline Easement. Lots 1-7 contain the Fenceline Easement shown on the Plat in favor of the Declarant and the Association for access to construct, maintain, repair and replace a fence and landscaping in such easement area. The Owners of Lots 1-7 will maintain and replace the lawn areas on the Fenceline Easement. The Association will construct, maintain, repair, and replace the fence improvements and the landscaping other than the lawn on the Fenceline Easement. The Fenceline Easement includes the right of access to it.

Section 2.31 Lot 17 Additional Land Maintenance. Until the Declarant provides otherwise in a Supplemental Declaration, the Owner of Lot 17 will maintain the area described in Exhibit "D" and known as the Lot 17 Additional Land in accordance with all federal, state, and local laws and regulations. The Owner of Lot 17 holds the Declarant harmless for Owner's failure to maintain the Lot 17 Additional Land.

Section 2.32 Sidewalks. Sidewalks must be built to municipality standards within two and one-half years after an Owner takes title to a Lot. This does not apply to Lots owned by Declarant.

Section 2.33 Water Flow Easements. Several Lots abut Outlots with retention/detention ponds. A easement is granted over such abutting Lots for flow of water from the Outlots over the Lots during periods of high water levels.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Membership. Every Owner of a Lot will be a member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Lot.

Section 3.2 Classes of Membership and Voting Rights. The Association will have one class of voting membership which will be comprised of all Owners, without regard to whether there are Residential Units on such Owners' Lots. Each Owner will hold one membership for each Lot owned and will be entitled to one vote for each Lot owned, except as provided in Section 10.6(c) hereof. When more than one person holds an interest in any Lot, all such persons will be members. The vote for such Lot will be exercised as such co-owners among themselves determine evidenced by a certificate signed by all such Owners filed with the Association. Such signed certificate will also be conclusive with respect to voting rights of an Owner in instances where such Owner's voting is referred to in this Declaration. In no such event will more than one vote be cast with respect to any Lot either with respect to Association membership or Lot ownership.

Section 3.3 Board of Directors. The Members will elect a Board of Directors of the Association ("Board") as prescribed by the Association's By-Laws. There will be three members of the initial Board of Directors, and subsequent Boards will have such numbers of members as may be provided in the By-Laws, provided that the By-Laws will not provide for less than three members of the Board. The Board will manage the affairs of the Association. The initial Board will be appointed by Declarant and will manage the affairs of the Association until Declarant transfers control of the Association to the Owners as required herein at Section 3.6 herein.

Section 3.4 Professional Management. No contract or agreement for professional management of the Association nor any other contract with Declarant will be for a term in excess of three years. Any such agreement or contract will provide for termination by either party with or without cause without termination fee by written notice of 90 days or less.

Section 3.5 Responsibilities of the Association. The Association is hereby authorized to maintain, repair, and replace the Common Area, to determine Common Expenses, to collect annual and special Assessments, and to grant any approvals whenever and to the extent called for by this Declaration for the common benefit of all such Owners. The Association will 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 this Declaration. Neither the Association nor its officers or authorized agents will have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration as 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. The Association will procure and maintain casualty insurance for the Common Area, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable. The Association may contract for such services as management, snow removal, security control, lawn care, trash removal, exterior maintenance and repair and such other services as the Association deems necessary or advisable.

Section 3.6 Control and Transfer of Control of Association. During the development and construction stages of the Development and for so much of selling period as described hereinafter, the Association will be operated and controlled by Declarant. The Board will, during such period, consist of persons appointed by Declarant, and each Owner will give and will be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which the Owner is entitled to vote under this Declaration, any Supplemental Declaration, or under the Articles of Incorporation or the By-Laws of the Association.

The control of the Association will be transferred to the Owners (which includes Declarant with respect to each unsold Lot) 120 days after the date on which Declarant no longer owns any portion of the Development platted, to be platted, or to be annexed, as then ascertained, or on such earlier date as Declarant, in its discretion, may determine.

ARTICLE IV

COMMON MAINTENANCE

Section 4.1 Maintenance by Association. The Association will maintain and keep in good repair the Area of Common Responsibility, which responsibility will be deemed to include the Common Area. The maintenance of the Common Area will be deemed to include, but not to be limited to, maintenance, repair, and replacement (subject to later reimbursement from the insurance and casualty loss provisions contained at the Association's sole cost and expense as Common Expense) of all of the following located on the Common Area: trees, fences, shrubs, grass, signs, Common Area access and parking spaces, if any, walks, Trails, pedestrian bridges, Drainage System improvements (unless contracted otherwise to a public agency), the Common Area lighting and watering systems and other improvements situated upon the Common Area. The Association may, at its discretion, leave appropriate portions of the Common Area unmaintained to produce a "natural effect" for a natural habitat.

In addition, the Association will maintain, replace and keep in good repair the planting and landscape areas to include electrical and watering systems thereon located in and upon the public street cul-de-sac circular areas (if any) and the entry way median strips and all parcels designated on the plat or otherwise situated at various Lots in the Development as Common Area.

In addition, the Association will maintain and keep in good repair the street name signs (unless installed and maintained by the municipality having jurisdiction) located on public streets in the Development.

In addition, the Association will pay for any utility consumption costs such as natural gas, electricity and water which serve the Common Area.

Section 4.2 Liabilities of Owners. Except with respect to the Townhome Development, if the Board determines that (i) any Owner has failed or refused to discharge properly such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder or otherwise; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or such Owner's family, guests, tenants, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, will give such Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice will set forth with reasonable particularity the maintenance, repairs, or replacement required and will advise the Owner to complete the same within three days from the date of such notice; provided, however, that if the same is not capable of completion within the three day period, such notice will advise the Owner to immediately commence such work which will be completed within a reasonably specified time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at owner's sole cost and expense, and the cost

will be added to and become a part of the assessment to which such owner is subject and will become a lien against the Lot as provided in Article X and elsewhere herein.

Section 4.3 Excess Costs. With respect to Common Areas, the cost of snow removal, landscaping maintenance and road maintenance, if any, in excess of amounts budgeted therefor will be paid by the Owners (on the same basis as assessments for Common Expenses are allocated by the Owners at Section 10.3) by a Special Assessment pursuant to Section 10.4. If the Association enters into contracts for snow removal, landscaping maintenance and road maintenance, if any, while Declarant controls the Association, the Association will indemnify and hold Declarant harmless from all liability and obligations with respect thereto in its capacity as Declarant but not in its capacity as Lot Owner. This Section is included herein in recognition of the fact that the costs of snow removal, landscaping maintenance and road maintenance, if any, for the Development may substantially exceed amounts budgeted therefor the Association due to inordinate snowfall, an inordinate number of snowfalls during any season, general weather conditions, agricultural conditions and amount of use. Nothing contained herein will be construed to require that the Association provide snow removal service for the Development. In the event snow removal service is to be provided for the Development an amount therefor will be included in the annual budget and collected as a Common Expense with the understanding that a Special Assessment may be necessary in the event the amount budgeted therefor is insufficient to defray the actual snow removal costs.

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ARTICLE V
INSURANCE

Section 5.1 Insurance.

(a) **Insurance of Common Area.** The Board, or its duly authorized agent, will have the authority to and will obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance will be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) **Liability Insurance.** The Board will also obtain a public liability policy covering the Common Area, the Association, and its members for all damage or injury caused by the negligence of the Association of any of its Members or agents. The public liability policy will have at least a \$500,000 single person limit as respects bodily injury and property damage, a \$1,000,000 limit per occurrence, and a \$250,000 minimum property damage limit. Premiums for all insurance on the Common Area will be common expenses of the Association. The policy may contain a reasonable deductible amount and the deductible amount thereof will be added to the face amount of the coverage limitations of the policy in determining whether the insurance at least equals the full replacement cost.

(c) **Standards for Insurance.** All such insurance coverage obtained by the Board will be written in the name of the Association as trustee and will add the officers and directors from time to time as additional insurers, such insurance as hereinabove described for the respective benefitted parties, as further identified elsewhere. Such insurance will be governed by the provisions hereinafter set forth:

(i) All policies will be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating;

(ii) All policies on the Common Area will be for the benefit of the Owners and their Mortgagees as their interests may appear;

(iii) Exclusive authority to adjust losses under policies in force on the Development obtained by the Association will be vested in the Board; provided, however, no mortgagee, if any, having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;

(iv) In no event will the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;

(v) All casualty insurance policies will have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified person, at least one of whom must be in the real estate industry and familiar with construction in the Lake County area; and

(vi) The Board will make every reasonable effort to secure insurance policies that will provide for the following:

(A) a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(B) a waiver by the insurance company of its rights to repair, and reconstruct, instead of paying cash;

(C) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(D) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or

employee of the Association or its duly authorized manager without prior damage in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

(E) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(F) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

(d) **Other Insurance.** In addition to the other insurance required by this Section, the Board will obtain, as a Common Expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds with respect to directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage will be determined in the Board's best business judgment, but may not be less than three months assessments, plus reserves on hand. Bonds will contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least 30 days prior written notice to the Association.

Section 5.2 Individual Insurance.

(a) **Required Insurance.** By virtue of taking or holding title to a Lot which contains a Residential Unit, each Owner covenants and agrees with all other such Owners and with the Association that such individual Owner will carry all-risk casualty insurance on such Owner's Residential Unit in an amount of full replacement cost, general liability coverage for a minimum of \$300,000 per occurrence, and \$2,000 medical payment coverage per person. Each such Owner will provide the Association with a certificate evidencing such liability coverage when taking title to said Residential Unit. Each such Owner will provide a certificate of insurance evidencing such casualty insurance immediately prior to initiation of construction by said Owner on said Lot or when taking title to such Lot. Such certificates will be furnished upon each renewal date to the Association to provide continuous evidence of adequate insurance coverage.

(b) **Rebuilding of Attached Residential Units.** Each individual Owner further covenants and agrees that in the event of the loss, damage or destruction of any one or more Attached Residential Units, resulting in total or less than total destruction, the individual Owner will proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. Notwithstanding the foregoing if, upon such loss, damage, or destruction, the Owners of all Residential Units which constitute all of the units within one group of attached units unanimously agree not to rebuild or reconstruct such units and the Association approves, such Owners will clear their respective Lots of all debris and return such Lots to substantially the natural

state in which it existed prior to the beginning of construction. The Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots and the standard for returning the Lots to their natural state in the event such Owners so decide not to rebuild or reconstruct.

(c) **Rebuilding of Detached Residential Units.** Each Owner of a Detached Residential Unit further covenants and agrees that in the event of partial loss, damage or destruction resulting in less than total destruction, such individual Owner will proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner will clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. The Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct.

Section 5.3 Disbursement of Proceeds. Proceeds of insurance policies on Common Area Improvements will be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, will be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, will be retained by and for the benefit of the Association and placed in a capital improvements account.

(b) If it is determined that the damage or destruction to the Common Area for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed in the manner as provided for excess proceeds in Section 5.3(a).

Section 5.4 Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Development covered by insurance written in the name of the Association, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portions of the Development. Repair or reconstruction, as used in this paragraph means repairing or restoring the Development to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area will be repaired or reconstructed unless at least 75% of the total Eligible Votes decide within 60 days after the casualty

not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period will be extended until such information will be made available; provided, however, such extension will not exceed 60 days; No mortgagee will have the right to participate in the determination of whether the Common Area damage or destruction will be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area will not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Development will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

Section 5.5 Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board will use general funds or seek a special assessment as permitted in Section 10.4.

ARTICLE VI

NO PARTITION

Section 6.1 No Partition. Except as permitted in this Declaration, or any Supplemental Declaration, there will be no physical partition of the Common Area or the Townhome Common Area or any part thereof, nor will any person acquiring any interest in the Development or any part thereof seek any such judicial participation unless the applicable portions of the Development have been removed from the provisions of this Declaration. This Article will not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VII

CONDEMNATION

Section 7.1 Condemnation. Whenever all or any part of the Common Area is taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by an authority having the power of condemnation or eminent domain, each Owner will be entitled to notice thereof. The award made for such taking will be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within 60 days after such taking a vote of at least 75% of the Eligible Votes directs otherwise, the Association will restore or replace such improvements so taken on the remaining land included in the Common Area, to the extent lands are available therefor, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article V, Section 5.3 hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired, will apply.

(b) If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds will be disbursed to the Association and used for such purposes as the Board determines.

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Section 8.1 Annexation Without Approval of Owners.

(a) Declarant will have the unilateral right, privilege, and option, from time to time at any time until December 31, 2020, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of any real property adjacent thereto or to the Development as the same exists from time to time whether in fee simple or leasehold, by filing in the Office of the Recorder of Lake County, Indiana, an amendment or Supplemental Declaration annexing such property. Such Supplemental Declaration or amendment to this Declaration will not require the vote or approval of any Owners. Any such annexation will be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

(b) Declarant will have the unilateral right to transfer to any other person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee will be the developer of at least a portion of said real property to be so annexed and that such transfer is memorialized in a written, recorded instrument.

(c) The rights reserved to Declarant to subject additional land to the Declaration will not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association nor any obligation, if subjected, to build improvements or housing of the same type, design, or materials. If such additional land is not subjected to this Declaration, Declarant's reserved rights will not impose any covenants and restrictions similar to those contained herein upon such additional land, nor will such rights in any manner limit or restrict the use to which such additional land may be put by Declarant

or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 8.2 Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication will be accepted by the Association and thereafter will be maintained by the Association as a Common Expense for the benefit of all Owners.

Section 8.3 Incorporation into Development.

(a) Declarant may restrict the rights of owners within the Additional Land in the annexation but may not grant rights greater than those granted to those who are Owners prior to the annexation. Declarant may restrict the rights of those who are Owners prior to the Annexation to facilities within the Additional Land if the expense of maintaining such facilities is borne solely by those owners within the Additional Land.

(b) If any portion of the Additional Land will contain other than single-family residential uses (containing more than one living unit per lot) and the Declarant determines that to make Common Area assessments on the basis of a per Lot assessment would unfairly burden a set of owners, Declarant may amend this Declaration to assess Lots or the various units on a nearly equal basis taking into consideration the benefits and burdens allocated to each Lot or various unit.

ARTICLE IX

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 9.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, will be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto, if any), and will keep in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the By-Laws of the Association.

Section 9.2 Duty To Comply With Easements Benefitting The Development. Declarant may enter into easement agreements or similar agreements with neighboring land owners for the benefit of the Development. The Association will be responsible to fulfill the duties and obligations of Declarant and to protect the rights and interest granted to the Development pursuant to such agreements. Declarant may enter into additional private easements for the benefit of the Development or neighboring land owners. The Association will be responsible to fulfill the duties and obligations of Declarant as set forth in any future easements which affect the Development and are entered into by Declarant.

Section 9.3 Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association will determine to be necessary or desirable for the property operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration. The Association may, but will not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, snow removal, security, lawn and landscaping service and other common services to each Lot. The Association will provide the services required of it by the Supplemental Declarations, if any.

Section 9.4 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests hereafter annexed into the Development and conveyed to it by Declarant.

Section 9.5 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, or the By-Laws, and every other right or privilege reasonably to be implied for the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 9.6 Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent will have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any construction, erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board will give the violating Owner five days written notice of its intent to exercise Association remedial activity (self-help). All costs of such Association remedial activity (self-help), including attorneys' fees actually incurred will be assessed against the violating Owner and will be collected as provided for herein for the collection of assessments. No liability will be assumed by the Association's exercise of such remedial activity.

ARTICLE X

ASSESSMENTS

Section 10.1 Purpose of Assessment. The assessments for the Common Area and Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of

Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board.

Section 10.2 Creation of Assessments.

(a) There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board. General assessments and special assessments will be allocated among all Owners of Residential Units or Lots which include Residential Units within the Association pursuant to Section 10.3 hereof and will be for capital improvements and expenses determined by the Board to be for the benefit of the Association as a whole or otherwise as provided in this Declaration. Each Owner, by acceptance of such Owner's deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law will be a charge on the land and will be a continuing lien upon the Lot against which each assessment is made.

(b) Each such assessment, together with interest, costs, and reasonable attorneys' fees, will also be the personal obligation of the person or persons who were the Owner(s) of such Residential Unit or Lot containing a Residential Unit at the time the assessment arose, and such Owner's grantee will be jointly and severally liable for total unpaid assessments as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage will be liable for unpaid assessments which accrued prior to such acquisition of title by such lender. Assessments will be paid in such manner and on such dates as may be fixed by the Board which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessments for delinquents. Unless the Board otherwise provides, all assessments will be paid annually within 30 days after the date of the billing.

Section 10.3 Computation of Assessment.

(a) **Budget.** It will be the duty of the Board, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget is to be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. In accepting bids and/or estimating Common Expenses prior to preparing the budget, the Board will separate the Common Expenses to the extent necessary to allocate said expenses among Owners as set forth below. If and to the extent applicable, the budget will include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and will separately list Common Expenses.

(b) **Amount of Assessments.** Common Expenses shall be allocated among Owners in the Development on an equal per Lot basis. Where contiguous Lots are combined and approved as one building site, the allocated value is "one" Lot. Each Owner of any Lot or approved combined Lot building site (including any Residential Unit) in the Development hereby covenants

and agrees to pay to the Association a Proportionate Share (as hereinafter defined) of the annual Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Proportionate Share of each Owner in the Development shall be the percentage obtained by dividing "one" by the total number of Lots (and/or building sites if contiguous Lots are combined) shown on the Plats of the Development as the same may be recorded from time to time and owned by Owners (including Declarant). The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Lot for the following year to be delivered to each Owner at least 15 days prior to the meeting. The budget and the assessments shall become effective unless disapproved at the meeting addressing Common Expenses by a vote of at least a two-thirds (2/3) Majority (present or by proxy) of the total Owners.

(c) **Failure to Approve Budget.** Notwithstanding the foregoing, however, if the Members disapprove the proposed budget or if the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as the budget has been determined as provided herein, the budget in effect for the then current year will continue for the succeeding year.

(d) **Deficits.** If 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 will be carried over and become the first item comprising the next year's budget as an additional basis for assessments for the following fiscal year, except that so long as Declarant controls the Association, and subject to Declarant's right to impose Special Assessments as described in Section 4.3 hereof, Declarant will be responsible for such deficit; provided, however, that Declarant will be reimbursed by the Association for such deficits, together with interest at 10% per annum until so reimbursed, from available surpluses in later years or through a special assessment at the time of transfer of control of the Association to Owners. Thereafter, such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more special assessments for such purpose, at the option of the Association. If 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, an allocable share of such excess (based on the amounts originally levied as assessments) will be a credit against the assessment(s) due from each Owner for the next fiscal year(s); provided, that Declarant will first be reimbursed for deficits previously paid, with interest, as required above before such excess will be so credited to Owners.

(e) **Limitation on Increases.** In each year thereafter, the total assessments per Lot Residential Unit per month for Common Expenses will not be increased by more than the greater of 10% over the prior year or \$40, until such time as Declarant relinquishes control of the Association.

Section 10.4 Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable does not exceed \$50 per Lot in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special

assessments allocable to any Residential Unit to exceed this limitation will be effective only if approved by a two-thirds ($\frac{2}{3}$) majority of the Eligible Votes, present in person or by proxy. Special assessments will be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. This Section 10.4 will not apply to assessments levied pursuant to Section 4.3 hereof.

Section 10.5 Lien for Assessments.

(a) All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, as provided herein, will be secured by a lien on such Lot in favor of the Association. Such lien will be recorded by the Association with the Lake County Recorder. Such lien will be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Lake County, Indiana, and all amounts advanced to such respective Mortgage or Mortgages and secured thereby in accordance with the terms of such instrument.

(b) All other persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded in the Office of the Recorder of Lake County, Indiana, will be deemed to consent that such liens or encumbrances are and will be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 10.6 Effect of Nonpayment of Assessments: Remedies of the Association.

(a) **Lien Rights.** Any assessments which are not paid when due will be delinquent. Any assessment delinquent for a period of more than 10 days will incur a late charge in an amount as the Board may from time to time determine. The Association will cause a notice of delinquency to be given to any member who has not paid within 10 days following the due date. If the assessment is not paid within 30 days from the due date, a lien, as herein provided, will attach to the Lot and, in addition, the lien will include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law. If the assessment remains unpaid 60 days from the due date, the Association may, as the Board determines, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, or all persons or parties in title, jointly and severally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property (*i.e.*, mechanics and materialmen's liens). The lien provided for in this Article will be in favor of the Association and will be for the benefit of all other Owners. The Association, acting on behalf of the Owners, will have the power to bid on the Lot at any foreclosure sale or to acquire and to hold, lease, mortgage, or convey the Lot. No Owner may waive, purge himself, or otherwise except liability for the

assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot .

(b) **Priority of Application of Payment.** All payments will be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

(c) **Suspension of Voting Rights.** If any assessment with respect to any Lot is not paid within 30 days from the due date thereof, the Board may suspend the voting rights of the delinquent Owner with respect to such Lot. Upon and during such suspension, the vote with respect to such Lot will not constitute one of the Eligible Votes. Such voting rights will cease to be suspended when all delinquent assessments with respect to such Owner's Lot are paid.

Section 10.7 Capital Budget and Contribution. The Board will annually prepare a capital budget which will take into account the number and nature of replacement costs for the Common Area. The Board will set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association as shown on the capital budget, with respect to both amount and timing of need for funds by annual assessments over the period of the budget.

Section 10.8 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, will be subordinate to the lien of any first Mortgage upon any Lot . The sale or transfer of any Lot will not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage will extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Association to payment out of available foreclosure sale proceeds). No sale or transfer will relieve such Lot from lien obligations for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, such Mortgagee's successors and assigns will not be liable for the share of the Common Expenses by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lots by such acquirer. Such unpaid share of Common Expenses will be deemed to be Common Expenses collective from all the Residential Unit or Lot which include Residential Units, including such acquirer and all successors and assigns thereof. Such procedure will not discharge the former Owner from personal liability for such unpaid assessment.

Section 10.9 Capitalization of Association. Upon acquisition of record title to a Residential Unit or Lot which includes a Residential Unit from Declarant or upon completion of a Residential Unit by an Owner other than Declarant, such Owner will contribute to the capital of the Association an amount equal to a pro-rated portion of the annual general assessment for Common

Expenses for that Lot as determined by the Board. Such pro-ration will be based upon the remaining portion of the assessment year during which the Owner acquired title or completed a Residential Unit.

Section 10.10 Date of Commencement of Annual Assessments. The annual assessments provided for herein will commence as to all Lots subject to assessment under this Declaration on the first day of the month following the conveyance of the first Lot which includes a Residential Unit by Declarant to an Owner or the completion of a Residential Unit on a Lot by an Owner other than Declarant and will be due and payable in a manner and on a schedule as the Board may provide. The first annual assessment will be adjusted according to the number of months then remaining that fiscal year. The date any Lot becomes subject to assessment hereunder will be the date on which such Lot is transferred by Declarant to an Owner.

Section 10.11 Assessments by Declarant.

(a) After the commencement of assessments on any Lot, Declarant will be liable for and agrees to pay the full amount of the annual assessment (prorated for partial years, if applicable) for each Residential Unit or Lot which include Residential Units which are owned by Declarant.

(b) Notwithstanding anything to the contrary herein, Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called "in-kind contribution"). The amount by which monetary assessments will be decreased as a result of any in-kind contribution will be the fair market value of the contribution. If Declarant and the Association agree as to the value of any contribution, the value will be as agreed. If the Association and Declarant cannot agree as to the value of any contribution, Declarant will supply the Association with a detailed explanation of the service performed and material furnished, and the Association will acquire bids for performing like services and furnishing like materials from three independent contractors approved by Declarant who are in the business of providing such services and materials. If the Association and Declarant are still unable to agree on the value of the contribution, the value will be deemed to be the average of the bids received from the independent contractors.

ARTICLE XI

ARCHITECTURAL STANDARDS

Section 11.1 Architectural Standards Jurisdiction. The Board will have the authority and standing, on behalf of the Association, to enforce its decisions in courts of competent jurisdiction. No construction, as defined herein, will take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the appropriate Committee has been obtained. For purposes of this Section, "Construction" will mean:

- (a) With the exception of the Townhome Development, original construction of any kind;
- (b) Reconstruction, modifications, additions, or alterations of any kind;
- (c) Staking, clearing, excavating, grading and other site work;
- (d) Installation of lawn carpeting, fences, walls, awnings, swimming pools, playground equipment, basketball goals, mailboxes, yard light fixtures, or any other structure or appurtenance of any kind.

It is understood and agreed that the purpose of architectural regulations and controls is to secure an attractive, harmonious residential development having continuing appeal by assuring materials and design elements are harmonious in conjunction with the way building and improvements relate to each other and the environment.

Section 11.2 Board Authority. The Board will have exclusive jurisdiction over all Construction on Lots and on the open space, if any, on any portion of the Development appurtenant thereto, provided; however, the Board may delegate this authority to the appropriate board or committee of any residential association subsequently created or subsequently subjected to this Declaration so long as the board has determined that such board or committee of any residential association subsequently created or subsequently subjected to this Declaration so long as the Board has determined that such board or committee has in force review and enforcement practices, procedures and appropriate standards at least equal to those of the board. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. No permission or approval will be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein will be construed to limit the right of an Owner to remodel the interior of his or her residence, or to paid the interior of his or her residence any color desired.

Section 11.3 Procedures for Approval. Approvals required by this Article will be in written form by the Board or appropriate Committee, and will be forthcoming only after written application has been made and application fee paid, if any, to the Board or appropriate Committee by the Owner of the Lot requesting authorization. Such written application will be in the manner and form prescribed from time to time by the Board of applicable Committee and will be accompanied by four of all of the following:

- (a) Two complete sets of plans and specifications drawn to scale setting forth the nature, kind, shape, height, color and composition of all exterior materials proposed to be used; and the square footage, level by level, as well as the total square footage of the residence (excludes below grade).

(b) Plot plan drawn to scale showing streets, location, all lot dimensions; all structures proposed or existing on the lot, their size, location and distance from each other and to adjacent property right of way line; location/width of driveways; location/width of sidewalks; required set back distances from property or rights of way; topography and physical features. Indicate elevation of the proposed improvement as it relates to the existing street elevation and adjoining lands. All elevations must comply with declarant's master engineering plan which specify minimum finished top of foundation elevations. Elevations shown on the master plans are guidelines and may be altered by the Board when needed to conform to existing conditions. As drawn, such materials must be prepared and sealed by either registered land surveyor, engineer, or architect. Declarant will supply a staked plat of survey at the time of closing at the Declarant's expense. Lots 107, 108, 109, 117, 119, 120, and 121 require custom engineering for the foundation layout. Owner must supply, at Owner's expense, a grading plat designed by an engineer chosen by Declarant. All permit plats must show location of all trees on the lot of 8" caliper or greater from the curb back onto the lot a min of 100 feet. A final grading plat must be furnished the Declarant prior to occupancy.

(c) Landscaping plan drawn to scale setting forth the nature, kind, shape, height of all materials to be used; sod and seed areas.

(d) Soil erosion and sedimentation control plan.

(e) Drainage, grading and site plan indicating topography and proposed plans for handling of on-site drainage, including, but not limited to, sump pump discharge, gutter drains, driveway drains, ditches, swales, sedimentation basins or berms; show physical features such as existing plant life, tree group, creeks, etc. Such plans must comply with Declarant's master engineering plans for elevations and drainage.

(f) Only Builders approved by the board may build in the Development. If an Owner's builder is not pre-approved, Owner must submit a Resume of builder evidencing quality experience and demonstrated achievements including references. Proof of builder's financial capability must also be provided. Owner will be responsible to obtain and submit the builder's packet.

In addition, permission to build (in the form of a building permit or other certified means) must be obtained from all regulatory bodies subsequent to Committee approval but prior to any improvements.

Section 11.4 Power of Disapproval. The Board or appropriate committee may refuse to grant approvals required under this Article when:

(a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of these restrictions or the requirements of the applicable Supplemental Declaration;

(b) The design or color scheme of a proposed exterior repainting, modification or improvement is not in harmony with the general surroundings of the Lot, with adjacent buildings or structures, or with Community-Wide Standards, all as determined in the sole discretion of the Committee;

(c) The proposed improvement, construction or modification, or any part thereof, would be contrary to the interests, welfare or rights of all or any part of the other Owners, all as determined in the sole discretion and opinion of the Board of applicable committee; or

(d) In the event that the Board or appropriate Committee has not acted upon the submission within 30 days by the issuance of a written approval, the submission will be deemed to have been denied.

Section 11.5 Hold Harmless. Neither the Association, its directors, and committee created by the Board, nor any member thereof, will be liable for any damage, loss or prejudice suffered or claimed by any Owner or contractor who submits such plan on account of (a) any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; and (e) the development of any property within the Development. Any person submitting plans to either or both of such Committees will hold Declarant, the Association, its directors, the Committees, and any member thereof, harmless from all damage, loss or prejudice suffered or claimed by any third party, including attorneys' fees incurred.

Section 11.6 Inspection. The Board or their duly authorized agents, may inspect work being performed with their permission to assure compliance with this Declaration, the requirements of the applicable Supplemental Declaration and any applicable regulations of the Association.

Section 11.7 Declarant Improvements. Notwithstanding any other provisions of this Declaration, neither the Association nor the Board will have any powers with respect to any construction, improvements or modifications undertaken by Declarant, its agents, contractors, suppliers, or subcontractors (or any assignee of Declarant if Declarant has approved the plans therefor).

Section 11.8 Remedies for Failure to Obtain Approval. In the event any construction or modifications are made without first obtaining approval of the Board of appropriate committee

as required herein, the Association and the applicable committee will have the powers of enforcement granted to the Association generally for purposes of this Declaration and may require any modifications, construction, changes or improvements undertaken or installed without the approval of the applicable committee to be removed or renovated by whatever means the Association and/or applicable Committee deems appropriate, with all the costs thereof, including costs of collection and attorneys' fees to become a lien against the defaulting Owner's Lot in the manner described in Section 10.5 hereof.

Section 11.9 Certain Architectural Standards. All Lots will be improved according to the following standards. If the standard is such that it sets a minimum, the standard may be exceeded.

(a) **Size.**

(i) **Phase One.** For Lots shown on the Plat for Ellendale Farm, Phase (Unit) One, recorded in Plat Book 82, Page 40 of the Lake County Recorder, single story Residential Units will contain a minimum of 1,800 square feet of living area. Two story Residential Units will contain a minimum of 2,200 square feet of living area with a ground floor area of at least 1,200 square feet. No Bi-level Residential Units will be allowed. All construction will be "stick built" at the Lot.

(ii) **Phase Two.** With the exception of the Townhome Lots, for Lots shown on the Plat for Ellendale Farm, Phase Two, recorded in Plat Book 84, Page 30, single story Residential Units will contain a minimum of 2,000 square feet of living area. Two story Residential Units will contain a minimum of 2,400 square feet of living area with a ground floor area of at least 1,200 square feet. No Bi-level Residential Units will be allowed. All construction will be "stick built" at the Lot.

(b) **Garages.** For Lots that are 100' or wider and those Lots that front on Mary Ellen Drive, Residential Units will be constructed with an attached garage to be accessed from the side of the Residential Unit. The Board may approve a front access garage if it is set back from the front line of the Residential Unit by 10'.

(c) **Roof.** Roof pitches must be 6:12 or steeper for Lots shown on the Plat for Ellendale Farm, Phase (Unit) One, recorded in Plat Book 82, Page 40. Except for the Townhome Lots, Roof pitches must be 8:12 or steeper for Lots shown on the Plat for Ellendale Farm, Phase Two, recorded in Plat Book 84, Page 30.

(d) **Sidewalks.** Each Owner will install at its expense, sidewalks which will be at least five feet in width, except for those located on Lots 7 and 27 on the Mary Ellen Drive side of the Lot and Lots 8-16 and 106-116, which walks will be seven feet wide. All walks will comply with the construction standards (except for width size) of appropriate governmental authorities.

(e) **Landscaping: Trees.** No clearing of any Lot may occur without Board approval. Each Owner will keep its Lot landscaped to maintain a neat, clean appearance and in a manner to

reasonably control erosion of the Lot. No trees existing on the lot in excess of 8" caliper may be removed without Board approval. Except for the lawn, all landscaping will be complete within 90 days after an occupancy permit is issued and the lawn must be sodded or hydroseeded before occupancy. The Board may, in the case of bad or improper weather conditions, defer the landscaping and lawn activities upon terms acceptable to the Board.

(f) **Setbacks.** All Lots will have the following setbacks:

- (i) **Front.** As required on the Plat.
- (ii) **Side.** 10' except for lots 17, 19, 20, 21, 23, 24, 25, 106, 110, and Townhome Lots which will be as required by municipality.
- (iii) **Back.** As required by municipality.

(g) **Fencing.** All fencing must receive Board Approval. If a Lot borders a Common Area, except for Lots 13, 14, 23, 24, 35, and 36, the fencing, if approved by the Board, must be set back 25' from the Lot line bordering the Common Area and must be constructed of wrought iron or of the same material as fencing bordering the Development.

(h) **Curbs and Temporary Drives.** All driveway curb cuts must be formed by grinding the back of the curb to the desired grade. No driveway entrance may be filled with concrete or asphalt. No construction activities may commence until the drive entrance curb is ground to grade and the drive is covered with stone as required by the Board so that soil is not tracked off site. No traffic may access or leave the Lot from any point on the Lot except for at the ground-curb area. Any damage to the curbs will be repaired or replaced at Owner's expense.

(i) **Drives.** All driveways must be constructed of concrete or paving blocks designed for driveway use.

Section 11.10 Erosion Control. Declarant has prepared a erosion control plan in accordance with the requirements of 327 I.A.C. 15-1 *et seq.* ("Rule 5"). Each Owner will comply with Rule 5 and any amendments to it, and take the following erosion control measures during the construction of its Lot or during any land disturbing activity as defined in Rule 5. These provisions are supplementary to those requirements in Rule 5. Nothing herein will suspend or supersede the need to comply with the requirements of Rule 5, as such regulations may amended or replaced with successor regulations:

(a) Sediment-laden water which otherwise would flow from the Lot shall be detained by erosion control practices appropriate to minimize sedimentation and erosion. No storm water shall be discharged from the Lot in a manner causing

erosion of the Lot. Proper erosion control practices include the use of such as filter (silt) strips, diversions, straw bales, filter (silt) fences, inlet protection measures, slope minimization, phased construction, maximizing tree coverage, temporary and permanent seeding of vegetation, mulching, and sodding.

(b) Appropriate measures shall be taken by the Owner to minimize or eliminate wastes or unused building materials, including, but not limited to, garbage debris, cleaning wastes, wastewater, and other substances from being carried from a Lot by run-off. Proper disposal or management of all wastes and unused building materials, appropriate to the nature of the waste or material, is required.

(c) Sediment being tracked from a Lot onto public or private roadways shall be minimized.

(d) Public or private roadways shall be kept cleared of accumulated sediment. Bulk clearing of accumulated sediment shall not include flushing the area with water. Cleared sediment shall be returned to the point of likely origin or other suitable location.

(e) All on-site storm drain inlets shall be protected against sedimentation with straw bales, filter fabric, or equivalent barriers meeting accepted design criteria, standards, and specification for that purpose.

All measures involving erosion control practices shall be designed and installed in accordance with the requirements of the State of Indiana set out in Rule 5, as such regulations may amended or replaced with successor regulations, provided, however, that the minimum requirements above will at all times be followed unless prohibited by law or ordinance. The Owner will indemnify the Declarant against all liability, damage, loss, claims, demands, and actions of any nature which may arise out of or are connected with or are claimed to arise out of or connected with, any work done by an Unit Owner or its agents, contractors, subcontractors, and employees which is not in compliance with required erosion control measures.

Section 11.11 - Power to Grant Variances. The Board may allow reasonable variances or adjustments of the provisions of this Declaration where literal application, in the sole discretion of the Board, would result in unnecessary hardship, but any such variance or adjustment will be granted in conformity with the general intent and purposes of this Declaration, and no variance or adjustment will be granted which is materially detrimental or injurious to other Lots in the Development. All such variances will be subject to all applicable laws, ordinances, rules and regulations of any governmental agency or political subdivision having jurisdiction over the Development. No variance granted pursuant to the authority granted herein will constitute a waiver of any provision of this Declaration as applied to any other Person, Owner, Lot, or Residential Unit.

Section 11.12 Plan Approval Fee and Lien. For each Residential Unit constructed on a Lot, the Owner will pay a construction fee equal to 1% of the construction price of the Residential Unit (not including the price of the Lot). The fee will cover, but not be limited to, Declarant's cost to review plans, administer the approvals of construction on Owner's Lot under these Covenants, and to inspect and verify construction in accordance with these Covenants, to the extent deemed necessary by Declarant. Such fee will be paid before or at closing of the sale of the constructed improvements to the Owner. Such fee will be a lien on the Lot on which such Residential Unit is constructed. Upon request of the Owner, Declarant will provide written notice of the amount of such fee to the agent closing the transaction. The amount of the lien may be collected and foreclosed in the same manner with the same fees as delinquent assessments.

ARTICLE XII

TOWNHOME DEVELOPMENT

Section 12.1 Additional Land. The Townhome Development is added to the Development. This Declaration applies to the Townhome Development, except as specifically excluded.

Section 12.2 Townhome Association. In addition to being members of the Association, the owners in the Townhome Development will have their own property owners' association. The Townhome Association will be administered and operated in the same manner as the Association. Owners of a Townhome parcel will have membership and voting rights in the Townhome Association. The Townhome Association will be administered on the same terms as the Association. The provisions in this Declaration will apply to the Townhome Association and the Townhome Development, including, but not limited to, those set forth in Articles III, IV, V, IX, and X. When applied to the Townhome Association, the definitions in each of those articles will be changed so that the reference to "Association" will refer to the Townhome Association. Every other term that applies to the Association will, in the context of the Townhome Association, refer to the Townhome Development and the Townhome Association, as the case may be.

Section 12.3 Exterior Maintenance. In addition to the maintenance upon the Townhome Common Areas, the Townhome Association will provide exterior maintenance upon each Townhome Lot which is subject to assessment hereunder, as follows: Paint, repair, replace, and care for roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance will not include glass or screen surfaces. If the need for maintenance or repair is caused through the willful or negligent act of the owner, his family, or guest, or invitees, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Townhome Lot is subject.

Section 12.4 Pond Maintenance. The Association will own and maintain the land and water areas along the exterior perimeter of the Townhome Development Lots as Common Areas.

The Association may require the Townhome Association or an owner within the Townhome Development to install adequate shoreline protection as determined by the Association. Notwithstanding the foregoing, a Townhome Parcel Owner whose parcel abuts on the water areas must maintain the land to the water line, even if such are includes Common Area.

ARTICLE XIII

MORTGAGEE RIGHTS

Section 13.1 Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder), will, upon payment of the reasonable expenses of the Association associated therewith, be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) condemnation, damage or destruction to the Development or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- (c) any delinquency in the payment of assessments or charges owned by an Owner of a Lot or Residential subject mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of 60 days;
- (d) any lapse, cancellation, or material modifications of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of eligible holders.

Section 13.2 Rights of Mortgagees. Except to the extent otherwise provided herein, no breach of this Declaration will defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purpose at such sale and his successors and assigns will hold any and all land so purchased subject to this Declaration. Notwithstanding any other provision of this Declaration, neither the Owners nor the Association will have any right to make any amendment to this Declaration which materially impairs the rights of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

ARTICLE XIV

GENERAL PROVISIONS

Section 14.1 Duration. This Declaration and the covenants, restrictions, charges and liens set out herein will run with and bind the Development, and will inure to the benefit of and be enforceable by Declarant, and its legal representatives, successors, and assigns. Except as otherwise expressly set forth herein, this Declaration benefits only the real property described in this Declaration, and there is no intention to the benefit any persons other than those having an interest in such real property. The existence of easement rights or covenant rights in Persons not owning or having an interest in such real property will not confer on any such person, any right whatever to enforce the covenants, conditions and restrictions hereby created. The easements granted hereunder will be perpetual, subject to the provisions of this Declaration; with the exception of the easement rights provided herein, this Declaration will continue and remain in full force and effect at all times with respect to the Development and each part thereof (subject, however, to the right to amend the provisions hereof as provided for in Section 14.2 hereof and the right to include additional real property as provided herein), until December 31, 2040. As of and after December 31, 2040, this Declaration and all provisions hereof will remain in full force and effect, subject to termination at any time by the written election of Owners of two-thirds (based on acreage) or more of the Real Estate and any Additional Land. Upon the recording of such termination election in the Office of the Recorder of Lake County, Indiana, this Declaration and all provisions hereof (excepting the grants of easement provided herein) will expire and terminate as of the date of such recording without any further act or instrument by any Person.

Section 14.2 Amendment.

(a) This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which will be in conflict therewith; (ii) at Declarant's option, if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) at Declarant's option, if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration or (iv) at Declarant's option, if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment will not adversely affect the title to any Owner's Lot unless any such Lot Owner will consent thereto in writing. Further, so long as Declarant owns any property in the Development or any property capable of being annexed thereto, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment will not adversely affect in a material magnitude, the

substantive rights of any then present Lot Owners hereunder, nor will it substantially affect marketability of title to any Lot without the consent of the affected Owner.

(b) In addition to the above, the provisions of this Declaration that do not pertain to the Townhome Development may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds ($\frac{2}{3}$) a majority of the Owners and the consent of Declarant, so long as Declarant has an unexpired option to subject property to this Declaration, as set forth at Article VIII. The provisions of this Declaration that pertain to the Townhome Development may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds ($\frac{2}{3}$) a majority of the owners of Lots within the Townhome Development and the consent of Declarant, so long as Declarant has an unexpired option to subject property to this Declaration, as set forth at Article VIII, except that the provisions pertaining to the payment of Assessments and rights in the Development may not be amended except by the owners of the Lots in the Development.

Amendments to this Declaration will become effective upon recordation in the Lake County, Indiana, records, unless a later effective date is specified therein.

Section 14.3 Indemnification. The Association will indemnify each of its officers and directors against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director 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 or director. The officers and directors will not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. Officers and directors will have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors are Members of the Association and thereby affected through the assessment process), and the Association will indemnify and forever hold each such officer and director 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 will not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association will, 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 14.4 Easements for Utilities. There is hereby reserved to the Association and to any public or private utility which is an assignee of the Association, blanket easements upon, across, above, and under all property within the Development for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system or security system which the Association might decide to have installed to serve the Development. Notwithstanding the foregoing, such easement rights will be limited to the

Common Area and to portions of the Lots on which on which no Residential Unit, as originally constructed, was situated. It will be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board will have the right to grant such easement.

Section 14.5 Construction and Sale. Notwithstanding any provision contained in the Declaration to the contrary, so long as construction and initial sale of Lots continues, it will be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sales offices, and Declarant will have an easement for access to such facilities. The right to maintain and carry on such facilities and activities will include specifically the right to use residences owned by Declarant and the Common Area facilities, if any, which may be owned by the Association, as models and sales offices. This Section may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Section 14.5 will terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded or (b) upon Declarant's recording a written statement that all sales activity has ceased.

Section 14.6 General and Grammar. The singular, wherever used herein will be construed to mean the plural, when applicable, and the use of the masculine pronoun will include the neuter and feminine.

Section 14.7 Severability. Whenever possible, each provision of this Declaration will be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property will be prohibited or held invalid, such prohibition or invalidity will 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 14.8 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article of Section to which they refer.

Section 14.9 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration will be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions will continue only until twenty-one (21) years after the death of the last survivor of the individuals who were Owners, who were living on the date of this Declaration, and who originally purchased Lots from the Declarant.

Section 14.10 Mailing Address. Each Owner of a Lot in the Development will file the correct mailing address of such Owner with Declarant and will notify Declarant promptly in writing of any subsequent change of address. Declarant will maintain a file of such addresses and make the same available to the Association. A written or printed notice, deposited in the United States Post Office, postage prepaid, and addressed to any Owner at the last address filed by such Owner with Declarant or Association will be sufficient and proper notice to such Owner wherever notices are required in this Declaration. Once Declarant transfers control of the Association to the Owners, any filing of correct mailing address or subsequent change will be to the Association which will make same available to Declarant as Declarant's interests may require.

ARTICLE XV

ENFORCEMENT

Section 15.1 In General. Any party to whose benefit this Declaration inures, including Declarant, the Association and any Owner, may proceed at law or in equity to prevent the occurrence of continuation of any violation of this Declaration, but neither Declarant nor Association will be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any provision of this Declaration.

Notwithstanding any other provision in this Declaration of Covenants, Conditions, Easements and Restrictions to the contrary, the Association acting through the Board may elect to enforce any provision of the Declaration, the Association's By-Laws, the Rules and Regulations by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Owner or occupant responsible for a violation for which abatement is sought or for which other action will be taken will pay all costs including attorneys fees actually incurred.

In addition thereto, any judgment for monetary damages arising from any such enforcement action, if not paid within 30 days from the due date, will constitute a lien on such Owner's lot in favor of the Association. Said lien will have the same priority as a lien for assessment set forth in Section 10.5 of this Declaration and will be subject to foreclosure and such other provisions of Section 10.6 of this Declaration not inconsistent with this Section 14.1.

In addition to and not in limitation of the foregoing, if the Association or any director, officer, or Member thereof, or any Owner incurs attorneys' fees or costs in enforcing its rights under this Declaration as a result of any breach hereof, regardless of whether the matter results in the filing of a suit in any court, the breaching Person will pay all reasonable attorneys' fees and costs incurred by the Association or such director, officer, or Member thereof, or such Owner.

Section 15.2 Government Enforcement. The Plan Commission of the municipality having jurisdiction, its successors and assigns, will have no right, power, or authority, to enforce any

covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor of the Plan Commission of the municipality.

Section 15.3 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the Declaration will be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violating of this Declaration.

ARTICLE XVI

PRIVATE AMENITIES AND SERVICES

Section 16.1 Private Amenities and Services. Elements comprising the Common Area will be owned and maintained by the Association so long as this Declaration remains in force. In the event of any termination of this Declaration and/or dissolution of the Association, the Association will convey the Common Area and any other applicable properties to a successor organization having similar purposes and powers as the Association (if any), and/or will use its best efforts to dedicate any or all applicable properties to the appropriate governmental agencies or utilities which normally hold and/or administer such properties. If and to the extent that such conveyance and/or dedication are not possible, all remaining properties will be disposed of as determined by the Circuit Court of Lake County, Indiana, consistent with the purposes set forth in this Declaration.

ARTICLE XVII

LIMITATION ON DECLARANT'S LIABILITY

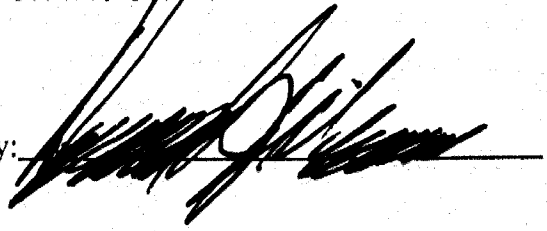
Section 17.1 Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees, that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any partner, manager, member, director, officer or shareholder of Declarant (or any partner, member, officer, director or shareholder in any such assignee) will have any personal liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Association except, in the case of Declarant (or its assignee), to the extent of its interest in the Real Estate and Additional Land (if any); and, in the event of a judgment, no execution or other action will be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgement debtor.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date above.

Declarant:

David J. Wilcox, trustee under Trust Agreement dated July 30, 1996 and known as Trust N° 202615-96


By:

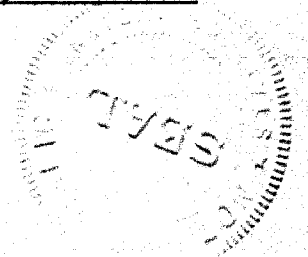
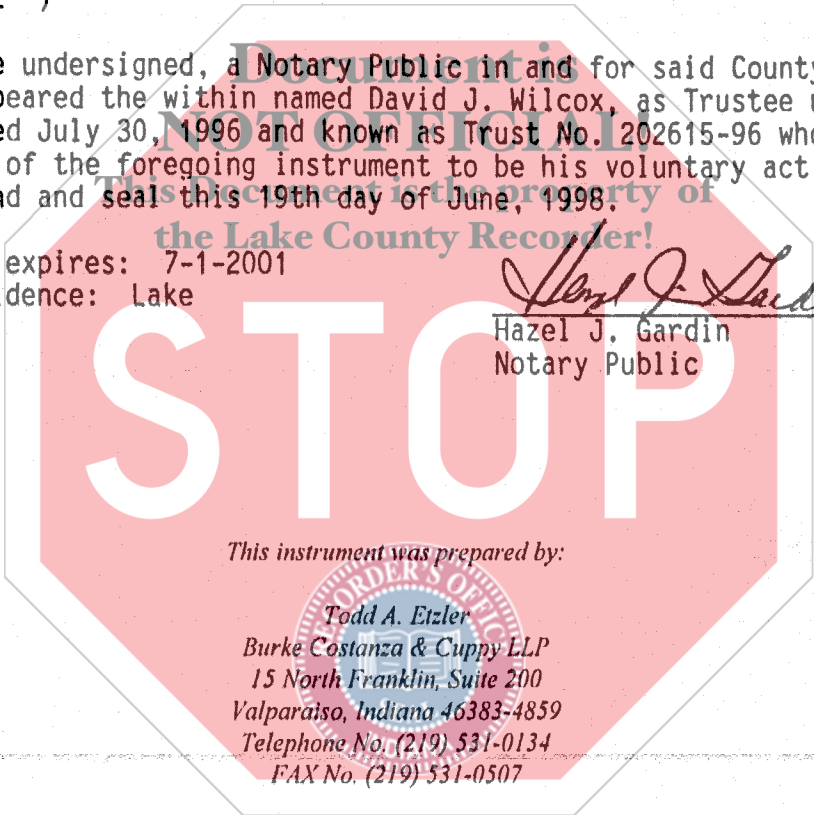


STATE OF INDIANA)
)SS:
COUNTY OF LAKE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named David J. Wilcox, as Trustee under Trust Agreement dated July 30, 1996 and known as Trust No. 202615-96 who acknowledged the execution of the foregoing instrument to be his voluntary act and deed. Witness my hand and seal this 19th day of June, 1998.

My Commission expires: 7-1-2001
County of Residence: Lake


Hazel J. Gardin
Notary Public



This instrument was prepared by:

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EXHIBIT A

Legal Description of Real Estate

That part of the South 1/2 of the Southeast 1/4 of Section 7 and that part of the Northeast 1/4 of Section 18 both in Township 34 North, Range 8 West of the 2nd Principal Meridian, bounded and described as follows: Beginning at the Northeast corner of said South 1/2 of the Southeast 1/4 of said Section 7; thence South 00degrees 33 minutes 04 seconds East along the East line of said Southeast 1/4, 1326.06 feet, to the Northeast corner of said Northeast 1/4 of Section 18; thence North 89 degrees 58 minutes 57 seconds West along the North line of said Section 18, 40.00 feet; thence South 49 degrees 09 minutes 47 seconds West 632.02 feet; thence North 40 degrees 50 minutes 13 seconds West 147.59 feet; thence South 69 degrees 30 minutes 30 seconds West 82.12 feet; thence North 86 degrees 46 minutes 48 seconds West 82.18 feet; thence North 76 degrees 26 minutes 11 seconds West 120.68 feet; thence North 73 degrees 31 minutes 20 seconds West 130.56 feet; thence North 57 degrees 33 minutes 18 seconds West 130.56 feet; thence North 41 degrees 35 minutes 16 seconds West 130.56 feet; thence North 27 degrees 25 minutes 56 seconds West 105.05 feet; thence North 56 degrees 05 minutes 23 seconds West 81.90 feet; thence North 66 degrees 17 minutes 35 seconds West 60.56 feet; thence South 90 degrees 00 minutes 00 seconds West 407.45 feet; thence North 00 degrees 00 minutes 00 seconds East 177.40 feet; thence North 18 degrees 41 minutes 57 seconds East 92.90 feet; thence North 90 degrees 00 minutes 00 seconds East 130.00 feet; thence North 00 degrees 00 minutes 00 seconds East 45.50 feet; thence North 90 degrees 00 minutes 00 seconds East 190.00 feet; thence North 00 degrees 00 minutes 00 seconds East 320.00 feet; thence North 17 degrees 54 minutes 44 seconds East 62.00 feet; thence South 44 degrees 49 minutes 49 seconds East 64.30 feet; thence South 44 degrees 49 minutes 28 seconds East 94.85 feet North 42 degrees 28 minutes 13 seconds East 129.54 feet; thence North 27 degrees 22 minutes 00 seconds East 62.32 feet; thence North 43 degrees 40 minutes 44 seconds East 205.63 feet; thence South 87 degrees 33 minutes 38 seconds East 73.45 feet; thence South 80 degrees 31 minutes 19 seconds East 134.70 feet South 58 degrees 40 minutes 13 seconds East 112.31 feet; thence South 23 degrees 54 minutes 12 seconds West 73.67 feet; thence South 54 degrees 48 minutes 28 seconds East 20.39 feet; thence South 31 degrees 10 minutes 09 seconds East 142.32 feet; thence South 42 degrees 29 minutes 30 seconds East 76.93 feet; thence South 86 degrees 31 minutes 02 seconds East 88.71 feet; thence North 73 degrees 34 minutes 46 seconds East 94.87 feet; thence North 68 degrees 46 minutes 00 seconds East 113.40 feet; thence North 64 degrees 19 minutes 40 seconds East 60.31 feet; thence North 76 degrees 22 minutes 26 seconds East 126.00 feet; thence North 00 degrees 33 minutes 04 seconds West 601.43 feet, to said North line of the South 1/2 of the Southeast 1/4; thence South 89 degrees 57 minutes 53 seconds East 170.01 feet, to the herein designated point of beginning, in Lake County, Indiana.

EXHIBIT A

Legal Description of Real Estate

That part of the South 1/2 of the Southeast 1/4 of Section 7 and that part of the Northeast 1/4 of Section 18 both in Township 34 North, Range 8 West of the Second Principal Meridian, bounded and described as follows: Commencing at the most Southerly corner of Outlot A in Ellendale Farm Unit One, being a subdivision as recorded in Plat Book 82, Page 40 in said Southeast 1/4 of Section 7 and in said Northeast 1/4 of Section 18; thence South 49°-09'-47" West 816.80 feet along the Southwesterly prolongation of the Southeasterly line of said Ellendale Farm Unit One; thence North 90°-00'-00" West 161.60 feet; thence South 76°-07'-16" West 190.00 feet; thence South 39°-46'-48" West 160.00 feet; to the POINT OF BEGINNING; thence South 43°-10'-08" East 305.43 feet; thence South 08°-01'-54" East 71.77 feet; thence South 02°-33'-02" East 84.75 feet; thence South 03°-35'-26" West 156.24 feet; thence Westerly 114.58 feet along the arc of a circle of 430.00 feet radius convex Southerly having a chord bearing of North 78°-46'-34" West, to a point of compound curve; thence Westerly 22.79 feet along the arc of a circle of 770.24 feet radius convex Southerly having a chord bearing of North 70°-17'-42" West; thence South 22°-47'-06" West 211.14 feet; thence North 88°-18'-23" West 511.47 feet; thence North 56°-20'-31" West 298.23 feet; thence North 26°-21'-47" West 357.52; thence North 33°-47'-10" East 539.76 feet; thence Southwesterly 39.68 feet along the arc of a circle of 430.00 feet radius convex Southerly having a chord bearing of South 76°-39'-45" West, to a point of tangency; thence South 79°-18'-22" West 14.29 feet; thence North 10°-41'-38" West 60.00 feet; thence North 79°-18'-22" East 14.29 feet, to a point of curve; thence Northeasterly 263.20 feet along the arc of a circle of 370.00 feet radius convex Southeasterly having a chord bearing of North 58°-55'-39" East; thence North 51°-27'-03" West 140.00 feet; thence North 28°-37'-15" East 79.31 feet; thence North 13°-41'-29" East 94.05 feet; thence North 13°-00'-01" East 100.00 feet; thence North 15°-08'-49" East 515.25 feet, to the Westerly prolongation of a South line of said Ellendale Farm Unit One; thence North 90°-00'-00" East 643.97 feet along said South line, to the Southeast corner of Lot 27 in said Ellendale Farm Unit One; thence South 66°-17'-35" East 60.56 feet, to the Southwest corner of Lot 28 in said Ellendale Farm Unit One; thence South 56°-05'-23" East 81.90 feet, to the Southeast corner of said Lot 28; thence South 27°-25'-56" East 66.94 feet along the Southwesterly line of Lot 29 in said Ellendale Farm Unit One; thence South 53°-46'-47" West 147.06 feet; thence South 45°-55'-26" West 60.57 feet; thence South 55°-39'-42" West 140.08 feet; thence South 70°-15'-53" West 169.77 feet; thence South 56°-39'-50" West 165.92 feet; thence South 14°-27'-13" West 194.63 feet; thence South 44°-23'-11" West 47.18 feet; thence South 52°-45'-40" West 100.34 feet; thence North 71°-07'-48" West 53.79 feet; thence Southwesterly 167.55 feet along the arc of a circle of 430.00 feet radius convex Southerly having a chord bearing of South 30°-01'-56" West; thence South 48°-48'-19" East 64.07 feet; thence South 09°-55'-11" East 77.53 feet; thence South 53°-29'-17" East 440.00 feet, to the herein designated POINT OF BEGINNING, in Lake County, Indiana.

EXHIBIT B

Legal Description of Additional Land

That part of the South 1/2 of the Southeast 1/4 of Section 7 and that part of the Northeast 1/4 of Section 18 both in Township 34 North, Range 8 West of the Second Principal Meridian, bounded and described as follows: Commencing at the most Southerly corner of Outlot A in Ellendale Farm Unit One, being a subdivision as recorded in Plat Book 82, Page 40 in said Southeast 1/4 of Section 7 and in said Northeast 1/4 of Section 18; thence South 49°-09'-47" West 816.80 feet along the Southwesterly prolongation of the Southeasterly line of said Ellendale Farm Unit One; thence North 90°-00'-00" West 161.60 feet; thence South 76°-07'-16" West 190.00 feet; thence South 39°-46'-48" West 160.00 feet; to the POINT OF BEGINNING; thence South 43°-10'-08" East 305.43 feet; thence South 08°-01'-54" East 71.77 feet; thence South 02°-33'-02" East 84.75 feet; thence South 03°-35'-26" West 156.24 feet; thence Westerly 114.58 feet along the arc of a circle of 430.00 feet radius convex Southerly having a chord bearing of North 78°-46'-34" West, to a point of compound curve; thence Westerly 22.79 feet along the arc of a circle of 770.24 feet radius convex Southerly having a chord bearing of North 70°-17'-42" West; thence South 22°-47'-06" West 211.14 feet; thence North 88°-18'-23" West 511.47 feet; thence North 56°-20'-31" West 298.23 feet; thence North 26°-21'-47" West 357.52; thence North 33°-47'-10" East 539.76 feet; thence Southwesterly 39.68 feet along the arc of a circle of 430.00 feet radius convex Southerly having a chord bearing of South 76°-39'-45" West, to a point of tangency; thence South 79°-18'-22" West 14.29 feet; thence North 10°-41'-38" West 60.00 feet; thence North 79°-18'-22" East 14.29 feet, to a point of curve; thence Northeasterly 263.20 feet along the arc of a circle of 370.00 feet radius convex Southeasterly having a chord bearing of North 58°-55'-39" East; thence North 51°-27'-03" West 140.00 feet; thence North 28°-37'-15" East 79.31 feet; thence North 13°-41'-29" East 94.05 feet; thence North 13°-00'-01" East 100.00 feet; thence North 15°-08'-49" East 515.25 feet, to the Westerly prolongation of a South line of said Ellendale Farm Unit One; thence North 90°-00'-00" East 643.97 feet along said South line, to the Southeast corner of Lot 27 in said Ellendale Farm Unit One; thence South 66°-17'-35" East 60.56 feet, to the Southwest corner of Lot 28 in said Ellendale Farm Unit One; thence South 56°-05'-23" East 81.90 feet, to the Southeast corner of said Lot 28; thence South 27°-25'-56" East 66.94 feet along the Southwesterly line of Lot 29 in said Ellendale Farm Unit One; thence South 53°-46'-47" West 147.06 feet; thence South 45°-55'-26" West 60.57 feet; thence South 55°-39'-42" West 140.08 feet; thence South 70°-15'-53" West 169.77 feet; thence South 56°-39'-50" West 165.92 feet; thence South 14°-27'-13" West 194.63 feet; thence South 44°-23'-11" West 47.18 feet; thence South 52°-45'-40" West 100.34 feet; thence North 71°-07'-48" West 53.79 feet; thence Southwesterly 167.55 feet along the arc of a circle of 430.00 feet radius convex Southerly having a chord bearing of South 30°-01'-56" West; thence South 48°-48'-19" East 64.07 feet; thence South 09°-55'-11" East 77.53 feet; thence South 53°-29'-17" East 440.00 feet, to the herein designated POINT OF BEGINNING, in Lake County, Indiana.

EXHIBIT C

Legal Description of Townhome Development

Lots 1-17 and Outlot E, Unit Two, Ellendale Farm Subdivision as recorded in the Office of the Lake County Recorder on March 23, 1998 in Book 84, page 30 as Document N° 98019070.



EXHIBIT D

Lot 17 Additional Land

That part of Outlot B in Ellendale Farm Unit One, being a subdivision as recorded per Plat Book 82, Page 40, in the Southeast 1/4 of Section 7 and in the Northeast 1/4 of Section 18 both in Township 34 North, Range 8 West of the Second Principal Meridian, bounded and described as follows: BEGINNING at the Southeast corner of Lot 17 in said Ellendale Farm Unit One; thence South 25° -02' -04" West 30.00 feet; thence North 81° -27' -21" West 57.00 feet; thence North 02° -27' -51" West 80.00 feet, to the Southwest corner of said Lot 17; thence South 49° -49' -33" East 94.89 feet, to the herein designated POINT OF BEGINNING; in Lake County, Indiana.

